

IN THE HIGH COURT OF JUDICATURE AT MADRAS

W.P.No.

of 2020

R.R.Gopaljee
son of Late Mr.R.Raghavan
Publisher, Dinamalar
TVR House
No.57, 2nd Floor,
Pantheon Road, Egmore
Chennai

...Petitioner

Vs.

1. Principal Secretary/ Commissioner
Hindu Religious and Charitable Endowments Department
119, Uthamar Gandhi Salai
Nungambakkam, Chennai – 34
2. Chief Secretary
Government of Tamil Nadu
Secretariat, Fort St.George
Chennai – 600 009
3. The Deputy Secretary & Treasurer
Chief Minister's Public Relief Fund
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai – 600 009

...Respondents

AFFIDAVIT OF SHRI R.R.GOPALJEE

I, R.R.Gopaljee, son of Late Mr. R.Raghavan, aged about 49 years, having office at No.57, 2nd Floor, Pantheon Road, Egmore, Chennai, do hereby solemnly affirm and sincerely state as follows:

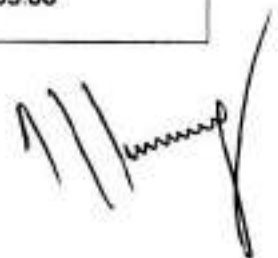
1. I hereby submit that I am the Petitioner herein and I am well acquainted with the facts and circumstances of the case. I further submit that I am competent to swear this Affidavit.
2. I hereby submit that I am an Income Tax Assessee, my Income for the Financial Year 2018-19 is Rs. 1,05,41,058/- and my PAN No. is AALPG0293L. I further submit that my Aadhar No. is 3528 9379 6449 A copy of my PAN Card is annexed herewith as **Annexure – P1**. A copy of my Aadhar Card is annexed herewith as **Annexure – P2**.
3. I hereby submit that this Public Interest Litigation (PIL) is being filed purely in the interest of the public being poor, skilled and semi-skilled workers whose livelihood depends solely on the income from Hindu temples. I further submit that the Petitioner herein has no personal/private interest in the present Writ Petition.



depends solely on the income from Hindu temples. I further submit that the Petitioner herein has no personal/private interest in the present Writ Petition.

4. I hereby submit that in the event this Hon'ble Court determines that the present Writ Petition has been filed for personal gain or oblique motive, the Petitioner herein undertakes to pay any costs as may be determined by this Hon'ble Court. I further submit that the present Writ Petition is being filed from the own funds of the Petitioner and no public collection of funds was done towards the filing of the present Writ Petitioner.
5. I hereby submit that I am the Publisher of the Tamil newspaper 'Dinamalar' having wide circulation in the state of Tamil Nadu. I further submit that I am a public spirited citizen time and again engaged in the betterment of the society at large.
6. I hereby submit that in the recently on 24.04.2020, through newspaper articles on 24.05.2020 the Petitioner became aware of the fact that the Principal Secretary/Commissioner of Hindu Religious & Charitable Endowments Department had directed 47 temples to transfer a total sum of Rs.10 Crores to the Chief Minister's Public Relief Fund. Copies of newspaper clippings dated 24.04.2020 is annexed herewith as **Annexure P3** and **Annexure P4**.
7. I hereby submit that on 22.04.2020, the Principal Secretary/Commissioner of Hindu Religious & Charitable Endowments Department, the 1st Respondent herein had issued a Circular Na.Ka.18104/2020/G2 dated 22.04.2020 ('Impugned Circular') to the Executive Officers, Assistant Commissioners, Deputy Commissioners and Joint Commissioners of the HR & CE Department with a direction to the following temples to contribute a total sum of Rs.10 Crores from the surplus funds of the temples to the Chief Minister's Public Relief Fund:

Sl.No	Name of Temple	Sum (in Lakhs)
1.	ArulmiguDhandayudhapani Swamy Temple, Pazhani	35.00
2.	ArulmiguSubramaniaswami Temple, Tiruchendur	35.00
3	Arulmigu Meenakshi Sundareshwarar Temple,	35.00



	Madurai	
4	ArulmiguSubramanyaswami Temple, Tiruttani	35.00
5	Arulmigu Devi Karumariamman Temple, Thiruverkadu	35.00
6	ArulmiguArunachaleshwarar Temple, Tiruvannamalai	35.00
7	ArulmiguAranganadha Swamy Temple, Srirangam	35.00
8	ArulmiguMariamman Temple, Samayapuram	35.00
9	ArulmiguRamanathaswamy Temple, Rameshwaram	35.00
10	ArulmiguKabaleeshwarar Temple, Mylapore	35.00
11	ArulmiguBannariMariamman Temple, Bannari	25.00
12	ArulmiguKannazhagar Temple, Azhagarkoil	25.00
13	ArulmiguSubramaniaswamy Temple, Marudamalai	25.00
14	Arulmigu Parthasarathy Swamy Temple, Triplicane	25.00
15	ArulmiguVadapalaniAndavar Temple, Vadapalani	25.00
16	ArulmiguSubramaniaswamy Temple, Thiruparangundram	25.00
17	ArulmiguKamatchiamman Temple, Mangadu	25.00
18	ArulmiguSankaraNartayanaswamy Temple, Sankarankoil	25.00
19	ArulmiguSwaminathaswamy Temple, Swamimalai	25.00
20	ArulmiguDevarajaswamy Temple, Kancheepuram	15.00
21	ArulmiguThyagaraja Swamy Temple, Thiruvottriyur	15.00
22	Arulmigu Lakshmi Narasimhaswamy Temple, Sholingur	15.00
23	ArulmiguAngalammai Temple, Melmalayanur	15.00
24	ArulmiguAranmanaiDevasthanam, Thanjavur	15.00
25	ArulmiguVenkatachalapathy Temple, Uppiliappankoil	15.00

26	ArulmiguKoodalnagar Temple, Madurai	15.00
27	ArulmiguArdhanareeswarar Temple, Thiruchengodu	15.00
28	ArulmiguSugavaneswarar Temple, Salem	15.00
29	ArulmiguThayumanaswamy Temple, Malaikottai, Trichy	15.00
30	ArulmiguVaazhathottadhuAyyan Temple, Ayyampalayam	15.00
31	ArulmiguVanabadrakaliamman Temple	15.00
32	ArulmiguThirumalaikumara Swamy Temple, Panpozhi	15.00
33	ArulmiguMariamman Temple, Irukkankudi	15.00
34	ArulmiguAdaikalamKaaththaAyyanar Temple, Madapuram, Paramakudi	15.00
35	ArulmiguJembukeswarar and Akilandeswari Amman Temple, Thiruvanaikaval, Trichy	15.00
36	ArulmiguMasaniamman Temple, Anaimalai, Pollachi Taluk, Coimbatore District	15.00
37	ArulmiguKalyanaVenkatramana Swamy Temple, Thanthondimalai, Karur District	15.00
38	ArulmiguAabathsagayeswarar Temple, Alangudi, Thiruvannamalai District	15.00
39	ArulmiguVekkaliyamman Temple, Urayur, Trichy	15.00
40	ArulmiguPatteswarar Temple, Perur, Coimbatore	15.00
41	ArulmiguVinayagar Temple, Eesani, Coimbatore	15.00
42	ArulmiguSangameswarar Temple, Bhavani	15.00
43	ArulmiguKutralanadha Swamy Temple, Kutralam	15.00
44	ArulmiguNarasimhaswamy Temple, Namakkal	15.00
45	ArulmiguSubramaniya Swamy Temple, Sivanmalai	15.00
46	ArulmiguPandiMuneeswarar Temple, Madurai	25.00

47	ArulmiguAadhiviyadhiharaBakthaAnjaneyar Temple, Nanganallur, Chennai	15.00
Total		1000.00

A copy of the Circular Na.Ka.18104/2020/G2 dated 22.04.2020 issued by the 1st Respondent is annexed herewith as **Annexure – P5**. A copy of the translation of the Circular Na.Ka.18104/2020/G2 dated 22.04.2020 is annexed herewith as **Annexure – P6**.

8. I hereby submit that the Impugned Circular directs the Executive Officers of the aforementioned 47 temples and the Assistant Commissioners, Deputy Commissioners and Joint Commissioners of the HR & CE Department to contribute the sums as mentioned above without fail. I further submit that the Impugned Circular seems to have been made by the 1st Respondent invoking Section 36B of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 ('TN HR & CE Act') which reads as follows:

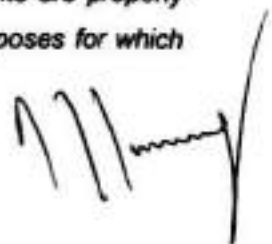
Section 36B: *Utilisation of surplus funds for making contribution towards any funds for the purposes of funding the poor etc.*

Notwithstanding anything contained in sections 36, 36A and in any other provisions of this Act and subject to such condition and restrictions as may be prescribed, the trustee of a religious institution may, in addition to the purpose mentioned in section 36 and 36-A, appropriate any portion to the surplus fund referred to in section 36 for making any contribution towards any fund constituted for the purpose of

- (i) *Feeding the poor or*
- (ii) *Constructing any building, shed or center for feeding the poor.*

9. I hereby submit that the powers and duties of the Commissioner in respect of temples have been enumerated as follows in Section 23 of TN HR & CE Act :

23. *Subject to the provisions of this Act, the administration of all temples (including specific endowments attached thereto) and all religious endowments shall be subject to the general superintendence and control of the Commissioner; and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such temples and endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist.*



Provided that the Commissioner shall not pass any order prejudicial to any temple or endowment unless the trustees concerned have had a reasonable opportunity of making their representations.

I further submit that upon a plain reading of the aforementioned provisions clearly stipulates that the powers of the 1st Respondent are very limited and are not wide when it concerns the diversion of surplus funds from the temples. I further submit that the 1st Respondent cannot unilaterally require the temples or religious institutions to contribute to the Chief Minister's Public Relief Fund.

I hereby submit that in addition to the above, Sections 36, 36-A, 36-B and 66 (1) of the TN HR & CE Act stipulate the manner in which the surplus funds of religious institution can be appropriated, Sections 36, 36-A and 66 (1) read as follows:

36. With the previous sanction of the Commissioner, and subject to such conditions and restrictions as may be prescribed, the trustee of a religious institution may appropriate for any of the purposes specified in sub-section (1) of section 66 –
(i) any portion of the accumulated surplus of such institution and
(ii) if, after making adequate provision for the purposes referred to in sub-section (2) of section 86 and also for the arrangements and training referred to in sub-section (1) of section 35, there is a surplus in the income of the institution of any year, any portion of such surplus:

Provided that the trustee shall in appropriating the surplus under this section, give preference to the purposes specified in items (a) to (g) of sub-section (1) of section 66:

Provided further that, before according the sanction under this section, the Commissioner shall publish the particulars relating to the proposal of the trustee in such manner as may be prescribed, invite objections and suggestions received from persons having interest:

Provided also that the sanction aforesaid shall be published in such manner as may be prescribed:

Provided also that nothing in this section shall prevent the trustee of a math of a specific endowment attached to a math from utilizing the surplus referred to in this section in such manner as he deems fit.

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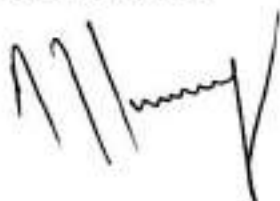
36-A Notwithstanding anything contained in section 36 and subject to such conditions and restrictions as may be prescribed, the trustee of a religious institution may in addition to the purposes mentioned in that section appropriate any portion of the surplus fund referred to in section 36 for the performance of Hindu marriages among Hindus who are poor in needy circumstances.

I further submit that Section 66 (1) of the HR & CE Act is also reproduced as follows:

66 (1) The Deputy Commissioner, may, on being satisfied that the purpose of a religious institution has from the beginning been, or has subsequently become, impossible of realization, by order, direct that the endowments of the institution be appropriated to all or any of the following purposes, namely:-

- (a) The grant of aid to any other religious institution which is poor or in needy circumstances;
- (b) The grant of aid to any religious purpose connected with the Hindu religion;
- (c) The propagation of the religious tenets of the institution;
- (d) The recitation of DivyaPrabhandham and Thevaram and the like;
- (e) The establishment and maintenance of schools for the training of archakas, adyapakas, vedaparayanikas and othuvans and for the study of DivyaPrabhandhams, Thevarams and the like including the study of Indian languages for that purpose;
- (f) The establishment and maintenance of a university or college or other institution in which the main features shall be the provision of the study of Hindu religion, philosophy or sastras or for imparting instruction in Hindu temple architecture;
- (g) The establishment and maintenance of educational institutions where instruction in the Hindu religion is also provided;
- (h) Promotion of fine arts and architecture;
- (i) The establishment and maintenance of orphanages for Hindu Children;
- (j) The establishment and maintenance of asylums for persons suffering from leprosy;
- (k) The establishment and maintenance of poor homes for destitute, helpless and physically disable persons; and
- (l) The establishment and maintenance of hospitals and dispensaries for the benefit of pilgrims:

Provided that in the case of a religious institution founded and maintained by a religious denomination or any section thereof, the endowments shall, as far as possible, be utilized for the benefit of the denomination or section concerned for the purposes mentioned above.



I further submit that the following is a schematic representation of the procedure that is to be followed in accordance with the Utilisation of Surplus Funds Rules framed by the TN HR & CE Department

The Trustee/Trustees/Chairman of the Trust can make an application to the Commissioner along with the particulars of the receipts, expenditure, surplus relating to *fasili* year after making adequate provisions as under Section 86 (2) and 35 (1) of the TN HR & CE Act, the total accumulated surplus available till the end of previous *fasili* and particulars regarding the purpose for which any portion of surplus may be diverted. [Rule 2]

The Commissioner shall scrutinize the proposal for diversion of surplus funds and provisionally decide the amount of surplus that may be diverted. [Rule 3 (1)]

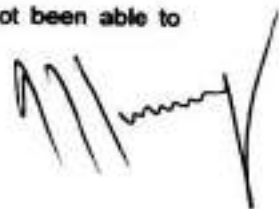
The Commissioner shall publish a notice one of the leading local Tamil dailies containing the provisional decision along with the particulars of such diversion. [Rule 3 (2)]

The said notice shall specify a date, which shall be not less than thirty days from the date of its publication within which objections and suggestions may be sent. The notice must also specify the date on which inquiry will be held to consider the objections or suggestions. [Rule 4]

After inquiry into the objections and suggestions, the Commissioner shall either confirm or modify or set aside provisional decision. [Rule 6]

I further submit that all while on the one hand the Commissioner passed the impugned Circular without any jurisdiction, on the other hand the Impugned Circular also goes against the stipulations made under Section 36, 36-A, 36-B and 66 (1) of the TN HR & CE Act. I further submit that the 1st Respondent is also in complete violation of the procedure laid down under the Utilization of Surplus Funds Rules laid by the TN HR & CE Department for the diversion of surplus funds of the temples for purposes under Section 36, 36-A, 36-B and 66 (1) of the TN HR & CE Act.

10. I hereby submit that these 47 temples are temples of heritage which not only have rich history behind it but also play host to several skilled and semi-skilled workmen such as *archakas*, *adyapakas*, *vedaparayanikas*, *othuvars*, flower vendors, musicians, sweepers, torch bearers, etc., whose livelihood have not been able to



earn their livelihood in the current situation where on account of COVID – 19 become a question due to the non-functioning the lockdown imposed by the Government of Tamil Nadu.

11. I hereby submit that the Petitioner, upon acquiring knowledge of the Impugned Circular, sent representations by way of email dated 27.04.2020 to the Respondents herein explaining the plight of those people whose livelihood has been adversely affected due to the closure of the temples. A copy of the email sent to the Respondents is annexed herewith as **Annexure – P7**.

12. I hereby submit that the Government of India has allocated a sum of Rs.510 Crores to the State of Tamil Nadu towards the relief funds in light of COVID – 19, further, the Reserve Bank of India (RBI) has also permitted the State Governments to borrow under the Ways and Means Advances (WMA) due to which Tamil Nadu will be able to borrow Rs.3,960 Crores from the RBI. A copy of the statement of allocation and release of funds from State Disaster Response Mitigation Fund is annexed herewith as **Annexure – P8**.

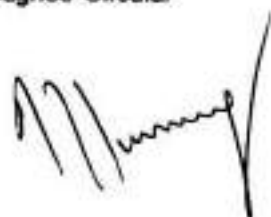
13. I hereby submit that since the Impugned Circular is a generic one addressed to the 47 temples mentioned therein and further no prayer has been sought against the 47 temples by the Petitioner, at this point of time it may not be necessary to implead the 47 temples as a party to this Writ Petition. I further submit that, however, at the appropriate time, in the event the same is required, the 47 temples shall be made as parties subject to the orders of this Hon'ble Court.

14. I hereby submit that the Impugned Circular passed by the 1st Respondent overlooks the livelihood of the skilled and semi-skilled workmen.

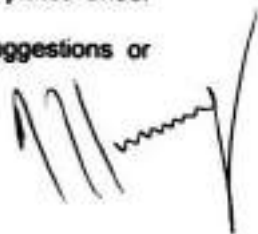
15. I hereby submit that the facts mentioned above give rise to various grounds that has been mentioned in the following paragraphs:

GROUND

- A. The Impugned Circular passed by the 1st Respondent is arbitrary, illegal, bad in law and exceeding jurisdiction.
- B. The 1st Respondent has abused his powers by passing the Impugned Circular requiring the 47 temples to contribute a total of Rs.10 Crores.



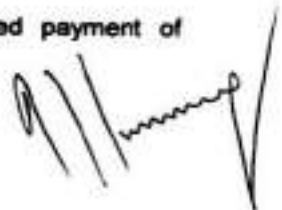
- C. The 1st Respondent has no powers under Section 36-B of the TN HR & CE Act to mandate the temples to contribute from the surplus funds of such temples as nowhere in the said provision has such powers been conferred upon the 1st Respondent. Since it is only the trustees of the religious institutions who can make proposals of such diversion of surplus funds for other purposes, which clearly establishes the fact that the 1st Respondent has exceeded his powers conferred under the statute by passing the Impugned Circular. This alone is sufficient grounds for quashing the Impugned Circular.
- D. With regard to the powers of the 1st Respondent, the same is derived from Section 23 of the TN HR & CE Act and is subject to the other provisions of the TN HR & CE Act, including Section 36-B which only permits for the Trustees of the religious institution to decide on the diversion of surplus funds of such religious institutions.
- E. Further, the stipulation under Section 36-B of the TN HR & CE Act is that the trustees of the religious institution can make an application to the 1st Respondent and subsequently the 1st Respondent is to consider the same as per the procedure laid down under the Utilization of Surplus Fund Rules. However, in the present case, the 1st Respondent has decided on the sums to be contributed by each temple by way of the Impugned Circular thereby completely circumventing the due process laid down under the aforementioned Rules. This circumvention is also another reason solely due to which the Impugned Circular may be quashed.
- F. The Impugned Circular is also in complete violation of The Utilisation of Surplus Funds Rules framed under the HR & CE Act in which Rule 2 states that the trustee have to submit proposals for the diversion of surplus funds with a statement of receipts during the *fasili* year and expenditure during the *fasili* year and subsequently, the Commissioner shall scrutinize the proposals for such diversion and provisionally decide the amount of surplus that may be diverted and the same shall be published in local Tamil dailies as contemplated under Rule 3. Further, the same has to be kept open to receive suggestions or



objections for a period of 30 days as contemplated under Rule 4 and upon receipt of any objections, the Commissioner ought to consider the same and pass orders as provided under Rule 6. However, with regard to the Impugned Circular, no such notice, time for objection or even proceedings of the Commissioner was carried out, thereby in square violation of The Utilisation of Surplus Funds Rules framed by the TN HR & CE Department.

G. In addition to the above, it is pertinent to state that with regard to the administration of temples in Tamil Nadu, there are three categories of people who work for the purpose of administering the temple. The 1st category being the Executive Officers, Superintendents and Clerks who are in the payroll of the TN HR & CE department. However, the second category of people would be the *archakas*, *adyapakas*, *vedaparayanikas* and *othuvars* who are vital for the functioning of the temple and performing ceremonies at the temple. The third category of people are those whose business depends on the temple such as flower vendors, torch bearers and cooks who prepare *prasadam* amongst others. The livelihood of the second and third category of people is solely based on the contribution made by the devotees to the temple which is received when the temples are open and functional. It is to be noted that for a very long time the people of the second and third category have been receiving remuneration much lesser than The Minimum Wages Act, 1948. When this is the case, the 1st Respondent ought to prioritize the financial assistance of the persons belonging to second and third category, who have been dependent on the functioning of the temples which have been closed for more than 30 days. By issuing the Impugned Circular, the 1st Respondent is causing prejudice to the utilization of surplus funds of the Temples for the benefit of those skilled and semi-skilled workmen dependent on the functioning and contributions for their living.

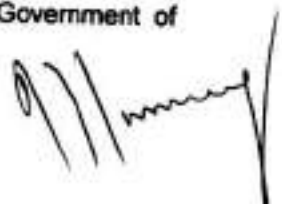
H. This act of the 1st Respondent violates the right to life as enshrined in Article 21 of the Constitution of India, of the skilled and semi-skilled workmen of the temple. In addition to the above out of the three categories of people working for the temple and temple administration, by ensuring continued payment of



remuneration of those under the payroll of the TN HR & CE department while passing Impugned Circular to prejudice the hope of financial assistance for the second and third categories of persons who depend on the functioning of the temples violate their right to equality and equal treatment of the law as stipulated under Article 14 of the Constitution of India.

16. I hereby submit that the Petitioner craves the leave of this Hon'ble Court to permit the Petitioner to raise and file additional grounds and material documents in support of the case if deemed necessary and proper.
17. I hereby submit that this Hon'ble Court may be pleased to stay the operation of the Impugned Circular being Circular Na.Ka.18104/2020/G2 dated 22.04.2020 issued by the 1st Respondent until the disposal of the Writ Petition.
18. I hereby submit that the Petitioner herein has made out a *prima facie* case against the Respondents and the balance of convenience is in favour of the Petitioner herein and grave prejudice would be caused to a great number of skilled and semi-skilled workmen related to these 47 temples.
19. I hereby submit that the Petitioner has not approached any other Court of law or forum in relation to the reliefs claimed hereunder.

Therefore, in these circumstances it is prayed that this Hon'ble Court may be pleased to issue a writ, order or direction in the nature of Writ of Certiorarified Mandamus or any other appropriate writ calling for the records in relation to the Circular Na.Ka.No.18104/2020/G2 dated 22.04.2020 passed by the Principal Secretary/Commissioner, Hindu Religious & Charitable Endowments Department and quash the same and further direct the Principal Secretary/Commissioner, Hindu Religious & Charitable Endowments Department to forthwith make arrangements for providing financial assistance to the skilled and semi-skilled labour dependent on temples for their livelihood and further in the event of any sum contributed from the surplus funds upto the sum of Rs.10 Crores has already been transferred to the Tamil Nadu Chief Minister's Public Relief Fund direct the Chief Secretary Government of



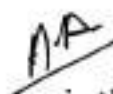
Relief Fund, the 3rd Respondent herein to refund the same to the respective temples and pass any such further orders as this Hon'ble Court may deem fit and thus render justice.



Solemnly affirmed at
Chennai on this the 27th
day of April 2020 and
signed in my presence

DEPONENT

Before Me,



(Adv. G. Mahalingam)
1945, 1911/1912
No. 11, 1st Floor, 100
N.S. Road, Chennai - 600 002

ADVOCATE, Chennai