
(2001) 10 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No. 17759 of 2001 and W.M.P. No. 26204 of 2001

A. Sankararaman

APPELLANT

Vs

The Government Tamil Nadu

RESPONDENT

Date of Decision : 05-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 10 MAD CK 0082

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : R. Subramaniam, for the Appellant; N.R. Chandran, Advocate General assisted by Mr. G. Sukumaran, Special Government Pleader on behalf of respondents 1 and 2 in both petitions and Mr. S. Thangamani, Advocate for the third respondent in both petitions, for the Respondent

Judgement

P. Shanmugam, J.—The petitioner prays for the issuance of a Writ of Mandamus directing the second respondent, namely, the Commissioner, Hindu Religious and Charitable Endowment Department to consider his representation dated 14.8.2001 and to decide the right of the third respondent to go abroad regard to the established usage and custom of Sri Kanchi Kamakodi Peedam at Kancheepuram. The representation dated 14.8.2001 is for a permission u/s 59 (1) of the Tamil nadu Hindu Religious and Charitable Endowment Act (hereinafter referred to as the Act). Section 59 coming under Chapter IV of the Act deals with the consent of the Commissioner to institute a suit to obtain a decree for removing the trustee of a math. Sub-Section (1) of Section 59 of the Act sets out the reasons based on which the consent in writing may be sought for. The relevant ground which the petitioner pursues his representation is Clause of Sub-Section (1) of Section 59 of the Act, which is as follows:

"his having ceased to profess the Hindu Religion or the tenets of the math".

2. According to the petitioner, the proposal of the third respondent to go abroad is contrary to the tenets of the math and therefore, he intends to file a suit and

seeks consent from the Commissioner. His request having not been answered by the second respondent, the writ petition has been filed.

3. The learned Advocate General, while taking notice on behalf of respondents 1 and 2, and while opposing the relief, submits that the writ petition is not maintainable and is premature. There is no scope for invoking Section 59 of the Act in this case so as to seek the jurisdiction of this Court to direct the second respondent to dispose of the representation or to give consent. The provision speaks of violation at present and he said situation has not come about for seeking permission. Any such order prohibiting the third respondent to go abroad, on the alleged contravention of the tenets of the math, will lead to a dangerous proposition violating the guaranteed fundamental rights of the third respondent.

4. Learned counsel, for the petitioner, in his reply, submits that his anxiety is only to prevent a possible disqualification, since he wants the services of the third respondent to continue for the benefits of the math and Hindu Religion.

5. After hearing the learned counsel for the petitioner and the learned Advocate General, I am of the view that the writ petition is not maintainable for the following reasons: As rightly contended by the learned Advocate General, Section 59 of the Act, which sets out the reason for a consent, is not attracted at this stage. As such, the third respondent has not gone abroad so as to attract the alleged disqualification. A mere intention or a proposal to leave the country will not attract the provision. There is no need to go into the merits of the matter at this stage, since according to the Advocate General, planning to go to China or Manasarovar will not attract any disqualification and that there is no bar, as such and the third respondent knows better about the religious custom or the tenets of the math. As I have indicated above, the representation filed only u/s 59 (1) of the Act dealing with disqualification, is not attracted and does not call for consideration of the representation at this stage. The petitioner has no legal right so as to invoke Article 226 of the Constitution of India for the issue of a Mandamus to the second respondent to consider the representation.

For all these reasons, the writ petition is dismissed. No costs. Consequently, the above W.M.P. is also dismissed.