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MINISTRY OF HINDU RELIGIOUS
AND CHARITABLE ENDOWMENTS,
TOURISM AND CULTURE DEPARTMENT
SECRETARIAT,
CHENNAI – 600 009

...RESPONDENTS

A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA IN THE NATURE OF A PUBLIC INTEREST LITIGATION FOR ISSUANCE OF APPROPRIATE WRIT HOLDING THE IMPUGNED PROVISIONS OF THE HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT 1959, AS UNCONSTITUTIONAL AND ULTRA-VIRES ARTICLES 14, 25 AND 26 OF THE CONSTITUTION OF INDIA

To

Hon'ble The Chief Justice of India

and his other Companion Judges

of Hon'ble the Supreme Court of India,

The Humble Petition

of the Petitioner above-named

MOST RESPECTFULLY SHEWETH:

1. **PARTICULARS OF THE CAUSE/ ORDER AGAINST WHICH THE PETITION IS MADE:**

1.1. The present Writ Petition is being filed challenging the constitutional validity of the provisions of the **Hindu Religious and Charitable Endowments Act 1959**, of Tamil Nadu, as

amended from time to time (hereinafter referred to as the **"HRCE Act" or "the Act"**), and rules framed thereunder (Relevant Sections of the Act and Rules are Appended hereto). Through the HRCE Act, the Respondent-Government has arbitrarily and unconstitutionally taken over the administration, management and control of nearly 40,000 Hindu temples and Hindu religious institutions in Tamil Nadu. The Respondent-Government has also been arbitrarily interfering in the appointment of Archakas and in the discharge of other religious and administrative functions, which acts of the Respondent are in derogation of the right to freedom of religion enshrined in Article 25 and 26 of the Constitution.

1.2. The Petitioner challenges the validity of ***Sections 21, 23, 27, 28, 47, 49, 49B, 53, 55, 56, and 114*** **of the HRCE Act**, in as much as they grant control of all the Hindu religious institutions in the State and their activities in matters of appointment and dismissal of archakas, to the Respondent-Government. The Petitioner submits that the impugned sections are ex facie unconstitutional and ultra-vires the fundamental rights guaranteed to the Hindus of Tamil Nadu and to their religious institutions under Articles 25 and 26 of the Constitution.

1.3. The impugned sections of the Act passed by the Respondent-Government amount to a complete take over by the Respondent-Government, of the Hindu religious institutions in the State, thereby ousting the rights of Hindu persons to profess, practice and propagate their religion, and to manage Hindu religious endowments and their own affairs in the matters of religion. The Respondent-Government has used its legislative power, which is confined only to regulate secular aspects of religious institutions, to what amounts to take over / nationalization all Hindu religious

institutions which is not permissible under law, as enunciated by various judgments of this Hon'ble Court ***[Comm. HRE Madras v Sri Lakhmindra Thirtha Swamir of Sri Shirur Mut, AIR 1954 SC 282].***

1.4. It is respectfully submitted that Article 25 of the Constitution protects the right of all persons in the country to freely profess, practice and propagate their religion. In pursuance of these rights, all persons are free to set up and administer institutions of their choice for religious and charitable purposes; and such institutions are liable only to be *regulated* by the government, but they are not liable to be *controlled* so as to oust the management by such persons all together [***Pannalal Bansilal Pittie v State of AP, (1996) 2 SCC 498].***

2. **THE ANTECENDANTS OF THE PETITIONER:**

2.1. The Petitioner is a law-abiding citizen of India (the Aadhar Card of the Petitioner is annexed to this Petition as **ANNEXURE P-1**, on **page 50**). The Petitioner holds a doctorate in Economics from Harvard University in the USA, where for several years, he taught in the Department of Economics. He has been a full professor of Economics at the Indian Institute of Technology in Delhi. He is a senior politician, and he has served as a Member of Parliament for six terms. He is currently a Member of Parliament in the Rajya Sabha. In the past, he has served as a cabinet minister in the Central Government, heading the Ministries of Law and Justice, and of Commerce; and he has also served as the Chairman (with cabinet rank) of the Commission for Labour Standards. The Petitioner has numerous books and articles to his credit.

2.2. The Petitioner has previously initiated and conscientiously argued several Public Interest Litigations, thereby duly assisting the court on complex questions of law. He regards this as a duty he

owes to his country. Some of the cases argued by the Petitioner are listed below:

a) Dr Subramanian Swamy v State of Tamil Nadu, (2014) 5 SCC 75.

b) Dr Subramanian Swamy v Dr Manmohan Singh and Anr., (2012) 3 SCC 64.

c) Dr Subramanian Swamy v Raju, (2013) 10 SCC 465.

d) Dr Subramanian Swamy v Director, Central Bureau of Investigation, (2014) 8 SCC 682.

e) Dr Subramanian Swamy v State of UP (Crl.M.C. 3280/2013 and Crl.M.A. No. 16766/2015; presently pending before the Supreme Court of India).

f) Dr Subramanian Swamy v the Election Commission of India, (2013) 10 SCC 500.

2.3. The Present Petition under Article 32 of the Constitution of India is being filed as a Public Interest Litigation and the Petitioner has no personal interest in the same.

3. FACTS CONSTITUTING THE CAUSE OF ACTION

3.1. The present Petition is in the nature of a Public Interest Litigation wherein it is submitted that the State Government has exceeded its powers and constitutional mandate, by interfering in the religious activities and practices of all Hindus. The actions of the State Government of Tamil Nadu are in derogation of the rights of followers of the Hindu faith, worldwide. The Respondent-Government has taken over 40,000 Hindu temples, without just cause: it is submitted that this is nothing but an act which may be termed as "Nationalization of Temples", and it has been done without jurisdiction, and in violation of fundamental rights.

3.2. It is submitted that the appointment of archakas through an arbitrary process by the Respondent-Government is

unconstitutional, thereby affecting the fundamental rights of countless Hindus. The Petitioner submits that there is an urgent need to rid these temples of unconstitutional and invasive government control.

3.3. The Petitioner respectfully submits that the Government of Tamil Nadu has from time to time issued several Rules, notices, notifications, circulars, orders and G.O.s under the HRCE Act, taking over the full control of the management and administration of nearly 40,000 Hindu temples in the State of Tamil Nadu. The Respondent has also created an extensive bureaucratic mechanism to maintain deep and pervasive control over such temples' affairs and wealth.

3.4. The mechanism created by the Respondent is headed by the Commissioner of HR&CE Department, with several bureaucrats working under him, at various levels. These state appointed officers perform various functions, carry out temple repairs, assess the quality and quantity of donations received by the temples and also make all major decisions regarding the temple properties. They also purport to exercise complete control over the trustees of all Hindu religious institutions in the State, and each and every decision of the trustees of an institution is amenable to review and approval of the Commissioner, Deputy Commissioner, Joint Commissioner or Assistant Commissioner (hereinafter referred to as "**Officers**") as the case may be. The trustees of religious institutions in the State are completely at the mercy of the Respondent-Government.

3.5. It is respectfully submitted that the Respondent and its Officers take all decisions regarding the properties of the temples, relating to any litigation on temple properties etc. the Respondent-Government has also arrogated to itself of the power to regularize

encroachment on temple lands, and the power to appoint and dismiss trustees.

3.6. The Government of Tamil Nadu, in the guise of "regulation" has empowered itself and its Officers to such an extent that the Respondent-Government is giving away lands of Hindu religious institutions to illegal encroachers. In the Policy Note 2018-19 issued by the HRCE department, the Respondent-Government claims to have regularized encroachments on 300 acres of lands belonging to religious institutions. It fails to mention where it derives the power to regularize encroachments on private/trust property. It is such vast and drastic powers that the Respondent-Government has given to itself, that have completely ousted the role of private trustees or devotees in the process of decision making for temples. It may be argued that these functions are "secular" in nature and therefore amenable to regulation; however, as various judgments of this court have already held, such secular functions are to be performed by the trustees of the religious institutions and not by a government exercising control in the guise of regulation. The impugned provisions of the Act and consequent actions of the Government are completely without constitutional mandate.

COMPLETE CONTROL OVER TRUSTEES, THEIR APPOINTMENTS AND DISMISSALS

3.7. *Section 7A* vests Area Committees with the power to make list of persons eligible to be appointed as Trustees and then these lists are sent to the Assistant Commissioners. *Sections 47, 48 and 49* of the Act deal with appointment of Trustees for Hindu religious institutions. Under these sections, the Commissioner, Assistant Commissioner, Deputy Commissioner or the Government, can

appoint Trustees and constitute Boards of Hindu religious institutions for different classes of institutions, which are classified based on their annual income. Under *Section 47*, in addition to appointment of Trustees, the Respondent also has the power to remove any hereditary Trustees if it thinks that the affairs of the Hindu religious institution are "not likely to be managed properly" by such a hereditary Trustee. Wide powers are conferred on the Government and its authorities in this regard. Under *Section 46* of the Act, when such Hindu religious institutions' annual income exceeds Rs. 10,000/-, the Commissioner is required to notify the names of these Hindu religious institutions in one of three lists based on such income. Under *Section 53* of the Act, the State Government of Tamil Nadu and its Officers are empowered to suspend, remove or dismiss Trustees. In fact, the control over Trustees is to an extent where the Trustees are required to hand over their resignation to Government Officers under *section 26(2)* of the act.

3.8. It is submitted that along with the power to appoint, dismiss, and suspend Trustees, the State Government of Tamil Nadu and its Officers also exercise deep and pervasive control of the activities of the trustees of all Hindu religious institutions in the State. The Respondent-Government and the Commissioner have the power to micromanage all the trustees and each and every decision and act of the trustees of a religious institution is subject to the approval of the State Government of Tamil Nadu or the Commissioner. *Section 21* grants the Commissioner the power of superintendence over all the decisions or orders of the trustee. The Commissioner has the power to call for records of the Trustees and modify and set aside their orders or decisions as he sees fit. *Section 23* expands the scope of the powers under *Section*

21 by stating that the Commissioner shall have the power of general superintendence and control over all Hindu religious institutions of the State. *Section 27* further adds that the trustees shall be bound by all orders of the Respondent-Government or its Officers. Under *section 28*, the trustees are *bound* to administer the affairs and apply funds as per the directions of competent authority. *Section 35* imposes upon the trustees to be guided by the general or specific instructions of the Commissioner while incurring any expense for the religious institution. *Section 45* of the Act empowers the Commissioner to appoint an Executive Officer for any religious institution, without specifying any cause whatsoever. The Executive Officer so appointed has all the powers to administer the property of the religious institution: on paper he is a subordinate of the trustees; but, under *section 49B* of the Act, the Executive Officer and the Chairman of the Board of Trustees are not obligated to act upon the resolutions passed by the Board if they do not see fit, and they may place it before the Board of trustees for reconsideration and the revised or unrevised resolution of the Board of trustees is then sent to an Officer of the State Government, who may pass appropriate orders as he deems fit.

3.9. Under *Sections 55 and 56*, trustees of a religious institution have been empowered to appoint, dismiss, punish or suspend office-holders for religious institutions, including archakas; but subject to appeals to the Government. It is submitted that, this power, like all others of the Trustees, is an eyewash as any person displeased with the decision of the trustees in this regard may appeal to the Joint Commissioner or the Deputy Commissioner who are empowered to modify the decision of the Trustees as they deem fit. Under *section 57*, the trustees may fix fees for the

services of office holders and servants, subject to general or special orders of the Commissioner. Finally, the State Government, under *Section 114*, has powers that are similar to that of the Commissioner as under *section 21*, to modify or set aside any decision or order of the trustees as it deems fit.

3.10. It is submitted that from the above description of the provisions of the HRCE Act it is ex-facie clear that the trustees are mere figurehead appointments by the Respondent-Government, with the Respondent-Government and its Officers retaining and exercising complete control over their activities and affairs. It is submitted that all these appointments are made by ignoring the initial trust deed or customs which had led to the formation of the trust, endowment, or temple in the first place; and they are completely overridden and controlled by the State Government as if it were the property of the State Government. Furthermore, the power of the Respondent-Government to dismiss or suspend trustees is another weapon the State Government has, that ensures no independence at all for the trustees in order to completely curtail the rights guaranteed under Articles 25 and 26 of the Constitution. It is submitted that the use of the word "trustee" in the act is a purposive and notorious one. In the general sense, the word "trustee" denotes a person entrusted with dominion over something by the owner or contributor of the property, to exercise lawful and reasonable control to manage the property. However, in the Act, the term "trustee" is only used to showcase a usage in the general sense; however, in application it is merely a person who is the trustee of the Respondent-Government to be a front man for State control.

4. SOURCE OF INFORMATION:

4.1. That the source of information of the Petitioners is the HRCE Act and subsequent rules passed by the Government of Tamil Nadu, along with official gazettes and other publications of the Government.

5. DETAILS OF REMEDIES EXHAUSTED:

5.1. It is submitted that no other remedies have been sought or exhausted.

6. NATURE OF INJURY CAUSED OR LIKELY TO BE CAUSED TO THE PUBLIC:

6.1. It is submitted that, the rights of the Hindus of Tamil Nadu, as enshrined under Article 25 and 26 of the Constitution have been left as a hollowed shell. The quintessential rights of practice, profession and propagation of religion guaranteed to every Hindu person, have been taken away and reduced to a mere cursory or nominal right. Whenever any person wishes to construct a temple or a religious institution and administer the same, he is only a stroke of a pen away from losing control of his religious institution. Under the impugned provisions of the Act the Respondent-Government in empowered to appoint archakas arbitrarily and dismiss well-qualified archakas, leading to infringement of rights under Article 25 of the Constitution. This causes obvious deterrence in future attempts of propagating religion. Moreover, the administration of temples is not a right of the Government. The Government may only regulate the secular functions of the temples. The public at large has lost their precious right to administer religious institutions, thus infringing upon Article 25 and 26 of the Constitution.

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7. NATURE AND EXTENT OF PERSONAL INTEREST:

7.1. There is no personal interest of the Petitioner in the present Petition.

8. DETAILS REGARDING ANY CIVIL, CRIMINAL, OR REVENUE LITIGATION, INVOLVING THE PETITIONER OR ANY OF THE PETITIONERS, WHICH HAS OR COULD HAVE A LEGAL NEXUS WITH THE ISSUE(S) INVOLVED IN THE PUBLIC INTEREST LITIGATION.

8.1. It is submitted that no such litigation is pending and it is inapplicable to the Petitioner.

9. WHETHER ISSUE WAS RAISED EARLIER; IF SO, WHAT RESULT:

9.1. It is submitted that no such similar issue was raised earlier, and no similar petition filed either before the Supreme Court or before any High Court and that there are no similar pending or disposed of cases.

10. WHETHER CONCERNED GOVERNMENT AUTHORITY WAS MOVED FOR RELIEF(S) SOUGHT IN THE PETITION AND IF SO, WITH WHAT RESULT:

10.1. It is submitted that the concerned Government Authority has not been moved for relief(s) sought in the Petition.

11. GROUNDS

MANAGEMENT OF TEMPLE IS PART OF RIGHT TO PROFESS AND PROPAGATE RELIGION

A. The Petitioner submits that under the Constitution of India all people have the right to freely profess, practice and propagate religion. These rights are subject to health, morality, public order and the other rights under Part III of the Constitution. Clause 2(a) of Article 25

empowers the State to make laws to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice. The Petitioner submits that there is a need to assess and clearly define what practices or acts constitute an "economic" or "secular" activity, in contradistinction with practices that constitute practice and profession of religion.

B. Activity of management of the funds of a religious institution and the properties thereof, cannot be considered a "secular" activity for the following reasons. The funds of a temple are received through one of two means: first, in the form of "Chadhava" (offering), which is offered directly to the priest and deity at the time of worship, as a part and parcel of religious practice. It is submitted that it is an essential part of the contours of Hindu religion to offer such sums of money to the deity, through the priest, as may be within one's financial prowess. The Second means of collection of funds is through donations or Hundis. The Petitioner submits that neither donations by worshippers nor offerings in Hundi, can in no way be considered a "secular" activity, totally bereft of the religious freedom of the worshippers. These donations are not in the form of a fee or a charge, which is paid by compulsion. Payment of monies into Hundis or by means of donation to temples is a way of offering, which is optional, paid by the devotee purely out of devotion and in the exercise of his fundamental right of profess and propagate his religion.

C. When devotees offer donations in Hundis or otherwise, they initiate the collective exercise of their right to profess and propagate their religion guaranteed under Article 25. The fund that is donated by the devotees, is for the purposes of betterment of the temple by way of better remuneration for priests, expansion of temple, construction of new temples, charitable causes in service of God (such as service of food to poor, etc.), and propagation of the religious teachings through

publication of literature and other means. Therefore, it is submitted that the propagation and promotion of religion through donations to temples, is an integral part of the religious freedoms guaranteed under Article 25 of the Constitution and cannot be interfered with by Government regulations or control under sub-clause 2 of Article 25.

D. Even in the HRCE Act, the position of usage of funds for the profession and propagation of Religion is well identified and laid down by Statute. *Sections 66 and 97* of the Act explicitly point to this position and therefore it is indisputable that the funds of the temple are collected to be used for propagation and profession of religion. Moreover, it is also the recognized duty of the archakas to profess and propagate the Hindu religion in discharge of their office. Therefore, it is submitted that the funds of the temple may only be regulated by the State to a very limited extent, which is to say, only to regulate financial mismanagement. The funds are donated by devotees in the exercise of their right to profess and propagate religion and these funds are to be used by the religious institution for that purpose only.

E. The funds of the religious institutions cannot be controlled in the manner as purported to be controlled by the government and its Officers under the various provisions of the Act, as the exercise of government control through officers or government appointed trustees is in violation of the right to profess, practice and propagate religion guaranteed to all persons.

F. The scope of regulation by State law of the funds of the temple is narrow and must be interpreted as such, in the light of the provisions of Articles 25 and 26. Where the object of the funds of a religious institution is to be utilized for the Profession and Propagation of religion, it should not be interfered with by the State. The Petitioner humbly submits that the scope of regulation by state law would be

limited to matters pertaining to financial mismanagement, investment of surplus funds in assets and appointment of staff for non-religious activities, such as cleaners, security guards, repairmen, etc. It is submitted that the State has no right or Constitutional mandate to interfere in the management and administration of temple funds as the administration of temple funds is to be done for profession and propagation of religion. Further, the state has no right to interfere in the appointment of religious functionaries such as archakas, as their role is purely religious – relating to profession, practice and propagation of religion.

RIGHT TO APPOINT ARCHAKAS AND RIGHT TO ADMINISTER PROPERTIES

G. It is respectfully submitted that archakas are an integral and inalienable part of the Hindu religion. The Hindu religion consists of a vast and expansive number of doctrines which prescribe different modes of worship, prayer, recitals rituals, etc. for different deities. Though and archaka is officially an employee of the temple, his position is firstly that of a servant of God. Without properly qualified archakas, who are in their own right, well-versed with the modes of worship, rituals, etc. of the deity they serve—the religion of Hinduism will be but a mere shell of itself. It is submitted that the work, position and appointment of archakas, are all an integral part of the practice of the Hindu Religion. It is submitted that due to their central importance in the Hindu religion—without whom the Worship of a deity in Hinduism would not be possible—the appointment of an archaka would squarely fall within the meaning of "matters of religion" as contemplated under Article 26(b) of the Constitution, and thus, would not be subject to State regulation. It is, therefore, submitted that the appointment of an archaka to a temple is the sole right of the independent Trustees of the religious institution,

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or the Mahant, as the case may be, without warranting any interference whatsoever from the Respondent-Government. This position of law is well settled by a 7-Judge bench of this Hon'ble Court in the case of ***Commissioner, HRE, Madras v Shri Lakshmindra Thitha Swamiar of Shirur Mutt (AIR 1954 SC 282)***:

> *"19. These observations apply fully to the protection of religion as guaranteed by the Indian Constitution. Restrictions by the State upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order, morality and health. Clause (2)(a) of Article 25 reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices.* ***The learned Attorney-General lays stress upon clause (2)(a) of the article and his contention is that all secular activities, which may be associated with religion but do not really constitute an essential part of it, are amenable to State regulation.***
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> *20. The contention formulated in such broad terms cannot, we think, be supported. In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b). What Article 25(2)(a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they run counter to public order, health and morality but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices..."*

(Emphasis added)

H. It is respectfully submitted that the power to appoint archakas rests solely with the trustees of a religious institution. The Petitioner has so far argued that the function of appointment of an archaka is a religious function and cannot be dubbed a secular function for the aforesaid reasons; however, even if it is held that the appointment of such archaka is a secular function and not a religious function—it is settled law that the power to appoint archakas is vested in the

Trustees of a religious institution. It is respectfully submitted that the power of the Respondent-Government to control the appointment of archakas through their Officers and their puppet trustees as provided for under ***Sections 55 and 56*** of the Act, are ultra-vires Articles 25 and 26 of the Constitution. In its attempt to control the appointment of archakas, the Respondent-Government has even prescribed arbitrary eligibility and retirement ages for the archakas under the **Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020** (the "**Service Rules**"), as if it was an appointment being made to a government office. It is submitted that such a prescription for private individuals engaged in performing religious practices for religious institutions, would be as absurd as prescribing a retirement age for lawyers or doctors.

I. Each temple is governed by a different set of principles, rituals, practices and procedures, as prescribed by the different agamas, and followed customarily in the temple. There are 28 different Agamas prescribed just for Shivite temples, each relating to a different aspect of worship. Only an independent trustee or independent Board of Trustees, in consultation with the existing archakas of the temple, well versed with the prevailing rituals, would be competent to prescribe qualifications they deem fit for the appointment of an archaka to that temple. Therefore, making a mandatory requirement for certificate of completion of prescribed studies as contemplated under the **Service Rules**, is impermissible and unconstitutional, as even though the appointment of an archaka may be considered a secular function, the performance of duties of an archaka and the requisite qualifications are a matter of religion and religious practice. It is well settled in *Seshammal v State of Tamil Nadu [(1972) 2 SCC 11]*, that the Trustees of a religious institution are empowered to appoint archakas. Therefore, a process of appeal to State Government

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authorities; and the power of the State Government authorities to supersede the decision of the Trustees in regard to appointment, dismissal, suspension etc. of archakas, as prescribed under *Sections 55 and 56* of the Act are unconstitutional.

J. Under Sections 3 and 4 of the Places of Worship Act 1991, the religious character of any place of worship cannot be changed after 15th August 1947, and no place of worship can be converted to a place of worship of a different section or denomination even of the same religion. It is submitted that appointment of archakas by the Respondent-Government on the basis of a common exam derogates religious practice, in as much as appointment of an archaka not well versed with the agamas governing that temple and the rituals prevalent therein, would change the religious character of that temple. It is, therefore, submitted that the actions of the Respondent-Government in appointing and dismissing archakas, in addition to being unconstitutional are also in the teeth of the Places of Worship Act 1991, in as much as they change the religious character of temples in the State of Tamil Nadu.

K. It is submitted that the though the state has the power to regulate secular functions and that the administration of property of a denomination is to be done in accordance with law; nothing in the Constitution either envisages or sanctions the exercise of complete takeover of religious institutions by the state or the right of state to exercise complete control over the religious institutions. In the present case, nearly 40,000 temples are under the direct and illegal control of the State Government of Tamil Nadu. The Respondent Government appoints the trustees of the temples and religious institutions under *Section 47 and 49* of the Act, and it has the power to dismiss, remove or suspend the Trustees under *Section 53* of the Act. The trustees are answerable in all respects to the Respondent-

Government and all their decisions are amenable to review and revision by government Officers under *Sections 21 and 114*. It is submitted that by controlling the appointment and dismissal of trustees, the trustees are reduced to mere puppet officers of the Respondent-Government, discharging their functions, invariably, under Government directions and under political pressure. It is humbly submitted that through this oblique process, the Government has taken over the control of 40,000 temples in the State of Tamil Nadu, exercising full control over the Hindu Religion. It is trite law that what cannot be done directly, cannot be done indirectly or obliquely *[Sant Lal Gupta v Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336]*. Therefore, even the appointments of archakas, which has been held to be an act to be performed by the trustees of an institution is being indirectly performed by the Respondent-Government, using the trustees as a mere rubber stamp for its facilitation.

L. It is submitted that through their powers under *Sections 21 and 114* of the Act, the Respondent-Government can interfere in the day-to-day activities of Hindu religious institutions in the State, calling into question each and every act done or performed by the trustee. The Respondent-Government is also empowered to set aside or modify the decisions of the trustees of all Hindu religious institutions as it deems fit. It is submitted that as all functions performed by the trustees are under the control of the Respondent, and are subject to constant review by the Respondent; the Respondent-Government is empowered to exercise direct control over the Hindu Religious institutions in the State – ousting the control of devotees and individuals – in derogation of Article 25 and 26 of the Constitution. It is submitted that this Hon'ble Court has previously forewarned of the dire undesirable consequences of Government takeover of religious

institutions and trusts; and has held that control of religious institutions by the state is unconstitutional. In ***Pannalal Bansilal Pittie v.State of AP [(1996) 2 SCC 498]:***

> *"25. But immediate question is whether taking away of the management and vesting the same in the board of non-hereditary trustees, constituted under Section 15, is valid in law. It is seen that the perennial and perpetual source to establish or create any religious or charitable institution or endowment or a specific endowment is the charitable disposition of a pious person or other benevolent motivating factors, but to the benefit of indeterminate number of people having common religious faith and belief which the founder espouses. Even a desire to perpetuate the memory of a philanthropist or a pious person or a member of the family or founder himself may be the motive to establish a religious or charitable institution or endowment or specific endowment. Total deprivation of its establishment and registration and take-over of such bodies by the State would dry up such sources or acts of pious or charitable disposition and act as disincentive to the common detriment.*
> *26. Hindus are majority in population and Hinduism is a major religion. While Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Therefore, protection under Articles 25 and 26 is available to the people professing Hindu religion subject to the law therein. The right to establish a religious and charitable institution is a part of religious belief or faith and, though law made under clause (2) of Article 25 may impose restrictions on the exercise of that right, the right to administer and maintain such institution cannot altogether be taken away and vested in other party; more particularly, in the officers of a secular Government. The administration of religious institution or endowment or specific endowment being a secular activity, it is not an essential part of religion and, therefore, the legislature is competent to enact law, as in Part III of the Act, regulating the administration and governance of the religious or charitable institutions or endowment. They are not part of religious practices or customs. The State does not directly undertake their administration and expend any public money for maintenance and governance thereof. Law regulates appropriately for efficient management or administration or governance of charitable and Hindu religious institutions or endowments or specific endowments, through its officers or officers appointed under the Act."*
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> (Emphasis added)

UNCONSTITUTIONAL TAKEOVER OF THE RELIGIOUS INSTITUTIONS BY THE STATE

M. It is submitted that the it is not permissible for the State to perform a complete takeover of all religious institutions across the State. The term "regulate" as used in Article 25 in the context of financial, economic, political or secular activity cannot mean to completely

take over and control the functions of the temple and its employees in its entirety, so as to oust the control of the present independent trustees and individuals. Through the operation of ***Sections 23, 27 and 28*** the Respondent-Government has practically created a mechanism of complete and absolute control over all the aspects relating to management of Hindu religious institutions and their resources, without any stake or interest in the same. It is submitted that the Respondent-Government has ousted the liberty of the people to run and administer these temples, and profess, practice and propagate their religion through these temples and religious institutions. It is submitted that the takeover of temples has been done obliquely and such regulation in the nature of absolute control cannot stand.

N. The Petitioner submits that the word "regulate" as used in sub-clause 2 of Article 25 of the Constitution, though may have a broad import, does not give the State the right to interfere with the administration of temples in such a manner as to completely take over the management of temples from the trustees, indefinitely and without just cause, or to appoint puppet trustees or Executive Officers to exercise control on behalf of the State. The powers of the Respondent-Government under ***Sections 23, 27 and 28*** of the Act, go beyond the scope of regulation permissible under Articles 25 and 26 of the Constitution, in as much as they empower the Respondent-Government to micro-manage and pass specific orders for the management and administration of every individual Hindu religious institution in the State. It is, therefore, submitted that ***Sections 23, 27 and 28,*** are ultra-vires the Constitution. Further, under ***Section 49B*** of the Act, the Respondent-Government is empowered to interfere and curb any attempt at independent functioning of the Board of Trustees, through either an Executive Officer.Appointed under Section 45 or 47, or even through

the Chairman of the Board. The Chairman and the Executive Officer, both have veto power over any resolution passed by the Board of Trustees, and may refuse to implement the same. This veto power, can be exercised on various grounds, including if the Chairman or the Executive Officer considers that the resolution *"is not beneficial to the institution or endowment"*. Once a resolution is refused to be implemented and returned to the Board for reconsideration, it must then be sent to the Commissioner for orders to be passed that he *"deems fit"*. It is submitted that these powers are wide and arbitrary, and allows the Respondent-Government to control each and every resolution of the Board of Trustees directly, which is a violation of the proprietary and Fundamental Rights under Articles 14, 25 and 26 of the Constitution. In the case of ***Subramanian Swamy v. State of T.N.***, (2014) 5 SCC 75:

> *"65. Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such an expropriatory order requires to be considered strictly as it infringes the fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order [Sri Sabanayagar Temple v. State of T.N., (2009) 4 LW 705 : (2009) 8 MLJ 1503] is liable to be set aside for failure to prescribe the duration for which it will be in force.*
>
> *66. Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period."*
>
> (Emphasis added)

O. It is submitted that in view of the decision in *Dr Subramaninan Swamy v State of Tamil Nadu (2014)*, it is clear that the power of

supersession of management of a temple is not unfettered or unlimited. It is a qualified power, through which the State may take over the administration of a Temple for a temporary period to remedy maladministration.

P. It is, therefore, most respectfully submitted that the impugned provisions and several other provisions (which, for the present, have not been challenged by this Petition) of the HRCE Act, empowering the Respondent-Government to take over and exercise control over temples, appointment of archakas, and appointment of Trustees, along with invasive intrusion in the administration of trust properties are illegal and unconstitutional, and liable to be struck-down.

Q. That no other Similar petition has been filed before this Court or any other High Court.

12. GROUNDS FOR INTERIM RELIEF

12.1. Under the impugned provisions of the Act, the Respondent-Government has been exploiting its self-proclaimed powers by dismissing competent archakas, going beyond the scope of its Constitutional authority. Some of the persons who have suffered the loss of their lively-hood by the unconstitutional actions of the State Government have sworn affidavits, which are attached with this Petition (Affidavits of Parmeswaran Gurukkal, K Chidambarawswara Gurukkal, and K Karthick Gurukkal are appended to this Petition as **ANNEXURE P-3** on **Pages 56-79**). In these cases, the aggrieved persons lost their position of archaka held by them for several years, without cause or notice, just by an arbitrary decision of the Respondent-Government. Further, the Respondent has also begun arbitrarily appointing archakas for temples in Tamil Nadu, without the requisite Constitutional mandate or even any statutory authority to do so, as even in the HRCE Act and its rules, trustees have the right to appoint archakas, not the State Government (A true copy of the press

release of the Government of Tamil Nadu dated 14.08.2021, along with its English Translation, stating that the CM has appointed 24 archakas and other personnel is appended hereto as **ANNEXURE P-2** on **Pages 51-55**). It is submitted that grave and irretrievable injury in the nature of loss of lively-hood would be caused to archakas who are being dismissed without cause, if an order of interim injunction is not granted. Such dismissed archakas neither have the requisite legal advice nor the resources to effectively represent and argue against their unconstitutional dismissal, thereby causing them permanent loss of lively-hood.

12.2. It is submitted that as enunciated in ***Seshammal v State of Tamil Nadu [(1972) 2 SCC 11],*** the trustees have the power to appoint Archakas. This power cannot be abridged and rendered a mere formality by providing for appeals against the decisions of the trustees, to the Respondent-Government or by the power of absolute control over the trustees. Such an abridgement of the rights of trustees and the Hindu community would amount to arbitrary takeover of temples and Hindu religious institutions by the Respondent-Government — which is in the teeth of the law laid down in ***Subramanian Swamy v State of Tamil Nadu, [(2014) 5 SCC 75] and Pannalal Bansilal Pittie v State of AP [(1996) 2 SCC 498].***

12.3. Therefore, the Petitioner submits that only independent Trustees have the power to appoint archakas and the state cannot take away or hijack this power. Thus, the impugned sections of the HRCE Act, especially sections 21, 35, 55(4), 57, 114— empowering the Respondent-Government to interfere in the appointment or dismissal of archakas are prima facie unconstitutional.

12.4. It is submitted that if archakas are appointed to Hindu religious institutions at the behest of the Government, and not by independent trustees, it would lead to grave and irretrievable injury to the temples and Hindu religious institutions in the State of Tamil Nadu. It would not merely be a matter of employment, but of religion; as an improperly trained and unfit person performing pooja and other religious functions would deteriorate the purity and sanctity of the idol, and would derogate the religious practices of the temple. It is respectfully submitted that such a travesty of religious practices and beliefs can only be prevented by an order protecting the temples and Hindu religious institutions during the pendency of the present Petition.

12.5. It is submitted that the balance of convenience is in favour of the Petitioner, as an injunction on appointment and dismissals of archakas by the Respondent would not cause any prejudice to the Respondent. If such an injunction is not granted, it would seriously curtail the Fundamental Rights of the Hindus. It is respectfully submitted that for the foregoing reasons, the unconstitutional actions and practices of the Respondent-Government are liable to be stayed for the pendency of this Petition.

13.MAIN PRAYER:

In the facts and circumstances of the case as mentioned above, it is, therefore, most humbly prayed that this Hon'ble Court may be pleased to:

a) Issue an appropriate writ, order or direction, striking down ***Sections 21, 23, 27, 28, 47, 49, 49B, 53, 55, 56, and 114*** of **the HRCE Act** and all Rules, orders, notifications issued under these sections as unconstitutional and ultra-vires Articles 14, 25 and 26 of the Constitution.

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b) Pass appropriate writ, direction or order under Article 142 of the Constitution of India and mold the appropriate reliefs that will be in public interest while upholding the Constitution of India.

c) Pass any other directions or orders as may be deemed appropriate in the interest of justice.

14.INTERIM RELEIF, IF ANY:

In the facts and circumstances of the case as mentioned above, it is, therefore, most humbly prayed that this Hon'ble Court may be pleased to:

a) Pass an Order of Temporary Injunction against the Respondent-Government of Tamil Nadu, its officers, employees etc., restraining them from appointing or dismissing archakas for the temples and Hindu religious institutions in the State of Tamil Nadu, till the final disposal of this Petition.

b) Pass an Order for ex-parte ad-interim reliefs in the nature of prayer clause (a) above.

c) Pass any other directions or orders as may be deemed appropriate in the interest of justice.

And for this act of kindness, the Petitioner as in duty bound, shall ever pray.

Filed on: 28.09.2021

[redacted]