

BEFORE THE COMMISSIONER, H.R & CE ADMN.DEPARTMENT,CHENNAI-34.

Tuesday the 22<sup>nd</sup> day of July, Two thousand and fourteen.

Present : Thiru P. Dhanapal, M.A.,B.L.,  
Commissioner.

A.P. 14 & 21/2014

Between

1. M. Anandan Pillai,  
S/o Muthu Velayutham Pillai. Appellant in A.P.14/2014.
2. Tmt. Pitchaiammal @ Kamatchiammal  
W/o Ramalingam Pillai. Appellant in A.P. 21/2014.

And

1. The Joint Commissioner,  
HR & CE Admn.Department, Madurai.
2. The Joint Commissioner,  
HR & CE Admn.Department, Tirunelveli. .. Respondents

In the matter of Nacharammal Trust, Vandiyur, Madurai.

Appeal Petitions filed under Section 53(5) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 5.3.2014 of the Joint Commissioner, HR&CE Admn. Department, Tirunelveli in Pro.Rc.No. 13832/2013 under Section 53 (2) of the Act.

Common Order in D.Dis. A.P. 14 and 21/2014 D2 dated : 22.7.2014.

The above Appeal petitions having come on for final hearing before me on 1.7.2014 in the presence of Thiru N. Sathyamoorthy, Counsel for the appellant in A.P.14/2014, Thiru E. Ganesh, Counsel for the appellant in A.P.21/2014. Upon hearing the arguments and having perused the connected records and the matter having stood over for consideration till this day, the following order is passed.

COMMON ORDER

The above appeal petitions filed under Section 53(5) of the Act against the order dated 5.3.2014 of the Joint Commissioner, Tirunelveli under Section 53 (2) of the Act.

2. The appellant in A.P.14/2014 contended that the 2<sup>nd</sup> Respondent failed to consider the motive of the Joint Commissioner, Madurai for framing the charges against the Appellant before deciding the charges against the Appellant and two others. The appellant and two others have been recorded as Hereditary Trustees of the said Trust only on 15.2.2010. Apart from the Appellant and two others, the Government by its G.O. 488 dated 2.9.2010 two non-hereditary trustees were appointed. Therefore it is an admitted fact that there are five trustees was functioning in the above said Trust as per the Scheme O.A.No. 3 of 1967 dated 4.4.1967. Both the Joint Commissioner of Madurai and the Joint Commissioner and the Joint Commissioner of Tirunelveli have not made any remarks or mentioned the name of two non-hereditary Trustees of the said Trust in respect of the administration of the said Trust. The charges are leveled only against the Hereditary Trustees and totally left out the non-hereditary trustees of the said Trust. No reasons have been assigned for their left out from the charges leveled against the appellant and two others. This factual and legal lacuna has to be answered by the Respondent to the Commissioner. By framing the charges against three Hereditary Trustees and left out the non-hereditary trustees who were also in the administration of the Trust along with Hereditary Trustees shows the ulterior motive of the Joint Commissioner, Madurai. Nowhere the names of the said non-hereditary trustees were found in the charges as well as in the impugned order. The 2<sup>nd</sup> respondent ought to have seen that it has been mentioned in his order at Page No.3 is as follows:-

“ இந்த விசாரணைக்கு ஆணையர் உத்தரவின்படி தனது அலுவலக அசல் ஆவணங்கள், கோப்புகள் ஆகியவற்றை அனுப்பாமல் ஒரு சில ஆவணங்களின் நகல்களை மட்டுமே மதுரை இணை ஆணையர் அனுப்பி உள்ளார். அதனால் மதுரை இணை ஆணையரிடமிருந்து வரப்பெற்ற ஆவணங்களின் நகல் மற்றும் மேற்குறிப்பிட்ட ஆவணங்களின் அடிப்படைகளின் குற்றச்சாட்டு வாரியாக கீழ்க்கண்டவாறு உத்தரவு பிறப்பிக்கப்படுகின்றது.”

From the above statement of the Respondent it has been clearly established that the Impugned order has not been passed on the basis of any original documents and without oral and documentary evidence. Therefore, the impugned order passed only on the presumption and assumption and also

imagination. The reading of the findings of the 2<sup>nd</sup> respondent would establish that he has not properly appreciated the facts and circumstances of the case and the legal position involved therein. Under such circumstances the findings of the Respondent is only based on surmises and imagination. There are no definite findings of the Respondent in respect of all the charges. He himself admitted that there is no document available before him, it is legally not possible to arrive at such a conclusion. Without any basis of documentary evidence or supporting and evidence the Respondent ought not to have passed such an order, and the same is bad in law.

3. The appellant in A.P. 21/2014 contended that the 2<sup>nd</sup> respondent has not armed with all the relevant documents in relating to ipso facto concluding charges against the Appellant and other 2 trustees. Besides that, the factum that the documents are not sent to him by the 1<sup>st</sup> respondent would safely transpire that there are no documents or material evidence at all against the Appellant and other 2 Trustees so as to prove them guilty. The above order is the outcome of filtered imagination of the issue and passed on presumption and surmises and the order has not been supported by any concrete oral or documentary evidence as emphasized under the Indian Evident Act. It is admitted fact that the Appellants tenure of management would commence from subsequent to 11.10.2013 onwards alone, despite knowing the fact the 2<sup>nd</sup> Respondent has founded guilty of few charges against the Appellant too, on the pretext of collective responsibility. However, surprisingly, neither the 1<sup>st</sup> respondent nor the 2<sup>nd</sup> respondent has inducted the other 2 non hereditary trustees in the disciplinary proceedings and even there was no observation in relation to their role in the mismanagement of the trust.

4. I heard Thiru N. Satyamoorthy, Counsel for the appellant in A.P. 14/2014 and Thiru E.Ganesh, Counsel for the appellant in A.P.21/2014 and perused the relevant records. The counsel for the appellants narrated and reiterated the grounds of appeal filed by the appellants. In the impugned order, the Joint Commissioner has observed as follows:

“இந்த விசாரணைக்கு ஆணையர் உத்தரவின்படி தனது அலுவலக அசல் ஆவணங்கள், கோப்புகள் ஆகியவற்றை அனுப்பாமல் ஒரு சில ஆவணங்களின் நகல்களை மட்டுமே மதுரை இணை ஆணையர் அனுப்பி உள்ளார்.” Further in the findings given by the Joint Commissioner to the charges, he observed that “குற்றச்சாட்டுகள் தொடர்பான ஆவணங்கள் வரப்பெறவில்லை” “ஆவணம் ஏதும் இணை ஆணையர் குற்றச்சாட்டில் குறிப்பிடவில்லை” So, it is clear that the findings of the Joint Commissioner is not based on any documentary evidence but based on surmises. The conclusion arrived by the Joint Commissioner without verifying the original documents is not sustainable in law.

Therefore, the impugned order suffers from infirmity as stated above and liable to set aside and accordingly the order dated 5.3.2014 of the Joint Commissioner, Tirunelveli is hereby set aside. And the matter is remitted back to the Joint Commissioner to hold fresh enquiry and disposal in accordance with law. The Joint Commissioner, Madurai is directed to send original file, records and relevant documents to the Joint Commissioner, Tirunelveli within 15 days from the date of receipt of this order. With the above direction the appeal petitions are disposed of.

/typed to dictation/

Sd. P. Dhanapal,  
Commissioner.

/ true copy/by order/

Superintendent.

To

1. The Appellant in A.P.14/2014 through Thiru N. Sathyamoorthy, Advocate, No.62, New Law Chambers, High Court, Chennai.104.
2. The Appellant in A.P.21/2014 through Thiru E. Ganesh, Advocate, through No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai-85.
3. The Joint Commissioner, HR & CE Admn.Dept., Madurai. (along with file in R.C. 1459/2013)
4. The Joint Commissioner, HR&CE Admn. Dept., Tirunelveli. (along with file in Rc.13832/2013 2 volumes)

Copy to:

5. The Assistant Commissioner, HR & CE Admn.Dept., Madurai.
6. The Inspector, HR & CE Admn.Dept.,Madurai North, Madurai.
7. N5 Section at Head Office.
8. Extra.