

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN
&
THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON
Wednesday, the 26th day of June 2024 / 5th Ashadha, 1946
DBP NO. 44 OF 2024**

IN THE MATTER OF TRAVANCORE DEVASWOM BOARD & COCHIN DEVASWOM BOARD - REGARDING THE CONSTITUTION OF HIGH POWER COMMITTEE FOR IMPLEMENTATION OF SABARIMALA MASTER PLAN, APPOINTMENT OF SPECIAL COMMISSIONER, SABARIMALA, APPOINTMENT OF OMBUDSMAN FOR TRAVANCORE DEVASWOM BOARD & COCHIN DEVASWOM BOARD AND ALSO MATTERS IN RELATION TO THE *(APPOINTMENT OF CHIEF COMMISSIONER, IN THE ABSENCE OF AN ELECTED BOARD IN THE TRAVANCORE DEVASWOM BOARD AND COCHIN DEVASWOM BOARD) AND ALSO APPOINTMENT OF DEVASWOM COMMISSIONERS - SUO MOTU PROCEEDINGS INITIATED- REG

***THE WORDS "APPOINTMENT OF PRESIDENT AND MEMBERS OF THE TRAVANCORE DEVASWOM BOARD AND COCHIN DEVASWOM BOARD" ARE CORRECTED AS ABOVE AS PER ORDER DATED 21/05/2024 IN DBP.NO.44/2024**

PETITIONER:

SUO MOTU



RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
REVENUE (DEVASWOM) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.**
- 2. THE TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY, NANTHANCODE, KOWDIAR POST,
THIRUVANANTHAPURAM - 695003.**
- 3. THE COCHIN DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY, ROUND NORTH, THRISSUR - 680001.**
- 4. THE DEPUTY DIRECTOR
STATE AUDIT DEPARTMENT, TRAVANCORE DEVASWOM BOARD AUDIT,
NANTHANCODE, THIRUVANANTHAPURAM - 695003**

5. THE DEPUTY DIRECTOR
STATE AUDIT DEPARTMENT, COCHIN DEVASWOM BOARD AUDIT,
THRISSUR - 680001.
6. THE HIGH POWER COMMITTEE FOR IMPLEMENTATION OF
SABARIMALA MASTER PLAN, REPRESENTED BY ITS MEMBER SECRETARY,
TRAVANCORE DEVASWOM BOARD, NANTHANCODE, THIRUVANANTHAPURAM,
KERALA - 695003.

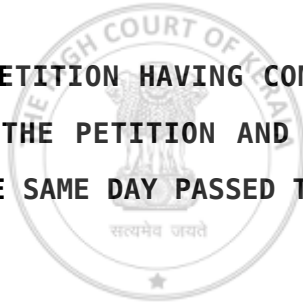
BY SRI.S.RAJMOHAN, SENIOR GOVERNMENT PLEADER

BY STANDING COUNSEL FOR TRAVANCORE DEVASWOM BOARD

BY STANDING COUNSEL FOR COCHIN DEVASWOM BOARD

BY SMT.SAYUJYA RADHAKRISHNAN, FOR HIGH POWER COMMITTEE FOR
IMPLEMENTATION OF SABARIMALA MASTER PLAN

THE DEVASWOM BOARD PETITION HAVING COME UP FOR ORDERS AGAIN ON
26/06/2024, UPON PERUSING THE PETITION AND THIS COURT'S ORDER DATED
25/06/2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING.



“CR”

ANIL K. NARENDRAN & HARISANKAR V. MENON, JJ.

D.B.P. No.44 of 2024

Dated this the 26th day of June, 2024

ORDER

Anil K. Narendran, J.

This DBP is registered *suo motu*, in terms of the directions contained in the judgment of this Court dated 25.03.2024 in O.P.No.3821 of 1990, in the matter of Travancore Devaswom Board and Cochin Devaswom Board - regarding the constitution of High Power Committee for Implementation of Sabarimala Master Plan, appointment of Special Commissioner, Sabarimala, appointment of Ombudsman for Travancore Devaswom Board and Cochin Devaswom Board and also matters in relation to the appointment of Chief Commissioner, in the absence of an elected Board in the Travancore Devaswom Board and Cochin Devaswom Board and also the appointment of Devaswom Commissioners. O.P.No.3821 of 1990 was registered *suo motu*, vide order dated 11.04.1990, in the matter of Travancore Devaswom Board and Cochin Devaswom Board, on the illegalities, embezzlements and irregularities in the administration noticed during the consideration of audit reports.

2. On 25.05.2024, when this DBP came up for

consideration, this Court noticed that the post of Devaswom Commissioner in Travancore Devaswom Board is lying vacant. The learned Standing Counsel for the Travancore Devaswom Board submitted that the Board has already made a requisition before the 1st respondent State for the deputation of an Additional Secretary to the Government from the Administrative Secretariate. The learned Senior Government Pleader submitted that the said requisition is pending consideration before the Government.

3. On 31.05.2024, along with a memo filed by the learned Senior Government Pleader, the panel containing the names of two Additional Secretaries to Government from the Administrative Secretariate, for appointment on deputation basis as the Devaswom Commissioner, Travancore Devaswom Board, was placed on record. The learned Standing Counsel for the Travancore Devaswom Board sought time to get instructions.

4. By the order dated 10.06.2024, the learned Senior Government Pleader was directed to place on record the details of those who held earlier the post of Devaswom Commissioner, Travancore Devaswom Board, on deputation from the Administrative Secretariate. Based on that direction, the learned

Senior Government Pleader has made available for the perusal of this Court the details of those who held the post of Devaswom Commissioner on deputation for the period 2013-23 after furnishing a copy of the same to the learned Standing Counsel for Travancore Devaswom Board. The learned Standing Counsel has also pointed out the preference of the Board, as stated in the written instructions dated 06.06.2024, for the person to be appointed as Devaswom Commissioner on deputation from the Administrative Secretariate.

5. On 21.06.2024, the learned Senior Government Pleader sought time to place on record detailed service particulars of two Additional Secretaries to Government, included in the panel, for appointment as Devaswom Commissioner on deputation, which was furnished along with a memo dated 21.06.2024.

6. Heard the learned Senior Government Pleader for the 1st respondent State and the learned Standing Counsel for the Travancore Devaswom Board for the 2nd respondent on the service particulars and other aspects of two Additional Secretaries to Government included in the panel and also the submission made by the learned Standing Counsel regarding the preference of the

Board among the persons included in the panel.

7. The Travancore-Cochin Hindu Religious Institutions Act, 1950, enacted by the State Legislature, makes provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and Funds. Section 15A of the Act, inserted by Act 5 of 2007, with effect from 12.04.2007, deals with the duties of the Board. As per Section 15A, it shall be the duty of the Board to perform the following functions, namely, (i) to see that the regular traditional rites and ceremonies according to the practice prevalent in the religious institutions are performed promptly; (ii) to monitor whether the administrative officials 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 the temples for the devotees.

7.1. Section 24 of the Act deals with the maintenance of Devaswoms, etc., out of the Devaswom Fund. As per Section 24, the Board shall, out of the Devaswom Fund constituted under Section 25, maintain the Devaswoms mentioned in Schedule I [i.e., incorporated Devaswoms], keep in a state of good repair the

temples, buildings, and other appurtenances thereto, administer the said Devaswoms in accordance with recognised usages, make contributions to other Devaswoms in or outside the State and meet the expenditure for the customary religious ceremonies and may provide for the educational upliftment, social and cultural advancement and economic betterment of the Hindu community. Section 27 of the Act deals with Devaswom properties.

7.2. Section 31 of the Act deals with the management of Devaswoms. As per Section 31, subject to the provisions of Part I and the rules made thereunder, the Board shall manage the properties and affairs of the Devaswoms, both incorporated and unincorporated as heretofore, and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage.

8. In **Ram Mohan Das v. Travancore Devaswom Board and others [1975 KLT 55]** a learned Single Judge of this Court held that under Section 31 of the Travancore-Cochin Hindu Religious Institutions Act, the Travancore Devaswom Board shall manage the properties and affairs of the Devaswoms, both incorporated and unincorporated and arrange for the conduct of the daily worship and ceremonies and of the festivals in every

temple according to its usage. The position of the Board in regard to the Devaswoms - incorporated and unincorporated - is analogous to that of trustees. Any improper act of the Trustees could be questioned by a worshipper.

9. In **Suo Motu v. State of Kerala and others [2022 (2) KHC 411]**, in a matter alleging corruption in the submission of fake food bills at Sabarimala Guest House, after taking note of the law laid down by the Apex Court in **M.V. Ramasubbiar v. Manicka Narasimachara [(1979) 2 SCC 65]** and in **A.A. Gopalakrishnan v. Cochin Devaswom Board [(2007) 7 SCC 482]** and the law laid down by this Court in **Travancore Devaswom Board v. Mohanan Nair [2013 (3) KLT 132]**, a Division Bench of this Court in which one among us [Anil K. Narendran, J.] was a party, held that in view of the provisions under the Travancore-Cochin Hindu Religious Institutions Act and also the law laid down in the decisions referred to supra, the Travancore Devaswom Board is duty bound to ensure proper administration, supervision and control of Sabarimala Devaswom, which is an incorporated Devaswom mentioned in Schedule I of the Act, under the Chengannur Group. The Board has a statutory duty to monitor whether its administrative officials and employees

and also the employees connected with religious rites are functioning properly. The Board is duty bound to exercise proper supervision and control over the acts and proceedings of all officers and servants and to manage the properties and affairs of Sabarimala Devaswom and conduct daily worship, ceremonies and festivals in the temple according to its usage. The position of the Travancore Devaswom Board in this regard is analogous to that of trustees, as held by this Court in **Ram Mohan Das [1975 KLT 55]**. Any improper act of the trustees could be questioned by a worshiper. The Board and those entrusted with the duty of managing the properties and affairs of Sabarimala Devaswom are duty bound to protect the properties of the deity from any wrongful claims, theft or misappropriation. Any such wrongful claims, theft or misappropriation with the passive or active collusion of the authorities concerned, which are acts of 'fence eating the crops' should be dealt with sternly. The deity being a perpetual minor, this Court has inherent jurisdiction to protect and safeguard the interests and properties of the deity. The doctrine of *parens patriae* will also apply in the exercise of such jurisdiction.

10. Chapter XV of the Travancore Devaswom Manual Volume - I – Office Manual – deals with the organization chart of

the Board, which provides the duties and powers of various officers under the Board. As per Chapter XV, the Devaswom Commissioner shall be the Chief Executive Officer of the Department of Devaswoms and the Hindu Religious Endowments. He shall be responsible for carrying out all the directions and orders issued by the Board from time to time. He shall supervise and control the working of the subordinate officers of the Department. He shall regulate the expenditure within the sanctioned 'Pathivus' and estimates. He shall watch and collect the receipts from all sources due to the Devaswom funds and all other institutions under him. The powers of the Devaswom Commissioner enumerated in Chapter XV of the Travancore Devaswom Manual Volume - I - Office Manual - include that as disciplinary authority for all non-gazetted employees of the Devaswom Department, including temple employees.

11. Section 13B of the Act, inserted by Amendment Act 26 of 2018, deals with the appointment of Devaswom Commissioner. Section 13B reads thus;

"13B. The Board shall appoint an officer not below the rank of a Deputy Commissioner who is eligible to be promoted as Devaswom Commissioner and, in the absence of such officer, an officer not below the rank of an Additional Secretary to Government on deputation as Devaswom

Commissioner.” (underline supplied)

12. As per Rule 4(1)(a) of the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022, the post of Devaswom Commissioner falls under Category 1. Rule 5(1) of the Rules deals with the method of appointment to various categories in the Travancore Devaswom Board Devaswom Department. The method of appointment for the category 'Devaswom Commissioner' in Rule 5(1)(a) reads thus;

	Category	Method of Appointment
	(1)	(2)
1	Devaswom Commissioner	1. By promotion from among the category of Deputy Devaswom Commissioner specified in category 4 under rule 4(1)(a). 2. In the absence of suitable candidate for promotion so specified above, an officer not below the rank of an Additional Secretary to Government from the Administrative Secretariate on Deputation basis.

13. As per Rule 6(1) of the Rules, which deals with qualifications, no person shall be eligible for appointment to the categories under Rule (4) specified in column I of the table by the method against it in column 2 thereof unless he/she possesses the qualifications specified in the corresponding entry in column 3. The qualifications prescribed in Rule 6(1) for the post of Devaswom Commissioner read thus;

	Category	Method of Appointment	Qualifications
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	(1)	(2)	(3)
1	Devaswom Commissioner	1. By promotion 2. Deputation from Government service	1. From among the category of Deputy Devaswom Commissioner specified as in category 4 under Rule 4(1)(a). Should possess a Bachelor's Degree and a Degree in Law with an unblemished service record in the services of the Board to be appointed from a select list based on seniority and merit and approved by the Departmental Promotion Committee. Vigilance clearance from the State Vigilance is necessary for the appointment. 2. In the absence of suitable hands in (1) above, an officer not below the rank of Additional Secretary to Government from the Administrative Secretariat on deputation basis. Vigilance clearance is necessary for the appointment.

14. In **Radhakrishnan R.G. v. State of Kerala and others [2024 (3) KHC SN 9 : 2023:KER:11706]** - judgment dated 31.01.2024 in W.P.(C)No.43139 of 2023 - a Division Bench

of this Court, in which one among us [Anil K. Narendran, J.] was a party, was dealing with the challenge made against the appointment of the 8th respondent therein as Devaswom Commissioner, Travancore Devaswom Board, by way of promotion, by the Board order dated 12.12.2023. Among other reliefs, a writ of quo warranto was also sought for the removal of the said respondent from the post of Devaswom Commissioner. That writ petition was disposed of by the judgment dated 31.01.2024 by issuing a writ of quo warranto declaring that the appointment of the said respondent as Devaswom Commissioner in Travancore Devaswom Board is contrary to the statutory provisions and that he has no authority to hold that post. Consequently, the Board order dated 12.12.2023 was set aside, and it was declared that the said respondent will not be entitled to get any service benefits, including monetary benefits on account of the promotion granted on 12.12.2023 to the post of Devaswom Commissioner.

14.1. In **Radhakrishnan R.G. [2024 (3) KHC SN 9]** the Division Bench noticed that the post of Devaswom Commissioner is of pivotal importance, considering the powers, duties and responsibilities to be exercised by the Commissioner as per the

statute and the person requires to be one who will protect the rights and interests of the deity, Devotees and Devaswom in all respects. The power of appointment vested with the Devaswom does never get automatically transferred to the Government, for identifying a person of their choice, even compromising with the rights and interests of the Devaswom, to be appointed as the Commissioner. It is always open for the Devaswom to refuse to appoint the person nominated by the Government, if he has a blemished track record or if he is otherwise not suitable to be appointed for meeting the responsibilities of the Commissioner, to be discharged under the statute, protecting the larger interests of the deity and the devotees.

14.2. In **Radhakrishnan R.G. [2024 (3) KHC SN 9]**, after referring to the order dated 14.03.2019 in SSCR No. 2 of 2019 and R.P. No. 243 of 2019 in DBP No. 11 of 2017, the Division Bench noticed that during the annual festival of Sabarimala Temple various tasks and responsibilities have to be met by the Devaswom Commissioner, by virtue of which the post cannot be left vacant. The Devaswom Commissioner happens to be the Member Secretary of the High Power Committee appointed by this Court.

14.3. As noticed by the Division Bench in **Radhakrishnan R.G. [2024 (3) KHC SN 9]**, the order dated 14.03.2019 of this Court in SSCR No. 2 of 2019 and R.P. No. 243 of 2019 in DBP No. 11 of 2017 was challenged before the Apex Court in SLP(C) Nos.8254-55 of 2019. In those special leave petitions, the Apex Court granted an order of status quo vide the order dated 08.04.2019, which was followed by the orders dated 09.12.2019 and dated 02.03.2021. Seeking permission to appoint the 8th respondent in W.P.(C)No.43139 of 2023 as the Devaswom Commissioner, by way of promotion, the State filed an interlocutory application before the Apex Court and also for approval of a panel of officers for appointment as Devaswom Commissioner by way of deputation, after the date of superannuation of the said respondent on 31.01.2024. The Travancore Devaswom Board has also filed an interlocutory application, seeking modification of the order dated 08.04.2019 and to allow the Board to make the appointment of the Devaswom Commissioner. Before the Apex Court, the petitioner in W.P.(C)No.43139 of 2023 filed an application for intervention, pointing out various aspects, including the irregularity in the constitution of the Departmental Promotion Committee. On

08.12.2023, when those applications came up for consideration, the Apex Court disposed of SLP(C)Nos. 8254-55 of 2019, without expressing any opinion on the merits of the case, including the fact of the rules, giving liberty to the State, the Travancore Devaswom Board and the petitioner in W.P.(C)No.43139 of 2023, who filed an application for intervention, to raise all the contentions before this Court. The Division Bench noticed that, after the order dated 08.12.2023 of the Apex Court, the Travancore Devaswom Board issued the order dated 12.12.2023, whereby, the 8th respondent in that writ petition was promoted to the cadre of Devaswom Commissioner. That order was followed by the order dated 12.12.2023 of the State, whereby the deputation of the then Devaswom Commissioner was terminated and he was relieved from the service of the Travancore Devaswom Board. In terms of the Board order dated 12.12.2023, the said respondent assumed charge as the Devaswom Commissioner, on 13.12.2023.

14.4. In **Radhakrishnan R.G. [2024 (3) KHC SN 9]**, the Division Bench noticed that the change effected in the office of Devaswom Commissioner on 13.12.2023, during Mandala-Makaravilakku festival season, was never brought to the notice of

this Court. In SSCR No.29 of 2023 and connected matters, this Court issued various directions on crowd management and pilgrim facilities at Sabarimala and also at various Sabarimala Edathavalams, which includes more than 50 temples under the management of Travancore Devaswom Board, where the pilgrims were provided with facilities like Annadhanam, toilet and Viri. On account of various issues on crowd management at Sabarimala and pilgrim facilities at Sabarimala Edathavalams, this Court conducted special sittings on holidays and issued various orders to ensure that the pilgrims have a safe and comfortable pilgrimage and darshan during the festival season. On a query made by the Division Bench, the learned Amicus Curiae for the Special Commissioner, Sabarimala submitted that the Special Commissioner was never informed about the change effected in the office of the Devaswom Commissioner on 13.12.2023. After taking charge, the 8th respondent in W.P.(C)No.43139 of 2023 personally met the Special Commissioner once at Sabarimala. In the above circumstances, the Division Bench in **Radhakrishnan R.G.** (supra) deprecatd in the strongest words the conduct of the Travancore Devaswom Board in effecting a change in the office of the Devaswom Commissioner, during Mandala-Makaravilakku

festival season, when the number of footfall on most of the days have crossed one lakh pilgrims, even without intimating this Court about such a change.

15. As already noticed hereinbefore, the post of Devaswom Commissioner, Travancore Devaswom Board, is of pivotal importance, considering the powers, duties and responsibilities to be exercised by the Commissioner as per the statute. The Devaswom Commissioner is the Chief Executive Officer of the Board, who has to supervise and control the working of the subordinate officers in the Board. The powers of the Devaswom Commissioner enumerated in Chapter XV of the Travancore Devaswom Manual Volume - I - Office Manual - include that as disciplinary authority for all non-gazetted employees of the Devaswom Department, including temple employees. The Devaswom Commissioner is the Member Secretary of the High Power Committee appointed by this Court for the implementation of the Sabarimala Master Plan, which is headed by a former Judge of this Court.

16. During Mandala-Makaraviilakku festival seasons, the number of footfall on most of the days in Sabarimala will cross one lakh pilgrims. In addition to the pilgrim facilities provided at

Sabarimala, the pilgrims are provided with Annadhanam, toilet and Viri facilities at Sabarimala Edathavalams, which include more than 50 temples under the management of Travancore Devaswom Board. Such facilities are provided in the temples under the management of the Cochin Devaswom Board, Guruvayur Sreekrishna Temple under the management of Guruvayur Devaswom Managing Committee and also in temples, which are controlled institutions under the Malabar Devaswom Board. Therefore, during Mandala-Makaravilakku festival seasons, various tasks and responsibilities have to be met by the Devaswom Commissioner, in addition to the duty to supervise and control the working of the subordinate officers in the Board, to ensure that Pilgrims have a safe and comfortable darshan and pilgrimage during the festival season.

17. Since the position of the Board in regard to the Devaswoms - incorporated and unincorporated - is analogous to that of trustees, the powers, duties and responsibilities of the Devaswom Commissioner, who is the Chief Executive Officer of the Board, have to be exercised with utmost care and caution. The Devaswom Commissioner is duty bound to protect the properties of the deity from any wrongful claims, theft, misappropriation, etc.

18. Having considered the submissions made at the Bar on the service particulars and other aspects of two Additional Secretaries to Government included in the panel and also the submission made by the learned Standing Counsel regarding the preference of the Board among the persons included in the panel, we find that **Sri. C.V. Prakash, Additional Secretary to Government, Home Department**, who had experience in the Vigilance Department for about 4 years as Under Secretary and Deputy Secretary and experience in the Home Department for about 3 years as Joint Secretary and Additional Secretary, can appointed as the Devaswom Commissioner, Travancore Devaswom Board, on deputation basis, for a period of two years, who shall also act as the Member Secretary of the High Power Committee for Implementation of Sabarimala Master Plan. The Travancore Devaswom Board is directed to issue formal orders in this regard, as expeditiously as possible, at any rate, within a period of two weeks. A copy of that order shall be placed on record in this DBP, along with a memo filed by the learned Standing Counsel for the Board.

19. The post of Devaswom Commissioner, Travancore Devaswom Board, which is of pivotal importance, considering the

powers, duties and responsibilities attached thereto, has been occupied for more than six months by persons other than those appointed as per the method of appointment prescribed under the Travancore Devaswom Board Officers' and Servants' Service Rules. Instead of continuing such an arrangement for more than six months, the Board ought to have filed a DBA before this Court, immediately after the disposal of W.P.(C)No.43139 of 2023 by the judgment dated 31.01.2024, seeking an order directing the State Government to forward a panel consisting the name of officers not below the rank of Additional Secretary to Government, from the Administrative Secretariat, for appointment as Devaswom Commissioner on deputation.

20. We make it clear that all orders by the Travancore Devaswom Board regarding the appointment of the Devaswom Commissioner, either by promotion or deputation, including the extension of the term of appointment on deputation, shall be made only with the concurrence of this Court, by filing interlocutory applications in this DBP. The Board shall also report to this Court, without any delay, any vacancy in the post of the Devaswom Commissioner.

Cochin Devaswom Board

21. On 31.05.2023, when this DBP came up for consideration, the learned Standing Counsel for Cochin Devaswom Board pointed out that the term of deputation of the officer not below the rank of Joint Secretary to Government, as Devaswom Commissioner, Cochin Devaswom Board, under Section 74A of the Act, expired and a requisition has already been made before the State Government to forward a panel of officers. The learned Senior Government Pleader sought time to get instructions.

22. The learned Senior Government Pleader seeks some more time to get instructions on the requisition made by the Cochin Devaswom Board for the appointment of the Devaswom Commissioner, on deputation.

List this DBP for further consideration on 08.07.2024.

Sd/-
ANIL K. NARENDRAN, JUDGE

Sd/-
HARISANKAR V. MENON, JUDGE

The 12th line in paragraph 18 at page 18 of the order dated 26.06.2024 in DBP No.44 of 2024 will stand corrected as 'till

D.B.P. No.44 of 2024

18.05.2025' instead of 'for a period of two years' vide order dated 02/07/2024 in DBP 44/2024.

Sd/-

JOINT REGISTRAR

Skk

