

(1919) 04 BOM CK 0012

In the Bombay High Court

Case No : First Appeal No"s. 75, 76, 78, 80, 121, 122, 149, 206 and 223 of 1915

Asharam Ganpatram Gor

APPELLANT

Vs

The Dakore Temple Committee

RESPONDENT

Date of Decision : 11-04-1919

Acts Referred:

Citation : (1920) 22 BOMLR 232 : 55 Ind. Cas. 956

Hon'ble Judges : Hayward, J; Basil Scott, J

Bench : Division Bench

Judgement

Hayward, J.—Those appeals and applications relate to the rules which have been framed under clause 12 of" this Scheme and sanctioned in 1914 by Mr. Kennedy, the District Judge of Ahmedabad. The appeals have been filed as appeals from orders in execution passed under clause 12(7) of the Scheme by the District Judge of Ahmedabad. We think we ought to deal with them as such as no objection has been taken. No orders need therefore be passed on the applications filed ex majore cautela as applications under clause 20 of the Scheme reserving general power of interference to the High Court. We have heard Sir Chitnanlal Setalvad on behalf of the Tapodhan Shevaks in Appeal 80 of 1915, Mr. Mehta on behalf of the Khedaval Shevaks in Appeal 79 of 1915 and Mr. Inverarity on behalf of the Shrigor Shevaks in Appeal 78 of 1915. We have heard Diwan Bahadur Rao on behalf of the Tarwadi Mewada Gors, represented in the second suit, in Appeal 122 of 1915, Mr. B. G. Rao for other Tarwadi Mewada Gors, so represented but by mistake struck out of these proceedings by the District Judge, in Appeal 206 of 1915, Mr. Divatia on behalf of other Tarwadi Mewada Gors, not so represented, in Appeal 75 of 1915, and Mr. Thakor on behalf apparently of an altogether different group of Gors in Appeal 76 of 1915. We have heard Diwan Bahadur Rao again on behalf of the representative of the family of Tambekar in Appeal 121 of 1915. We have, on behalf of the Temple Committee, heard Mr. Jayakar, and finally, on behalf of the general public, the Advocate General.

2. The contest has been mainly over the rules restricting by payment for passes entry into the inner sanctuary of the temple known as the Nij Mandir. But this was the very dispute between the Shevaks and the Tarwadi Mewada Gors decided in the other suit by Mr. Dayaram Gidumal District Judge of Ahmedabad. He observed in his judgment: "We have almost unanimous evidence to the effect that before the Shevaks made their rules in 1883, their permission for entering the Nij Mandir was only taken at the time of the Sakribhog Darshan and at no other and even at Sakribhog time no fixed fee was ever demanded or paid"; and again "But although every one could go into the Nij Mandir every one could not go up on the Sinhasan. The idol wears ornaments worth about a lakh...It stands to reason, therefore, that permission should be taken for mounting the platform. It is needed by those who want to do Panchamrit or Kesar Shan or Charanasparsh. The regulation of these must in the nature of things be done by the Shevaks in attendance... The condition regarding cleanliness does not appear to have been rigorously enforced but there is no doubt that Shevaks are entitled to refuse permission to any one not following the usual rules regarding personal cleanliness...The Shevaks are to see to decency in worship but this power does not mean that they can make a sweeping rule demanding tickets and fees for entrance. I therefore hold that according to the established practice of the institution the Gors were not prevented from entering the Nij Mandir whenever it was open or doing any Dharma Kriya in the said Mandir but that whenever such Kriya had to be performed on the Sinhasan permission, express or implied, used to be taken from the Shevaks in attendance, which permission was never refused to decent worshippers." He then proceeded to show that the Gors were before the rules free also to enter for Darshan or Dharma Kriya with their Yajmans and that before 1883 the Shevaks had no right to demand money from them as entrance fee for the Nij Mandir. He next discussed the question whether the Gors could take whatever was given to them by their Yajmans in the Nij Mandir and came to the conclusion that they could whether given inside or outside the Nij Mandir and he remarked that "it could appear from some of the witnesses that they consider it a matter of conscience to pay the Gor in the Nij Mandir." He also stated generally. There is therefore not the least doubt that before 1883 every Hindu (excepting certain low caste people like Mochis, etc.) could go freely into the Nij Mandir." He then considered whether the Shevakshad any right to change the old practice of the institution and frame the rules of 1883 for fixed fees and wrote: "All I can say is that nothing can be more scandalous, nothing more unjustifiable ... They have promulgated these novel rules which would make the hair of any Hindu loving his country's institution to stand on end. Such open sale of Darshan tickets has never been practised anywhere and not a single witness except the 3 or 4 infatuated ones, who said the Shevaks were owners...could say a word in favour of the Shevaks" power to frame such rules." These conclusions were confirmed and even extended by the exclusion of the exception in favour of the Sakribhog Darshan by the High Court. Birdwood J. observed: "The Shevaks are not the owners of the temple...they are liable, as trustees, to render an account of their management. This was the position assigned to them by the

judgment...in Manohar Ganesh Tathbekar v. Lakhmiram Govindram ILR (1887) 12 Bom. 247. And we do not think that by virtue of their office, as defined in that ease, they have the authority to levy fees in respect of any public religious services held in the temple ILR (1890) 15 Bom. 309." And Parsons J. remarked: "Such of the rules which forbid admission to the Mandirs, except on the production of a pass to be obtained on payment of a fee, are undoubtedly illegal and ultra vires. Rules can be made and enforced by the Shevaks to ensure good order and decency of worship and to prevent overcrowding in the" temple, but subject to these rules the right of entrance into a public temple, such as the present, for the purposes of worship, of the members of a caste entitled there to worship is a free right and cannot be prohibited or sold Ibid p. 321. No appeal was made from this decree of the High Court to the Privy Council. It has, however, been argued on behalf of the Shevaks with the support of the Temple Committee that the rules have been validated by having been in force since 1883 and by having been revived in 1888 by the Receiver in the present suit Manohar Ganesh v. Lakhmiram with the approval of Mr. McCorkell, the District Judge of Ahmedabad, and in 1892 of the High Court and by having been continued in force pending the framing of fresh rules under clause 12(4) by the provisions of clause 13 of the Scheme of Management prepared in 1906 by the High Court and finally sanctioned in 1912 by the Privy Council. It seems to us, however, that these arguments have no solid foundation as urged on behalf of the Gors and the general public. The radical objections to the rules have been repeated by Mr. Kennedy the District Judge of Ahmedabad thus: " The first question then as regards these rules is the pass system. There is no objection to the pass system itself by which only pass holders are admitted with certain exceptions into the Nij Mandir and where special passes are issued for particular acts of devotion. But a great deal of objection is raised to the levy of fees for the passes. It does seem to me somewhat of a scandal that the opportunity of acquiring religious merit should be sold in this way formally and nakedly. I do not suppose any other temple in India does anything of the sort. There are fees no doubt levied at other temples ad valorem of the religious benefit but these are secular taxes imposed by the Government." He did not consider the levy of fees necessary to prevent overcrowding but did not press his objections in view of the fact that the levy had been practised for at least thirty years and was strongly favored by the Temple Committee. He failed, however, to notice that this practice had been in question from the very outset and had been declared illegal and ultra vires in the other suit by his predecessor Mr. Dayaram Gidumal in 1888 and in 1890 by the High Court. Its revival or rather survival under the Receiver from 1888 in the present suit was a temporary arrangement pending the settlement of the Scheme of Management and was so sanctioned by Mr. Dayaram Gidumal's successor Mr. McCorkell in 1891 and in 1892 by the High Court. It was similarly permitted as a temporary arrangement only pending the framing of regular rules under clauses 12(4) and 13 and Schedule 5 of the Scheme in 1906 by the High Court and in 1912 by the Privy Council. It seems to us, therefore, that the rules prescribing the pass system have been shown to be illegal and ultra vires in so

far as they have imposed fixed fees in payment for the passes, whether upon the Gors or the general public entitled to worship in the. It has to be remembered that the rules when sanctioned become a part of the Scheme of Management under clause 12(7) subject under clause 20 to the control of the High Court and that it was provided that the Scheme should be in accordance with the established practice of the institution by the preliminary judgments both of the High Court and of the Privy Council.

3. [His Lordship then proceeded to deal with the rules seriatim].