

P.Suresh Kumar vs The Secretary on 13 April, 2023

Author: Anil K. Narendran

Bench: Anil K.Narendran

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA
&
THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
Thursday, the 13th day of April 2023 / 23rd Chaithra, 1945

DBP NO. 95 OF 2018

IN THE MATTER OF TDB REPORT NO.89 OF 2018 - COMPLAINT NO.17 OF 2018 - QUALITY OF
POOJA ARTICLES AND FIXED RATE - SUO MOTU PROCEEDINGS INITIATED - REGARDING

PETITIONER:

P.SURESH KUMAR
AGED 51 YEARS, POOVATHU MADOM, WEST FORT,
MAVELIKKARA.

RESPONDENTS:

1. THE SECRETARY
TRAVANCORE DEVASWOM BOARD, NANTHANCOD, KAWDIAR POST
THIRUVANANTHAPURAM-695 003
*ADDL.R2 IMPEADED
2. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
*IS IMPEADED AS ADDITIONAL 2ND RESPONDENT VIDE ORDER DATED
12.02.2019 IN DBP 95/2018.

*ADDL.R3 IMPEADED

3. MARKET FED

REPRESENTED BY THE MANAGING DIRECTOR

*IS SUO MOTU IMPEADED AS ADDITIONAL 3RD RESPONDENT AS PER

ORDER DATED 10TH APRIL 2019

*ADDL.R4 IMPEADED-

4. THE JOINT DIRECTOR,

KERALA STATE AUDIT DEPARTMENT, TRAVANCORE DEVASWOM BOARD AUDIT,

NANTHANCODE, THIRUVANANTHAPURAM - 695003

*IS SUO MOTU IMPEADED AS ADDITIONAL 4TH RESPONDENT AS PER

ORDER DATED 13/04/2023 IN DBP 95/2018

BY SRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD FOR R1

BY GOVERNMENT PLEADER FOR ADDL.R2 & R4

BY SRI.P.RAMACHANDRAN, AMICUS CURIAE FOR OMBUDSMAN

BY M/S.K.V.GEORGE, P.N.RAJAGOPALAN NAIR, P.S.GIREESH and

RIYAL DEVASSY, Advocates for Addl.R3

THE DEVASWOM BOARD PETITION HAVING COME UP FOR ORDERS AGAIN ON
13/04/2023, UPON PERUSING THE PETITION AND THIS COURT'S ORDER DATED
10/04/2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING.

ANIL K. NARENDRAN & P.G. AJITHKUMAR, JJ.

DBP Nos.95 of 2018 and 26 of 2019

Dated this the 13th day of April, 2023

ORDER

Anil K. Narendran, J.

DBP No.95 of 2018:-

This DBP is registered based on TDB Report No.89 of 2018 in Complaint No.17 of 2018 of the learned Ombudsman. The said complaint by a devotee by name P.Suresh Kumar, who is arrayed as the petitioner in this DBP, relates to sale of pooja materials in temples under the management of the Travancore Devaswom Board. In the complaint dated 21.12.2017 filed before the learned Ombudsman, the petitioner has pointed out the undesirable practice of procurement and sale of pooja materials in the temples under the management of the Travancore Devaswom Board, virtually looting the devotees. The task is mostly done by entrusting the same with the Devaswom employees, instead of the Devaswom Board supplying it directly. Pooja materials are being procured through private suppliers or by tender and then sold to the devotees without any regard to the quality and purity to be maintained, by virtue of which the rights and interest of the devotees and the deity are not protected. There was an earlier order passed by the Devaswom DBP Nos.95 of 2018 and 26 of 2019 Bench in DBP No.23 of 2014, which was based on the report submitted by the learned Ombudsman with reference to the complaint preferred by one K.Sivankutty Nair, in which the complainant had referred to various instances where spurious and sub-standard pooja materials, such as camphor, oil, gee and such other articles were being procured. In the report, the learned Ombudsman suggested that the Vigilance Wing of the Travancore Devaswom Board should take necessary steps to have periodical checking with regard to the quality of pooja materials and that the Travancore Devaswom Board shall consider whether it would be in the best interest of the devotees to conduct the stalls departmentally. In DBP No.23 of 2014, this Court passed an order dated 17.02.2014. Pursuant to the directions contained in that order, the Devaswom Board had considered the matter, also referring to the provisions of the Food Safety and Standards Act, 2006 as well as the Standards of Weights and Measures Act, 1976 and ensure the quality of vazhipadu items. It was accordingly, that a policy decision was taken by the Devaswom Board to see that vazhipadu items are sold only through pooja stalls maintained by the Devaswom directly, which shall be implemented in a phased manner. It was DBP Nos.95 of 2018 and 26 of 2019 resolved that, from the year 2017-18 onwards, auction of stalls shall put to an end and direct supply has to be effected by the Devaswom, engaging persons deployed on daily wages. The pooja items sold through the department stalls were decided to be supplied under the name and label of the Devaswom Board. Though various decisions were taken for implementing direct supply of pooja materials and a project report was directed to be submitted in this regard, nothing transpired thereafter.

2. In this DBP, an affidavit dated 31.01.2019 has been filed on behalf of the Travancore Devaswom Board, wherein it is stated that the committee appointed by this Court as per the order dated 06.07.2011 in DBP No.31 of 2009 found that it was practically difficult to supply vazhipadu articles in a centralized manner and that the Board has decided to cancel the earlier proceedings dated 29.03.2016, vide Board order dated 23.01.2019.

3. On 17.12.2018, when this DBP came up for consideration, the Devaswom Bench passed an interim order staying further procurement of pooja materials by the Devaswom Board through third parties/employees, except with the permission of this Court (in case of extreme emergency), DBP Nos.95 of 2018 and 26 of 2019 making it clear that it will not stand in the way of the Devaswom Board to effect procurement and supply directly.

4. In this DBP, the Devaswom Board filed I.A.No.1 of 2019 producing therewith a copy of Board order dated 23.02.2019, pointing out that the Board has decided to constitute a separate committee to study the possibility for centralized supply of pooja materials in different Devaswoms under its management, in the light of the orders passed by this Court. After getting the report of the said committee, the matter will be reconsidered. In the affidavit filed in support of that interlocutory application, it is stated that there is no adequate infrastructure to effect centralized supply of pooja materials as on that date; that the current contract with the suppliers will come to an end only by 31.03.2019; and that it is practically impossible to implement the Board decision dated 29.03.2016 before 31.03.2019. It was also pointed out that the implementation of the Board decision dated 29.03.2016 will cost much financial burden to the Devaswom Board and therefore, sought for an order to vacate the interim order passed by the Devaswom Bench on 17.12.2018, simultaneously seeking DBP Nos.95 of 2018 and 26 of 2019 permission to continue with the present system of supply of pooja materials, for the year 2019-20 as well.

5. By the order dated 13.03.2019, which was under

challenge before the Apex Court in Civil Appeal No.1295 of 2023, arising out of SLP(C)No.13404 of 2019, the Devaswom Bench permitted the Travancore Devaswom Board to continue the existing arrangement by procuring the materials from suppliers already on record (notwithstanding the expiry of the agreement on 31.03.2019), by a further period of three months, which shall come to an end on 30.06.2019. In the said order it was made clear that it will be open to the Devaswom Board to enter into fresh agreements with such persons to effect the supply, if they are interested in effecting the supply on same rates and conditions. If anybody is reluctant, liberty is given to the Devaswom Board to make appropriate arrangements to ensure continuous supply. By the order dated 13.03.2019, the Devaswom Board was directed to file a report as to the steps taken to implement the Board order dated 29.03.2016.

6. In SLP(C)No.13404 of 2019 filed by the Travancore Devaswom Board challenging the order dated 13.03.2019 of the Devaswom Bench in this DBP, the Apex Court passed an order DBP Nos.95 of 2018 and 26 of 2019 dated 04.07.2019 extended, pending further orders by the Apex Court, the time granted by the Devaswom Bench until 30.06.2019 for continuing with the existing arrangements for procuring pooja materials. In the said SLP(C), the Apex Court passed various orders. By the order dated 14.01.2020, Justice K.T.Sankaran, a former Judge of this Court was requested to submit a report before the Apex Court indicating the steps for measures that can be reasonably adopted by the Travancore Devaswom Board to ensure the supply of pooja materials of the requisite quality to the devotees and particularly to obviate the exploitation of devotees by commercial interest.

7. The interim report dated 26.03.2022 of Justice K.T.Sankaran, a former Judge of this Court was followed by a final report dated 15.11.2022 in 4 volumes. Volume No.1 contains the report and the volumes 2 to 4 contain the annexures.

8. On 20.02.2023, when the aforesaid report came up for consideration, the Apex Court granted leave in SLP(C)No.13404 of 2019 and thereafter allowed Civil Appeal No.1295 of 2023 by setting aside the order dated 13.03.2019 of the Devaswom Bench in DBP No.95 of 2018, without entering DBP Nos.95 of 2018 and 26 of 2019 into the merits of the disputes and the matter is remanded back to this Court for fresh consideration. By the said order, the Apex Court directed the Devaswom Bench to look into the report filed by Justice K.T.Sankaran and revisit the issues raised in the impugned proceedings and pass an order in accordance with law.

9. The final report dated 15.11.2022 deals with various aspects relating to supply of pooja materials in temples under the management of the Travancore Devaswom Board and also the constructions made by the Maramath Wing of the Board in various temples under its management. Various suggestions have also been made in the final report dated 15.11.2022.

10. Having perused the final report dated 15.11.2022, we deem it appropriate to suo motu implead the Joint Director, Kerala State Audit Department, Travancore Devaswom Board Audit, Nanthancode, Thiruvananthapuram - 695 003 as additional 4th respondent. Registry to carry out necessary corrections in the cause title.

11. The learned Senior Government Pleader enters appearance for the additional 4th respondent.

12. The learned Standing Counsel for Travancore Devaswom Board to place on record an affidavit on behalf of the DBP Nos.95 of 2018 and 26 of 2019 Board on the suggestions made in the final report dated 15.11.2022 of Justice K.T.Sankaran. The learned Senior Government Pleader to place on record the remarks of the additional 4th respondent Joint Director, Kerala State Audit Department on the suggestions in the said report. The affidavit on behalf of the Travancore Devaswom Board and the remarks of the 4th respondent Joint Director shall be placed on record within four weeks.

13. DBP Nos.95 of 2018 and 26 of 2019:-

List on 25.05.2023, for further consideration.

Sd/-

ANIL K. NARENDRAN, JUDGE Sd/-

P.G. AJITHKUMAR, JUDGE MIN 13-04-2023 /True Copy/ Assistant Registrar