

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

MONDAY, THE 20TH DAY OF FEBRUARY 2023 / 1ST PHALGUNA,

1944

WP (C) NO.29670 OF 2022

PETITIONERS:

- 1 ANANTHA NARAYANAN
AGED 48 YEARS
S/O.HARIDASAN,, PARAPPANAKUZHI HOUSE,
THRIKKADEERI PO, PALAKKAD DISTRICT -679502.
- 2 P.N.SREERAMAN,
AGED 57 YEARS
S/O.NARAYANA SWAMI, SRELAKSHIMI NIVAS,
VELLINEZHI PO, CHERPLUSSEERI, PALAKKAD -679 503.

BY ADVS.
K.MOHANAKANNAN
H.PRAVEEN (KOTTARAKARA)

RESPONDENTS:

- 1 MALABAR DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY, HOUSEFED COMPLEX,
ERANHIPALAM, KOZHIKODE -673 006.
- 2 THE COMMISSIONER,
MALABAR DEVASWOM BOARD, HOUSEFED COMPLEX,
ERANHIPALAM, KOZHIKODE -673 006.
- 3 THE ASSISTANT COMMISSIONER,
MALABAR DEVASWOM BOARD, KENATHUPARAMBU,

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KUNATHURMEDU, PALAKKAD- 678013.

4 AREA COMMITTEE,
PALAKKAD DIVISION,
MALABAR DEVASWOM BOARD -678 013 REPRESENTED BY
ITS CHAIRMAN.

5 EXECUTIVE OFFICER,
POOKKOTTUKALIKAVU TEMPLE, KADAMBUR,
OTTAPALAM TALUK, PALAKKAD DISTRICT-679 515.

6 ASOKKUMAR
S/O.KRISHNAKURUP, KALARIKKAL HOUSE,
THANNNIKKUNNU, KADAMBOOR PO, OTTAPALAM,
PALAKKAD DISTRICT -679 515.

7 RATHEESH
AMBALAPARAMBIL HOUSE, LAKSHAMVEEDU COLONY,
KADAMBOOR PO, OTTAPALAM,
PALAKKAD DISTRICT-679 515.

8 PANKAJAKSHAN,
S/O.RAMAKRISHNAN, THOTTILINGAL HOUSE,
POOTHAKKADU, VEERAMANGALAM, OTTAPALAM,
PALAKKAD DISTRICT -679 503.

9 JAYAGOVINDAN
S/O.BALAKRISHNAN NAIR, KAYARATT HOUSE, VAZHUR,
MUNNOORKODU, TRIKKIDEERI, PALAKKAD -679 502.

BY ADVS.

SRI.R.LAKSHMI NARAYAN, SC, MALABAR DEVASWOM
BOARD

MAHESH V RAMAKRISHNAN

CHITRA JOHNSON

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
FINAL HEARING ON 10.02.2023, THE COURT ON 20.02.2023
DELIVERED THE FOLLOWING:

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JUDGMENT

P.G. Ajithkumar, J.

Sree Pookkottukalikavu Temple, Kadambur in Ottapalam Taluk is a Temple under the administrative control of Malabar Devaswom Board. The 5th respondent Executive officer is in charge of the administration of the Temple. A Board of Trustees constituted as per the orders of the Area Committee under the provisions of Section 41 read with Section 39(5) of the Madras Hindu Religions and Charitable Endowments Act, 1951 is managing the affairs of the Temple. As per Ext.P1 order dated 20.02.2021, respondent Nos.6 to 8 were appointed as non-hereditary trustees in the Temple. The petitioners allege that respondent Nos.6 to 8 are not disqualified to be appointed as non-hereditary trustees for the reason that they are active politicians and involved in several criminal cases. Pointing out a few specific instances for establishing such allegations, the petitioner has filed this Writ Petition invoking the extraordinary jurisdiction of this court under Article 226 of the Constitution of India seeking the

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following reliefs:

- “(i) Issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Ext.P1 and quash the same;
- (ii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the 2nd respondent to consider and pass orders on Ext.P8 representation filed by the petitioners and the appointment of respondents 6 to 9 as per Ext.P1 may be stayed till orders are passed and communicated to the petitioners.”

2. On 19.10.2022, when this matter came up for consideration, the learned Standing Counsel for Malabar Devaswom Board took notice for respondents 1 to 4. Urgent notice was ordered to respondent Nos.5 to 9. After hearing the learned counsel for the petitioner and also the learned Standing Counsel for Malabar Devaswom Board, this Court passed an interim order restraining respondent Nos.6 to 9 from dealing with the fixed deposit of Rs.60 lakhs in the name of the Temple in any manner until further orders.

3. The 3rd respondent filed a counter affidavit justifying that the appointment of respondent Nos.6 to 9 was done following the proper procedure. It is further contended

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that the petitioners have filed a representation, Ext.P8 only after the expiry of 18 months from the date of appointment of respondent Nos.6 to 9. The petitioners without affording a reasonable time to take a decision on Ext.P8, rushed to this Court with this Writ Petition.

4. Respondent No.5 filed a counter affidavit taking a similar stand as that of respondent No.3. Respondent Nos.6 to 9 filed a counter affidavit claiming that there was no disqualification for them at the time of appointment. They took the stand that they were not holding any post in any political party, at the time when they were appointed as non-hereditary trustees. They would contend that on the basis of Ext.P1 they took charge as non-hereditary trustees on 24.02.2021 and in the meeting of the Board of Trustees, the 6th respondent was elected as the Chairman of the Board. They have been managing the affairs of the Temple without giving room for any complaint. However, the petitioners out of political rivalry had submitted Ext.P8 representation much after respondent Nos.6 to 9 assuming charge. The Writ

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Petition has been filed without any basis and it is not maintainable.

5. They further would contend that on 23.10.2021, the 6th respondent was deputed as Secretary of a Local Committee of C.P.I.(M). He therefore did not function as the chairman of the Board thereafter. In the meeting held on 06.05.2022, the 7th respondent was selected as the new Chairman. Later, the 7th respondent was deputed as the Secretary of Pookkottukavu Centre Branch of C.P.I.(M) and therefore he resigned as Chairman of the Board of Trustees.

6. The 8th respondent is not an office bearer of any political party as alleged by the petitioners. He was the Meghala Secretary of DYFI from January 2021 to December 2021. Since DYFI is not a political party or does not have political affiliation he has no disqualification to continue as a non-hereditary trustee. The allegations that since there are criminal cases against them, respondent Nos.6 to 8 are disqualified to be the non-hereditary trustees is incorrect. Some false cases are initiated against respondent No.8. As

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long as there is no conviction, it cannot be said that there is disqualification. Accordingly, these respondents would contend that the Writ Petition deserves to be dismissed on merits also.

7. The petitioners have filed separate reply-affidavits in answer to the counter affidavits filed by the 3rd respondent, the 5th respondent and respondents No.6 to 9. An additional counter affidavit was filed by respondents 6 to 9 in answer to the reply affidavit of the petitioners.

8. In answer to a query from this Court, the 5th respondent has placed on record Exts.R5(a) and R5(b) audit reports of the Pookkottukalikavu Devaswom for the period from 2008 to 2019.

9. Heard the learned counsel appearing for the petitioners, the learned Standing Counsel for the Malabar Devaswom Board and the learned counsel appearing for the 5th respondent as also respondent Nos.6 to 9.

10. Respondents No.6 to 9 were appointed as non-hereditary trustees in Pookkottukalikavu Temple as per Ext.P1 dated 20.02.2021. Two reasons stated by the petitioners as

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disqualifications for their appointment are that they are the office bearers of a political party and that they face criminal cases. The petitioners specifically alleged that the 6th respondent is a Local Committee Secretary of C.P.I.(M), Pookkottukavu Unit, the 7th respondent is a Branch Secretary of Pookkottukavu Centre Branch of C.P.I.(M) and the 8th respondent is the Meghala Secretary of DYFI. These respondents do not dispute the said contentions. They admit those facts in the counter affidavit filed by them. They would contend that only after their appointment as non-hereditary trustees respondents No. 6 and 7 became office bearers and therefore they did not have any disqualification for taking up the appointment. Respondents No.6 and 7 took the stand that on their appointment to the respective offices of the political party, they relinquished their office as non-hereditary trustees. The stand of the 8th respondent is that DYFI is not a political party and therefore his holding the post of Meghala Secretary of DYFI is not a disqualification.

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11. In the light of the admission made by respondent Nos.6 to 8 that they were office bearers of political party/DYFI, the photographs produced by the petitioners to prove that fact do not require consideration. The pertinent question to be considered is: whether a person actively involved in politics, whether or not holding an official post, is disqualified to be a non-hereditary trustee in a Temple. Also, whether facing criminal prosecution is a disqualification?

12. Ext.R6(a) is the notification inviting application for appointment of non-hereditary trustees in Pookkottukalikavu Temple. Clause 3(7) spells out one of the disqualification which reads:-

“3(7) സജീവ രാഷ്ട്രീയ പ്രവർത്തകർ, രാഷ്ട്രീയ പാർട്ടികളുടെ ഔദ്യോഗികപദവികൾ വഹിക്കുന്നവർ

13. This Court considered the said aspect in **Suresh v. State of Kerala and others [2021 (2) KLT 885]** and **Chathu Achan v. State of Kerala [2022 (6) KLT 388]**. In **Suresh** (supra) this Court held that,-

“9. When the Government had considered the Ext.P11 revision filed by the petitioner and passed

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the Ext.P12 order, the relevant aspects were considered; that order was passed after hearing both sides. The petitioner had also highlighted the photographs to buttress his contention that they are active politicians. The very same argument is raised by the learned counsel before this Court. But, as a matter of fact, it is trite that when such an allegation is raised by the petitioner, he is expected to bring in foolproof evidence to support the contention. It seems that photographs like Exts.P7 to P9 were produced before the Government, which were not acted upon. Basing on such an evidence, which is not specific but vague, this Court also cannot accept the arguments of the petitioner. The identity of the said persons is not ascertainable by this Court. Secondly, even assuming that respondents 7 to 9 have some political leaning or rather they are sympathizers of a political party, that fact will not disentitle them to be considered for appointment as non-hereditary trustees. There is clear distinction between sympathizing with a political party and indulging in active participation in the activities of the party. The taboo under subclause (g) of clause 3 of Ext.P2 will be attracted only if they are active politicians or are office bearers of a political party, for which absolutely no evidence is forthcoming.”

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14. This Court considered the said question in great detail in **Chathu Achan** (supra). After considering the said proposition of law laid down in **Suresh** (supra), and entire aspects of the matter, this Court held in paragraph No.43 as follows,-

"43. The provisions of Clauses 3 and 4 of Ext.P5 notification, referred to hereinbefore at paragraph 38, make it explicitly clear that, for appointment as non-hereditary trustee of the temple, the applicant should be a regular worshipper of the temple, who is prepared to actively work for the betterment of the temple. He should be a permanent resident of the Taluk in which the temple situates, who believe in idolatry. Persons who are busy with their employment, office bearers of political parties, active politicians or those indulging in active participation in the activities of a political party cannot aspire appointment as non-hereditary trustee of the temple. Therefore, it is for the 3rd respondent Commissioner to take necessary steps to ensure that any appointment made as nonhereditary trustee of the temples under the control of Malabar Devaswom Board is strictly in terms of the disqualification and eligibility clauses provided in Ext.P5 and similar notifications. If found necessary, the format of the application for appointment as a non-hereditary trustee in the temple

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under the control of Malabar Devaswom Board has to be modified in an appropriate manner, by requiring the applicant to furnish particulars in terms of the disqualification and eligibility clauses in Ext.P5 and similar notifications. It is for the 3rd respondent Commissioner to take necessary steps in this regard, if found necessary, after placing before the Malabar Devaswom Board, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a certified copy of this judgment.

15. When clause 3(7) in Ext.R6(a) notification is considered in the light of the interpretation given by this Court in **Chathu Achan** (supra), no person actively involved in politics is not eligible to be appointed as a non-hereditary trustee in a Temple.

16. The learned counsel appearing for respondents No.6 to 9 would submit that respondent Nos.6 and 7 became office bearers of political party subsequent to their appointment as non-hereditary trustees and therefore there was no disqualification for them to be non-hereditary trustees. The further submission of the learned counsel is that DYFI is not a political party and in order to fortify her contention, she

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placed reliance on the Constitution of DYFI, Ext.R6(e). The learned counsel further would explain that unless a person accepts politics as a profession, he cannot be termed as an active politician for which the meaning given in Webster Dictionary and Oxford Advanced Learners Dictionary is referred to.

17. Meaning given to the word 'politician' in the new Webster Dictionary is "one who occupies himself with politics as a profession". The Oxford Advanced Learners Dictionary defines 'politician' as "a person whose job is concerned with politics, especially as an elected member of the Parliament, etc." We are afraid, such a technical meaning of the word 'politician' can be accepted to understand clause 3(7) in Ext.R6(a) notification which says that active politicians or persons holding official posts in any political party are ineligible. The terms are used disjunctively. So persons who are actively involved in politics, whether or not they hold any post in a political party are ineligible. Nonetheless as a matter of fact, respondents No.6 to 8 have no case that they have

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any other profession.

18. Admittedly, respondent No.6 was elected as Local Committee Secretary of a political party with effect from 23.10.2021. The 7th respondent was appointed as Branch Secretary of Pookkottukavu Centre of a political party. The 8th respondent was deputed as the Meghala Secretary of DYFI in January 2021. Appointment of these respondents as non-hereditary trustees was on 20.02.2021. Either before or after their appointment as non-hereditary trustees, in the same year, they came to occupy the respective posts in the political party/DYFI.

19. It is a matter of common knowledge that the functioning of a political party and selection/election of its office bearers is not similar to public employment. Whichever be the political party, one who is actively involved in the activities of that political party alone is ordinarily selected/elected as an office bearer. Having been selected as office bearer of the political party/DYFI before or soon after the appointment as non-hereditary trustees, respondent

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Nos.6 to 8 cannot contend that they were not active politicians. No much deliberation is required in that regard in order to conclude that respondent Nos.6 and 7 were active politicians and respondent No.8 was an active worker of DYFI even at the time of their making applications for appointment as non-hereditary trustees and also appointment.

20. In Ext.R6(e) it is stated that a member of the DYFI can work in any political party. That does not mean that the DYFI does not have any political colour. Whether or not it has any affiliation to any particular political party, what is evident from Ext.R6(e) constitution is that the area of activities of DYFI is politics and related activities. As such it cannot be said that the activities of DYFI are non political.

21. We have perused the file relating to the appointment of respondent Nos.6 to 9 as non-hereditary trustees. In the application submitted by them there is a declaration that they did not have any disqualification as referred to in the notification, which obviously is incorrect. They should have disclosed their political activities and the

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criminal cases in which they involved. Curiously enough the officials of the Malabar Devaswom Board did not make any enquiry regarding such backgrounds of those respondents and the Area Committee which made the appointment did not bother to delve into any such matters. In such circumstances, we are of the view that respondent Nos.6 to 8 were disqualified to be appointed as non-hereditary trustees at the time of their making applications and appointment, on account of their involvement in active politics.

22. Going by the parameters prescribed in Ext.R6(a) notification, persons who are convicted for more than six months for offences involving moral turpitude are alone ineligible to be non-hereditary trustees. It is, however, specifically prescribed in Ext.R6(a) that persons who apply to be appointed as non-hereditary trustees shall be idol worshippers and persons having interest in the advancement of the Temple. They should also be persons used to be involved in the affairs of the Temple. A person having reverence and adoration for a deity can alone be treated as a

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worshipper. A person facing criminal prosecution for an offence involving moral turpitude cannot be considered a true worshipper of that standard required for a person to be appointed as a trustee in a Temple. A trustee is a person obligated to conduct temple affairs in accordance with custom or usage. In **A.A. Gopalakrishnan v. Cochin Devaswom Board and others [(2007) 7 SCC 482]** a Three-Judge Bench of the Apex Court explained the diligence and devotion a trustee of a Temple should have, as follows:

“The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/Sebais/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly.”

23. When those are the necessary qualifications required for a person to be appointed as a non-hereditary

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trustee, and danger of appointing unqualified and untrustworthy persons as trustees, the Malabar Devaswom Board shall stipulate eligibility criteria in consonance with that. The Malabar Devaswom Board therefore shall take a decision in that regard before proceeding with any new appointment of non-hereditary trustees in the Temples under it.

24. The learned counsel appearing for the Malabar Devaswom Board would submit that statutory remedy is available to challenge the appointment of a non-hereditary trustee and therefore this Writ Petition should not be entertained. Ext.P1 is an order of the Assistant Commissioner in terms of the resolution of the Area Committee. Such an order can certainly be questioned before the Commissioner invoking the provisions of Section 18 of the HR&CE Act. The learned Standing Counsel and also the learned counsel appearing for the 5th respondent raised a further contention that on account of the inordinate delay in approaching this Court, the petitioners are not entitled to get a writ or order as

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claimed. It is true that the petitioner approached this Court only in September 2022 to challenge Ext.P1 order dated 20.02.2021. There is a considerable delay.

25. In **M/s Magadh Sugar and Energy Limited v. State of Bihar [2021 (5) KLT 667 (SC)]** it was held that if an effective and alternative remedy is available no writ petition is maintainable. This decision was rendered after considering all the previous decisions on the point starting from **Whirpool Corporation v. Registrar of Trademarks, Mumbai [(1998) 8 SCC 1]**. In **Magadh Sugar** (supra) the Apex Court held,

“19. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in **Whirpool Corporation v. Registrar of Trademarks, Mumbai (1999 (1) KLT OnLine 908 (SC) = (1998) 8 SCC 1)** and **Harbanslal Sahni v. Indian Oil Corporation Ltd. (2003 (1) KLT OnLine 1161 (SC) = (2003) 2**

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SCC 107). Recently, in **Radha Krishan Industries v. State of Himachal Pradesh & Ors. (2021 (2) KLT OnLine 1158 (SC) = 2021 SCC OnLine SC 334)** a two judge Bench of this Court of which one of us was a part of (Justice D.Y.Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:

“28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a Writ Petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where

(a) the Writ Petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or

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- (d) the vires of a legislation is challenged;
- (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;
- (v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and
- (vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a Writ Petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.” (emphasis supplied)

26. The petitioners could have approached the statutory authorities to redress their grievance. Not only that they did not avail that remedy, but also they approached this

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Court after the lapse of a long period after appointment of respondent Nos.6 to 9 as non-hereditary trustees. That apart, the term of their office expires on 20.02.2023. In such circumstances, there would not be any useful purpose in issuing a writ quashing Ext.P1 order. Therefore, we refrain from setting aside Ext.P1. This Writ Petition is disposed of by directing the Malabar Devaswom Board, the 1st respondent to ensure that hereafter every appointment of non-hereditary trustee in the Temples under its control is done strictly in accordance with the directions in **Chathu Achan [2022 (6) KLT 388]** (supra) and also the observations we made hereinbefore.

The Writ Petition is disposed of accordingly.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr

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APPENDIX OF WP(C) 29670/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT NO.A5-3271/2020/MDB/D.DIS DATED 20-2-2021.
- Exhibit P2 TRUE COPY OF THE FACE BOOK POSTS OF OCTOBER, 2021 OF THE 6TH RESPONDENT.
- Exhibit P3 TRUE COPY OF THE FACE BOOK POSTS OF NOVEMBER, 2021 OF THE 6TH RESPONDENT.
- Exhibit P4 TRUE COPY OF THE FACE BOOK POST IN RELATION TO THE 7TH RESPONDENT.
- Exhibit P5 TRUE COPY OF THE FACE BOOK POST IN RELATION TO THE 8TH RESPONDENT.
- Exhibit P6 TRUE COPY OF THE FACE BOOK POST IN RELATION TO THE 8TH RESPONDENT.
- Exhibit P7 TRUE COPY OF THE FACE BOOK POST IN RELATION TO THE 8TH RESPONDENT.
- Exhibit P8 TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER AGAINST THE APPOINTMENT OF RESPONDENTS 6 TO 8 BY EXT.P1 ORDER BEFORE THE 2ND RESPONDENT DATED 11-8-2022.

RESPONDENT EXHIBITS

- Exhibit R6(A) TRUE COPY OF THE NOTIFICATION NO. A5/929/2018/MDB(1) DATED 11/07/2018 ISSUED BY THE 3RD RESPONDENT
- Exhibit R6(B) TRUE COPY OF THE MINUTES OF THE MEETING OF THE BOARD OF TRUSTEES HELD ON 24/02/2021

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- Exhibit R6(C) TRUE COPY OF THE LETTER DATED
30/10/2021 ISSUED BY THE 6TH
RESPONDENT TO THE 5TH RESPONDENT
- Exhibit R6(D) TRUE COPY OF THE MINUTES OF THE
MEETING OF THE BOARD OF TRUSTEES HELD
ON 06/05/2022
- Exhibit R6(E) TRUE COPY OF THE PREAMBLE AND
CONSTITUTION OF DYFI

PETITIONER EXHIBITS

- Exhibit P9 TRUE COPY OF THE FACE BOOK POST IN
RELATION TO THE 6TH RESPONDENT
- Exhibit P10 TRUE COPY OF THE FACE BOOK POST IN
RELATION TO THE 7TH RESPONDENT
- Exhibit P11 TRUE COPY OF THE FACE BOOK POST IN
RELATION TO THE 7TH RESPONDENT
- Exhibit P12 TRUE COPY OF THE FACE BOOK POST IN
RELATION TO THE 8TH RESPONDENT

RESPONDENT EXHIBITS

- Exhibit R5(a) THE AUDIT REPORT DATED 17-12-2013 FOR
THE PERIOD 2008-2012, ISSUED BY THE
DEPUTY DIRECTOR, KERALA LOCAL FUND
AUDIT DEPARTMENT.
- Exhibit R5(b) THE AUDIT REPORT DATED 27-04-2021 FOR
THE PERIOD 2013-2019 ISSUED BY THE
DEPUTY DIRECTOR, KERALA LOCAL FUND
AUDIT DEPARTMENT.