IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
06.01.2023	02.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Review Application (Writ) Nos. 169 and 170 of 2021

Review Application (W) No. 169 of 2021

1. The Chief Secretary
   Government of Tamil Nadu
   Secretariat
   Fort St. George, Chennai - 600 009

2. The Secretary
   Government of Tamil Nadu
   Tourism, Culture and Religious Endowments Department
   Secretariat, Chennai - 600 009

3. The Commissioner
   Hindu Religious and Charitable Endowments Department
   Chennai - 600 034 .. Review Applicants

Versus

1. The Director
   Archaeological Survey of India
   Janpat, New Delhi - 110 004

2. The Superintending Archaeologist
   Chennai Circle
   Archaeological Survey of India
   Chennai - 600 009

3. Heritage Conservation Society
represented by its Secretary
Mr. Srikumar
102/10, Kurunji Street
Polepettai, Tuticorin .. Respondents

Review Application (W) No. 170 of 2021

1. The Secretary
Government of Tamil Nadu
Tourism, Culture and Religious Endowments Department
Secretariat, Chennai - 600 009

2. The Commissioner
Hindu Religious and Charitable Endowments Department
Chennai - 600 034 .. Review Applicants

Versus

Periyanambi Narasimha Gopalan
Son of Periyanambi Srinivasachariyar
1/7, Sannadhi Street, Mannarkoil - 627 413
Ambasamudram
Tirunelveli District .. Respondent

Review Applications filed under Order 47 Rules 1 and 2 read with Section 114 of the Code of Civil Procedure, 1908 to review the common order passed in Suo-Motu Writ Petition No. 574 of 2015 and WP (MD) No. 24178 of 2018 dated 07.06.2021.

For Review Applicants in both applications : Mr.NRR.Arun Natarajan, Special Government Pleader (HR & CE)

For R1 & R2 in Rev.A.169/2021 : Mr.G.Karthikeyan, ASG

For Respondent in Rev.A.170/2021 : Mr.M.Ramamoorthy

For stakeholders : Mr. Rangarajan Narasimhan
Mr. T.R.Ramesh,
Mr.R.Venkataraman and Mr. Sriram
Parties-in-Person/Sr. Advocate

COMMON ORDER

R. MAHADEVAN, J.

Both these review applications are filed by the State Government as well as the Hindu Religious and Charitable Endowments Department (hereinafter shortly referred to as "the HR&CE Department") to review the common order dated 07.06.2021 passed in *suo motu* WP No. 574 of 2015 and WP(MD) No.24178 of 2018, in and by which, this Court had issued as many as 75 directions to the review applicants, for the purpose of safeguarding the cultural and heritage value as well the archaeological importance of the historical monuments, sites, temples and its properties.

2.Originally, the applicants preferred the present review applications seeking suitable modification / clarification in respect of the 32 directions, while they filed partial compliance report in respect of 37 directions. However, by clarification petition dated 21.07.2022, they restricted the relief sought in the review applications only in respect of the direction Nos.3, 4, 5, 15, 33, 51 and 53. Subsequently, during the course of hearing, they filed a modified revision petition on 05.08.2022, with respect to the 30 directions, but on the same day, they filed an affidavit dated 05.08.2022, to the effect that they withdrew the said modified revision petition and they sought clarification only

with respect to the directions as mentioned in the clarification petition dated 21.07.2022 and direction no.63 (orally made); and submitted that they will not raise any issue in respect of the other directions and they are taking earnest steps to comply with the same. As such, this court, recording the said affidavit of withdrawal dated 05.08.2022, proceeds to deal with the direction Nos.3, 4, 5, 15, 33, 51 and 53 as stated in the clarification petition dated 21.07.2022 as well as the direction no.63 and the averments connected thereto.

3.The learned Special Government Pleader (HR&CE) appearing for the review applicants submitted that the directions issued by this court are more helpful, guiding and conducive for the effective functioning of the HR&CE Department, besides administering and supervising the secular functioning of the religious institutions and mutts, in the matter of preserving, conserving and maintenance of the ancient, historical and heritage structures, while carrying out repair and renovation works. Adding further, the learned counsel submitted that out of 75 directions, 5 directions are not applicable to the State Government and the HR&CE Department and that, the review applicants have taken steps to comply with 37 directions. It is also submitted that entrusting the powers, duties and works to the District Level Committees is the major issue; that, if the conferment of power to the District Level

committees is bestowed, it will reign in chaos, interruption and diversification of the powers and duties discharged and performed by the hierarchy of authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter shortly referred to as “the HR&CE Act”) and the Rules made thereunder; and therefore, as per the penultimate direction no.75 of the order dated 07.06.2021 that '*in case of any clarification, the party interested or affected is at liberty to approach this Court'*, the review applicants preferred the instant applications to modify / clarify the directions only in respect of the direction nos.3, 4, 5, 15, 33, 51 and 53, as per the clarification petition dated 21.07.2022 and direction no.63.

4.The submissions of the learned Special Government Pleader (HR&CE) for the review applicants in respect of the aforesaid restricted directions, are as under:

Direction Nos. 3, 4 and 5

> ***(3) The Heritage Commission shall consist of 17 members including the representatives from Archaeological Survey of India, representatives from the State Archaeological Department, one renowned historian or anthropologist, two representatives of PWD department i.e., one from Building Structural and Conservation Wing and another from Architectural Wing, one representative from the HR&CE Department not below the rank of Joint Commissioner, one Stapathi qualified from the Government College of Architecture and Sculpture, Mamallapuram or any other college in the state with similar objectives, two experts in Agamas and Shilpa Shastras and one chemical***

analyst. The inclusion of a representative from the UNESCO shall also be taken into consideration.

(4) The Heritage Commission shall identify all the structures, monuments, temples, antiques with historical /archaeological importance within the State of Tamil Nadu, formulate a list with age of such monuments by categorising them within their period group, issue appropriate notification, render periodical advices to the State, supervise the restoration, repair works etc. and maintain the same.

(5) No structural alteration or repair of any monument / temple / idol / sculpture / murals of which are notified either under the Central Act or the State Act, shall take place without the sanction of the Heritage Commission.

4.1. At the first instance, the learned Special Government Pleader (HR&CE) appearing for the review applicants submitted that the constitution of 17 members Heritage Commission is not in consonance with section 4 of the Tamil Nadu Heritage Commission Act, 2012 (Act No.24 of 2012); and that, the court has no power to issue mandamus to the Government to bring a statute or a statutory provision in force, in the light of the decisions of the Hon'ble Supreme Court in ***A.K.Roy v. Union of India [1982 (1) SCC 271] and Aelthemesh Rein, Advocate, Supreme Court of India v. Union of India and others [1988 (4) SCC 54]***. However, the learned counsel, reiterating the averments made in the clarification petition dated 21.07.2022, submitted that the State Government had already enacted the Tamil Nadu Heritage Commission Act, 2012 (Act No.24 of 2012). Section 11(1) of the said Act

provides that all local authorities shall refer to the Commission anything related to identification, restoration and preservation of any heritage building or any other development or any engineering operation, which is likely to affect preservation of any heritage building for advice. According to Section 11(2)(1), the duty of the Commission is purely advisory in nature and it can advise the local authorities on the cost of repair of heritage buildings and the policy to be adopted for raising repair funds from private sources and the manner in which the amount has to be spent.

4.2. Continuing further, the learned Special Government Pleader (HR&CE) submitted that though the Heritage Commission has no power either under the Tamil Nadu Heritage Commission Act, 2012 (Act No.24 of 2012) or under the HR&CE Act to accord sanction for repair works in the temples and also to supervise the restoration, repair works etc. carried out in the temples, since 'temples' are not covered under the Tamil Nadu Heritage Commission Act, 2012 (Act 24 of 2012), the Tamil Nadu Hindu Religious and Charitable Endowments Act, XXII of 1959 is a special enactment to amend and consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State; and that, under the Management and Preservation of Properties of Religious Institutions Rules, framed as per Section 116 (2) (xvii) (xviii) (xix)

and (xxii) of the Act, special Rules have been framed for sanction of plans and estimates, besides supervision, control and inspection of building works by the appropriate authority prescribed therein; and therefore, a separate State Heritage Commission would be constituted under the aegis of the HR&CE Act by suitably framing Rules in exercise of the powers under section 116 of the HR&CE Act.

4.3. Elaborating further, the learned Special Government Pleader (HR&CE) submitted that *vide* G.O.(Ms)No.122, Tourism, Culture and Religious Endowments Department, dated 18.10.2021, in compliance with the direction no.6 of the order dated 07.06.2021, a State Level Expert Committee has been constituted consisting of 12 members and the same can be reconstituted as the State Heritage Commission, which may inspect the ongoing works and identify the temples requiring immediate attention for repairing, renovation, etc., besides inspecting the ongoing works. Thus, the review applicants are complying with the direction nos. 3 and 4 accordingly.

4.4. In respect of the direction no.5, the learned Special Government Pleader (HR&CE) submitted that as per Rule 2(i) of the Management and Preservation of Properties of Religious Institutions Rules, the 'appropriate authority' has been defined in accordance with the value of the works undertaken; and Rule 4 of the said Rules, provides that the proposal of

trustees to execute any work should be approved by the appropriate authority. Further, Rule 12(1) states that after approving the proposal, the trustees shall prepare detailed estimates for the works proposed, make provision in the budget and submit the estimate along with plans to the appropriate authority; and Rule 13 provides for sanction of plans and estimates submitted under Rule 12, by appropriate authority. Hence, it is submitted that Rule 4 can be amended by substituting 'State Heritage Commission', instead of 'appropriate authority', so that, it can approve the proposal of the trustees to execute any work; and the sanction for undertaking the works will be given by the appropriate authority. Stating so, the learned counsel sought to modify the direction no.5 to the extent that the 'appropriate authority' will sanction the works related to structure alteration or repair of any monument/ temple / idol / structure / murals.

Direction No.15

The CAG audit shall be done with ASI expertise to assess the damage structurally and evaluate the value of the antique destroyed. Further, the compliance audit, financial audit and performance audit shall also be done every year for managing huge wealthy resources of the temples.

5.With respect to the aforesaid direction, the learned Special Government Pleader (HR&CE) appearing for the review applicants submitted that to have transparency in the audit of accounts of the religious institutions,

the present audit wing has been migrated under the control of the Finance Department, Government of Tamil Nadu, *vide* G.O.(Ms.)No.181, TC&RE (RE 2.2) Department, dated 25.11.2021. It is further submitted that to strengthen the auditing process, it has been proposed that existing qualifications for the entry level posts in the audit wing will be reviewed and suitable modifications will be prescribed to meet the changing circumstances. That apart, a committee comprising of audit officials has been constituted and it prepared a draft audit manual, based on the Hindu Religious Local Fund Audit Department Audit Manual Volume 5, Manual of Account of the HR&CE and as per the HR&CE Act and the Rules framed thereunder as well as the various Government Orders and Circulars so far issued by the Commissioner; and that, a scrutiny committee comprising of senior officials of the audit wing, has been set up to scrutinize the said draft audit manual and after getting approval from the Government, it will be published. It is also submitted that a team comprising of higher officials of the audit department will be constituted and will be deputed to Tirumala Tirupati Devasthanam, Travancore Devaswom Board and other famous religious institutions to study the procedure and practices adopted for auditing purposes in the temples in different stages and frame procedures to meet out the current scenario of auditing practices in religious institutions in an effective manner. It is further stated that the process

of computerizing accounts, records and all necessary documents of religious institutions under the control of the HR&CE Department by National Informatics Centre is in progress; and that, the feasibility of implementing the risk base audit system, will be ascertained and done, with the approval of the Government. Therefore, according to the learned counsel, the newly created audit wing under the control of the Finance Department, Government of Tamil Nadu, will assess the damage structurally and evaluate the value of the antique destroyed and accoringly, the direction no.15 will be complied with by the review applicants.

Direction No. 33

The state Government or the Commissioner of the HR&CE department, who are the Trustee/administrator of the temple lands, shall not alienate or give away the lands contrary to the wish of the donor. The lands shall always remain with the temples. The public purpose theory shall not be invoked in cases of temple lands over which the interest of the community people of the religious denomination generally rests.

6.Regarding the aforesaid direction, the learned Special Government Pleader (HR&CE) appearing for the review applicants submitted that the lands belonging to religious institutions were alienated for public purposes following the procedures as prescribed under section 34 of the HR&CE Act,

instead of the Land Acquisition Act, as the compensation amount sanctioned under section 34 was higher than the award passed under the land acquisition proceedings. While so, the Government has issued G.O.(Ms) No.200, TC&RE (RE.4.3) Department, dated 02.11.2018 for acquisition of lands belonging to the religious institutions. According to the learned counsel, if the lands are acquired under the Land Acquisition Act, the religious institutions will get meager amount of compensation and the religious institutions have to accept the same or file an appeal seeking enhancement of compensation. On the other hand, when the lands belonging to the religious institutions required for public purposes are given for long lease to other Government Departments or government undertakings or government companies, the religious institutions will get substantial income, which is more beneficial to them. Adding further, the learned counsel submitted that most of the properties are endowed for the purpose of maintenance and rendering service and that, the temples are depending on the income derived from the same, whereas the income derived from the said properties is inadequate to meet the expenses and that, the service holders are paid salary by the temples. It is also submitted by the learned counsel that some of the landed properties belonging to the temples are surrounded by private properties and have no access except through the private properties and hence, no body is

willing to take those properties on lease and the temples are not getting income from the same. In some cases, the private owners are willing to exchange their properties, which are having higher value than the temple properties and if such exchange is permitted, the temple will get more income. Pointing out the same, the learned counsel submitted that the review applicants may be permitted to give the lands belonging to religious institutions required for public purposes to other Government Departments or Government undertakings or Government companies by way of long lease or sale; and that, the HR&CE Department may be permitted to exchange or sale the landed properties, if it is beneficial to the religious institutions, by clarifying this direction.

Direction No.51

The salary and other service and retirement benefits of all the staff of the temple including that of the archakas and oduvars must be fixed as per the provisions of the Minimum Wages Act and on par with the Government servant.

7.With respect to the aforesaid direction, the learned Special Government Pleader (HR&CE) appearing for the review applicants submitted that the provisions of the Minimum Wages Act will not apply to the employees working under the temple management and they cannot be considered as

'workmen' under the said Act. It is further submitted that each religious institution is a separate entity and that, the salaries and allowances of the employees of such religious institution are being fixed, based on the income of the religious institution and paid from the funds of that religious institution and not from the State Consolidated Fund. However, the Government has passed G.O.Ms.No.91, TC&RW Department, dated 28.06.2019 revising the time scale of pay of office holders and servants working in the religious institution throughout the State. It is also submitted that the charges on schedule of establishment of temple employees should not exceed 40% of its annual income and the retired temple employees are being paid under the Departmental Pension Scheme and other terminal benefits are settled as per the Rules framed under section 116(2)(xxiii) of the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020 as framed in G.O.Ms.No.114, TC&RE Department, dated 03.09.2020. Thus, the learned counsel submitted that it is not possible for the review applicants to fix uniform salary to all the employees and hence, the direction no.51 needs to be clarified.

Direction No.53

A fixed salary be awarded to the trustees of the temple, which can be arrived at based on the income of the religious institution to ensure participation on a full time basis by the selected trustee, subject to penal and

disciplinary provisions of the Act. In a routine manner, periodical transfer for the staff of the temples must be made.

8.In this regard, the learned Special Government Pleader (HR&CE) appearing for the review applicants submitted that the post of Trusteeship is purely an honorary post and the term 'trustee' is defined under sub-section (22) of Section 6 of the HR&CE Act, which reads as follows:

> *"Trustee means any person or body by whatever designation known in whom or in which the administration of a religious institution is vested and includes any person or body who or which is liable as if such person or body were a trustee."*

Thus, a trustee is the one, who is appointed for administering the religious institution without any remuneration on a honorary basis. It is he, with whom the trust and its properties have been entrusted for due discharge of the objects of the trust endowment and its due performance. According to sub-section (1-A) of Section 26 of the HR&CE Act, the trustee so appointed shall be disqualified for being appointed as and for being, as such, if he is interested in a subsisting lease of any property or contract made with or any work being done for the religious institution or endowment, or if he is employed as a paid legal practitioner on behalf of or against the religious institution or endowment. It is nowhere stated that a trustee has to be paid salary, emolument or perquisite or any benefit from and out of the income generated from the religious institution in which he is appointed and the Rules provide only for

travelling allowance. Except hereditary trustee, in all the religious institutions, non-hereditary trustees are appointed as stipulated under section 47/49 of the HR&CE Act and they hold the office of the Trusteeship for two years, unless the trustee is removed or dismissed or his resignation is accepted by the appropriate authority. Stating so, the learned counsel submitted that it is not possible to award fixed salary to the trustee of the temple, and hence, this direction will have to be clarified.

9.Ultimately, the learned Special Government Pleader (HR&CE) appearing for the review applicants, during the course of arguments, prayed to clarify the direction no.63 issued by this court, which for easy reference is quoted below:

Direction No. 63

> ***All the employees and trustees concerned with the temples are made to be governed by the Tamil Nadu Government Servants Conduct Rules. There shall be a prohibition for the person with political background to be appointed as a Trustee or employee of the temple in any cadre, in view of Rule 14 of the Tamil Nadu Government Servant Conduct Rules.***

9.1. The learned Special Government Pleader (HR&CE) appearing for the review applicants submitted that *vide* G.O. Ms. No.114, Tourism, Culture and Religious Endowments Department dated 03.09.2020,

Rule 20(10 & 11) of the Tamil Nadu Hindu Religious Institutions Employees (Condition of Service) Rules, 2020 framed under Section 116 (2) (xxiii) of the HR&CE Act, deals with conduct rules of the employees of the Religious Institutions, and the same is usefully extracted hereunder:

> *"20.Conduct Rules -*
>
> *(10)The employee of a religious institution shall not be a member of or be otherwise associated with any political party or any organisation in respect of which there is reason to believe that the organisation has a political aspect. He shall also avoid giving room for any suspicion that he is favouring any political party or any candidate in elections.*
>
> *(11)The employees of a religious institution shall not bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the religious institution."*

According to the learned counsel, the aforesaid rules are sufficient to comply with the direction issued by this court and hence, no further clarification is required for the same.

9.2. However, the learned Special Government Pleader (HR&CE) appearing for the review applicants submitted that the trustees of the temples are in the nature of private citizens and are not public servants. While they hold their posts under the temples, no restriction regarding the political background can be brought in similar to that of Rule 14 of the Tamil Nadu Government Servant Conduct Rules. He also placed reliance on the decision of the Allahabad High Court in ***Shyam Lal Sharma v. LIC of India [1970 II LLJ 393]***, wherein, the prohibition imposed by the Life Insurance

Corporation of India against its employees from canvassing or otherwise interfering or using his influence in connection with the election to the Corporation, was questioned. The Allahabad High Court accepted the plea of the employees and directed the Life Insurance Corporation not to enforce the Regulation 25 of the LIC of India against its employees. Aggrieved by the same, the LIC of India preferred an appeal before the Hon'ble Supreme Court and it was heard along with batch of writ petitions filed by other statutory corporations and finally, the conclusion of the High Court was upheld, in ***Sukhdev Singh v. Bhagatram [AIR 1975 Supreme Court Cases 1331],*** with reference to the appeal preferred by the LIC in Civil Appeal No.1879 of 1972, the relevant passage of which is extracted below:

> *"200. In Civil Appeal No. 1879 of 1972, our conclusion is that the Corporation is an authority within the meaning of Article 12 of the Constitution for the reasons given in this judgment. The conclusion of the High Court that the regulations have not the force of law is set aside. The conclusion of the High Court that Corporation should not be permitted to enforce the regulations mentioned in clause (1) and (4) of Regulations 25 is upheld."*

By referring to the above decision of the Hon'ble Supreme Court, the learned counsel submitted that the Conduct Rules cannot be framed in respect of the trustees of the religious institutions and therefore, this aspect has to be clarified by this court.

10.On the above submissions of the learned Special Government Pleader (HR&CE) appearing for the Review Applicants, we have heard the learned counsel for the respondents and perused the materials available on record.

11.We have also heard some of the stakeholders viz., Mr.Rangarajan Narasimhan and Mr.R.Venkataraman, who were the petitioners in the miscellaneous petitions filed in *suo motu* WP.No.574 of 2015, as well and Mr.T.R.Ramesh and Mr.Sriram, learned senior counsel. According to them, this court had passed a detailed order on 07.06.2021 in *suo motu* WP.No.574 of 2015 etc. batch, with 75 directions, but, till date, none of the directions are complied with by the review applicants; and that, various projects worth about several crores of rupees on renovation of temples and its employees, have been proposed, yet, the same are to be implemented so far. They raised various other issues connnected to the directions issued by this court in the *suo motu* writ petition. However, we are of the opinion that the clarifications sought herein are only between the court and the review applicants and that, all the contentions/submissions made by the stakeholders are connected to the WMPs filed and hence, the same will be dealt with separately on merirts.

12.At the outset, it is necessary to recollect the genesis of the main case viz, *suo motu* Public Interest Litigation as recorded by us in the original order dated 07.06.2021, certain directions of which are sought to be clarified in these review applications, and the relevant passage of the same reads as follows:

> "*2.1 .....a suo motu proceedings, based on the newspaper report published in "The Hindu" on Sunday, 4th January, 2015 titled "Silent Burial", relating to the inaction on the part of the Government in establishing the statutory authority, framing Rules and constituting a 17-member Heritage Commission to advise them on heritage issues. It was pointed out that in April 2012, the Government announced its decision to enact a law on Heritage Commission, which move was welcomed by activists and conservationists and the State Legislature passed a bill in this regard and it had received the assent of the Governor, however, there was no progress ever since. The newspaper report further indicated about another initiative of the Government viz., the Mamallapuram World Heritage Area Management Authority, inspired from the model of Hampi World Heritage Area Management Authority, meant for conservation of cultural heritage of area declared as a World Heritage Site in 1984, which has also not been set up.*
>
> *2.2 Our constitution, understanding the importance of long standing history and civilization, has thrust upon the state, a duty to protect, safeguard and nourish the rich culture, tradition and heritage of this land. The devout inhabitants of indigenous faiths of this land have left behind numerous symbols reflecting their adroit and arduous work, which by efflux of time have garnered great veneration to the faiths now known as religions. The right to profess, practice and propagate religion shall also include within its domain the right to protection of the symbols of such religion. When the state obligated under the Constitution to protect the symbols of heritage, tradition and culture, fails in its duty, the courts have to step in. Since the same was a matter of vital importance, it has been taken up as Public Interest Litigation and registered as suo motu W.P.No.574 of 2015 to issue a mandamus, directing the respondents to take speedy steps to constitute the 17-Member Heritage Commission and also set up the Mamallapuram World Heritage Area Management Authority for the purpose of safeguarding the archaeological monuments in the state of Tamil Nadu. During the pendency of the same, various writ petitions touching upon the protection, maintenance and sustenance of the ancient temples, idols, murals, temple lands and other places /articles*

which all are also of archaeological and historical importance, came to be filed before this Court. In view of the commonality, interconnectivity and interdependence of the issues involved, all the writ petitions have been clubbed together and taken up for hearing along with this Public Interest Litigation. However, for the sake of convenience and easy understanding, separate orders are being passed by this Court and the present order is with respect to suo motu WP.No.574 of 2015 and WP(MD)No.24178 of 2018."

12.1. In the aforesaid batch of cases, several interim directions were issued. Reports were received from the UNESCO, Amicus Curiae and the Committees constituted by this court. Upon considering the same and after hearing the arguments made by all the parties including the stakeholders, the final order was delivered on 07.06.2021 with 75 directions, to protect the archaeological and cultural heritage of this State, which itself goes without saying includes the temples, monuments and other places of historical importance. The need and necessity to preserve the places of historical importance including temples and forts, have been deliberated and expressed by this court in the original order. The significance of preserving the culture, temple lands, folklore, arts, murals and all the activities related to the temples, though have also been spelled out earlier, at the cost of repetition, it is worth pointing out that the rights, directions and duties guaranteed by the Constitution under Part III, IV and IVA cannot be curtailed by any party including the State. The ancient temples in Tamil Nadu, the most in the country, carry a cultural heritage. The temple lands gifted by pious

philanthropists, play a very important role in the sustenance of temples and it is the duty of the administrators of the temples, for which endowments have been made, to preserve the same, as it is settled law that the conditions in gift are to be complied. The Kings, who ruled the State then with different geographical divisions, were all unified in building, maintaining and preserving the temples, charities and activities. Now, all that could be expected of the State government is to take appropriate and continuous action to preserve the temples and its properties left over by the donors. In such administrative process, the role of the HR&CE Department, Mutts and every individual is significant. Erosion of a culture results in elimination of identity and slowly leads to extinguishment. Therefore, the directions issued by this court earlier, is a step towards protection of not only the places of archaeological importance, but also the culture, tradition, properties and the activities associated with such sites including temples.

13.As already stated, the instant review applications were filed as against 32 directions. During the course of hearing, compliance reports dated 26.11.2021 and 07.03.2022 were filed. Thereafter, several questions were raised and liberty was given to the applicants to file clarification petition, which they duly filed on 21.07.2022. Again a modified revision petition was filed on 05.08.2022, which was withdrawn by an affidavit of the same date.

Thereafter, through the affidavit dated 13.10.2022, in the form of compliance report, the applicants have restricted their prayer seeking clarification only in respect of the directions bearing Nos.3,4,5,15,33,51, 53 and 63, instead of pressing the review applications originally filed by them and the same has also been recorded by this court, in the order dated 22.12.2022, the relevant passage of which is reproduced below for ready reference:

> *"The learned Special Government Pleader appearing for the HR&CE Department, referring to the compliance report filed on 13.10.2022, in an unequivocal terms, submitted that these Review Applications are related to the direction nos. 3, 4, 5, 15, 33, 53 and 63 issued in suo motu W.P. No. 574 of 2015 etc. batch and that, the authorities of HR & CE Department have not raised any issue, in respect of other directions, which they are inclined to comply. Such statement is recorded."*

14.As regards the clarifications for directions 3,4 and 5, it is seen that the same are interlinked. According to the review applicants, the Tamil Nadu Heritage Commission Act, 2012 (Tamil Nadu Act No.24 of 2012) prescribes a 16 member committee and it is the state government, which can constitute the commission and the State cannot enact any law, as enactment is the role of the legislature; that, the role of the Heritage commission is advisory in nature and specific authorities are prescribed under the Management and Preservation of Properties of Religious Institutions Rules for approval of plans, estimates, building work, etc.; and that, this court cannot issue any direction for amendments.

14.1. To substantiate their stand, the review applicants placed reliance on the judgments of the Hon'ble Supreme Court in ***A.K Roy's case and Aelthemesh Rein's case*** (cited supra), which in the opinion of this court, do not apply, as they are distinguishable on facts for the reason that they deal with a direction to bring the particular provision of an Act into force, whereas the present writ petition is a *suo motu* Public Interest Litigation emanated from the court for failure of the State to take steps to perform its duties entrusted under Constitution for the protection of the cultural, traditional and religious rights and for the preservation of the sites of archaeological importance. The State having all along contended that it was committed to bring into force the Act and to preserve the places of historical importance, cannot now question the directions or authority issued by this court. The role of the Constitutional Court and its powers to implement and preserve constitutional and fundamental rights, have undergone considerable change. It is not to be forgotten that this is a *suo motu* public interest litigation, taken up to protect the sites of archaeological importance, which will also include the temples. If the Government is unwilling to bring into force or when there is vacuum in law, the court will be within its power to issue directions in the interest of public until there is an enactment. It will be completely a different scenario when the law is struck down as unconstitutional, which can be cured only

bringing in a curative enactment. The federal structure of our Constitution vouches for three-way system in judiciary, executive and legislature. Article 246 of the Constitution deals with the subject matter of laws to be made by the Parliament and by the legislature of the State. The field of legislation given in Schedule VII to the Constitution, has three lists, namely, Union list, State List and the Concurrent list. The populist government of a State is in control of the legislature that enact laws in List II of the Seventh Schedule. The policy of the State encapsulates into law. Enactment of law is one of the significant functions of the State legislature, which is done in accordance with the procedure laid down in Articles 196 to 209 of the Constitution. The legislature is one of the arms of the State, through which governance is made. Hence, when directions are issued to the State, it is imperative that the same are to be complied with by the executive and the legislature as both form part of the State.

14.2. In this context, it will be useful to refer to the following decisions of the Hon'ble Apex court, wherein, specific directions were given to bring in enactments:

(A) ***Amarnath Shrine, In re*, (2013) 3 SCC 247 : 2012 SCC OnLine SC 1053:**

> *"**30.**The next question that arises is as to what directions generally and particularly in the cases of the present kind, the Court is*

competent to issue?

31.*In M.C. Mehta v. Union of India [(1987) 1 SCC 395 : 1987 SCC (L&S) 37] , the Court, while discussing the ambit and scope of Article 32 of the Constitution, held as under : (SCC pp. 405 & 407-08, paras 3 & 7)*

> *"3…. We have already had occasion to consider the ambit and coverage of Article 32 in Bandhua Mukti Morcha v. Union of India [(1984) 3 SCC 161 : 1984 SCC (L&S) 389] and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.*
>
> ***
>
> *7.We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide Bandhua Mukti Morcha case [(1984) 3 SCC 161 : 1984 SCC (L&S) 389] . If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can injunct such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that*

Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words 'in appropriate cases' because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32."

32.*In Vishaka v. State of Rajasthan [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] this Court held as under : (SCC pp. 247 & 251, paras 3 & 15-16)*

"3.Each such incident results in violation of the fundamental rights of 'gender equality' and the 'right to life and liberty'. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practise any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention, as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a 'safe' working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

***

15.In Nilabati Behera v. State of Orissa [(1993) 2 SCC 746 : 1993 SCC (Cri) 527] a provision in the Iccpr was referred to support the view taken that 'an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly

guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

16.In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution."

(emphasis in original)

33.*In Vineet Narain v. Union of India [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] this Court held as under : (SCC p. 264, para 49)*

"49.There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. It is in the discharge of this duty that IRC was constituted by the Government of India with a view to obtain its recommendations after an in-depth study of the problem in order to implement them by suitable executive directions till proper legislation is enacted. The report of IRC has been given to the Government of India but because of certain difficulties in the present context, no further action by the executive has been possible. The study having been made by a Committee considered by the Government of India itself as an expert body, it is safe to act on the recommendations of IRC to formulate the directions of this Court, to the extent they are of assistance. In the remaining area, on the basis of the study of IRC and its recommendations, suitable directions can be formulated to fill the entire vacuum. This is the exercise we propose to perform in the present case since this exercise can no longer be delayed. It is essential and indeed the constitutional obligation of this Court under the aforesaid provisions to issue the necessary directions in this behalf. We now consider formulation of the needed directions in the performance of this obligation. The directions issued herein for strict compliance are to operate till such time as they are replaced by suitable legislation in this behalf."

34.*In University of Kerala v. Council of Principals of Colleges [(2010) 1 SCC 353] this Court held as under : (SCC p. 367, paras 32-33)*

> *"32.It may be noted that this Court has on several occasions issued directions, directives in respect of those situations which are not covered by any law. The decision in Vishaka v. State of Rajasthan [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] is one such instance wherein a three-Judge Bench of this Court gave several directions to prevent sexual harassment of women at the workplace. Taking into account the 'absence of enacted law' to provide for effective enforcement of the right of gender equality and guarantee against sexual harassment, Verma, C.J. held that guidelines and norms given by the Court will hold the field until legislation was enacted for the purpose. It was clarified that this Court was acting under Article 32 of the Constitution and the directions 'would be treated as the law declared by the Court under Article 141 of the Constitution'. (para 16)*
>
> *33.Similarly, the Supreme Court issued directions regarding the procedure and the necessary precautions to be followed in the adoption of Indian children by foreign adoptive parents. While there was no law to regulate inter-country adoptions, Bhagwati, J., (as His Lordship then was) in Laxmi Kant Pandey v. Union of India [(1987) 1 SCC 66 : 1987 SCC (Cri) 33] , formulated an entire scheme for regulating inter-country and intra-country adoptions. This is an example of the judiciary filling up the void by giving directions which are still holding the field."*

35.*The abovestated principles exhibit the scope and width of the power of this Court under Article 32 of the Constitution. There is a clear mandate of law for this Court to protect the fundamental rights of the citizens. Infringements of rights would certainly invite the Court's assistance. The limitation of acceptability to justice will not come in the way of the Court to extend its powers to ensure due regard and enforcement of the fundamental rights. The absence of statutory law occupying the field formulating effective measures to check breach of rights is the true scope of proper administration of justice. It is the duty of the executive to secure the vacuum, if any, by executive orders because its field is coterminous with that of the legislature and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in pursuance of its constitutional obligation to provide solution in any case till the time the legislature addresses the issue. The courts have taken precaution not to pass orders even within the ambit of Article 142 of the Constitution that would amount to supplanting substantive law but*

at the same time these constitutional powers cannot in any way be controlled by any statutory provision. The absence of law and a vacuum or lacunae in law can always be supplied by judicial dictum. In some cases, where the jurisdiction is invoked to protect the fundamental rights and their enjoyment within the limitation of law, the Court has even stepped in to pass orders which may have the colour of legislation, till an appropriate legislation is put in place. The directions of the Court could be relatable to a particular lis between the parties and even could be of a generic nature where the facts of the case called for. There can be cases like the one in hand where there is no infringement of a specific legislation or even where no legislation is in place but are purely cases of infringement of fundamental rights and their violation. The directives are needed to protect them and to ensure that the State discharges its obligation of protecting the rights of the people as well as the environment. The deficiencies in the aforementioned fields are not deficiencies simpliciter but have far-reaching consequences of violating the fundamental protections and rights of the people at large. It is the obligation of the State to provide safety, health care, means to freely move and to profess the religion in the manner as they desire insofar as it is within the limitations of law."

(B) Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449 : 2014 SCC OnLine SC 532:

*"**11.**Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:*

***11.1.**All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;*

***11.2.**All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);*

***11.3.**The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;*

***11.4.**The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;*

***11.5.**The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the*

Superintendent of Police of the district for the reasons to be recorded in writing;

11.6.*Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*

11.7.*Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.*

11.8.*Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.*

12.*We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.*

13.*We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance."*

(C) Madras Bar Assn. v. Union of India, (2021) 7 SCC 369 : 2020 SCC OnLine SC 962:

*"**33.**It has been repeatedly held by this Court that the Secretaries of the sponsoring departments should not be members of the Search-cum-Selection Committee. We are not in agreement with the submission of the learned Attorney General that the Secretary of the sponsoring department being a member of the Search-cum-Selection Committee was approved by this Court in Union of India v. Madras Bar Assn. [Union of India v. Madras Bar Assn., (2010) 11 SCC 1] and it would prevail over the later judgment in Madras Bar Assn. v. Union of India (2014) 10 SCC 1] . We have already referred to the findings recorded in para 70 [**Ed.**: See also para 120(xii) for the direction in this regard.] of the judgment in Union of India v. Madras Bar Assn., [(2010) 11 SCC 1] that the sponsoring department should not have any role to play in the matter of appointment to the posts of Chairperson and members of the tribunals. Though the ultimate direction of the Court was to constitute a Search-cum-Selection Committee for appointment of members to NCLT and Nclat of which Secretary, Ministry of Finance and*

Company Affairs is a member, the ratio of the judgment is categorical, which is to the effect that Secretaries of the sponsoring departments cannot be members of the Search-cum-Selection Committee. We, therefore, see no conflict of opinion in the two judgments as argued by the learned Attorney General. However, we find merit in the submission of the learned Attorney General that the presence of the Secretary of the sponsoring or parent department in the Search-cum-Selection Committee will be beneficial to the selection process. But, for reasons stated above, it is settled that the Secretary of the parent or sponsoring Department cannot have a say in the process of selection and service conditions of the members of tribunals. Ergo, the Secretary to the sponsoring or parent Department shall serve as the Member-Secretary/Convener to the Search-cum-Selection Committee and shall function in the Search-cum-Selection Committee without a vote.

34.*The Government of India is duty-bound to implement the directions issued in the earlier judgments and constitute the Search-cum-Selection Committees in which the Chief Justice of India or his nominee shall be the Chairperson along with the Chairperson of the Tribunal if he is a retired Judge of the Supreme Court or a retired Chief Justice of a High Court and two Secretaries to the Government of India. In case the tribunal is headed by a Chairperson who is not a judicial member, the Search-cum-Selection Committee shall consist of the Chief Justice of India or his nominee as Chairperson and a retired Judge of the Supreme Court or a retired Chief Justice of a High Court to be nominated by the Chief Justice of India and Secretary to the Government of India from the Ministry of Law and Justice and a Secretary of a department other than the parent or sponsoring department to be nominated by the Cabinet Secretary. As stated above, the Secretary of the parent or sponsoring department shall serve as the Member-Secretary or Convener, without a vote.*

35.*Rule 4(2) of the Rules postulates that a panel of two or three persons shall be recommended by the Search-cum-Selection Committee from which the appointments to the posts of Chairperson or members of the tribunal shall be made by the Central Government. The learned Amicus Curiae voiced serious objections to Rule 4(2) on the ground that it would be compromising judicial independence. According to Mr.Datar, the procedure for appointment to the tribunals should be completely outside executive control. The learned Attorney General stated that a panel of names consisting of two or three persons is essential because their antecedents have to be examined by the Intelligence Bureau before appointing them to a tribunal. He suggested that the number of persons to be recommended can be two instead of three to limit the discretion of the Appointments Committee of the Cabinet. The recommendations for appointments by the Search-cum-Selection Committee should be final and the executive should not be*

permitted to exercise their discretion in the matter of appointments to the tribunals.

36.Accordingly, we direct that Rule 4(2) of the 2020 Rules shall be amended and till so amended, that it be read as empowering the Search-cum-Selection Committee to recommend the name of only one person for each post. *However, taking note of the submissions made by the learned Attorney General regarding the requirement of the reports of the selected candidates from the Intelligence Bureau, another suitable person can be selected by the Search-cum-Selection Committee and placed in the waiting list. In case, the report of the Intelligence Bureau regarding the selected candidate is not satisfactory, then the candidate in the waiting list can be appointed.*

……..

60.1. The Union of India shall constitute a National Tribunals Commission which shall act as an independent body to supervise the appointments and functioning of tribunals, as well as to conduct disciplinary proceedings against members of tribunals and to take care of administrative and infrastructural needs of the tribunals, in an appropriate manner. Till the National Tribunals Commission is constituted, a separate wing in the Ministry of Finance, Government of India shall be established to cater to the requirements of the tribunals.

…….

60.3. *Rule 4(2) of the 2020 Rules shall be amended to provide that the Search-cum-Selection Committee shall recommend the name of one person for appointment to each post instead of a panel of two or three persons for appointment to each post. Another name may be recommended to be included in the waiting list.*

……

60.6. *The 2020 Rules shall be amended to make advocates with an experience of at least 10 years eligible for appointment as judicial members in the tribunals. While considering advocates for appointment as judicial members in the tribunals, the Search-cum-Selection Committee shall take into account the experience of the advocate at the Bar and their specialisation in the relevant branches of law. They shall be entitled for reappointment for at least one term by giving preference to the service rendered by them for the tribunals. [**Ed.**: As per the modification effected by a subsequent decision of the Supreme Court in Madras Bar Assn. v. Union of India, (2020) 7 SCC 416, the last sentence of this direction has to be read as follows:"3. …They shall be eligible for being considered for reappointment for at least one term by giving preference to the service rendered by them for the tribunals."]*

……

60.8. *Rule 8 of the 2020 Rules shall be amended to reflect that the recommendations of the Search-cum-Selection Committee in matters of disciplinary actions shall be final and the recommendations of the Search-cum-Selection Committee shall be implemented by the Central Government."*

(D) In Re: To issue certain guidelines regarding inadequacies and Deficiencies in Criminal Trials v. the State of Andhra Pradesh and others, (2021) 10 SCC 598 : (2021) 4 SCR 100:

"*18.It was submitted by the amici that as regards the subject matter relating to the first three Draft Rules, the state and police authorities have to carry out necessary and consequential amendments to the police manuals, and other related instructions to be followed by each State. Counsel appearing for states and union territories have assured that suitable steps to incorporate the Draft Rules – relating to (1) Body sketch to accompany medico-legal certificate, post-mortem report and inquest report- [Draft Rule No.1]; (2) Photographs and Videographs of post mortem in certain cases [Draft Rule No.2] and (3) Scene Mahazar / Spot Panchanama [Draft Rule No.3] would be taken at the earliest.*

19.The court is of the opinion that the Draft Rules of Criminal Practice, 2021, (which are annexed to the present order, and shall be read as part of it) should be hereby finalized in terms of the above discussion. The following directions are hereby issued:

(a)All High Courts shall take expeditious steps to incorporate the said Draft Rules, 2021 as part of the rules governing criminal trials, and ensure that the existing rules, notifications, orders and practice directions are suitably modified and promulgated (wherever necessary through the Official Gazette) within 6 months from today. If the state government's co-operation is necessary in this regard, the approval of the concerned department or departments, and the formal notification of the said Draft Rules, shall be made within the said period of six months.

(b) The state governments, as well as the Union of India (in relation to investigating agencies in its control) shall carry out consequential amendments to their police and other manuals, within six months from today. This direction applies, specifically in respect of Draft Rules 1 - 3. The appropriate forms and guidelines shall be brought into force, and all agencies instructed accordingly, within six months from today."

(E) Satender Kumar Antil v. CBI, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1 : 2022 SCC OnLine SC 825:

> *"**30.**It is also brought to our notice that there are no specific guidelines with respect to the mandatory compliance of Section 41-A of the Code. An endeavour was made by the Delhi High Court while deciding Writ Petition (C) No. 7608 of 2017 vide order dated 7-2-2018 [Amandeep Singh Johar v. State (NCT of Delhi), 2018 SCC OnLine Del 13448], followed by order dated 28-10-2021 in Rakesh Kumar v. Vijayanta Arya [2021 SCC OnLine Del 5629], wherein not only the need for guidelines but also the effect of non-compliance towards taking action against the officers concerned was discussed. We also take note of the fact that a Standing Order has been passed by Delhi Police viz. Standing Order 109 of 2020, which provides for a set of guidelines in the form of procedure for issuance of notices or orders by the police officers. Considering the aforesaid action taken, in due compliance with the order passed by the Delhi High Court in Amandeep Singh Johar v. State (NCT of Delhi), 2018 SCC OnLine Del 13448] dated 7-2-2018, this Court has also passed an order in Abhyanand Sharma v. State of Bihar, [(2022) 10 SCC 819 : 2022 SCC OnLine SC 784] dated 10-5-2021 (sic.10-5-2022) directing the State of Bihar to look into the said aspect of an appropriate modification to give effect to the mandate of Section 41-A. A recent judgment has also been rendered on the same lines by the High Court of Jharkhand in Mahesh Kumar Chaudhary v. State of Jharkhand [2022 SCC OnLine Jhar 620] dated 16-6-2022.*
>
> ***31.Thus, we deem it appropriate to direct all the State Governments and the Union Territories to facilitate Standing Orders** while taking note of the Standing Order issued by Delhi Police i.e. Standing Order 109 of 2020, to comply with the mandate of Section 41-A. We do feel that this would certainly take care of not only the unwarranted arrests, but also the clogging of bail applications before various courts as they may not even be required for the offences up to seven years.*
>
> ***Summary/Conclusion***
>
> ***100.**In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments:*
>
> ***100.1.**The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.*
>
> *……*
>
> ***100.4.**All the State Governments and the Union Territories are directed to facilitate Standing Orders for the procedure to be followed*

under Section 41 and 41-A of the Code while taking note of the order of the High Court of Delhi dated 7-2-2018 in Amandeep Singh Johar v. State (NCT of Delhi), [2018 SCC OnLine Del 13448] and the Standing Order issued by Delhi Police i.e. Standing Order 109 of 2020, to comply with the mandate of Section 41-A of the Code.

100.7.*The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.*

100.12.*All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.*

101.*The Registry is directed to send copy of this judgment to the Government of India and all the State Governments/Union Territories"*

Thus, the Constitutional courts are not without powers to issue appropriate directions to the State to amend the rules, if necessary, while dealing with a public interest litigation. Pertinently, it is to be mentioned at this juncture that on the date of final hearing, the current position has been clarified by producing the draft rules by the learned Special Government Pleader (HR&CE) appearing for the review applicants.

14.3. Coming to the next point, from the genesis of the public interest litigation and the various interim orders including the constitution of Committees with members from UNESCO to visit the temples, appointment of amicus curiae, etc, which were all recorded in the order dated 07.06.2021, it was apparent that the intention of this court was to protect the buildings and

monuments of historical and cultural heritage including the temples, as indisputably, temples are also a symbol of cultural and historical heritage. The applicants herein after having participated actively, contributed with statistics, during inspections and accepted to protect the temples with heritage value, cannot now be permitted to take a different stand stating that the temples are not covered under the Tamil Nadu Heritage Commission Act, 2012. In any case, this court is of the view that the provisions of the Tamil Nadu Heritage Commission Act, 2012, are wide enough to cover temples. The definitions of 'building', 'heritage building', 'monuments of heritage importance' etc., found in Section 2 of the said Act, are exhaustive to include within its ambit, the temples also. For better appreciation, the relevant definitions are extracted hereunder:

> ***Section 2***
> *"(a) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial, cultural or other purposes whether in actual use or not."*
>
> *"(b) "building operations" includes rebuilding operations, structural alterations of or additions to buildings or other operations normally undertaken in connection with the construction of buildings."*
>
> *"(h) "heritage building" means any building or one or more premises or any part thereof which requires preservation and conservation for historical, architectural, environmental or cultural importance and includes such portion of the land adjoining such building or any part thereof as may be required for fencing or covering or otherwise preserving such building and also includes the areas and buildings requiring preservation and conservation for the purposes as aforesaid."*
>
> *"(k) "monuments of heritage importance" means any building, structure, erection, monolith, monument, mound, tumulus, tomb, place of interment,*

> *cave, sculpture, inscription on an immovable object or any part or remains thereof, or any site, which the Government, by reason of its heritage association, considers it necessary to protect against destruction, injury, alteration, mutilation, defacement, removal, dispersion or falling in to decay."*

14.4. The temples upon being declared as heritage sites, will be known as a place of historical importance bringing them under the jurisdiction of the Commission for preservation and repairs, which will be an added protection. At the same time, the authority of HR&CE Department in other aspects will not be disturbed and they can co-ordinate with the experts and the Commission. That apart, by declaration of temples as heritage sites, their status as a symbol of culture, will not be disturbed; and that, the temples are protected under Articles 25 and 26 of the Constitution.

14.5. As far as the number of members is concerned, during the pendency of the *suo motu* public interest litigation, the State never objected to the 17 member commission. The recommendations are also made based on the report of UNESCO. It is also relevant to mention here that already, the Secretary to the Tourism and Cultural Department, who is also the Secretary to the Religious Endowment Department, is a member of the Commission. Therefore, along with the existing 16 members, another member can be included from the HR&CE Department.

14.6. Similarly, a responsibility has been fixed on the local authorities. The object of the Act is to protect the places of cultural and historical importance. The provision will generally have to be interpreted keeping in mind the object of the enactment. In view of the clarification issued above, it is necessary that wider and exhaustive meaning is to be conferred on the term "local authority" so as to effectively implement the provision. Therefore, the definition of “local authority” in the Tamil Nadu Heritage Commission Act, 2012, is to be amended to include “any other authority under whom any site, building, monument or any other place of historical, architectural or cultural importance rests or to whom such functions or responsibility is entrusted by the State”, to remove all the doubts. Section 11 of the Tamil Nadu Heritage Commission Act, 2012, deals with the powers and functions of the Commission. Section 15 mandates that every advice of the commission is to be accepted by the Government and local authority and the same is to be implemented promptly and effectively. Therefore, the advise of the Commission is not directory, but mandatory. The object of the said Tamil Nadu Heritage Commission Act, 2012, which is self-explanatory, is to protect all structures of cultural and heritage value in the State; and the Act is to constitute a Heritage Commission for the State in connection therewith or incidental thereto, for the protection of such structures. In this regard, it will be

useful to refer to the judgment of Full Bench of this Court in ***Abdul Sathar v. Principal Secretary to the Government of Tamil Nadu and others*** wherein, while dealing with the binding nature of the recommendations of the Human Rights Commission, it was held as under:

> *"The recommendation of the Commission made under Section 18 of the Act, is binding on the Government or Authority. The Government is under a legal obligation to forward its comments on the Report including the action taken or proposed to be taken to the Commission in terms of Sub Clause (e) of Section 18. Therefore, the recommendation of the H.R.Commission under Section 18 is an adjudicatory order which is legally and immediately enforceable. If the concerned Government or authority fails to implement the recommendation of the Commission within the time stipulated under Section 18(e) of the Act, the Commission can approach the Constitutional Court under Section 18(b) of the Act for enforcement by seeking issuance of appropriate Writ/order/direction. We having held the recommendation to be binding, axiomatically, sanctus and sacrosanct public duty is imposed on the concerned Government or authority to implement the recommendation. It is also clarified that if the Commission is the petitioner before the Constitutional Court under Section 18(b) of the Act, it shall not be open to the concerned Government or authority to oppose the petition for implementation of its recommendation, unless the concerned Government or authority files a petition seeking judicial review of the Commission's recommendation, provided that the concerned Government or authority has expressed their intention to seek judicial review to the Commission's recommendation in terms of Section 18(e) of the Act."*
>
> *……*
>
> *"We earnestly trust and hope that the Parliament in its collective wisdom would bring necessary amendments in the Act to provide wherewithal to the Commission for direct execution of the recommendation. By such initiation, the learned Parliament would be according befitting status to the Commission steered by the high constitutional dignitaries of the highest legal order.*
>
> *….*
>
> *498. In the said circumstances, we hereby suggest to the policy makers to make suitable amendment's in the Act providing for an internal/self-contained mechanism qua Human Rights Commission for enforcing its recommendations under Section 18 of the Act. By such amendment's, the Act would become complete in all fours, leaving no room for procrastination in offering remedial action promptly. …"*

Hence, there is no impediment for the State to implement the directions of this court by making suitable amendments.

14.7. Furthermore, it is clarified by this court that the authorities shall act in accordance with the provisions of the HR&CE Act and Rules framed thereunder, with respect to the sanction for undertaking the works. Accordingly, the issues relating to the direction nos.3, 4 and 5 are answered. Insofar as the reconstituting the State Level Committee functioning under the HR&CE Department as State Heritage Commission, the same though falls within the ambit of direction no.6, it is clarified that the Heritage Commission is not only for the temples, but also for all other structures, which have cultural and heritage value. Hence, the request to reconstitute the State Level Committee as State Heritage Commission is not tenable and the State Level Committee is to function as per direction no.6.

15.Regarding direction no.15, after having considered the submissions of the learned Special Government Pleader (HR&CE) appearing for the review applicants, this court is of the opinion that such a direction was issued only in the interest of the temples and all places of historical importance, as the officials of the HR&CE Department so far, have not

maintained proper accounts relating to income from the lands, the extent of lands and leases, etc. The audit as suggested by the court is to independently ascertain whether the accounts are properly maintained; and the valuation of work, sanction of funds for repairs, accountability in expenditure and the sum spent are proportionate to the value of work, etc., are made properly. As per Article 149, at the request of the State, the Comptroller and Auditor General can audit the accounts of the State or any department and hence, the conduct of audit at the request of the State, by Comptroller and Auditor General, will not take away any right of the State government's administration. The State can also follow its own mechanism of audit. The audit to be conducted by the office of the Comptroller and Auditor General, is only an addition to the existing system and this Court in exercise of its authority under Article 226 of the Constitution of India, can issue any direction for such audit. This issue is clarified accordingly.

16.With regard to direction no.33, it will be necessary to look into the relevant provision of the HR&CE Act, which reads as follows:

> *"34.Alienation of immovable Trust property:- (a) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.*
>
> *Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published, in such manner as may be prescribed, inviting objections and suggestions with respect thereto, and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.*

Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

Explanation:- (4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to or given or endowed for the purpose of any religious institution and the Commissioner shall give effect to all such directions."

From the above provision, it is clear that the exchange, sale or mortgage and any lease for a term exceeding five years of any immoveable property is generally null and void. The exception being the prior sanction of the Commissioner for the necessity or beneficial to the institution. It is pertinent to mention that the word 'necessity' used therein would have to be related to the necessity of the temple or institution and not for the necessity of third parties. Necessity and beneficial intent being a pre-requisite condition, must be satisfied before the decision to even lease out the property for more than five years. Such a decision must be taken for the rational consideration. Therefore, this court is of the opinion that for alienation of the immovable properties belonging to the religious institutions, all the conditions stipulated in the proviso like publication, calling for objections and previous sanction from the Government and explanation to Section 34 of the HR&CE Act have to be scrupulously followed and it has to be established that such alienation is beneficial to the interest of the temple or institution and that, the alienation is the only option to ensure that the activities of temples including performance of rituals will be disturbed, if the property is not sold. It must also be for

necessity or beneficial for the temple or the religious institution. Before the properties are alienated, the other provisions regarding common good fund, funds of other temples to be used for the preservation and other activities of the other temples, contribution from the public, will have to be taken into consideration. Even thereafter, if there is a requirement, a decision on sale of property can be taken, that too, after following due procedure as contemplated under the HR&CE Act. The government lands are to be first utilized for public purpose before the lands belonging to the temples are touched. The directions to be issued by the Government under the explanation should also be inconformity with the above principles. It is significant to mention here that a Division Bench of this Court in the judgment in W.A No. 2831 of 2002 has already held that temple properties cannot be acquired. There are Government orders in G.O.MS.No.1266 (Rev.) dated 30.05.1981 and G.O.Ms.No.1630 dated 26.09.1984 on the subject. As such, the temple properties cannot be gifted away against the interest of the institution. The intention with which the charities given by the donor cannot be shun away at the pleasure of the government or the Commissioner. The Will of the donor is of paramount importance, which cannot be surpassed at executive pleasure against the interest of the temples. At this juncture, it is necessary to place on record the importance of maintenance of accounts regarding the contribution by the

donors, hundi collection, expenditure and importance of independent audit performed by an authority not forming part of state functionary. Therefore, the alienation by the government can only be in consonance with the provisions and object of the HR&CE Act; and that, the actions taken by the HR&CE Department shall always be subject to judicial review as this Court being one of the guardians of the rights guaranteed by the constitution, is vested with such power.

16.1. In these days of electronic advancement and computerization coupled with the manpower held by the State, it cannot be said that the extent of the lands cannot be identified. Further, as per Rule 16, the provisions of the Religious Institutions (Lease of Immovable) Property Rules are not applicable to the lands covered under the Tamil Nadu Public Trusts (Regulation of and Administration of Agricultural Lands) Act, 1961 and to mutts. The Act mainly deals with agricultural lands and brings in restriction on the holding of lands by “cultivating tenants” to five acres. The Act is applicable to temples as per Section 2(25). Already, enough directions have been issued about fixation of fair rents and it is the contention of the HR&CE department that a procedure is being followed. Therefore, the department has to ensure that all applicable laws relating to temple properties including the cultivable properties are followed. As far as exchange of the temple properties

is concerned, it is clarified that the land offered in exchange should be in the vicinity where the property situated with unhindered access and proper facilities and utilised only for the temple activities. This issue is answered accordingly.

17.In respect of the direction no.51, this court is of the view that the same is not contrary to the Tamil Nadu Hindu Religious Institutions Employees (Condition of Service) Rules, 2020 and hence, the minimum wages Act is applicable to employees of the temples also. The State is under constitutional obligation, to ensure a decent living for all the workers and their families. Right of life includes right to livelihood. Article 7 of the International Covenant on Economic, Social and Cultural Rights 1966, speaks about fair wages and equal remuneration for all workers for work of equal value. Therefore, the State is bound to comply with the provisions of the Minimum Wages Act in respect of the temple employees. The Minimum Wages Act and the notifications issued by the State are targeted towards guaranteeing a minimum standard of life, to all section of workers, skilled and un-skilled. It is pertinent to mention here that the employees of the Department are indisputably discharging public functions and are “public servants” under section 12. Just because the scheme of administration of the temple

contemplates payment from the income of the temple, the minimum wages cannot be denied. There are certain ways to generate income for paying salary to the temple staff, such as, the ceiling on the expenses fixed by the State can be increased, the surplus funds of other temples and the funds from the common good fund can be utilised, unnecessary expenses at the cost of the temples have to be cut down, and the State, if necessary, should also contribute for the same. Thus, this issue is clarified accordingly.

18.Insofar as the direction nos.53 and 63, we find the contentions of the review applicants to be riddled with contradiction. If there is provision for transfer, transfer can be made according to the rules and the issue stands clarified. It is also not out of place to mention here that the constitutional validity of Rule 17, which facilitates transfer, was upheld by this court.

18.1. With respect to the non-hereditary trustees, though it is visioned as honorary, an honorarium instead of salary can be paid and the same will bring in more accountability in addition to the existing safeguards and measures under the Act.

18.2. Another issue that was raised is relating to the appointment of trustees with political connections. The trustees who play a significant role in the day to-day management of the temple administration, are

to be people of impeachable character with devotion towards the deity. Sections 25A and 26 were introduced by insertion and substitution in the Act with that object. Therefore, the appointment of trustees cannot be based merely on political will. Opportunity must be given to all devotees and the process of selection must be transparent. The person to be appointed as trustee, must be satisfied with all the requirements, as per the provisions of the HR&CE Act and the judicial pronouncements and does not suffer from the vice of disqualification under section 26. The person so appointed proves to be religious and an ardent devotee and that, a mere political connection would not vitiate such appointment. It is pertinent to point out that a non-hereditary trustee can occupy a post only for a specific period. However, the existence of the political domination would be evident from the repeated and continuous appointment of same persons as trustees for several years, in different posts of the Board so as to ensure such person continues in the Board would cast a spell of cloud over such appointment and hence, should be avoided. It is settled law that an authority cannot do indireclty, that which, it is not permitted to do directly ***[See: D.C. Wadhwa and others v. State of Bihar, (1987) 1 SCC 378]***. The decision in the ***LIC of India's*** case is not applicable to the facts of the present case, as already, there is Rule 20 of The Tamil Nadu Hindu Religious Institutions Employees (Condition of Service) Rules, 2020. It is not

to be forgotten that the employees of the HR&CE Department are discharging public functions and that, they are also declared as "public servants" under Section 12. The Trustees, so appointed are discharging public duty as they are handling administration of temples, public money and also the properties of the temples. Though they are private citizens, they are deemed to be public servants, while discharging public duty. We feel, it is not necessary to deliberate further in these applications as the law is settled on this point ***[Refer: state v. C.N.Manjunath [(2017) 11 SCC 361]***, ***Asian Resurfacing of Road Agency (P) Ltd v. CBI (2018) 16 SCC 299, and State of Gujarat v. Mansukhbhai Kanjibhai Shah (2020) 20 SCC 360]*** and we deem it suffice to hold that any person discharging public duty including the handling of public money and property, is a public servant. If the existing rules are sufficient to meet out the directions, the same can be implemented. The issue stands clarified accordingly.

19.With the aforesaid clarifications, both these review applications stand disposed of. No costs.

Post the matters for reporting compliance after three months.

(R.M.D., J.) **(P.D.A., J.)**

02.06.2023

Index : Yes / No
Internet : Yes / No

To

1. The Chief Secretary
   Government of Tamil Nadu
   Secretariat
   Fort St. George, Chennai - 600 009

2. The Secretary
   Government of Tamil Nadu
   Tourism, Culture and Religious Endowments Department
   Secretariat, Chennai - 600 009

3. The Commissioner
   Hindu Religious and Charitable Endowments Department
   Chennai - 600 034

4. The Director
   Archaeological Survey of India
   Janpat, New Delhi - 110 004

5. The Superintending Archaeologist
   Chennai Circle
   Archaeological Survey of India
   Chennai - 600 009

6.The Secretary, Heritage Conservation Society
   102/10, Kurunji Street
   Polepettai, Tuticorin

R. MAHADEVAN, J
and
P.D. AUDIKESAVALU, J

rsh / rk

Pre-delivery common order in
Rev.A (Writ) Nos. 169 and 170 of 2021

02.06.2023