

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 30TH DAY OF MARCH 2022 / 9TH CHAITHRA, 1944

DBP NO. 5 OF 2022

IN THE MATTER OF TRAVANCORE DEVASWOM BOARD - TDB

PROCEEDINGS INITIATED - REG.

PETITIONER:

SUO MOTU

BY ADV suo motu

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO
GOVERNMENT, REVENUE (DEVASWOM) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695
001.
- 2 COCHIN DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY, ROUND NORTH,
TRICHUR-680 001.
- 3 DEVASWOM OFFICER
POORNATHRAYEESA TEMPLE,
THRIPUNITHURA DEVASWOM, THRIPUNITHURA-682 301.
- 4 ADDL.R4.SREE RAGHAVA PURAM SABHA YOGAM
REG NO:62/IV/2018, BRAHMASWOM MADOM, WEST NADA,
SREE RAGHAVAPURAM TEMPLE, CHERUTHAZHAM, MANDUR
P.O., KANNUR DISTRICT, 670501, REPRESENTED BY
ITS PRESIDENT

- 5 ADDL. AKHILAKERALA THANTHRI MANDALAM
SOCIETY BEARING REG.NO.Q.700/2010, KOLLAM,
REPRESENTED BY ITS GENERAL SECRETARY,
S.RADHAKRISHNAN POTTI, AGED 64 YEARS, S/O
M.SANKARAN POTTI, RESIDING AT KIDAKOTTU ILLOM,
KAPPILMEKKU, KRISHNAPURAM P.O., KARTHIKAPALLY
TALUK, ALAPPUZHA DISTRICT, PIN - 690533
- 6 ADDL. YOGAKSHEMA SABHA
REG NO:83/76, REGISTERED OFFICE AT OUTER RING
ROAD, GURUVAYOOR, THRISSUR-680101, REPRESENTED
BY ITS SECRETARY,
M.V. SUBRAHMANIAN, AGED 57 YEARS, S/O M V VISHNU
NAMBOODIRI
- BY ADVS.
K.P.SUDHEER ADVOCATE
T.V.JAYAKUMAR NAMBOODIRI
P.B.KRISHNAN
P.N.DAMODARAN NAMBOODIRI
P.B.SUBRAMANYAN
SABU GEORGE
MANU VYASAN PETER
- SRI S RAJMOHAN- SR GOVERNMENT PLEADER, SRI
P.RAMACHANDRAN- AMICUS CURIAE

THIS DEVASWOM BOARD PETITION HAVING COME UP FOR
ADMISSION ON 30.03.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

ORDER

Anil K. Narendran, J.

This DBP is registered *suo motu*, based on a news item that appeared in Kerala Kaumudi daily dated 04.02.2022 that, as part of 'Panthrandu Namaskaram' in Sree Poornathrayeesa Temple at Thripunithura, under the management of Cochin Devaswom Board, the devotees are made to wash the feet of 12 brahmins as atonement for sins. The Registry was directed to issue a copy of the proceedings dated 04.02.2022 to the learned Senior Government Pleader, the learned Standing Counsel for Cochin Devaswom Board and also the learned Amicus Curiae for the learned Ombudsman. A copy of the news items appeared in Kerala Kaumudi Daily on 04.02.2022 was ordered to be enclosed along with the proceedings.

2. On 08.02.2022 when this DBP came up for consideration, the learned Standing Counsel for Cochin Devaswom Board, on instructions, submitted that in connection with 'Panthrandu Namaskaram' in Sree Poornathrayeesa Temple at Thripunithura, the devotees are not made to wash the feet of 12 brahmins as atonement for sins, as stated in the news report. It is the Thantri, who wash the feet of 12

poojaries of Sree Poornathrayeesa Temple, in connection with 'Panthrandu Namaskaram'. The learned Standing Counsel for Cochin Devaswom Board sought two weeks' time to file affidavit on behalf of the 2nd respondent.

3. On 25.02.2022, when this DBP came up for consideration, the 2nd respondent Cochin Devaswom Board has filed an affidavit dated 24.02.2022, wherein it is stated that, when the above DBP came up for consideration on 08.02.2022, the Standing Counsel for the Cochin Devaswom Board, based on Annexure R2(A) written instructions given on 07.02.2022 submitted that, as stated in the news item appeared in the Kerala Kaumudi daily dated 04.02.2022, the devotees are not made to wash the feet of the Brahmins in connection with 'Panthrandu Namaskaram' in Sree Poornathrayeesa Temple. On the other hand, it is the Thanthri who washes the feet of 12 priests in connection with the 'Panthrandu Namaskaram'. Section 73A of the Travancore-Cochin Hindu Religious Institutions Act, 1950 deals with duties of the Board. As per clause (i) of Section 73A, it shall be the duty of the Board to see that the regular traditional rites according to the practice prevalent in the religious institution are performed promptly. In

terms of Section 73A, it is the duty of the Cochin Devaswom Board to see that the regular traditional rights according to the practice prevalent in the religious institutions are performed promptly. In view of the provisions under sub-section (2) of Section 62 of the Act all rituals and ceremonies in the temple of Sree Poornathrayeesa at Thripunithura shall continue to be executed as hitherto by the Ruler of Cochin. The news item appeared in Kerala Kaumudi daily dated 04.02.2022 is against the relevant provisions of the Act as well as the practice being followed in Sree Poornathrayeesa Temple, Thripunithura.

4. In the affidavit dated 24.02.2022, the 2nd respondent has stated that, based on the news item appeared in Kerala Kaumudi on 04.02.2022, the 1st respondent State sought for clarifications from the Cochin Devaswom Board. The Board in turn sought for a report from the Assistant Commissioner, Thripunithura and also the Devaswom Officer, Thripunithura. Apart from that, on 11.02.2022, the Board convened a meeting with the members of Akhila Thanthri Samajam. In the said meeting a decision has been taken to rename the vazhipadu as 'Samaradhana'. By Annexure R2(B) communication dated 21.02.2022 of the Commissioner, the

decision so taken was communicated to the 1st respondent State.

5. By the order dated 25.02.2022 in I.A.No.1 of 2022, Sree Raghava Puram Sabha Yogam, represented by its President was impleaded as the additional 4th respondent and by the order in I.A.No.2 of 2022, Akhilakerala Thantri Mandalam, represented by its General Secretary was impleaded as additional 5th respondent. Later, by the order dated 04.03.2022 in I.A.No.3 of 2022, Yogakshema Sabha, represented by its Secretary was impleaded as additional 6th respondent.

6. The additional 4th respondent has filed a counter affidavit dated 03.03.2022. The additional 5th respondent has filed a counter affidavit on 28.02.2022. The additional 6th respondent has filed a counter affidavit dated 05.03.2022. In the counter affidavits filed by additional respondents 4 to 6 various legal and factual contentions have been taken.

7. Heard the learned Senior Government Pleader for the 1st respondent State, the learned Standing Counsel for Cochin Devaswom Board, for respondents 2 and 3, the learned counsel for the 4th respondent, the learned Senior Counsel for

the 5th respondent and also the learned counsel for the 6th respondent.

8. The learned Standing Counsel for Cochin Devaswom Board contended that as per clause (i) of Section 73A of the Travancore-Cochin Hindu Religious Institutions Act, 1950, it is the duty of Cochin Devaswom Board to see that regular traditional rites according to the practice prevalent in Sree Poornathrayeesa Temple at Thripunithura, are performed promptly. As per sub-section (2) of Section 62 of the Act, notwithstanding the provisions contained in sub-section (1) of Section 62, the regulation and control of all rituals and ceremonies in Sree Poornathrayeesa Temple at Thripunithura shall continue to be exercised as hitherto by the Ruler of Cochin. Based on the news item appeared in Kerala Kaumudi daily dated 04.02.2022, the 1st respondent State sought for clarifications from Cochin Devaswom Board, which was furnished vide Annexure R2(B) communication dated 21.02.2022. Apart from that the Board convened a meeting with the members of Akhila Kerala Thanthri Samajam and in that meeting held on 11.02.2022 a decision has been taken to rename the vazhipadu as 'Samaradhana'.

9. The learned counsel for the 4th respondent, the learned Senior Counsel for the 5th respondent and also the learned counsel for the 6th respondent would raise contentions relying on Section 62 and Section 73A of the Act. They would submit that 'Panthrandu Namaskaram' in Sree Poornathrayeesa Temple at Thripunithura is a ritual, which has to be continued as such, in view of the statutory mandate of sub-section (2) of Section 62 of the Act, which starts with a non-obstante clause.

10. The learned Senior Government Pleader for the 1st respondent State would submit that, based on the news item that appeared in Kerala Kaumudi daily on 04.02.2022, the 1st respondent sought for clarification from Cochin Devaswom Board and the Commissioner furnished clarifications, vide Annexure R2(B) communication dated 21.02.2022.

11. The specific stand taken in the affidavit filed by the 2nd respondent is that the devotees are not made to wash the feet of Brahmins in connection with 'Panthrandu Namaskaram' in Sree Poornathrayeesa Temple at Thripunithura. It is the Thanthri who washes the feet of 12 priests in connection with 'Panthrandu Namaskaram'. The said fact is evident from the counter affidavits filed by additional respondents 4 to 6.

12. Chapter VIII of the Travancore–Cochin Hindu Religious Institutions Act deals with Cochin Devaswom Board. Section 62 of the Act deals with vesting of administration in the Board. As per sub-section (1) of Section 62, the administration of incorporated and unincorporated Devaswoms and Hindu Religious Institutions which were under the management of the Ruler of Cochin immediately prior to the first day of July, 1949 either under Section 50G of the Government of Cochin Act, 1113, or under the provisions of the Cochin Hindu Religious Institutions Act, 1081, and all their properties and funds and of the estates and all institutions under the management of the Devaswom Department of Cochin, shall vest in the Cochin Devaswom Board. As per sub-section (2) of Section 62, notwithstanding the provisions contained in sub-section (1), the regulation and control of all rituals and ceremonies in the temple of Sree Poornathrayeesa at Trippunittura and in the Pazhayannur Bhagavathy temple at Pazhayannur shall continue to be exercised as hitherto by the Ruler of Cochin.

13. Section 68 of the Act provides for administration by the Board as a trustee. As per sub-section (1) of Section 68, subject to the provisions of this Act and of any other law for the

time being in force, the Board shall be bound to administer the affairs of incorporated and unincorporated Devaswoms and institutions under its management in accordance with the objects of the trust, the established usage and customs of the institutions and to apply their funds and property for such purposes. As per sub-section (2) of Section 68, notwithstanding anything contained in sub-section (1), the Board may, out of the funds under their control set apart such sum as they deem fit for the educational uplift, cultural advancement and economic betterment of the Hindu community after providing adequately for the purposes of the institutions which have to be met from the said fund.

14. Section 73A of the Act deals with duties of the Board. As per Section 73A, it shall be the duty of the Board to perform the following functions, namely; (i) to see that the regular traditional rites according to the practice prevalent in the religious institution are performed promptly; (ii) to monitor whether the administrative staff and employees and also the employees connected with religious rites are functioning properly; (iii) to ensure proper maintenance and upliftment of the Hindu religious institutions; (iv) to establish and maintain

proper facilities in major temples for the devotees. Section 74 of the Act provides for vesting of jurisdiction in the Board. As per Section 74, subject to the provisions of sub-section (2) of Section 62, all rights, authority and jurisdiction belonging to or exercised by the Ruler of Cochin prior to the 1st day of July, 1949 in respect of incorporated and unincorporated Devaswoms and Institutions shall vest in and be exercised by the Board in accordance with the provisions of this Act.

15. During the course of arguments, the learned counsel for the additional 4th respondent has made available for the perusal of this Court, the relevant extract of the remedial measures suggested in the 'Ashtamangala Prasnam' conducted in Sree Poornathrayeesa Temple from 20th to 27th of September, 1999. The measures suggested in the 'Ashtamangala Prasnam' with regard to 'Panthrandu Namaskaram' is extracted hereunder;

"പരമപ്രധാനമായി എല്ലാറ്റിനെയും ആദിയായി ഒരു കാരണവശലും ഒഴിച്ചു കൂടാനാവാത്തതായി നിത്യമായി 12 നമസ്കാരം വർഷത്തിൽ കന്നിയിലും മീനത്തിലും നടന്നുവന്നിരുന്ന കുർമ്മിപ്പെച്ച നമസ്കാരം മുതലായവ കഴിയും വേഗം തുടങ്ങുകയും പൂർച്ചചാരത്തിന് വിരുദ്ധമാകാത്തവിധം ഭക്തിശ്രദ്ധാപൂർണ്ണരും അമ്പര്യം നിർച്ചഹിക്കേണ്ടതാണ്"

16. In **Aruna Roy v. Union of India [(2002) 7 SCC 368]** the Apex Court considered the importance of moral values in religions and it was observed that religion is the foundation for the value-based survival of human beings in a civilised society. The force and sanction behind civilised society depend on moral values. Religion should not be misunderstood. The secular democracy requires even a very weak man hopes to prevail over a very strong man on the strength of rule of law by proper understanding of duties towards the society.

17. In **Sarika v. Shri Mahakaleshwar Mandir Committee [(2018) 17 SCC 112]** the Apex Court noticed that there is a pious purpose of all the religious activities, no religion breeds hatred. It is in order to bring harmony and to understand basic human values and for self-realisation and to visualise the concept of equality of pilgrimages by the various sections of people of various religions. Secularism is the basic structure of the Constitution that has to be given the meaning that is developing understanding and respect towards different religions. The essence of secularism is non-discrimination of people by the State on the basis of religious differences. In **Commissioner, Hindu Religious Endowments v. Sri**

Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282] the Apex Court considered the concept of religion under Article 25 of the Constitution of India. It has been observed that it secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others.

18. In **Sarika (supra)** the Apex Court noticed that there is a constitutional obligation to preserve the religious practices of all religions, culture and there is also a corresponding duty to act in that direction. [Para.15] The Apex Court held that it is for the experts in the field of religion to decide about the rituals and ceremonies to be performed. It is not for the Court to make suggestions in this regard. It is not within the jurisdiction of the Court to dictate or prescribe or restrain the religious practices and pujas to be performed in the temple. The religious practices and pujas are required to be performed in accordance with the ancient rituals and practices. Paragraphs 44 and 45 of that decision read thus;

"44. With respect to the method of "lingarchan" i.e., the method of linga pooja, the 27th chapter of "Ling Mahapuranm" has been placed on record. That contains a detailed method of lingarchan running into 54 strotam. Apart from that "Shiv Mahapuranam", Vayveey Sanhita containing details of Shastrokt Shiv Poojan method in twenty-fourth chapter has been placed on record. Pooja of different lingam may be somewhat different. It is for the experts in the field of religion to decide about the rituals and ceremonies to be performed. It is not for this Court to make suggestions in this regard.

45. It is not within the jurisdiction of this Court to dictate or to prescribe or restrain the religious practices and pujas to be performed in temple. They are required to be performed, as rightly pointed out, in accordance with the ancient rituals and practices but, at the same time, it has to be ensured that no damage is caused to the lingam. The temple which is known as Mritunjaya Mahadev and is most ancient Jyotirlingam in one of the ancient cities of India, Ujjain. "Simhast" is also organised 6 years and 12 years which has international importance visited by several millions of people. The Government spends thousands of crores of rupees for development of infrastructure in Ujjain for each such occasion and lot of development has taken place. Owing to all these development work, Ujjain has come up. But at the same time very cause of all developments, the Lingam of Lord Shiva requires to be preserved, protected by way of preventive conservation methods." (underline supplied)

19. In **Srivari Daadaa v. Tirumala Tirupati**

Devasthanams [Order dated 16.11.2021 in SLP(C)No.6554 of 2021] a Three-Judge Bench of the Apex Court was dealing with a case in which the Special Leave Petition was against the judgment dated 05.01.2021 of the High Court of Andhra Pradesh in W.P.(PIL)No.254 of 2020, whereby the High Court dismissed that writ petition seeking a writ of mandamus to declare the action of the respondent-Tirumala Tirupati Devasthanams in following the irregular procedure in performing Sevas to Lord Shri Venkateshwara Swamy contrary to the procedure prescribed under 'Agama Shastra' and deciding not to obtain declaration form from devotees other than Hindus as arbitrary, illegal and consequently direct the respondent to follow the correct procedure prescribed under 'Agama Shastra' while performing the Sevas to Lord Shri Venkateshwara Swamy and obtain declaration form from the devotees other than Hindus before making Darshan. After considering the rival submissions, the Apex Court noticed that the reliefs sought by the petitioner, who appeared in person, are in the nature of interfering with the day-to-day rituals in respect of the temple, which cannot be gone into by the Court.

20. In **Srivari Daadaa (supra)** the Apex Court held

that, whether any ritual or sewa is being performed in a prescribed way or whether there is any deviation from established practice would raise disputed questions of fact which cannot be decided in a writ petition. The procedure of conducting rituals is in the exclusive domain of the Devasthanam and cannot be a matter of adjudication by any court unless it affects secular or civil rights of others. These issues have to be looked into by the pandits or the scholars or the advisors in accordance with the temple customs or the established practice and procedure. These are not the issues for which the Court possesses expertise. So, if the Sevas, Utsavams and Darshanams in the temple are not being done according to the set principles, the petitioner will be at liberty to approach the civil court or the competent authority and prove his claims with evidence, and it is for the respondent-Devasthanam to defend the same in accordance with law. At the same time, other than rituals, if the Devasthanam is ignoring the rules and regulations or indulging in any other violation of the prescribed procedure, etc., then the respondent Devasthanam can consider these issues and clarify the same.

21. In the instant case 'Panthandu Namskaram' in Sree

Poornathrayeesa Temple at Thripunithura is a ritual performed in that Temple from time immemorial. The said fact is evident from the relevant extract of the remedial measures suggested in 'Ashtamangala Prasnam' conducted in the year 1999, a portion of which has already been extracted hereinbefore at paragraph 17. The said ritual is one performed by the Thanthri of the Temple, who washes the feet of 12 priests. The said fact is evident from the affidavit filed by the 2nd respondent and also the counter affidavits filed by additional respondents 4 to 6. As part of 'Panthrandu Namskaram' in Sree Poornathrayeesa Temple, the devotees are not made to wash the feet of 12 Brahmins, as atonement of sins, as stated in the news report that appeared in Kerala Kaumudi daily dated 04.02.2022.

22. In view of the provisions under sub-section (2) of Section 62 of the Act, notwithstanding the provisions contained in sub-section (1) of Section 62, the regulation and control of all rituals and ceremonies in Sree Poornathrayeesa Temple at Thripunithura, shall continue to be exercised as hitherto by the Ruler of Cochin. Similarly, in view of the provisions under Section 73A of the Act, it shall be the duty of the Cochin Devaswom Board to see that regular traditional rites according

to practice prevalent in Sree Poornathrayeesa Temple are performed promptly. Therefore, no interference with the religious rite, namely, 'Panthrandu Namaskaram' performed in Sree Poornathrayeesa Temple, by the Thanthri is legally permissible either by the Cochin Devaswom Board or by the 1st respondent State. As held by the Apex Court in **Sarika [(2018) 17 SCC 112]**, there is a constitutional obligation to preserve the religious practices of all religions and there is also a corresponding duty to act in that direction. The religious practices and pujas are required to be performed in accordance with the ancient rituals and practices and it is not for Cochin Devaswom Board or the 1st respondent State to interfere with such practices. In that view of the matter, we find that even the decision taken by the Cochin Devaswom Board, as reflected in Annexure R2(B), to change the name of the ritual as 'Samaradhana' is legally unsustainable.

23. We make it clear that we have not considered the factual contentions raised in the counter affidavits filed by additional respondents 4, 5 and 6, since the issue involved in this DBP is decided with reference to the legal contentions raised by the parties.

24. In **Hindustan Times v. High Court of Allahabad [(2011) 13 SCC 155]** the Apex Court noticed that the media, be it electronic or print media, is generally called the fourth pillar of democracy. The media, in all its forms, whether electronic or print, discharges a very onerous duty of keeping the people knowledgeable and informed. The impact of media is far-reaching as it reaches not only the people physically but also influences them mentally. It creates opinions, broadcasts different points of view, brings to the fore wrongs and lapses of the Government and all other governing bodies and is an important tool in restraining corruption and other ill-effects of society. The media ensures that the individual actively participates in the decision-making process. The right to information is fundamental in encouraging the individual to be a part of the governing process. The enactment of the Right to Information Act, 2005 is the most empowering step in this direction. The role of people in a democracy and that of active debate is essential for the functioning of a vibrant democracy. With this immense power, comes the burden of responsibility. With the huge amount of information that they process, it is the responsibility of the media to ensure that they are not

providing the public with information that is factually wrong, biased or simply unverified information.

25. Therefore, it is the duty and responsibility of the media, be it electronic or print, to ensure that they are not providing the public with information that is factually wrong based on unverified information.

With the above observations and the finding hereinbefore at paragraph 24, this DBP is disposed of.

sd/-
ANIL K. NARENDRAN,
Judge

sd/-
P.G. AJITHKUMAR,
Judge

bkn/-

APPENDIX

2ND RESPONDENT'S ANNEXURES:

ANNEXURE R2 (A) TRUE COPY OF THE WRITTEN INSTRUCTIONS
GIVEN TO THE STANDING COUSNEL BY THE
COCHIN DEVASWOM BOARD DATED 07.02.2022.

ANNEXURE R2 (B) TRUE COPY OF THE COMMUNICATION DATED
21.02.2022 ISSUED BY THE CDB TO THE
FIRST RESPONDENT.

TRUE COPY

P.A. TO JUDGE