

BEFORE THE COMMISSIONER, H.R. & C.E.ADMN.DEPARTMENT, CHENNAI-34.

Thursday the 23rd day of June, Two thousand and Sixteen.

Present: Dr.M.Veera Shanmugha Moni, I.A.S.,
Commissioner.

A.P. 2/2016 D2

Between

1. S.P.Vasudevan

2. Rangaraj

...Appellants

And

1. Fit person of Sri Ammaluammal @Guruvammal
Charitable Endowments/ The Executive Officer of
Arulmigu Madhanagalaswamy Temple,
Madurai

.... Respondents.

In the matter of Sri Ammaluammal @Guruvammal
Charitable Endowments, Alwarpuram, Madurai North, Madurai.

The Appeal Petition filed under Section 53(5) of the Tamil Nadu
H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order
dated 23.12.2015 of the Joint Commissioner, Madurai in
Rc.No.5876/2015 passed under Section 53(2) of the Act.

Order in D.Dis.A.P.2/2016 D2 dated: 23.06.2016

The above Appeal petition came up for final hearing before
me on 14.6.2016 in the presence of M/s.J.Anandavalli Counsel for the
appellants, Thiru.E.Ganesh Counsel for the respondent. Upon hearing
their arguments and having perused the connected records and the
matter having stood over for consideration till this day, the following
order is passed.

ORDER

The above appeal petition filed under Section 53(5) of the Act
against the order dated 23.12.2015 of the Joint Commissioner, Madurai
passed under Section 53(2) of the Act.

2. The appellants contended that they along with other three
trustees were managing the affairs of the trust without any complaint
whatsoever. The erstwhile trustee has not handed over the charge as

directed by the Joint Commissioner, Madurai and representations were sent to the Joint Commissioner about the same. Apart from that, there were audit objections raised against him and complaint was also given to the Joint Commissioner. But no action was taken. In the mean time, celebration of Chithirai festival has come and there are kattalais to be performed by the trust. Since the erstwhile trustees did not hand over the books of accounts and other particulars, New Bank Account was opened in the name of the Trust in Andhra Bank. In view of the contingency to celebrate the festival and the pandhalkarar, flower decorator and other contracts wants the payment in cash, the Managing Trustee withdrew the amount in his name and obtained vouchers from the concerned persons for making the payment. After the festival was over, a representation was made to the Joint Commissioner, Madurai to approve the expenses incurred for the festival. He deputed the Assistant Commissioner to enquire into the details furnished by the trustees and he has submitted a report on 23.07.2015. The 1st appellant was asked to show cause for the expenses incurred by proceedings dated 24.10.2015. On 08.11.2015, an explanation was given to the same. The Joint Commissioner, Madurai by proceedings dated 23.12.2015 vide Se.Mu.Na.Ka.No.587/2015 passed an order of suspension and appointed the respondent herein as Fit Person for the conduct of the Trust in as much the Board cannot function in view of suspension of three trustees. The erstwhile Trustees has not handed over charge as per the direction of the Joint Commissioner. They have taken all bonafide efforts for the function of the trustee and there was no misappropriation or mismanagement of the trust. The Joint Commissioner has no jurisdiction to appoint Fit Person for the performance of the trust as there are two more trustees in the Board. The trustees spent the amount by cash for which vouchers are submitted and the expenses incurred were taken by the trustees from the trust account and not even a single rupee was taken without expenses. The amount available in the trust

account was only Rs.79,210/- whereas expenses incurred for the function was about Rs.1,48,477/- and the remaining amount were all spent by the trustees from their funds and claiming of the same with vouchers cannot be termed as mismanagement. The finding of the Joint Commissioner, Madurai that the Managing Trustee has admitted the issuing of the cheque will not amount to taking away of the funds of the trust, particularly when the expenses are all supported by vouchers. The Joint Commissioner himself approved for this year function expenses as Rs.2,10,000/- and that being so, the expenses incurred to the tune of Rs.1,48,477/- is highly reasonable and not excess. It is also relevant to see that the expenses incurred for the year 2013 to 2014 is a sum of Rs.1,51,000/- and that was also done without permission. But no action was taken against erstwhile Trustees, whereas the order of suspension against the appellants is highly excessive. The Joint Commissioner, Madurai has got power to ratify the accounts. Since the amounts are paid by the trustees, unless it is not taken from the trust, production of receipt does not arise. What was produced is the payment already given towards the expenses and permission sought for to allow the remaining amount, as the same are due to the respective parties who had given bills. This explanation has been wrongly understood by the Joint Commissioner.

3. I heard M/s.Anandavalli counsel for the appellants, Thiru.E.Ganesh Counsel for the respondent and perused the relevant records. The counsel for the appellants argued that the period of suspension was not specified and there was no misappropriation of funds. The trustees had spent from their own funds as sufficient fund was not available in the Trust Account.

4. The appellants has sent representation to the Joint Commissioner to approve the expenses incurred for the festival. The Joint Commissioner framed charges against them, as they had incurred expenses without following procedures and produced vouchers for

Rs.79,210/- only but sought ratification for Rs.1,48,497/-. In the explanation the trustees have stated that they were not aware of the procedures and only Rs.79,210/- was available in the Trust account and remaining amount were spent by the trustees from their own funds.

5. It is not a case of misappropriation. Even if any expenses were made without vouchers or the trustees made improper expenditures, that can be recovered from them by initiating appropriate surcharge proceedings against them under Section 90 of the Act.

6. The Trustees are collectively responsible for all the acts done by the Board of Trustees. But the Joint Commissioner had imposed punishment against the appellants alone. Further, while imposing suspension as punishment under Section 53(2) of the Act, the period of suspension should be specified. But in this case the Joint Commissioner failed to specify the period of suspension.

Therefore, the impugned order suffers from infirmity as stated above and it is liable to be set aside. Accordingly the order dated 23.12.2015 of the Joint Commissioner, Madurai is hereby set aside and the appeal petition is allowed.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

/t.c.f.b.o./

Superintendent

To

1. The Appellant through M/s.Anandavalli, Advocate, No.35, Law Chambers, High Court Buildings, Chennai 104.
 2. Fit person through Thiru.E.Ganesh, Advocate, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai 85.
- Copy to
3. The Joint Commissioner, H.R. & C.E. Admn.Dept., Madurai.(along with File no.5683/2013 Volume 1&2, File no.5876/2015) by RPAD
 4. The Assistant Commissioner, HR & CE Admn.Dept., Madurai.
 5. The Inspector, HR&CE Admn. Department, Madurai North, Madurai.
 6. Extra.