
(1958) 04 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 7 of 1956

Bhimsen Gochhikar

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 30-04-1958

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(5), 31(2)
Sri Jagannath Temple (Administration) Act, 1952 — Section 2
Sri Jagannath Temple Act, 1954 — Section 15(5), 21(2), 21(3), 21(4), 24(2)

Citation : AIR 1959 Ori 17

Hon'ble Judges : R.L. Narasimham, C.J; P.V.B. Rao, J

Bench : Division Bench

Advocate : M. Mohanty, for the Appellant; Govt. Advocate and Asst. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J.—This is a petition under Article 226 of the Constitution by one of the sebakas of the Temple of Lord Jagannath at Puri, known as Pratihari, for a declaration that the Shri Jagannath Temple Act (1954 (Act 11 of 1954), (hereinafter referred to as the Act), is ultra vires the State Legislature and not capable of being given effect to.

2. This petition was heard along with O. J. C., No. 321 of 1955 : (AIR 1959 Orissa 5) (A) in which the Raja of Puri challenged the validity of the Act. Most of the constitutional questions have been fully discussed in my judgment in that petition which has been delivered today. Mr. M. Mohanty on behalf of the petitioners, laid special emphasis on the fact that the Temple of Sri Jagannath at Puri (hereinafter referred to as the Temple) belongs to a special sect of Hindus known as the followers of "Jagannath Dharma" who form a separate denomination of their own, within the meaning of Article 26 of the Constitution. This question has been fully discussed in my judgment in O. J. C. Ram Chandra Deb Vs. The State of Orissa, and it is unnecessary to repeat it here.

3. A few special points that were taken up in this petition may now be noticed. The petitioner and other Pratiharis who form an association known as Pratihari Nijog are undoubtedly hereditary sebakhs of the Temple whose rights have been recorded in the record of rights prepared by the Special Officer, under the Orissa Sri Jagannath Temple (Administration) Act 1952 (Orissa Act XIV of 1952).

That record is final subject to the decision of the District Judge on an application made by a sebak, as provided in Section 6 of that Act, as amended by Orissa Act I of 1954. By Section 8 of the Act the provisions of Orissa Act XIV of 1952 were made apart of the Act. Mr. M. Mohanty on behalf of the petitioner attacked the definition of the expression "endowment" occurring in Section 2 of the 1952 Act. Especially the Explanation to that definition. For the purpose of appreciating his argument, it will be useful to quote the relevant provisions of that Act :

"2. In this Act unless there is something repugnant in the subject or context :

(a) "endowment" means all property belonging to or given or endowed for the support of the temple or given or endowed for the performance of any service, including the service of offerings to the deity or charity connected therewith, and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the sebak, pujari or other employee of the temple:

Explanation : Any gift, inam, or muafi or sebak or jagir granted to a sebak, pujari or other employee of the temple or to any other person for the performance of any service, including the service of offerings to the deity or charity in or connected with the temple, shall not be deemed to be a personal gift to the said sebak, pujari, or other employee, but shall be deemed to be an endowment.

(b)

(c) "specific endowment" means any property or money endowed for the performance of any specific service or charity in the temple."

Sub-section (5) of Section 15 of the Act casts on the Committee the duty of ensuring that the funds of the specific and religious endowments are spent according to the wishes, so far as may be known of the donors.

4. Mr. Mohanty contended that the petitioner and some other sebakhs attached to the Temple have a large number of jajmans (pilgrims) who come from different parts of India, utilise the services of these Pandas for performing their worship in the Temple, and then after giving them some gifts for the services rendered by them, further set apart some money or property in the hands of the petitioner and other Pandas for offering bhog to Lord Jagannath and distributing the Mahaprasad either amongst the members of the Panda's family or to a limited class of people.

Mr. Mohanty urged that any property specially endowed for that purpose would

be the personal property of the panda, but that the Act by widening the definition of the expression "endowment" attempts to include that property also and to control the administration of the same, thereby interfering with the petitioner's fundamental rights guaranteed by Article 19(1)(f).

5. The definitions of the expressions "endowment" and "specific endowment," in Section 2 (c), of Orissa Act XIV of 1952 are very similar to those given in Section 6 (14) and (16) of the Madras Hindu Religious and Charitable Endowments Act 1951 (Madras Act XIX of 1951), whose constitutionality was under challenge before the Supreme Court. I may quote these definitions for purposes of comparison :

"6 (14). "Religious endowment or endowments" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature, connected therewith, or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder, or other employee of a religious institution.

Explanation : Any inam granted to an archaka, service-holder, or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the Archaka service-holder or other employee but shall be deemed to be a religious endowment. Explanation II:

(16) "Specific Endowments" means any property or money endowed for the performance of any specific service or charity in a math or temple or for the performance of any other religious, charity, but does not include an inam of the nature described in Explanation I to Clause (14)."

Sections 32 and 33 of the Madras Act contained detailed provisions for the enforcement of charity or service in respect of these specific endowments. In The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., their Lordships of the Supreme Court held that all the provisions of the Madras Act except those which were specifically enumerated by them in that decision, were valid. It must therefore be held that the aforesaid definitions and Sections 32 and 33 of the Madras Act are not open to any constitutional objection.

The only material difference between the definitions in the Madras Act and in Orissa Act XIV of 1952 is that in the latter Act the words "of a public nature" are not found after the words "for the performance of any service or charity." Moreover, the service of offerings to the Deity is specially included in Section 2 (a) of the Orissa Act and, also in the Explanation to that clause.

In view of the absence in Orissa Act XIV of 1952 of the significant words "of a public nature" occurring in the Madras Act Mr. M. Mohanty is perhaps right in his

contention that by virtue of the wide definition given in Section 2 (a) the Orissa Act attempts to control even purely private religious endowments created by pilgrims by entrusting funds with a Panda of Puri with instructions to utilise the income thereof for offering bhog to the Lord, either daily or at periodical intervals. For the purpose of this application it is unnecessary to decide finally whether such an endowment will be a private religious endowment or a public religious endowment.

It will depend very much on the instructions given by the donor regarding the eventual disposal of the Mahaprasad after it had been offered to the deity. Prima facie every offering of bhog to the deity becomes its property unless the intention of the donor can be clearly established; see (Ramaswami v. Hindu Religious Endowments Board AIR "1935 Mad 755 (C); Rambrama Chatterjee Vs. Kedar Nath Banerjee and Others, ; and Manohar Ganesh Pambekar v. Lakshmiram Govindram ILR 12 Bom 247 (E).

6. But whether such an endowment is a public religious trust or a private religious trust, it is clearly connected with the Temple inasmuch as, the bhog is required to be offered to the deity at Puri and nowhere else. Hence, the control over such an endowment may appropriately be included in a statute dealing with the Temple and its endowments unless there are constitutional objections.

The State Legislature is competent to legislate both for public and private religious endowments (See item 28 of List III) but in the case of private religious endowments there may be a proprietary interest in the beneficiaries and the Legislature cannot take away that interest and thereby contravene Article 19(1) (f) or Article 31(2). But the provisions of the Act would not justify the view that an attempt is" made to appropriate the income of a private religious trust for the purposes of the Temple.

All that Sub-section (5) of Section 15 of the Act says is that the Committee should see that the funds of the specific and religious endowments are spent according to the wishes, so far as may be known, of the donors, that is to say, the Committee's powers are limited to seeing that the Pandas and other trustees of private religious endowments offer bhog to the Lord according to the wishes of the donors. The subsequent appropriation of the Mahaprasad by the beneficiaries of the trust is; not affected by the Act. The relevant provisions of the Act are merely regulatory and not confiscatory; and they do not impose unreasonable restrictions on the right of the beneficiaries. Hence there is no contravention of the aforesaid two Articles of the Constitution.

7. Mr. Mohanty then contended that drastic powers have been conferred on the Administrator by Section 21 (2) (e) and (f) and by Section 21 (4) of the Act to interfere with the rights of hereditary sebaks to enjoy the emoluments (Kheis) attached to their duties and that the said provisions offend Article 19(1)(f) of the Constitution. This argument does not appeal to me.

The Administrator of the Temple must necessarily have powers to decide disputes

amongst the various sebakas of the Temple and require them to perform their duties according to custom and usage, as mentioned in the record of rights. He must also necessarily have power to punish a sebak for failure to discharge his duties. The Act, however, does not give him arbitrary powers. Section 21 (3) confers a right of appeal to the Committee, against the decision of the Administrator and the aggrieved party is also given a further right to apply to the Civil Court. Section 24 (2) expressly saves this right.

Thus, so long as a judicial tribunal is given the ultimate power to decide whether any order of the executive authority which affects the right of property of an individual is justifiable or not that statutory provision cannot be held to impose an unreasonable restriction on the right of property. This principle was clearly laid down by the Supreme Court in *Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another*, while discussing sections 38 and 39 of the Orissa Hindu Religious Endowments Act dealing with the settling of a scheme.

8. For the aforesaid reasons, I would dismiss this petition with costs hearing fee Rs. 50/- (Rupees fifty only).

P.V. Balakrishna Rao, J.

9. I agree.