
Madhusoodanan Namboothiri Vs State Of Kerala

Writ Petition (C) No .35545 Of 2023

Court: High Court Of Kerala

Date of Decision: Nov. 9, 2023

Acts Referred:

Constitution of India, 1950 – Article 14, 16, 226

Hon'ble Judges: Anil K. Narendran, J; G. Girish, J

Bench: Division Bench

Advocate: Shabu Sreedharan, Sidharth S., Anupam P. Raj, Amal Biju, Ratheesh.V.R., S.Rajmohan, G.Biju, N.Raghuraj, Amicus Curiae, Ajith Viswanathan, Shibu Joseph, Sayed Mansoor Bafakhy, Thangal, Sidharth P. Sasi, P.Viswanathan, Haira

Final Decision: Dismissed

Judgement

Anil K. Narendran, J.

1. The petitioner, who is a devotee of Lord Ayyappa of Sabarimala Sree Dharma Sastha Temple, which is a temple under the management of the

Travancore Devaswom Board, has filed this writ petition under Article 226 of the Constitution of India, challenging the selection of the 5th respondent

as Melsanthi of the said Temple for the year 1199 ME (2023-24); and a writ of mandamus commanding the 2nd respondent Travancore Devaswom

Board and the 3rd respondent Devaswom Commissioner to conduct the process of draw of lots for selection of Melsanthi in Sabarimala Sree Dharma

Sastha Temple, afresh, based on Ext.P2 list of candidates shortlisted for the draw of lots. The first relief sought for in the writ petition is not properly

worded.

2. On 01.11.2023, when this writ petition came up for admission, we viewed in open Court the video clippings of the news item that appeared in

'Asianet News' regarding the draw of lots conducted in front of the Sanctum Sanctorum of Sabarimala Sree Dharma Sastha Temple, on 18.10.2023,

for selecting Melsanthi for the year 1199 ME, produced as Ext.P5 in a pen drive, along with I.A.No.1 of 2023. On a query made by this Court, the

learned Standing Counsel for Travancore Devaswom Board sought time to get instructions as to whether the CCTV footage of the draw of lots is

available with the Travancore Devaswom Board.

3. On 02.11.2023, when this writ petition came up for consideration along with SSCR No.33 of 2023 filed by the Special Commissioner, Sabarimala,

which is one filed in terms of the directions contained in the order of this Court dated 03.10.2023 in SSCR No.25 of 2023, after conducting the draw of

lots on 18.10.2023, for the selection of Melsanthis of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, for the year 1199 ME, the

learned Standing Counsel handed over a pen drive containing the CCTV footage from the camera installed in the Sopanam of Sabarimala Sree

Dharma Sastha Temple. On 02.11.2023, we viewed the said CCTV footage in open court. The learned Standing Counsel for the Board was directed

to forward a copy of that video to the learned counsel for the petitioner on his WhatsApp number.

4. In the order dated 03.11.2023 in this writ petition and SSCR No.33 of 2023, this Court noticed that the statement of facts in the writ petition does

not contain any specific allegations against the 5th respondent. The allegation in the writ petition is that the Special Commissioner, Sabarimala, after

folding and rolling the paper containing the name of the 5th respondent, did not roll it by using both palms, before putting it into the pot, as done in the

case of other lots. This also happened while rolling the paper, which contained the writing 'Melsanthi'. The draw of lots was done by a small child, who

is treated as a representative of the deity. On 03.11.2023, having considered the materials on record and also the submissions made at the Bar, we

deemed it appropriate to issue notice on admission to the 5th respondent, before disposal of the writ petition. Accordingly, notice on admission by

special messenger was ordered on 03.11.2023, returnable by 07.11.2023.

5. On 07.11.2023, the 5th respondent entered appearance through counsel. The learned counsel for the petitioner and also the learned Standing

Counsel for Travancore Devaswom Board were directed to send by WhatsApp the video clipping of the news item that appeared in 'Asianet

News' and the CCTV footage of the camera installed in the Sopanam regarding the draw of lots for selecting Melsanthis of Sabarimala Sree Dharma

Sastha Temple and Malikappuram Temple for the year 1199 ME, to the learned instructing counsel for the 5th respondent, on that day itself.

6. On 08.11.2023, we heard the arguments of the learned counsel for the petitioner, the learned Senior Government Pleader, the learned Standing

Counsel for Travancore Devaswom Board, the learned Senior Counsel for the 5th respondent and also the learned Amicus Curiae for Special

Commissioner, Sabarimala.

7. The allegations contained in the writ petition are that, on 18.10.2023, in the process of drawing lots at the Sopanam of Sabarimala Sree Dharma

Sastha Temple, for selecting Melsanthi for the year 1199 ME, the Special Commissioner, Sabarimala, after folding the papers containing the names of

candidates, who are Serial Nos.1 to 10 and 12 to 17 in Ext.P2 shortlist, rolled it with his both palms before putting into the silver pot. However, the

paper containing the name of the 11th candidate, i.e., the 5th respondent herein, was put into the pot after folding, but without rolling it with his both

palms. As per the video that appeared on Asianet News, the paper containing the writing 'Melsanthi' was first handed over to the Special

Commissioner. However, he returned the paper containing the writing 'Melsanthi' and started rolling the blank paper pieces. The 16 blank paper pieces

were folded by the Special Commissioner and then rolled with his both palms before putting them into the second pot. However, the Special

Commissioner, after folding the paper piece with the writing 'Melsanthi', put it in the second pot without rolling it with his both palms. According to the

petitioner in all probability, while shaking the pots, the unrolled paper pieces having less density and more area than that of the rolled paper pieces will

come to the top, making the child who has to draw the lots, to take the unrolled paper pieces first. According to the petitioner, this is actually what

happened on that occasion, which resulted in the 5th respondent coming out successful in the first instance itself.

8. The learned counsel for the petitioner, after referring to the pleadings in the writ petition and the video clippings, argued that the matter deserves

detailed enquiry to find out whether there was any foul play behind such impropriety or irregularity committed by the Special Commissioner on

18.10.2023, and also to find out who is behind the same. Therefore, according to the learned counsel, the selection of the 5th respondent as Melsanthi

of Sabarimala Sree Dharma Sastha Temple has become suspicious and as such, the selection of the said respondent is liable to be cancelled. Since

Sabarimala Temple opens on 10.11.2023 for Chithira Attathirunal festival scheduled to be held on 11.11.2023, a fair and transparent process of

drawing the lots for the selection of Melsanthi can be conducted on that day at Sabarimala Sannidhanam.

9. The learned Amicus Curiae for the Special Commissioner, Sabarimala, would submit that the paper piece containing the name of the 5th respondent

and that containing the writing 'Melsanthi' were put in the respective pots by the Special Commissioner, after folding and rolling with fingers, however

without rolling it with his both palms, as done in the case of other lots. It was only a coincidence that occurred at the time of the draw of lots, on

18.10.2023, for the selection of Melsanthi of Sabarimala Sree Dharma Sastha Temple for the year 1199 ME. The learned Amicus Curiae would point

out that the practice that is being followed at the time of the draw of the lots is that the paper piece with the writing 'Melsanthi' will be put in

the second pot only after putting all the blank paper pieces. Before the draw of the lots, both pots were shaken thoroughly inside the sanctum

sanctorum by the Tantri. The drawing of lots was done by a small child, who was deputed by the erstwhile Pandalam Royal family. As evident from

the video that appeared on Asianet News and the CCTV footage of the camera installed in the Sopanam, some of the lots in both pots were

unfolded partially at the time of draw of the lots, due to thorough shaking inside the sanctum sanctorum, and as such there is absolutely no basis for the

allegations contained in the writ petition. The draw of the lots was in the presence of Mr. Justice K. Padmanabhan Nair, a former Judge of this Court,

who was appointed by this Court as an Observer, the President and Members and other officials of the Board and also the pilgrims.

10. The learned Standing Counsel for the Travancore Devaswom Board and also the learned Senior Government Pleader put forth arguments in the

same line. The learned Senior Counsel for the 5th respondent submitted that the writ petition does not contain any specific allegations against the 5th

respondent to vitiate his selection as Melsanthi of Sabarimala Sree Dharma Sastha Temple, for the year 1199 ME, by the draw of lots on 18.10.2023.

11. In *Krishnan Namboothiri S. v. Travancore Devaswom Board and others* [2015 (5) KHC 829], in the context of the selection of Melsanthies of

Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, a Division Bench of this Court noticed that the selection to the post of Melsanthi

cannot be treated as a selection merely for public employment and the canvas in which grounds relating to Articles 14, 16, etc., of the Constitution of

India would be etched, will not necessarily be carried, as a whole, into such matters. The scheme of the settlement and purpose of the selection to

provide Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple have to be borne in mind and cohesively treated while

assimilating and applying the terms of the settlement. The Division Bench, though declined interference with the selection process, indicated before

parting with the case that once the terms of mediation settlement came to be in operation, the guarantee to the pilgrims, believers, worshippers and

faithful followers is that the selection process once carried through the system of the terms of that settlement will give them two persons who will

occupy the adorable status of being the Melsanthies of Sabarimala Sannidhanam and Malikappuram temples.

12. In the writ petition, the specific case of the petitioner is that though the Special Commissioner, Sabarimala after folding the papers containing the

names of the candidates, who are Serial Nos.1 to 10 and 12 to 17 in Ext.P2 shortlist, rolled it with his both palms before putting it into the silver pot, the

paper containing the name of the 11th candidate, i.e., the 5th respondent herein, was put into the pot after folding, but without rolling it with his both

palms. Similarly, the 16 blank paper pieces were folded by the Special Commissioner and then rolled with his both palms, before putting them into the

second pot. However, the Special Commissioner, after folding the paper piece with the writing Melsanthi, put it in the second pot without

rolling it with his both palms. Therefore, according to the petitioner, in all probability, while shaking the pots, the unrolled paper pieces having less

density and more area than that of the rolled paper pieces will come to the top, making the child who has to draw the lots, to take the unrolled paper

pieces first.

13. Insofar as the aforesaid contention raised by the petitioner is concerned, we notice that the paper piece containing the name of the 5th respondent

and that containing the writing *Āṣā, -ĒœMelsanthiĀṣā, -ā,,Ṣ* were put in the respective pots by the Special Commissioner, after folding and rolling it with fingers,

however without rolling it with his both palms, as done in the case of the papers containing the name of candidates, who are Serial Nos.1 to 10 and 12

to 17 in Ext.P2 shortlist, which were put in the first pot, and as done in the case of 16 blank paper pieces, which were put in the second pot. Though it

is alleged in the writ petition that the paper containing the name of the 5th respondent and that containing the writing *Āṣā, -ĒœMelsanthiĀṣā, -ā,,Ṣ* were put in the

respective pots by the Special Commissioner, after folding, but without rolling it with his both palms, we notice that those papers were put in the

respective pots by the Special Commissioner after folding and rolling with fingers, however without rolling it with his both palms, as done in the case of

other lots. At this juncture, we notice the submission made by the learned Amicus Curiae for the Special Commissioner that it was only a coincidence

that occurred at the time of the draw of lots on 18.10.2023.

14. Another issue pointed out by the petitioner is the conduct of the Special Commissioner, Sabarimala in returning the paper containing the writing

Āṣā, -ĒœMelsanthiĀṣā, -ā,,Ṣ, when it was given to him at the first instance, to put in the second pot and started rolling the blank paper pieces. The said aspect

has been explained by the learned Amicus Curiae for the Special Commissioner, by pointing out that the practice that is being followed at the time of

the draw of lots is that the paper piece with the writing *Āṣā, -ĒœMelsanthiĀṣā, -ā,,Ṣ* will be put in the second pot only after putting all the blank paper pieces.

15. As *Ā*, evident *Ā*, from *Ā*, the *Ā*, video *Ā*, of *Ā*, the *Ā*, news *Ā*, item *Ā*, that appeared in *Āṣā, -ĒœAsianet NewsĀṣā, -ā,,Ṣ* and the CCTV footage of the camera

installed in the Sopanam of Sabarimala Sannidhanam, after putting all the lots in the respective pots, the Special Commissioner has shaken both the

pots before entrusting the same to the Melsanthi for the purpose of taking those pots into the sanctum sanctorum. From the submissions made by the

learned Standing Counsel for Travancore Devaswom Board and also the learned Amicus Curiae, we notice that both the pots were again shaken

inside the sanctum sanctorum by the Tantri before the same were handed over to the Special Commissioner for the purpose of the draw of lots. Due

to thorough shaking of the pots twice, some of the lots in both the pots were unfolded partially, at the time of the draw of lots, as can be seen from the

CCTV footage of the camera installed in the Sopanam. The draw of lots from both pots were done by a small child, who was deputed by the erstwhile

Pandalam Royal family, who is considered as a representative of the deity, in the presence of the Observer appointed by this Court, the President,

Members and other officials of the Board and also the pilgrims. The learned Observer has filed a consolidated report dated 28.10.2023 in respect of

selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple.

16. Having considered the pleadings and materials on record, the submissions made at the Bar and perusing the video clipping and CCTV

footage referred to above, we find no reason to interfere with the selection of the 5th respondent as Melsanthi of Sabarimala Sree Dharma Sastha

Temple, for the year 1199 ME (2023-24), for the aforesaid reasons.

17. In the result, the challenge made in this writ petition against the selection of the 5th respondent as Melsanthi of Sabarimala Sree Dharma Sastha

Temple for the year 1199 ME (2023-24) - though the first relief sought for is not properly worded - fails for the aforesaid reasons.

18. From the video clipping and CCTV footage of the draw of lots held on 18.10.2023, we notice the presence of large number of persons inside the

ĀĀSopanam enclosureĀĀ, in front of the Sreekovil of Sabarimala Sree Dharma Sastha Temple, at the time of the draw of lots. The entry of persons

to Sopanam enclosure for darshan is regulated by the order of the Apex Court dated 05.01.2007 in Civil Appeal No.71 of 2007. The said direction of

the Apex Court was in respect of darshan in Sabarimala Sannidhanam, during Mandala-Makaravilakku festival seasons. However, the entry of

persons to the ĀĀSopanam enclosureĀĀ of Sabarimala Sree Dharma Sastha Temple, at the time of draw of the lots shall be confined to the Special

Commissioner, Sabarimala, the President of Travancore Devaswom Board (in his absence, a Member of the Travancore Devaswom Board), the

Devaswom Commissioner and the Observer appointed by this Court.

Subject to the above direction, this writ petition is dismissed.