
(2003) 08 KL CK 0033
In the High Court Of Kerala
Case No : O.P. No. 24797 of 2002

Ajithkumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Constitution of India, 1950 — Article 26
Guruvayoor Devaswom Act, 1978 — Section 6, 6A, 7(3)

Citation : (2004) 1 KLT 260

Hon'ble Judges : S. Sankarasubban, J; K.K. Denesan, J

Bench : Division Bench

Advocate : K. Radhakrishnan, Sajeev Kumar K. Gopal and Binoy Vasudevan, for the Appellant; Mohan C. Menon, Government Pleader, George Poonthottam, Reji Paul, Anil Xavier, Zakeer Hussain, N. Manoj Kumar, D. Somasundaram, U.K. Ramakrishnan, M.C. Sen, M.P. Sreekrishnan, Shahna Karthikeyan, K. Ramachandran, Rajit and P.N. Raveendran, for the Respondent

Judgement

S. Sankarasubban, J.—Sree Krishna Temple, Guruvayoor is a very ancient Temple of unique importance which owns extensive properties and endowments and in which millions of devotees from all over India and abroad are reposing their faith and belief.

2. Guruvayoor Devaswom Act, 1978, (hereinafter referred to as "the Act") was enacted to make provision for the proper administration of the Guruvayoor Devaswom. The salient features of the Act are the Constitution of a Managing Committee, appointment of a Commissioner and of an Administrator. The administration, control and management of the Devaswom are vested with the Committee constituted as stated in Section 4 of the Act. There are three permanent members in the Committee, viz., the Zamorin Raja, the Karanavan for the time being of the Mallisseri Illom at Guruvayoor and the Thanthri of the Temple. A representative of the employees of the Devaswom nominated by the Hindus among the Council of Ministers is a member. So also, not more than five persons, of whom one shall be a member of a Scheduled Caste, nominated by

the Hindus among the Council of Ministers from among persons having interest in the Temple. Thus there are nine members in the Committee. The term of the member nominated under Clause (d) or Clause (e) of Sub-section (1) of Section 4 was originally fixed as two years. Subsequently, it was enhanced to four years and by Act 20 of 2001, it was again reduced to two.

3. Chap. III of the Act deals with administration and establishment of the Managing Committee. The Administrator is appointed by the Managing Committee from among a panel of names suggested by the Government. The Administrator should be a person not below the rank of Deputy Collector. So far as the Commissioner is concerned, the Commissioner is an Officer not below the rank of Secretary to Government, who professes the Hindu Religion and believes in Temple worship, appointed by the Government. Section 5 of the Act deals with the term of office of non-official members, resignation and removal of such members and casual vacancies in their office. The duties of the Committee are mentioned in the Act itself. Powers and duties of Administrator are mentioned in Section 17 of the Act. The Administrator shall be the Secretary to the Committee and its Chief Executive Officer and shall be subject to the control of the Committee, have powers to carry out its decisions in accordance with the provisions of this Act.

4. Chapter IV deals with budget, accounts and audit. Section 21 (3) of the Act says that the Commissioner may, after giving notice to the Committee in the prescribed manner and after considering its representation, if any, make such alterations, omissions or additions in the budget as the Commissioner may deem fit and the Commissioner shall send a copy of the budget to the Government. Section 24 of the Act says that after completing the audit for any year or shorter period or for any transaction or series of transactions as he deems fit, the auditor shall send a report to the Commissioner. u/s 26 of the Act, the Commissioner shall send a copy of every audit report to the Committee and it shall be the duty of the Commissioner to remedy the defects or irregularities pointed out by the auditor and report the same to the Commissioner. u/s 26(2) of the Act, the Commissioner has got power to find out whether the Committee or any Officer or other employee of the Devaswom was guilty of misappropriation or willful waste of the funds of the Devaswom. After giving notice to the Committee or such Officer or other employee, the Commissioner shall surcharge it or him. So far as the meetings of the Committee are concerned, Section 7 of the Act fixes the quorum as 3.

5. The Guruvayoor Act was amended by Amendment Act 20 of 2001. Amendments were made to Section 5 and a new section was introduced as Section 6A. As per Section 2 of the Amendment Act, the term of office of the nominated members was reduced to two. Section 6A of the Act is as follows: "Where by reason of the expiry of the term of office of the members nominated under Clause (d) or Clause (e) of Sub-section (1) of Section 4 or by resignation, or otherwise, any vacancy occurs in the Committee and the number of the

remaining members cannot constitute the quorum for a meeting of the Committee as specified in Sub-section (3) of Section 7, then notwithstanding anything contained in this Act, the Commissioner shall hold charge and exercise the powers and perform the functions of the Committee, until the vacancy is filled up as provided in this Act to constitute the quorum". Section 3 of the Amendment Act says that in Sub-section (3) for the quorum the number of members to be inserted is four instead of three.

6. Immediately after the Amendment Act came into force on 31.12.2001, the terms of the nominated members expired and so they ceased to be the members of the Committee. Government did not nominate the members immediately and it was done only after four months. With the result, Section 6A came into operation and the Commissioner was put in charge of the Committee.

7. Originally, the Original Petition was filed challenging the termination of the existing Administrator and the appointment of the new Administrator on the ground that the Commissioner has no power without noticing the introduction of Section 6A. Subsequently, the Original Petition was amended and as per the amendment of the Original Petition, prayer was made to declare that Sections 3 and 4 of the Amendment Act, 2001 as unconstitutional, invalid and void. A new paragraph was inserted as paragraph 7(a) and grounds were raised challenging the validity of Sections 3 and 4 of the Amendment, viz., the constitutional validity of Section 6A and increasing the quorum from 3 to 4.

8. The main ground of attack is that by the introduction of Section 6A the State Government through the amendment is taking over the administration, control and management of the Devaswom through its Secretary, who is the Commissioner of Guruvayoor Devaswom. The right of the denomination is lost by this. The appointment of a new Administrator was attacked on the ground that he was not a person, who was holding the rank of Deputy Collector under the Act. The Administrator appointed does not belong to the Revenue Service.

9. A counter affidavit to the amended Original Petition was filed by respondents 1 and 2. In the counter affidavit, it is stated that this Court has upheld the validity of Section 6 which deals with the supersession of the Committee. As per Section 6, when the Committee is superseded, the Commissioner is put in charge of the Committee for the time being. It was further contended that the Government has got power to constitute a Committee for the administration of the properties of the Devaswom and it was not religious in nature. There is nothing wrong in raising the quorum to 4.

10. Counter affidavits were also filed by respondents 3, 4, 5, 8 and 9. The fourth respondent is the Zamorin Raja of Kozhikode, who is a permanent member of the Committee. It is stated in the counter affidavit filed by the fourth respondent that the amendments introduced by Ext.P2 Act are absolutely illegal and arbitrary. The right of the permanent members to manage the Devaswom is taken away by the amendments made. By delaying the nomination of the

members under Cls.(d) and (e) of the Committee and by virtue of the amendment made it has now become possible for the Government to take over the administration of Guruvayoor Devaswom. The amendments are therefore arbitrary.

11. We heard learned counsel for the petitioner Sri. K. Radhakrishnan (Sr.), learned Government Pleader Sri. Mohan C. Menon for the fourth respondent, Sri. D. Somasundaram for the fifth respondent and Sri. George Poonthottam for the 8th respondent.

12. It has now become clear that the Temple belongs to the denomination of Hindus believing in Temple worship. Article 26 of the Constitution of India guarantees to every religious denomination or any section thereof subject to public order, morality and health, the right to (a) establish and maintain Institutions for religious and charitable purpose (b) manage its own affairs in matters of religion (c) own and acquire movable and immovable property and (d) administer such property in accordance with law. Cls.(c) and (d) of Article 26 of the Constitution of India guarantee to a religious denomination a right to acquire and own property and to administer such property in accordance with law. The right of the denomination under Article 26 came up for consideration before the Supreme Court in many decisions. A number of decisions were cited before us and we are only referring to the decisions, which are just necessary.

13. In *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, it was held as follows: "In regard to affairs of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but under Article 26(d), it is the religious denomination itself which has been given the right to administer its property in accordance with any law which the State may validly impose. A law which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority would amount to violation of the right, which is guaranteed by Article 26(d) of the Constitution". In *Krishnan v. Guruvayoor Devaswom* 1979 KLT 350 a Division Bench of this Court dealing with the Guruvayoor case, held as follows: "As already noticed, religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Under Article 26(d) a religious denomination enjoys complete autonomy in the matter of deciding as to what rights and ceremonies are essential according to the tenets of the religion and no outside authority has any jurisdiction to interfere in such matters".

14. In *Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another*, the Supreme Court held as follows: "The right to establish a religious institution or endowment is a part of religious belief or faith, but its

administration is a secular part which would be regulated by law appropriately made by the Legislature. The regulation is only in respect of the administration of the secular part of the religious institution or endowment, and not of beliefs, tenets, usages and practices, which are an integral part of that religious belief or faith". In that case, in paragraph 26, it was held as follows: "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 (B) of Article 26 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....." The court considered the question whether the hereditary trustee should be the Chairman of the Committee. In dealing with this contention, the court held as follows: "Though abolition of hereditary right in trusteeship u/s 16 has already been upheld the charitable and religious institution or endowment owes its existence to the founder or members of the family who would resultantly evince greater and keener responsibility and interest in its proper and efficient management and governance. The autonomy in this behalf is an assurance to achieve due fulfilment of the objective with which it was founded unless in due course, foul in its management is proved. Therefore, so long as it is properly and efficiently managed, he is entitled to due freedom of management in terms of the deed of endowment or established practice or usage. In case a board of trustees is constituted, the right to preside over the board given to the founder or any member of his family would generate feeling to actively participate, not only as a true representative of the source, but the same would also generate greater influence in proper and efficient management of the charitable or religious institution or endowment. Equally, it enables him to persuade other members to follow the principles....." The court, thereafter held as follows: "Our view that the board of trustees should be headed either by the founder or a member of his family, would go a long way in seeing the fulfilment of the wishes and desires of the founder".

15. A review of the above decision shows that the Government is empowered to frame law to administer the property under Article 26(d) of the Constitution of India. By that law, the denomination should not be divested its right of management. The relevant section is Section 6A of the Act. It is stated as follows:

"6A. Commissioner to be in charge of the Committee:- Where by reason of the expiry of the term of office of the members nominated under Clause (d) or

Clause (e) of Sub-section (1) of Section 4 or by resignation, or otherwise, any vacancy occurs in the Committee and the number of the remaining members cannot constitute the quorum for a meeting of the Committee as specified in Sub-section (3) of Section 7, then notwithstanding anything contained in this Act, the Commissioner shall hold charge and exercise the powers and perform the functions of the Committee, until the vacancy is filled up as provided in this Act to constitute the quorum".

As per the section the number of members of the Committee for quorum is 4. On the expiry of the term of the office of the nominated members or by resignation, the Commissioner shall hold charge and exercise the powers and perform the duties and perform the functions of the Committee, until the vacancies are filled up as provided in the Act to constitute the quorum. Going by the decision of the Supreme Court referred to above, the entrustment of the management to the Commissioner is unconstitutional. The Commissioner does not represent the denomination as stated by the Supreme Court and the entitlement of the management to the Officer of the Government is contrary to the principles under Article 26(d) of the Constitution of India. Hence, Section 6A of the Act will be unconstitutional. But learned Government Pleader submitted that Section 6A of the Act is contemplated only for a short period and there is nothing illegal in entrusting the administration to the Commissioner for a short period. He further relied on Section 6 of the Act, which provides for supersession of the Committee and entrusting the management to the Commissioner for a period of six months. Learned Government Pleader further submitted that in the decision in *Krishnankutty v. State of Kerala* ILR 1985 (1) KER 701 Section 6 of the Act has been upheld. Hence, it was contended that there is nothing illegal in Section 6A of the Act. So far as this argument is concerned, we are of the view that both Section 6 and Section 6A of the Act are different. Section 6 of the Act applies in a situation where allegations of corruption are made against the entire Managing Committee, which is a serious one. When the Managing Committee is not there, then the management is given to the Commissioner. It cannot be compared with the situation u/s 6A of the Act. The situation u/s 6A of the Act occurs when there is delay in making nomination. Further three members of the Committee are still there. According to us, these facts make it different from the facts u/s 6 of the Act. Section 6A of the Act does not prescribe any period within which the nomination should be made. In the present case, it took four months time for the executive to nominate the members. Hence, the argument of the learned Government Pleader cannot be accepted.

16. According to us, striking down Section 6A of the Act will not solve the problem. The problem can be solved by managing the affairs of the Devaswom by the nominee, viz., the Commissioner and the three permanent members. Since the permanent members are already in the Committee, the three members and the Commissioner can manage the affairs till fresh nominations are made. We read down Section 6A of the Act like that. The management cannot be done by the Commissioner alone.

17. The next contention was regarding the fixation of the quorum at 4, Even though an attempt was made by the learned counsel for the petitioner that Section 7(3) of the Act was enacted with mala fide, we don't agree. The Legislature in its wisdom has fixed the quorum as 4 and we don't find anything illegal or unconstitutional. Fixation of the quorum as 4 is upheld.

18. The next contention is with regard to the appointment of Administrator. Now, the Administrator was appointed by the Commissioner. We are told that after the Committee came into force, it gave approval for the appointment of the new Administrator. The only contention with regard to the Administrator is that he does not belong to the rank of Deputy Collector. Learned counsel for the petitioner submitted that since it is stated that person not below the rank of Deputy Collector should be appointed as Administrator, only a person belonging to the Revenue Wing of the Government will be appointed. Learned counsel referred to Article 311 of the Constitution of India and relied on the decision reported in Divisional Personnel Officer, Southern Railway Vs. S. Raghavendrachar, , where the expression "rank" in Article 311(2) has reference to a person's classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs. Losing some places in the seniority list is not tantamount to reduction in rank. According to us, the word "rank", if we read in the setting in which it is held need not be that it should be from the revenue service. Then the only thing is that he should be on the same position of a Deputy Collector.

19. In the result, the Original Petition is disposed of as follows: Section 6A of the Act is read down by entrusting the management to the three permanent members and the Commissioner instead of the Commissioner alone as in the Statute (2) The appointment of the Administrator is upheld.