

**IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.03.2010**

**CORAM
THE HONOURABLE MR.JUSTICE K.CHANDRU**

**W.P.NOs.22886 and 22887 of 2007
and
M.P.NOs.1,2,1 and 2 of 2007**

Thiru Sabanatha Oli Sivachariyar .. Petitioner in both petitions
Vs.

1.The Commissioner,
H.R. & C.E. Department,
Uttamar Gandhi Salai,
Chennai-34 and 4 others

.. Respondents in
W.P.Nos.22886 & 22887 of 2007

W.P.Nos.22886 and 22887 of 2007 have been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the proceedings of the order of the second respondent made in Current R.C.Nos.1426/2006/A2 and 1971/2006/A2, dated 18.09.2006 respectively and confirmed by the first respondent made in R.P.Nos.71/2007 and 72/2007, dated 30.4.2007 respectively and to quash the same.

For Petitioner : Mr.M.C.Samy
For Respondents : Mr.T.Chandrasekaran,
Spl.G.P.(HR&CE)
for R1 and R2
MrV.Bharathidasan &
Mr. M. Saravanakumar for R3
Mr.D.R.Sivakumar for R4 and R5

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COMMON ORDER

I.The Legend:

- 1.1. கிழக்குவெளுத் ததுகருணை அருட்சோதி உதயம் கிடைத்தது
எனது உளக்கமலம் கிளர்ந்தது எனது அகத்தே
சுழக்கு வெளுத்தது சாதி ஆச்சிரமம் ஆசாரம் சமயம்
மதாசாரம் எனச் சண்டையிட்ட கலக
வழக்கு வெளுத்தது பலவாம் பொய்நநால் கற்றவர்தம்
மனம்வெளுத்து வாய்வெளுத்து வாயற வாதித்த
முழக்கு வெளுத்தது சிவமே பொருள் எனும்சன் மார்க்க
முழுநெறியில் பரநாத முரசுமுழங் கியதே.

[O my brothers and sisters of the world!

It is dawning in the east.

The Sun of the Glory of Compassion and Grace is coming into view.

The lotus of my heart is blooming in joy.

The evil of my mind is losing its grip.

The partisan quarrels and discords arising from castes, ashramas,
sects, and dogmas are ceasing to be.

Those who have long poured over many a false treatise have lost their
faith, their speech and vocal power of noisy debate,

Hark, my brothers and sisters!

Do you not hear the unending roll of the drums of the Divine Spirit of
the Supreme Lord, the one without an equal, and realize the Truth?

Do you not hear that compassion towards all living beings is the one
universal way of attaining Him?]

1.2 ஆதியும் நடுவும் அந்தமும் இல்லா
அருட்பெருஞ் சோதினன் உளத்தே
நீதியில் கலந்து நிறைந்தது நாணும்
நித்தியன் ஆயினேன் உலகீர்
சாதியும் மதமும் சமயமும் தவிர்த்தே
சத்தியச் சுத்தசன் மார்க்க
வீதியில் உமைத்தான் நிறுவுவல் உண்மை
விளம்பினேன் வம்மினோ விரைந்தே.

[O ye Men and Women of the world!

Do come this way

The supreme gracious glory, which has neither beginning nor middle nor end, has filled my mind in mercy.

And I have become an eternal being.

And I will establish ye in the broad day light of the one supreme ever existing.

Lord beyond, removing from you the excrescences of caste, dogmas and sect

The Truth is spoken,

O ye Men and Women of the world

Do come quick this way.]

[Translation by A.Balakrishnan Thiru Arutpa (1966)]

2.Vallalar The Reformer:-

2.1.Vallalar (Ramalinga Pillai, Maruthur), made this revolutionary declaration in the late 19th century and ever since his spectre of Arutpa haunted throughout the length and breadth of Tamil Nadu. Though he was born on 05.10.1823 and disappeared from this World on 30th January, 1874, only for a period of half a century, his mesmeric words and deeds had a sway over the people of Tamil Nadu continues and still has substantial following of the enlightened till date. He could attack the obscurantist caste bickerings and religious divides even 150 years before makes him an extraordinary human being. He was not a mere the-

osophist to wean persons from the material world and his teachings had relevance in his contemporary world. Of half century of his material existence during the first 40 years, after travelling widely and visiting many temples in Tamil Nadu got reflected in his hymns and verses. The last decade of his life saw a dramatic change in his outlook which based upon formless worship and his abundant love towards fellow human beings. Many of his words and deeds had remarkable influence not only on the people, but even on the colonial rulers of his time.

2.2.He could attack religions and caste as false make ups. He could derail Agamas and Vedas, making any one amazed by his boldness. The following verses composed by him will show the same:-

- a) சாதியும் மதமும் சமயமும் பொய்
என ஆதியில் உணர்த்திய அருட்பெருஞ்சோதி (211)

The boundless benevolent Jothi enlightens that
caste, religion and creed are false.

- b) ஆகமுடி மேல் ஆரண முடிமேல்
ஆகநின்ற ஒங்கிய அருட்பெருஞ்சோதி (5)

The boundless benevolent Jothi towering over
the Crowns of Agamas and Vedas Transcends them

- c) சமயம் குலம் முதல் சார்பு எனாம் விடுத்த
அமயம் தோன்றிய அருட்பெருஞ்சோதி (293)

The boundless benevolent Jothi has appeared at the right moment
when the bias of religion, caste etc. were eschewed.

(Translated by Swami Saravananda)

2.3.It will not be out of place to refer that the then colonial Government enacted The Caste Difficulties Removal Act, 1872. The Act safeguarded intercaste marriages and declared them as valid provided parties getting married are above the prescribed age. There was ex-

traordinary coincidence between his campaign against caste conflicts and Government enacting a law safeguarding the rights of the people.

2.4.The then Madras Presidency witnessed grave famines including the one at Kalahandi (presently in Orissa State) in 1866 which was seen in this part of the Country. People were dying in thousands for want of food. Vallalar so moved by the plight of common people, sang in desperation. He lamented and worried on seeing the withering crops. When Vallalar saw human sufferings it gave immense pain. The hungry faces he saw reminded him of withering ear of cereals falling for want of nourishment. He felt such profound compassion in his heart because God resided there. The feeling of compassion is given only for humans. Vallalar felt sad seeing the hungry faces and his compassionate heart went out to help them. When he saw a frail man, he felt himself to be frail. He prayed for disease-free life for all. It is this concern for the poor and downtrodden, this eagerness to wipe out poverty from the face of the earth that elevated Vallalar to the level of an outstanding and divine personality. His feelings poured out in the following lines which also became his famous quote:

வாடிய பயிரைக் கண்ட போதெல்லாம்
வாடினேன் பசியினால் இளைத்தே
வீடுதோறும் இரந்தும் பசியறாகு அயர்ந்த
வெற்றரைக் கண்டுளம் பதைத்தேன்
நீடிய பிணியால் வருந்துகின்றோர் என்
நேருறக் கண்டு உளம் துடித்தேன்
ஈடின் மானிகளாய் ஏழைகளாய் நெஞ்சு
இளைத்தவர் தமைக் கண்டே இளைத்தேன்

2.5.He did not stop lamenting, but started during 1867 a gruel centre at Vadalur and started feeding all the poor, who visited Sathya Gnana Sabai without regard to caste, creed or religion. The fire that was lit by him is never put out and it continues till today. He considered “Annadanam” (feeding poor) as one of the great virtues.

2.6.His anger against the Almighty who makes the poor to suffer made him to question the God whether it was proper to keep the poor to suffer and give food. If such sufferings continued, he made it clear that he will not keep his patience. He prayed for the alleviation of all sufferings in the following lines:

வாழையடி வாழையென வந்த திருக்கூட்ட
 மரணில் யான் ஒருவன் அன்றோ வகையறியேன் இந்த
 ஏழைபடும் பாடு உனக்குத் திருவுளச் சம்மதமோ
 இதுதகுமோ இது முறையோ இது தருமந்தானோ
 மாழைமணிப் பொது நடஞ்செய் வள்ளால் யான் உனக்கு
 மகனலனோ நீயெனக்கு வாய்த்ததந்தை அலையோ
 கோழைஉலகு உயிர்த்தயரம் இனிப்பொறுக்க மாட்டேன்
 கொடுத்தருள் நின்னருள் ஒளியைக்கொடுத்தருள் இப்பொழுதே.

2.7.Even before Indian National Congress was formed and campaign for a Self rule, Vallalar expressed openly that a rule without compassion must end and persons with good principles and grace must rule;-

கருணை இலா ஆட்சி கடுகி ஒழிக
 அருள் நியந்த நன்மார்க்கர் ஆள்க

2.8.Naturally, when his reach and sweep was multiplying with great speed, he himself made an introspection and came out with new ideas, which were not spoken by him earlier. His ideas were unique and his social reform in him came to the fore. He was the forerunner among the thinkers of his age. Subsequently, to his Siddi as is always expected, persons who claim to be his followers tried to interpret his life and teachings in their own style. It is suffice to state that Vallalar did not leave any heir apparent or a “Ilaiyapedam” as had happened in other Maths and Adinams. But, this gave rise to many bickerings. The present litigation arose out of one such attempt by a person who claims to be the follower of Vallalar.

3.The Present Litigation:

3.1.The petitioner in both the writ petitions is one and the same person. He claims to be the lineal descendant of late Adoor Sabhapathy Sivachariyar and hereditary Archaga of Sathya Gnana Sabai at Vadalur. Sathya Gnana Sabai was founded and established by Shri Chidambaram Ramalingam Maruthur and popularly known as Vallalar Ramalinga Adikal.

3.2.In both these writ petitions, the petitioner seeks to challenge the order of the second respondent Joint Commissioner, Hindu Religious & Charitable Endowments Department (for short H.R.& C.E.), Villupuram, dated 18.9.2006 and confirmed by the first respondent Commissioner, H.R.& C.E. Department, vide his order, dated 30.4.2007.

3.3.When the matter came up on 6.7.2007, notice was issued to the counsel for H.R.& C.E. Department. Accordingly, Mr.T.Chandrasekaran, learned Special Government Pleader, took notice. Subsequently, the Executive Officer and the Chairman, Board of Trustees of Thiru Arutprakasa Vallalar Deiva Nilayam, Vadalur got themselves impleaded as respondents 4 and 5. On behalf of the first respondent, a common counter affidavit, dated 30.8.2007 was filed. The third respondent, who was a private respondent represented by his counsel, also filed his counter affidavit, dated 2.1.2008. On behalf of impleaded respondents 4 and 5, a common counter affidavit, dated 28.9.2007 was filed.

4.Petitioner's contention:

4.1.The petitioner claims that Vallalar was a staunch devotee of Lord Nataraja of Chidambaram. He devoted his entire life in propagating Saivatism. He had written many lyrics in praise of Lord Siva at Padi, Lord Subramaniam at Kandakottam and Goddess Vadivudaiamman at Thiruvotriyur. Vallalar had great respect for the forefather of the petitioner, i.e. Adoor Sabapathy Sivachariyar. They had discussion over various aspects of Saivatism. Vallalar had number of disciples and followers, who donated lands and cash gifts. According to the petitioner, Vallalar

had strong belief that Lord Siva is the only ultimate God. Lord Nataraja at Chidambaram was considered by him as one of Siva's manifestation. He sung many poems in praise of Lord Nataraja, which were subsequently published as "Nangam Thirumurai". Vallalar wanted to establish a temple for Lord Nataraja at Vadalur with the funds donated by his devotees. He conceived and designed the architecture of the temple and made it in the form of Lotus leaves with "Ashtakonam Formation". While he labelled Chidambaram temple as Purva Gnana Sabhai, he named his temple at Vadalur as "Uttira Gnana Sabai". He installed a "Spatika Lingam" representing "Roopa/Arupa" manifestation of Lord Shiva. The seven curtains hung therein represented seven "Sakthis". He also put a plain glass and lamp behind the glass in the "Sanctum Sanctorum". The installation and consecration function were carried out by the forefather of the petitioner as per agamic rules on 25.1.1872.

4.2. It was claimed that from that day onwards, poojas were performed according to Saiva Agamic rules by Adoor Sabapathy Sivachariar. Vallalar had reposed full confidence on him and entrusted the administration of Sathya Gnana Sabai to Sabapathy Sivachariar. The said Sabapathy Sivachariar was the Managing Trustee and administrator of Sathya Gnana Sabai during his life time between 19.8.1889 and 13.11.1903. After his demise, his legal heirs were the trustees of Sathya Gnana Sabai till 1936. The fact that Vallalar had recognised Agamic form of poojas can be seen from the letter written by Vallalar to Sivachariar on 3.6.1868. The compilation of writings of Vallalar came to be labelled as "Thirumurai". The first five compilations were known as "Five Thirumurai". They were in praise of Lord Shiva, Lord Vinayaga and Lord Subramania. After consecration ceremony in the Sathya Gnana Sabai, Vallalar went to Mettukuppam, which is 5 Kms. away from Vadalur. During the period from 1869 to 1873, he had written poems, the compilation of which came to be known as "Aram Thirumurai" (Sixth Thirumurai). The said compilation contained very many controversial issues. Vallalar himself decided not to publish "Aram Thirumurai" and ordained his disciples not to venture on publishing the "Aram Thirumurai".

4.3.It was stated by the petitioner that after the establishment of H.R.&C.E. Department, the administration of the institution was taken over by the Government. The pooja system based on agamic injunctions started during the life time of Vallalar, were continued even after the administration was taken over by the Government. The Department itself had published various writings of Vallalar. It recognised the usage and custom followed by Sabai. The publications of “Deiva Nilayam” made in 2003 carried out information about the usage and custom followed by the Sabai which clearly revealed that Agama form of worship was followed as was done by Adoor Sabapathy Sivachariar. The said publication also informed about Vallalar’s ordain to his disciples not to venture publication of “Aram Thirumurai”. Contrary to his wishes, “Aram Thirumurai” was published during 1885.

4.4.The petitioner claimed that the third respondent who claims to be the follower of Vallalar’s teachings, sent a representation to the HR&CE Department and complained about the wrong rituals performed at Vadalur which is contrary to the philosophy propounded by Vallalar as well as his directions issued on 18.12.1872. On the basis of the complaint, the Joint Commissioner, HR&CE, Villupuram (second respondent) was directed by the first respondent to conduct an enquiry. Pursuant to the same, the petitioner was issued with a notice to appear for the enquiry. The enquiry conducted by the Joint Commissioner was administrative in nature. The said officer directed the petitioner to give statement regarding usage and custom followed in the Sabai. It was also furnished by the petitioner. Though the third respondent had sent a complaint, he neither examined himself nor filed any records to substantiate his claim. The second respondent did not conduct any proceedings as per the procedure contemplated under Section 63 of the HR&CE Act. According to the petitioner, if any dispute has to be tried under Section 63(e), it can be done only in the manner provided under the Act and the procedure is quasi judicial in nature. However, without due regard to the custom and usage in the Sathiya Gnana Sabai and without following due procedure under Section 63, the second respondent passed the impugned

order, dated 18.09.2006. By the said order, he had directed certain forms of rituals to be performed as if those rituals were ordained by Vallalar as per his letter dated 18.12.1872. Further, direction was given to stop all other forms of rituals which is conducted for the last 136 years.

4.5.It was also claimed that the second respondent has no power under the Act to direct as to how any rituals can be performed in a religious institution. The Act do not empower the authority to decide the forms of rituals to be performed in any religious institutions. The Act only provides administration of property and the governance of the institutions. Nowhere, the Act gives power to department to interfere in the religious affairs of the institution. Such interferences are prohibited by the Constitutional rights guaranteed under Articles 25 and 26 of the Constitution.

5.Devotees complain:

5.1.In the first impugned order, dated 18.9.2006, it was stated that Arulmigu Vallalar Deiva Nilayam at Vadalur (Sathiya Gnana Sabai) was maintained by the department under Section 46(iii) and was declared as non hereditary trust. The Board of non hereditary trust and the Executive Officer were in-charge of the administration. The Assistant Commissioner, Cuddalore was nominated as the Thakkar. The third respondent in W.P.No.22886 of 2007 had filed a writ petition being W.P.No.4063 of 2006. One Subramanian also filed W.P.No.21457 of 2006 before this court. The relief claimed by them was to consider their representations, dated 25.3.2006 and 7.6.2006 respectively. In their complaint, they had alleged that the rituals and poojas performed in Sathiya Gnana Sabai are contrary to the principles and tenets of Vallalar. The two writ petitions were ordered on 28.4.2006 and 17.7.2006 and the department was directed to take action on those representations.

5.2.The contentions raised by the two individuals (which included the third respondent) was that the Sathiya Gnana Sabai established by Vallalar at Vadalur transcend caste and religion. There is no discrimination between high class and low class people. It propagated non violence

and the practice of vegetarianism. It is based on love and affection. The worship of God in formless fashion. In effect, it is in the form of “Jothi”. Vallalar himself gave directions by his ordain, dated 18.7.1872 regarding pooja method to be performed in the Sabai. But contrary to his directives, the idol worship and other different rituals were introduced, which were against the tenets laid by Vallalar. The writ petitioner herein installed Sivalingam in the Sathiya Gnana Sabai and started performing poojas to Sivalingam. When he was functioning as Poojari, on the day of Pradhosham, he performed poojas to the idol and started distributing “Sacred Ashes” (Vibhudi) to the devotees as well as “Naivedya Prasadam” (food offerings) to the worshippers. Therefore, the petitioner before the second respondent wanted the department to restore performance of poojas as ordered by Vallalar as per his directives, dated 18.7.1872 which was published by Vallalar Deiva Nilayam and as per the customs and rules dated 25.01.1872. The publication themselves were done by Sathiya Gnana Sabai.

5.3.It was based upon the said representations, the second respondent Joint Commissioner heard the matter after issuing notice to the petitioner. He conducted an enquiry on 13.7.2006. That day, the Executive Officer of the Sabai (Sankaranarayanan), The Chairman of the trust (V.M.Shanmugam) and the other trustees Arutpa Annamalai and M.A.Rajan and the Accountant P.Gnanaprakasam appeared and gave their statements.

5.4.It was stated before the Joint Commissioner that in the Sathiya Gnana Sabai, as per the directive of Vallalar, there can be worship of Jothi Dharshan. Even if a Brahmin wants to worship, he should remove his sacred thread, deny his caste identity and then can perform divine service. But, the petitioner contrary to the directives of Vallalar, had established inside the Sabai on its eastern side, a Lingam and practiced rituals including worship during Pradhosham period. The public made complaints. It was also stated that apart from worship of Jyothi, there is no other ritual can be performed in the Deiva Nilayam. In the enquiry held on 13.7.2006, the temple Archakar (i.e. the petitioner) did not ap-

pear. The third respondent had appeared on 22.8.2006 and gave statement stating that as ordained by Vallalar, dated 18.7.1872, any children below 12 years or any person above 72 years are permitted to clean the Sathiya Gnana Sabai and light the lamp. But, the present Sivachariar is conducting rituals applying Sacred Ash and also doing Pradhosha rituals. Photographs to prove the same was also submitted. The publication made for 135th Thaipooosam festival was also produced to show that the pamphlet contained the details regarding Linga Pooja.

6.Joint Commissioner conducts an enquiry:

6.1.On 18.09.2006, the Thakkar/Assistant Commissioner and the Executive Officer also gave statements. On both the statements, it was stated that Vallalar's identity should not be obliterated by performing religious poojas. The petitioner submitted his statement through his counsel on 18.9.2006 and enclosed six documents. He claimed that 25.1.1872 was the first Thaipooosam festival day. Vallalar gave the grandfather of the petitioner a mirror and a lamp and thus started the present pooja system. Thereafter, the same rituals are followed by his successors. The first document was the sign by Vallalar. The second document was the festival invitation held on 11.2.1941. The third document was again the festival invitation, dated 1.2.1942. The 4th and 5th documents are Thaipooosa festival documents. The sixth document was the list of trustees.

6.2.On the basis of the above documents, the second respondent framed the following three issues:

- (i) Who had started rituals in the Sathiya Gnana Sabai from 25.1.1872?
- (ii) When the Idol worship was started and when the Lingam was installed?
- (iii) Whether the present rituals are as per the tenets of Vallalar?

6.3.In respect of these three issues, the authority found that there is no clear indication that the present rituals were as per the document

No.1. The document did not even contain the year, date, day. The signatures of Sabapathy Sivachariar and Vallalar could not be identified. The truthfulness of the document was not proved. It is claimed through document No.6 that Sabapathy Sivachariar was the trustee upto 13.11.1903 and because of ill-health, by a transfer deed, he had transferred the trusteeship to his son and daughter-in-law. Thereafter, after his death, Sabanatesa Sivachariar and his son-in-law Panchabagesa Sivachariar became trustees. From the time when Thaipooosam festival was started, the place, time and date as to when Thaipooosam festival was started and to the earlier period from when the present rituals were done were not proved. Further, Sabapathy Sivachariar was continued to be a trustee was also not proved. It was also not proved that the trustees themselves were also poojaris at that time.

6.4.The Sathya Gnana Sabai though was established on 25.1.1872, the worshipping methods were laid by the rules framed on 18.7.1872. It has been clearly stated that it is the Jyothi form of worship that has to be performed. It was stated that from the time when Vallalar established Sathiya Gnana Sabai, there was only the worship of God in its Jyothi form alone and no other form was adopted. The present idol worship was started very recently. Such practice is clearly contrary to Jyothi form of worship. With reference to three issues, it was stated that the present form of worship was clearly contrary to the procedure laid down by Vallalar. The worship of Lingam and carrying out Pradhosha worship to it is contrary to the directives of Vallalar. There were several complaints received and a resolution was also passed in the trustees meet held on 4.8.2005. Therefore, the petitioner before the Joint Commissioner failed to prove that the present rituals are carried out by him as ordained by Vallalar. On the contrary, the rituals should be practiced were laid down by Vallalar by his directive dated 18.7.1872.

6.5.The Joint Commissioner found that Vallalar himself had delineated the nature of worship and he stated that the worship will have to be done onlly in Jyothi form and not other form of rituals are to be prac-

ticed in Sathya Gnana Sabai. On the contrary, the Poojaris have installed religious idols inside the Sathya Gnana Sabai. After performing poojas each day two times from 11.30 to 12.00 Noon and 7.30 to 8.00 p.m. with Jyothi form, subsequently, other rituals were conducted by Poojaris without knowledge of public inside the Gnana Sabai. Thereafter, when they started openly performing poojas to the knowledge of devotees, protests started mounting and representations were given that such changes in the rituals are illegal.

7. Joint Commissioner's Directives:-

7.1. Therefore, the Joint Commissioner gave directions by listing out the nature of worship as ordained by Vallalar himself, dated 18.7.1872, which was published by Sathya Gnana Sabai in its publication as found at pages 551 to 553. The 12 rules extracted from the directive and incorporated as part of the order, are as follows:

(i) Those persons who belonged to Sanmarga Sangam, should follow the principles of Vallalar and should not have any desire over earth, gold and woman and it is they alone can maintain the Gnana Sabai.

(ii) Among those who are below 12 years and above 72 years alone can conduct rituals in Sathya Gnana Sabha.

(iii) Persons who are doing the same must have purity of mind and body.

(iv) They should, after taking bath, cover their feet with a cloth and light the Jyothi kept in a box made up of tin and glass and after going inside the room must keep it on the stage.

(v) Once in four days, they should cover their feet with a cloth and after going inside the sanctum clean up the glass lamp as well as other places.

(vi) They should not do other than what was stated above once inside the Sanctum.

(vii) The key of Gnana Sabai should not be with one person permanently. After finishing it must be locked and the key should be kept in a box. Then the box also should be locked and must be kept in the golden

Sabai. That room should be further locked and the key of that room should be handed over to the person guarding the place or the Administrative officer.

(viii) Strict silence should be kept in the Sathiya Gnana Sabai campus.

(ix) Jyothi should be shown by keeping it in the box made of Tin and glass and it should be burnt with oil medium.

(x) When Jyothi was being shown, people must stand in silence without making noise and must chant the mantra “Arutperunjyothi” “Arutperunjyothi”.

(xi) They should not have faith in the Vedas, Agamas, Puranas and Itihas.

(xii) They should have not faith in other religions, like Saivism, Vaishnavism, Vedanta and Siddhanta.

With these directives, the impugned order came to be passed.

8. Revision petition before the Commissioner:

8.1. As against the order, as noted already, the petitioner went before the first respondent with two revision petitions. On those revision petitions, notices were given to the opposing parties. The authority, by a well considered order, dated 30.4.2007 rejected the revision petitions being R.P.Nos.71 and 72 of 2006. Before the revisional authority, the petitioner contended that Vallar considered Sathya Gnana Sabai, established by him, as a Siva Temple and was practicing Saiva Agama form of worship. Rituals were performed by the forefathers of the petitioner. To establish this, he made five submissions:-

8.2. Vallalar wrote all his letters beginning with “c”, “rptkac;” and signed as Chidambaram Ramalingam Pillai. Secondly, Sathiya Gnana Sabai is an another form of Chidambaram Chit Sabai. Thirdly, in “Aram Thirumurai”, he had mentioned about Shiva and the worship of Shiva and about Chit Sabai at Chidambaram. Fourthly, Vallalar entrusted to Sabapathy Sivachariar all pooja articles which included Sivalingam, Doopa Deepa mirror. Fifthly, the rituals and poojas practiced at the time of inaugurating Sathiya Gnana Sabai are continued to be followed even today.

8.3. These arguments were countered by the private respondent by stating that while Sathiya Gnana Sabai was created as Deiva Nilayam by Vallalar, there is no proof to show that rituals are based upon Saiva Agama principle. Only for few years, the invitations for Thaipooosa festival were filed. Merely because it contained picture of Nataraja and the word “Anugnai” therein, it will not prove that Agama rituals were performed. In fact, those invitations were printed by the petitioner’s forefather unilaterally. If Vallalar wanted Sathya Gnana Sabai to follow Saiva Agama form of worship, he would have constructed it as Siva Temple. As per Saiva Agama principle, if a temple is established, Sivalingam would have been installed in the inner sanctorum. Such temples should have Sanctum Sanctorum, Artha Hall, Maha Hall and front hall. There would have been Nanthi installed before Lord Shiva. All these were absent in Sathiya Gnana Sabai. He had established Sathya Gnana Sabai as a worshipping place without any structure. There was no historical proof that Linga was consecrated by him followed by an Idol worship. Merely because, Aram Thirumurai was not published during his life time, it cannot be taken that Vallalar did not accept the contents of Aram Thirumurai. In the old Tamil tradition, there has never been any instance when an author himself had published his own writings. Old Tamil literature were discovered and copies were taken by subsequent researches and Tamil Scholars and thereafter published. The dictum laid down on 18.7.1872 and in his various writings of Vallalar (including poems and letters) were authenticated. The first publication of Aram Thirumurai was made by Thirusirapuram Loganatha Chettiar in 1885, the publication of Birungimanagaram Ramasamy Mudaliar in 1896, Sa.Mu.Kandasamy Pillai in 1924, A Balakrishnapillai in 1931-32. The publication of Samarasa Sudha Sanmarga Sangham in 1932. In all these publications, Vallalar’s writings of Arutperunjyothi Agaval was found. Therefore, that it was written by Vallalar himself cannot be denied.

8.4. The introductory remarks found in the publication will show that this was recorded at the time of Vallalar and written down by his

disciples from time to time in notes form. What was found in the notes and those which were found in the handwriting of Vallalare are in harmony with each other. It can be proved that these writings were that of Vallalar. All of them were published even before 1900. Thereafter published regularly from 1920 to 1930 onwards. Therefore, no one can deny that the contents published were erroneous and not attributable to Vallalar. Though the petitioner had stated that certain parts of poems found in Aram Thirumurai that Vallalar never deviated from Siva worship and the words “Sivan” and “Chitsabai” were referred to only Siva Temple and the Saiva religion, that by itself will not prove that Vallalar after introducing his own Samarasa Sanmarga Sangam continued to believe in the Siva worship. The word “Sivan” found in Aram Thirumurai referred to the God in general and “Chit Sabai” is a place where dance is performed by God. Since he got drawn to these ideas, he established the Sathya Gnana Sabai as a place of enlightenment. All the ideas expressed in Aram Thirumurai under the chapter “Gnanasariyai” clearly showed that all the contentions raised by the petitioner were contrary to facts.

8.5. It was also found that Vallalar rejected the idol worship and emphasised Sanmargam as found in Aram Thirumurai and the various letters, notes taken by his disciples and devotees. In a magazine published by Vallalar for “Miracle”, he had stated that the God represented in the form of Jyothi and he alone is the only truthful God and by understanding him alone gives pure knowledge. In the magazine called Truth, he had stated that the God found in the Sabai are not found in Purana or Jesus or Murthy, Devas or devotees or Yogi and Gnani. He had emphasised more often not to have faith in Vedas, Agamas, Puranas and Itihas. In all these texts, they have buried the reality of God. Similarly, he exhorted his followers not to believe in Saiva and Vaishnava religions and Vedanta and Siddanta. In all his subsequent writing he had mentioned God in abstract sense and in its hidden form and not in an explicit form.

8.6. When after he established Samarasa Sanmarga Sangam in 1865, he made many changes in the practices. What was originally stated

as Samarasa Veda Sanmarga Sangam in 1865, subsequently in 1872, he changed the name and called it as Samarasa Sudha Sanmarga Sathiya Sangam. It was only in that year, he established Sathiya Gnana Sabai. In between 1865 to 1872, his ideas expressed in verses underwent fundamental changes. His establishing formless God in the form of Jyothi was a progressive step towards the same. Vallalar had taken all his devotees of Sanmarga Sangh to Sathiya Gnana Sabai and converted them to practice formless worship. Merely because the words “Shiva” and “Chit Sabai” were referred to, that will not alter the basic philosophy of Vallalar. His claim regarding appointment of his forefather Adoor Sabapathy Sivachariar to perform poojas as per Saiva Agamas cannot be accepted. Only in 1869, Sabapathy Sivachariar came to Vadalur. Vallalar is a great Saint. In all his writings he expressed moderation and simplicity. It is the same humanitarian, Vallalar expressed to Sabapathy Sivachariat in 1868. This text was also published in the publication made by Sabapathy Sivachariar in 1932 and the publication made by Samarasa Sudha Sanmarga Sangam in the same year. Vallalar’s ordain dated 18.7.1872 were in his handwritings. Since Sathiya Gnana Sabai was not established as per Agama Sashtra, no one can make Agama Sashtra rituals to be performed at Sathiya Gnana Sabai. The fact that certain pooja materials were given to forefather of petitioner along with written notes, was not proved beyond doubt. The findings to that effect rendered by the Joint Commissioner was not dislodged.

8.7. In the list of trustees submitted by the petitioner, it is seen that it comprised of several men belonging to different castes. The list contains people belong to castes like Mudaliar, Iyer, Sivachariar, Reddiar, Chettiar as well as others. They were performing as trustees during different periods. May be on that basis, the petitioner’s forefather would have participated as a trustee. Merely because he was trustee at some point of time, that by itself cannot be proved that Siva worship had taken place in the Sathya Gnana Sabai. The fact that they were appointed as Archakas was also not proved. Even in the notice issued after Thaipoozam festival in January, 1872, one advertisement had appeared about the Sabai

and thereafter, on 18.4.1872, “Arutperunjyothi Agaval” was published by him. In the explanatory note for the Agaval, one Ananda Nadha Sanmuga Saranalaya Swamigal had stated about removal of curtains as done in the Sathiya Gnana Sabai, which was only on the basis of the explanation given for the curtain that were hung in the Sabai. Vallalar himself in the publication called “Gnanasabai Vilakka Vibhava Pathirigai” has given his dictum regarding the form of worship, was also not proved. This advertisement was not found in the book published by Balakrishna Pillai. Signatures found in that advertisement does not tally with the other signatures of Vallalar.

8.8. The fact that he was beginning the letters with “c”, “rptkai;” was denied by respondents. After he attained enlightenment, he never used those letters in any other communications. It was also stated that the HE&CE Department did not take over the Sabai. The word Thirukoil found in Section 6(20) of the HR&CE Act merely defines a place related to worship. It does not indicate there should be idol worship in such places. Even without idol worship, a place can be used as a place of worship and such a place will come within the control of the HR&CE Department. It was only on that basis, the institution was taken over by the HR&CE Department. In a letter written by Thozhudavur Velayutha Mudaliar, the first disciple of Vallalar, to the Theosophical society, he referred to the fact that since Vallalar had condemned the caste difference, he was not supported by majority, but persons belonging to all communities were surrounding him in big number. He never recited anything contrary to nature. His “Marg” is strictly on scientific basis. In few teachings by Vallalar, he stated that God is truth and love shown to all lives and only that love kindles the nature in the light form. If only people can understand the hidden divine power in them, they can even get over gravity of Universe and the natural law. They can keep rare power in them.

8.9. It was also stated that Vallalar was a great Saint of 19th Century and a great Gnani. After Buddha, he was the first one to start a society to spread his own Marg. He founded the society without any

caste distinction and only on the basis of human love. His search for truth is based on a long path. Each stage of his path reflected the stage of human proof. Until the establishment of Sathiya Gnana Sabai, he was reflecting Saiva Religion. After he found that the idol worship will not remove caste and race distinction, he invented the Jyothi form of worship. Therefore, it is only after he got enlightenment of seeing Jyothi darshan, he established Sathiya Gnana Sabai. Sathiya Gnana Sabai is a unique worship centre. He himself evolved the form of worship. His idea found in Aram Thirumurai is to take away the people from the form of idol worship to the form of Jyothi worship. The first five Thirumurais, he emphasised on the idol worship. Aram Thirumurai is as per the teachings of Vallalar, had emphasised pure Sanmargam and applied it only to those who are his followers. The persons who follow such principles are the believers in pure Sanmargam and integration of all souls. It is based upon love for all living things. All historical facts and truth were attempted to be hidden by the petitioner. Therefore, the order passed by the Joint Commissioner, dated 18.9.2006 was perfectly in tune with the teachings of Vallalar. Sathiya Gnana Sabai can only be conducted in the light of the teachings of Vallalar. Therefore, a duty is cast upon to the Board of Trustees and the Executive Officer to conduct prayer only as per the dictum of Vallalar. With these directives, the revision petitions filed by the petitioner were dismissed.

9.HR&CE Department defends the order:

9.1.The first respondent in his counter affidavit, dated 30.8.2007 had reemphasised these facts. It was also stated that the Commissioner had exercised his power under Section 21 of the HR&CE Act. If the petitioner so aggrieved, he could have moved the Government under Section 114 of the Act. The petitioner nowhere contended that declaration is to be made only under Section 63. In fact in the present case, the customs and usage are not sought to be changed, but only re-emphasised as per the dictum laid down by Vallalar.

9.2. In paragraph 13(xiii) and 14 of the counter, it was stated as follows:

“13(xiii)..... While establishing the Sathya Gnana Sabhai, if Vallalar had followed the worship, rituals as per the Saivagamas, he would have constructed the Sathya Gnana Sabhai as a Siva temple as per Saivagamas. If a temple is built according to Saivagamas, ‘Sivalingam’ ought to have been instaled in the ‘Sanctum Sanctorum’; there shall be a Sanctum Sanctorum, Artha Mandapam, Maha Mandapam and Front Mandapam in the Temple. Further, the idol of ‘Nandhi’ should have been instaled in front of the ‘Shivalingam’. There are no such features in the Sathya Gnana Sabai. Vallalar had established the Sathya Gnana Sabai as a completely different type of place of worship without any of the features based on Saivagama. When the Sabhai had thus been established as a completely different place of worship having nothing to do with Saivagamas, there is no reason to perform idol worship, prodhosha kalapooja and abishegam in the Sabhs depicting as if it is a Siva Temple.”

....

14. Shri Ramalinga Adigal (Vallalar) was a great saint born in the 19th century A.D. He is one who founded an association exclusively for religious faith, probably next to Lord Buddha. The principle of showing love towards all living beings, disregarding other difference like caste etc. was the philosophy on which he founded the organization. The path travelled by Vallalar in search of wisdom is very long. Every stage of this path reflects a particular stage of man who seeks to reach God. Vallalar was preaching the people about the general principles of Saiva religion until he established the Sathya Gnana Sabai. Vallalar had thought that discrimination of people on the basis of caste and creed could not be eradicated if idol worship is followed and for that reason, for the enlightened the members of Samarasa Sanmarga Sangam, he established the Sathya Gnana Sabai and started Jyothi worship there. Arutperum Jyothi Agaval was written by Vallalar himself.”

10.Private respondents plea:

10.1.In the counter affidavit filed by the third respondent, he had stated that the order passed by the Joint Commissioner cannot be construed to be an order under Section 63. If that was so, an appeal can be filed only under Section 69 of the HR&CE Act. After preliminary objections raised, the third respondent had stated in paragraphs 10 and 20 as follows:

“10....the writ petitioner is not a Hereditary Archaha as claimed by him. It is categorically held by the respondents 1 and 2 that he is neither an Archaha nor an employee of the Department, hence he is a stranger to the institution, and he did not produce any documentary evidence to substantiate his claim. Originally Shri Vallalar have faith in Saivatism, but in the year 1874 (Tamil Aipasi 7 @ 8.00 Am at Mettukuppam during his propagation had declared.

“My faith in the Saivatism earlier could not be measured. The benefit I have earned after throwing away the religious faiths is that, now I am before you. Likewise, if you (the people) free yourself from that belief, you could also gain a lot like me. When I was in the religious hold I had limited knowledge only. The religious men without actually knowing the truthfulness of the Almighty (God) preach meaningless words and means. They had buried and sealed the truthfulness of the God. So, do enquiry and indulge carefully on the promulgation indicated shown by me”.

His Holiness further stated that No one do not have any faith in Saivatism, Vaishnavism, Vedhantha and Sidhantha and His Holiness requested his Devotees only to follow his preachings. Apart from that it is also not proved by a writ petition that the Crystal Lingam was handed over to the predecessor of the petitioner by Vallalar. It is totally false to say that the Poojas were conducted according to Saiva Agamic Rules in “Gnana Sabhai” at Vadalur.

20....His Holiness by His promulgation has brought to light various components of cosmos and its secret and the microcosm in the human body, the relationship between cosmos and humans, the ways and means to reach and realize the facts of the above. His Holiness has preached that it is only through “Jeevakarunyam” (compassion etc.) the only essentiality to attain the Spiritual God and that His Holiness emphatically informed that the following of mere rituals and ceremonies cannot show the path to realization. In fact His Holiness has devised a table of principles and doctrines to be followed for attainment of the above ambition and for attaining deathless body (Saganilai). We also submit that at a time when the thoughts of His Holiness is gaining wide reception all over the Universe, the act of the petitioner in bringing down the very thought and essence of His Holiness to a level of idol worship not only is derogatory but also disthoughts the very truth promulgated by His Holiness and if permitted to continue the day is not far away when the whole world will be loser to gain a philosophy enunciated not by an outsider but a son of our Country.”

11.Sabhai authorities stand:

11.1.In the counter affidavit filed by the Executive Officer and the fifth respondent, it was averred as follows:

“9.According to the above Vallarlar’s teachings of Suddha Sanmarga, is to deny the rituals of any Agama or Vedha. Only to establish this, Vallalar founded Sathya Gnana Sabai at Vadalur, which is not similar to Thillai-Chidambaram Nataraja Shrine or Temple construction or plane. Even the full name for Sabai was revealed as Samarasa Suddha Sanmarga Sathya Gnana Sabai. Even according to list of documents No.4 Gnana Sabai Vilamparam, written by Valalar himself and revealed by him on 18-7-1872, it is obviously true, evident and certain that the Universal Gnana Sabai was not for any ritual or any practice of sectarian philosophy.

15.....So, it is evident from the above statements and old writings, only after 10 years after the establishment of Gnana Sabai, Adoor Sababathi Sivachariyar became poojekar. The first service done by Sivachariyar was to keep Guard and watch over Gnana Sabai. This is fundamental truth.....”

16....no one member of his family from the late Adoor Sivachariyar, the first poojekar up to the present poojekar was not legal Trustee as appointed by the Government and also they are not the Hereditary servant poojekars. They themselves declared as Trustees. There are no documents issued by Government supported for their Trusteeship. If the petitioner’s family had become the hereditary Trustees till 1936 same rights of Trusteeship could have been entrusted even after 1936. But, there is no evidence for that Trustee appointment by any authority. Consequently Sababathi Sivachariyar was neither Hereditary poojekar nor the legally accepted Trustee. It is submitted that Sababathi Sivachariyar on 4-7-1893 put up an advertisement claiming himself as Trustee and hence a counter statement was published in the name of Trustee Maruppu in January 1896. This fact is also mentioned in the Vadalur Varalaru.

....

20....The pooja of Gnana Sabai at Vadalur founded by Vallalar refers only to the worship of jothi. There is no provision to conduct any ritualistic saiva agama practice of idol worship, linga pooja or prathosa pooja. There should be only conducting of jothi worship, according to the rules of sanmarga as instructed by Vallalar. Only this is being the usual pooja method, curiously the petitioner only started inducting Idol worship, prathosa pooja, linga pooja etc., since about past 2 or 3 years. The intermediary interpolation method of unusual and improper way of pooja worship by the previous poojekar Sabanatha Oli could not and should not be taken as the permanent and traditional pooja method and the result is the real usual method of worship at Gnanasabai is only jothi worship following Vallalar’s Sanmargam.

23(g)....But according to the book Vadalur Varalaru written by Ooran Adigal, Ex-chairman, Board of Trustees, it has been mentioned at Page No.103, the first pooja at Gnana Sabai began on 25/1/1872 as per pooja rules laid down by Vallalar. The first poojakaar by the name of Rathinam Oodhuvar of age below (12) twelve and also another elder Thiru Malaiswamy aged about 72 years did pooja service. The pooja rules given and laid down in the preaching of Vallalar were followed even during life time and had continuously came into operation even after that and even today from 17-5-2007 upto date. For about 2 or 3 years the petitioner, the previous poojakaar had inducted or interpolated ritual based saiva agama poojas which had been stopped from 17/5/2007, 10 A.M. when the petitioner got relieved from pooja service. Only jothi pooja worship is being conducted from 17-5-2007 as per the custom and usage followed in the Sabhai for over 100 years. The petitioner Sabanatha Oli was not permitted to do poojas according to Saiva Agama and the Petitioner has handed over all the items used in Sabhai which was in his possession on 17-5-2007 10 A.M., in the presence of witnesses.

o).....It is evident from his great Upadesam on 22-10-1873 that he himself commanded to change the Sadhana practice of Mantra of formula of Sivayanama to

‘ARUTPERUNJOTHI ARUTPERUNJOTHI
THANIPPERUNKARUNAI ARUTPERUNJOTHI’

Which is still in daily usage both in dharmasalai pooja, siddhi valaga pooja as well as sathya gnana sabai jothi pooja worship of prayer of reciting arutpa and Arutperunjothi Mantra.

x)....The first pooja started on 25.1.1872. Only after 1881 Adoor Sabapathy joined as poojakaar, even then he performed poojas without the ritual agama form of symbols of sacred thread (Poonol) etc. Only the petitioner was performing Idol worship, sivalinga worship, pradasha worship etc., for his own interest and selfish motive for the past few years. The petitioner cum the former poojakaar’s ritual of (method) Saiva Agama procedure started 2 or three years cannot be accepted as usual and costumary procedure of worship. Only the jothi pooja worship ac-

ording to his Sanmarka rules instructed by Vallalar and followed continuously from 25.1.1872 should be taken as usual customary pooja practice. There is no change in the jothi pooja worship. The problem arose only when the petitioner interpolated saiva agama ritual worship of siva lingam etc. 2 years back with a view to change the usual and customary pooja and sanmargam, wounding the feelings of several followers of Vallalar.”

12.Contentions by counsel:

12.1.In the light of these pleadings, Mr.M.C.Samy, learned counsel for the petitioner submitted that the impugned orders were contrary to the provisions of the HR&CE Act. By changing the form of worship through an executive fiat, the respondents have really deviated and infringed the rights guaranteed under Articles 25 and 26 of the Constitution of India. He also placed reliance upon the judgment of a division bench judgment of this Court in C.A.Jagannathan Vs. T.E.Srinivasan and others reported in 2002 4 LW 259 for the purpose of showing the nature of enquiry to be conducted by the authority under Section 63. In paragraph 26 of the said judgment, it was observed that the authority hearing application under Section 63(e) must follow the procedure, i.e. examination of witnesses and cross examination by the opposite party. Before examination of witnesses, he must call upon the party to take oath that he is speaking truth and nothing but truth as contemplated under the Indian Rules Act. The mandatory provisions as enshrined in the Act were not followed and the resultant order must be set aside.

12.2.The learned counsel further stated that in the present case, in the applications filed by the third respondent and one Subramanian, no such procedure was followed and that on that short ground, the impugned order is liable to be set aside. On merits, he also submitted that selective reading of Vallalar cannot be made. Vallalar’s attachment to Saivite philosophy and Lord Nataraja cannot be given a go-bye. In effect, the respondents are resurrecting Aram Thirumurai which was forbidden by

Vallalar to be published during his life time. It was an attempt to resurrect a philosophy which Vallalar never propagated.

12.3.Per contra, Mr.V.Bharathidasan, learned counsel for third respondent submitted that all these facts were gone into by both the authorities. It must be noted that as against the order of the Joint Commissioner, the petitioner himself has filed only a revision under Section 21 and therefore, it cannot be said to be an order under Section 63. Even otherwise, it is not as if the authorities are changing any custom or usage. The authorities have only directed the Sabhai authorities to follow proper custom and usage as propounded by Vallalar and not allow it to be perverted by certain persons who have gained entry into the Sabai and made unilateral modification to suit their own selfish desire. Both the authorities have heard the objections and the statement given by persons concerned and directed to restore the glory of Sathiya Gnana Sabai as propounded by Vallalar. The teachings of Vallalar cannot be seen in contradictory terms. An attempt must be made to reach the core philosophy given in his teachings and that alone can be held to be the essence of his teachings. Therefore, he prayed for dismissal of the two writ petitions.

13.Essence of Vallalar:

13.1.In order to appreciate the contentions, it is relevant to quote the writings of Vallalar so as to capture the core of his tenets evolved during his life time. He called the existing religions as falsehood.

எச்சம யங்ளும் பொய்ச்சம யம்என்றீர்
இச்சம யம்இங்கு வாரீர்
மெய்ச்சம யம்தந்தீர் வாரீர்.

Deign to come, My Lord!

Thou taught me that all sects are partial and false.

Deign to come here and now my Lord.

Thou gaveth the true experience.

My Lord, pray, deign to come.

[Translated by A.Balakrishnan Thiru Arutpa (1966)]

13.2. On the question of scriptures and Agamas, he had the following to say:

சுதர்மறை ஆகம சாத்திரம் எல்லாம்
சந்தைப் படிப்பு நம் சொந்தப் படிப்போ
விதுநெறி சுத்தசன் மார்க்கத்திற் சாகா
வித்தையைக் கற்றனன் உத்தரம் னுமோர்
பொதுவளர் திசைநோக்கி வந்தனன் என்றும்
பொன்றாமை வேண்டிடில் எந்தோழி நீதான்
அதுவிது எண்ணாமல் ஆடேடி பந்து
அருட்பெருஞ் ஜோதி கண்டாடேடி பந்து

My Sister! Come, let us play at ball.

The four Vedas, the Agamas, and all the Sastras
do not become our own wisdom,
but remain only outside ourselves
as our wisdom for the market.

By experiencing the Absolute, the Lord Beyond,
I have come to learn the
wisdom of deathlessness.

And I have come towards the End, where the Lord
abides in mercy to all.

My Sister! If you long for deathlessness for ever,
do not say this and that,

But, beholding the Supreme Gracious Glory, play at ball.

[Translated by A. Balakrishnan Thiru Arutpa (1966)]

13.3. On the caste bickerings and religions fights, he had the following to say:

சாதியிலே மதங்களிலே
 சமயநெறி களிலே
 சாத்திரச்சந்தடிகளிலே
 கோத்திரச்சண்டையிலே
 ஆதியிலே அபிமானித்து
 அலைகின்ற உலகீர்
 அலைந்தலைந்து விணைநீர்
 அழிதல் அழி கலவே
 நீதியிலே சன்மார்க்க
 நிலைதனிலே ஞான
 நிருத்தமீடும் தனித்தலைவர்
 ஒருத்தர் அவர் தாமே
 வீதியிலே அருட்டுபருஞ்ஜோதி
 விளையாடல் புரிய
 மேவுகின்ற தருணம் இது
 கூவுகின்றேன் உமையே.

In castes, in philosophical dogmas, in the conflicting
 ceremonials of sectarian practices, in the noisy
 debates on Sastras, in the wars of Gotras-

Pinning your Faith in these differences, distinctions,
 and quarrels from times immemorial, you men and
 women of the world ! are restless and tossed
 about hither and thither;

Let me tell you, my brothers and sisters, it does not
 become you, loving and intelligent souls that you
 are, to be so restless and tossed about hither and
 thither and ruined ignominiously.

To establish you in Eternal Justice, in the very heart
of the Reality of Effulgent and Blissful Existence,

The One without an equal, the Lord who takes his endearing
abode in the inner sanctuary of all lives,
is now coming to the open and into the broad
day light of our experience and will play his
unique game of Glory and Grace.

It is therefore time for you to turn this way.

And I do call you all, men and women of the
world, in the name of our Lord and Master, to your
ineffable Destiny of Perfection.

[Translated by A.Balakrishnan Thiru Arutpa (1966)]

13.4.His own experience became a form of his teachings as
seen below:

செவ்வணத் தவரும் மறையும்ஆ கமழும்
தேவரும் முனிவரும் பிறரும்
இவ்வணத் ததுஎன் றறிந்திடற் சரிதாம்
எந்தைநின் திருவருள் திறத்தை
எவ்வணத் தறிவேன் எங்ஙனம் புகல்வேன்
என்தரத் தியலுவ தேயோ
ஒவ்வணத் தரசே எனக்னெ இங்கோர்
உணர்ச்சியும் உண்டுசொல் உணர்த்தே

My Father!

Thy Grace is transcendent.

The great sages,

The Vedic scriptures,

The Agamic Scriptures,

Heavenly Beings,

Austere men,

And others of great excellence-
 All those do not seem to apprehend the truth of Thy grace.
 How am I a poor sinner to know It?
 Where am I to enter?
 Is it open at all to one of my imperfections?
 My Lord! Thou who are the harmony of all opposites!
 Pray deign to tell me whether I can call my experience my own.

[Translated by A.Balakrishnan Thiru Arutpa (1966)]

13.5.Regarding worship in formless state, he made the following verse:

உருவாகி உருவீனில் உள உருவ மாகி
 உருவத்தில் உருவாகி உருவுள் ஒன்றாய்
 அருவாகி அருவீனில் உள் அருவ மாகி
 அருவத்தில் அருவாகி அருவுள் ஒன்றாய்க்
 குருவாகிச் சத்துவசீற் குணத்த குரகிக்
 குணாகிதப் பொருளாகிக் குலவா நின்ற
 மருவாகி மலராகி வல்-யாகி மகத்துவமாய்
 அணுத்துவமாய் வயங்குத் தேவே.

Oh Lord you are:-

The Body and also the inner Body
 Disguised in that Body and be in the Body as one.
 Formless and Bodiless and also form the inner Formless
 bodiless.

Disguised in that Formless and bodiless and be one in the
 Formless and

Bodiless.

The Guru and of virtuous quality and character and Intellect
 The Fragrance and the Flowers and the creeper
 Shining in greatness and in minute subtlity

(S.Rmalingam, 1980)

13.6.If it is seen in the above context, the essence of Vallalar will come out. A rejection of the idol form of worship and worship of fire in the form of Jyothi. There is no place for any established religion. But there is full of space for humanity. There are no distinction based on caste or creed. There is only Jeevakarunyam (abundant love to fellow human being). There is no scope for any violence. There is always compassion and care for poor and infirm. Therefore, the authorities had correctly taken note of the essence of Vallalar. They have not deviated from any of the established tradition left behind by Vallalar. On the contrary, to leave no one in doubt, Vallalar himself had made his directives in writings. Therefore, there is no scope for any one to plead contra.

14.What is essential part of Religion:

14.1.Hence the legal arguments addressed by the counsel for the petitioner must necessarily fail. Though a feeble attempt was made that there was constitutional infringement in terms of Articles 25 and 26. But there is no explanation as to whose constitutional rights were infringed. Since attempts were made to invoke Articles 25 and 26 by the petitioner’s counsel, it is necessary to refer to certain decisions of the Supreme Court which have a bearing on this issue. It is not every religious practice is protected and it is only the essential part of religions or essential religious practice is protected by the constitution.

14.2. The Supreme Court in Durgah Committee v. Syed Hussain Ali, reported in (1962) 1 SCR 383 held in paragraph 33 as follows:

“33.....Whilst we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and

may make a claim for being treated as religious practices within the meaning of Article 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Article 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other.”

14.3. The Supreme Court in *Seshammal v. State of T.N.*, reported in (1972) 2 SCC 11 in paragraph 13 observed as follows:

13. what constitutes an essential part of a religious or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion.

14.4. The Supreme Court again in *M. Ismail Faruqui (Dr) v. Union of India* reported in (1994) 6 SCC 360 in paragraph 77 held as follows:

“77..... The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion.”

14.5. The Supreme Court once again in *Pannalal Bansilal Pitti v. State of A.P.*, reported in (1996) 2 SCC 498 held in paragraph 26 as follows:

26. Hindus are majority in population and Hinduism is a major religion. While Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Therefore, protection under Articles 25 and 26 is available to the people professing Hindu religion subject to the law therein. The right to establish a religious and charitable institution is a part of religious belief or faith and, though law made under clause (2) of Article 25 may impose restrictions on the exercise of that right, the right to administer and maintain such institution cannot altogether be taken away and vested in other party; more particularly, in the officers of a secular Government. The administration of religious institution or endowment or specific endowment being a secular activity, it is not an essential part of religion and, therefore, the legislature is competent to enact law, as in Part III of the Act, regulating the administration and governance of the religious or charitable institutions or endowment. They are not part of religious practices or customs. The State does not directly undertake their administration and expend any public money for maintenance and governance thereof. Law regulates appropriately for efficient management or administration or governance of charitable and Hindu religious institutions or endowments or specific endowments, through its officers or officers appointed under the Act.

14.6. Once again, setting out various types of activities which falls under the Constitutional protection, the Supreme Court in A.S. Narayana Deekshitulu v. State of A.P., reported in (1996) 9 SCC 548 held in paragraphs 86 to 90 observed as follows:

86. There is nothing which a man can do, whether in the way of wearing clothes or food or drink, which is not considered a religious activity. Every mundane or human activity was not intended to be protected by the Constitution under the guise of religion. The approach to construe the protection of religion or matters of religion or religious practices guaranteed by Articles 25 and 26 must be viewed with prag-

matism since by the very nature of things, it would be extremely difficult, if not impossible, to define the expression religion or matters of religion or religious belief or practice.

87. In pluralistic society like India, as stated earlier, there are numerous religious groups who practise diverse forms of worship or practise religions, rituals, rites etc.; even among Hindus, different denominants and sects residing within the country or abroad profess different religious faiths, beliefs, practices. They seek to identify religion with what may in substance be mere facets of religion. It would, therefore, be difficult to devise a definition of religion which would be regarded as applicable to all religions or matters of religious practices. To one class of persons a mere dogma or precept or a doctrine may be predominant in the matter of religion; to others, rituals or ceremonies may be predominant facets of religion; and to yet another class of persons a code of conduct or a mode of life may constitute religion. Even to different persons professing the same religious faith some of the facets of religion may have varying significance. It may not be possible, therefore, to devise a precise definition of universal application as to what is religion and what are matters of religious belief or religious practice. That is far from saying that it is not possible to state with reasonable certainty the limits within which the Constitution conferred a right to profess religion. Therefore, the right to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or regulating any activity economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are subject to reform on social welfare by appropriate legislation by the State. Though religious practices and performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in a particular doctrine, that by itself is not conclusive or decisive. What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen

and the evidence factual or legislative or historic presented in that context is required to be considered and a decision reached.

88. The court, therefore, while interpreting Articles 25 and 26 strikes a careful balance between the freedom of the individual or the group in regard to religion, matters of religion, religious belief, faith or worship, religious practice or custom which are essential and integral part and those which are not essential and integral and the need for the State to regulate or control in the interest of the community.

89. There is a difference between secularism and secularisation. Secularisation essentially is a process of decline in religious activity, belief, ways of thinking and in restructuring the institution. Though secularism is a political ideology and strictly may not accept any religion as the basis of State action or as the criterion of dealing with citizens, the Constitution of India seeks to synthesise religion, religious practice or matters of religion and secularism. In secularising the matters of religion which are not essentially and integrally parts of religion, secularism, therefore, consciously denounces all forms of supernaturalism or superstitious beliefs or actions and acts which are not essentially or integrally matters of religion or religious belief or faith or religious practices. In other words, non-religious or anti-religious practices are antithesis to secularism which seeks to contribute in some degree to the process of secularisation of the matters of religion or religious practices. For instance, untouchability was believed to be a part of Hindu religious belief. But human rights denounce it and Article 17 of the Constitution of India abolished it and its practice in any form is a constitutional crime punishable under Civil Rights Protection Act. Article 15(2) and other allied provisions achieve the purpose of Article 17.

90. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an

egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos, Creator and realise his spiritual self. Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his Judicial Process, life is not a logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination shall be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The

concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself.”

14.7. The Supreme Court came down heavily on the insistence of custom or usage being followed irrespective of any proof of its existence even during preconstitutional days. The Court stated that such assertion cannot be said to be source of law to claim any right. Unless there are proof about specific custom or usage created by the founder of the temple or any one, who is having exclusive right to affairs, such custom may not be approved by the court. In this context, it is necessary to refer to the decision of the Supreme Court in *N. Adithayan v. Travancore Devaswom Board* reported in (2002) 8 SCC 106. The Supreme Court in that case observed in paragraphs 17 and 18 as follows:

17. Where a temple has been constructed and consecrated as per Agamas, it is considered necessary to perform the daily rituals, poojas and recitations as required to maintain the sanctity of the idol and it is not that in respect of any and every temple any such uniform rigour of rituals can be sought to be enforced, de hors its origin, the manner of construction or method of consecration. No doubt only a qualified person well versed and properly trained for the purpose alone can perform poojas in the temple since he has not only to enter into the sanctum sanctorum but also touch the idol installed therein. It therefore goes without saying that what is required and expected of one to perform the rituals and conduct poojas is to know the rituals to be performed and mantras, as necessary, to be recited for the particular deity and the method of worship ordained or fixed therefor. For example, in Saivite temples or Vaishnavite temples, only a person who learnt the necessary rites and mantras conducive to be performed and recited in the respective temples and appropriate to the worship of the particular deity could be engaged as an Archaka. If

traditionally or conventionally, in any temple, all along a Brahmin alone was conducting poojas or performing the job of Santhikaran, it may not be because a person other than the Brahmin is prohibited from doing so because he is not a Brahmin, but those others were not in a position and, as a matter of fact, were prohibited from learning, reciting or mastering Vedic literature, rites or performance of rituals and wearing sacred thread by getting initiated into the order and thereby acquire the right to perform homa and ritualistic forms of worship in public or private temples. Consequently, there is no justification to insist that a Brahmin or Malayala Brahmin in this case, alone can perform the rites and rituals in the temple, as part of the rights and freedom guaranteed under Article 25 of the Constitution and further claim that any deviation would tantamount to violation of any such guarantee under the Constitution. There can be no claim based upon Article 26 so far as the Temple under our consideration is concerned. Apart from this principle enunciated above, as long as anyone well versed and properly trained and qualified to perform the pooja in a manner conducive and appropriate to the worship of the particular deity, is appointed as Santhikaran de hors his pedigree based on caste, no valid or legally justifiable grievance can be made in a court of law. There has been no proper plea or sufficient proof also in this case of any specific custom or usage specially created by the founder of the Temple or those who have the exclusive right to administer the affairs religious or secular of the Temple in question, leave alone the legality, propriety and validity of the same in the changed legal position brought about by the Constitution and the law enacted by Parliament. The Temple also does not belong to any denominational category with any specialized form of worship peculiar to such denomination or to its credit. For the said reason, it becomes, in a sense, even unnecessary to pronounce upon the invalidity of any such practice being violative of the constitutional mandate contained in Articles 14 to 17 and 21 of the Constitution of India.

18. None of the earlier decisions rendered before Seshammal case⁴ related to consideration of any rights based on caste origin and even Seshammal case⁴ dealt with only the facet of rights claimed on the basis of hereditary succession. The attempted exercise by the learned Senior Counsel for the appellant to read into the decisions of this Court in Shirur Mutt case¹ and others something more than what it actually purports to lay down as if they lend support to assert or protect any and everything claimed as being part of the religious rituals, rites, observances and method of worship and make such claims immutable from any restriction or regulation based on the other provisions of the Constitution or the law enacted to implement such constitutional mandate, deserves only to be rejected as merely a superficial approach by purporting to deride what otherwise has to have really an overriding effect, in the scheme of rights declared and guaranteed under Part III of the Constitution of India. Any custom or usage irrespective of even any proof of their existence in pre-constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by courts in the country.

14.8. Finally, the Supreme Court held that there can be dispute among devotees as to what practice should be followed in temple. In such circumstances, normally the court may not enter into such disputed areas. At the same time, while granting an order, it should protect the right of the citizens as guaranteed under Articles 25 and 26 as held by the Supreme Court in Guruvayoor Devaswom Managing Committee v. C.K. Rajan reported in (2003) 7 SCC 546 held in paragraph 64 as follows:

64. The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what practices should be followed by the temple authorities. There may be dispute as regards the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the people may hurt the sentiments of the other. The courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be a welcome step.

15. Conclusion:

15.1. Before it is concluded it must be noted that Vallalar himself during the end of his life time was aware that there will be bickering and people may take only the form and not the substance. The true tenet of Vallalar can be found out by looking into the kind of criticism that he faced not only during his life time, but even thereafter. His formless worship and the denial of established religious order had created many enemies, who started counter campaigns against him. They went to an extent of describing his “Thiru Arutpa” (songs that extol the grace of God) as “Marutpa” (songs of disgrace). Even a defamatory suit was filed against him in the Court at Manjakuppam (Cuddalore) by a Tamil Scholar Arumuga Navalar, a devote Saivite during 1869. Finally, the suit was dismissed. This will show the antagonism which certain groups developed against him. In fact they counter campaigned that by rejecting Vedas and creating universal Veda, he indirectly exhorted people to follow Buddhism. In that process they not only ridiculed Vallalar but denigrated Buddha. Their campaign verse went like this:

1. புத்தந்தரும் போதா வித்தருந்ததாதா
நித்தந்தரும் பாதா சித்தந் திரும் பாதா
சாக்கிய வேதம் தேக்கிய பாதம்
தாக்கிய ஏதம் போக்கிய பாதம்

This hostile counter campaign will show the core philosophy of Vallalar which is not known to the petitioner.

15.2. Before attaining 'Siddhi' in the last few weeks, he closeted inside the room and made occasional appearance. He gave lectures to his followers. At one stage, he even made it clear that even the present form of worship may not last long and made the following famous quote:

கடைவிரித்தோம் கொள்வாரில்லை
கட்டிவிட்டோம்

(We opened a shop. But no takers. We have packed).

16. Finale:

Hence the contentions raised by the petitioner are misconceived and lacks in merits. Hence in the light of the above, both the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

Note to Office:

Issue order copy on 29.3.2010.

K.CHANDRU, J.
PRE DELIVERY ORDER IN
W.P.NOS.22886 AND 22887
OF 2007

24.03.2010

திருஅருட்பீரகாச வள்ளலார் “சத்திய ஞானாசாரம்”

- ❖ எங்கும் பூரணராகி விளங்குகின்ற ஓர் உண்மைக்கடவுள் உண்டென்றும், அக்கடவுளை உண்மையன்பால் கருத்தில் கருதி வழிபாடு செய்தல் வேண்டும். அக அனுபவமே உண்மை.
- ❖ அக்கடவுளின் அருள், தயவு என்னும் கருணையால் கிடைக்கும். கருணை என்பது எல்லா உயிர்களிடத்தும் தயவும், ஆண்டவரிடத்தில் அன்புமே.
- ❖ தயவுக்கு ஒருமை வரவேண்டும். தனது அறிவு ஒழுக்கம் ஒத்த இடத்தில் தானே தோன்றுவது ஒருமையாகும்.
- ❖ தயவு விருத்திக்கு தடையாக இருக்கும் சமய, சாதி ஏற்பாடு முதலிய கட்டுப்பாட்டு ஆசாரங்களை விட்டொழித்து, சத்திய ஞானாசாரத்தை பெற்று “பொதுநோக்கம்” வருதல் வேண்டும்.
- ❖ உண்மையறிவு, உண்மையன்பு, உண்மையிரக்கம் முதலிய சுகுணங்களைப் பெற்று நற்செய்கையுடையராய் இருத்தல் வேண்டும்.
- ❖ தனித்தலைமைப்பதியாகிய “பெருங்கருணை” கடவுளின் அருளால் மரணம், பிணி, மூப்பு, பயம், துன்பம் முதலிய அவததைகள் நீங்கும்.
- ❖ உலகில் காணும் சமய, மத, மார்க்கங்களில் லட்சியம் வையாதீர்கள். எல்லாவற்றிற்கும் உண்மைப் பொதுநெறியாக விளங்கும் சுத்த சன்மார்க்கமே உயர்வுடையது.