

(2001) 08 MAD CK 0129
In the Madras High Court

C.A. Jagannathan

APPELLANT

Vs

T.E. Srinivasan and Others

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 70

Citation : (2001) 3 LW 459

Hon'ble Judges : Prabha Sridevan, J

Bench : Division Bench

Judgement

Prabha Sridevan, J.—The only ground of appeal raised here is whether the suit is maintainable u/s 70 of H.R.& C.E. Act ("the Act" in short).

2. The appellant was rendering "Ulthurai" service at the Devarajaswamy temple in Kancheepuram. He had to go overseas for personal reasons. When he returned and requested resumption of duties as "Ulthurai", objections were raised by the devotees on the ground that he had disqualified himself by going overseas. The Deputy Commissioner, H.R.& C.E. in his revision dated 3.2.1993 u/s 21 of the Act reversed the order of the Deputy Commissioner. Against this, a suit u/s 70 was filed by the respondents herein to set aside the order of the Commissioner. The suit was decreed and therefore the "disqualified" person has filed the appeal.

3. Mr. T. Srinivasa Raghavan, appeared for the appellant. He made it clear even at the outset that he would not be arguing on merits, namely he would not argue whether it was correct to hold that overseas travel made a person "unclean" in so far as rendering service to God is concerned. He would restrict his arguments only to the maintainability of the suit. According to the learned Counsel, the Deputy Commissioner had no power to deal with the question whether the person earns disqualification by going abroad. His powers are circumscribed by Section 63 of the Act, he cannot exercise his jurisdiction beyond the statutory parameters. The order was not one passed u/s 63. So the Commissioner could not have passed his order u/s 69 of the Act. In fact, the order of the

Commissioner makes it clear that it was only an order u/s 21 of the Act. A dispute regarding the right of the appellant to carry on his duties as a servant in the temple has to be decided only according to the Act. The civil courts jurisdiction is barred in view of Section 108. He submitted that the appellant is not an officer appointed under the provisions of the Act and therefore is not liable to be considered as a Government servant. His right to render service was a hereditary right and therefore, he was entitled to carry on his duties until his death. He submitted that there was absolutely no justification for the objectors to prevent from rendering his service. In Sreerangam, a priest who had gone overseas had been permitted to render service. Therefore, that cannot be any serious disqualification. In any event, appellant had done the "prayaschitha" which are the expiatory rituals prescribed for a person who is incurred a disqualification. He had therefore purified himself and cannot be prevented from rendering service. The Deputy Commissioners power is laid down in Section 63 of the Act and according to him, this dispute does not fall u/s 63 a, b, c, d, f, or g. Even with regard to Section 63(e), he would submit that it deals only with the entitlement of a person to any honour, emolument or perquisite and the customer establish usage of the religious institution. According to the learned Counsel, the right to perform service is neither an honour nor emolument or perquisite. He would submit that the terms should be read ejusdem generis and the other categories are clearly not applicable to the instant case. Section 69 of the Act deals with appeals to the Commissioners. In this case, the appellant did not file an appeal u/s 69. Therefore, his order was not one passed u/s 69(1) of the Act. It also cannot be one u/s 69(2). Section 70 clearly lists the various orders against which a suit would lie. An order u/s 21 is not enumerated under that. If one looks at Section 21, it gives the Commissioner very wide powers of revision either suo moto or on application. But no suit lies against this order. If at all the party is aggrieved by an order u/s 21, he can approach the Government u/s 114 to call for and examine the record of the Commissioner. u/s 114, the Government has the power to call for and examine the records of the Commissioner and modify, annul, reverse or remit such an order. So this suit u/s 70 is not maintainable. The respondents cannot maintain a suit under Order 7, Rule 1, C.P.C. since they are barred from doing so u/s 108 of the Act. Therefore, he would submit that the trial court should have rejected the suit as not maintainable and the appellate court has the same powers as the trial court and ought to dismiss to suit.

4. The Counsel for the 2nd respondent temple Mr. R. Subramanian would submit that the appellant had reached the age of superannuation. Therefore, the question raised itself is purely academic and the exercise of the court would be one in futility.

5. Mr. G. Sukumar, Special Government Pleader for H.R.& C.E. submitted that the appeal suit should be dismissed as not maintainable since the order was one passed u/s 21. He would submit that, the 1st respondent cannot take shelter u/s 9, C.P.C. claiming that the court will have jurisdiction to try all the suits of the

civil nature when there is a specific bar under the Act. The 1st respondent may have availed of the remedy by approaching the Government to examine the orders of the Commission u/s 14 of the Act or perhaps invoked the Article 226 of the Constitution of India; but most certainly a suit u/s 70 is not the proper remedy. The appeal is not maintainable and is barred and is liable to be dismissed.

6. Mr. S. Parthasarathy of Sarvabhauman Associates appeared for R. 1 who is the contesting respondent viz., the plaintiff who filed the statutory suit u/s 17 to set aside the order of the Commissioner. He submitted that the appellant was clearly disqualified. The "shastras" provide that a person who has gone overseas cannot come near the idol and this temple namely Devarajaswami Temple has been observing the tenets of "Dharmashastras" and "Agamas" and anyone claiming a hereditary right to render service to the temple is bound by the rules and regulations of the temple. A person cannot violate these rules and then insist that he be permitted to resume his duties either on the ground that it is a fundamental right or a hereditary right. He also submitted that courts as a rule are restrained from interfering with the religious observances of religious institution. He relied on the following judgments: (i) Samba Nataraja Dikshitar Vs. Kalyanasabesa Dikshitar, the present Secretary to the Podu Dikshitars of Sri Sabhanayagar Devasthanam, ; (ii) Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay, (iii) The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., (iv) Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, (v) Seshammal and Others, Vs. State of Tamil Nadu, and (vi) A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, to support his contentions. He submitted that there cannot be any doubt that the orders passed by the Deputy Commissioner clearly came u/s 63(e). An appeal there against to lay the Commissioner u/s 69. If so, the right to file a statutory suit is available to the 1st respondent. The suit cannot be dismissed as not maintainable. But, if it is an order not u/s 69, then it is an order against which no appeal or suit is provided for and therefore, the bar of Section 108 will not operate. So the suit can be treated as a suit on the Order 7, Rule 1, C.P.C. Therefore, looked at from either angle, the suit is clearly maintainable. He also submitted that even on merits, the first respondent had a good case, but since the counsel for the appellant had stated that he would stand or fall by this issue of maintainability of the suit, he would refrain from making any other submission except that the court of law cannot interfere with the established customs or usage of a temple. According to him, the courts have no power to do it. Therefore, this notice maintainable and the appeal therefore should be dismissed.

7. It might seem anachronistic in these days of jet travels and shrinking globe to even consider the question whether overseas travel would amount to disqualification. The very idea might seem so preposterous that the knee-jerk response would be to hold that there cannot be any disqualification because a person had gone abroad. This is one point of view. Another point of view is to

look at it like a social club which forms its own rules and regulations of permitting entry to the club premises. It might appear totally incomprehensible to a person as to why the club should insist on a person wearing a coloured shirt or proper shoes and-not slippers before he is permitted entry. One remembers the famous incident where the artist M.F. Hussain was prevented entry into a club because he wore slippers. But those are the rules of the club and the person who wants to enter the club is bound to follow the rules. No one can knock on the doors of the court praying for a mandatory order to permit entry into the club. This is another angle.

8. But here, we must examine whether the Deputy Commissioner had the power to consider the objections of the respondents and others to prevent the appellant from resuming his duties. Section 63(e) of the Act reads as follows:

Subject to the rights of suit of appeal hereinafter provided, the Deputy Commissioner shall have power to enquire into and decide the following disputes and matters:-

(a) --

(b) --

(c) --

(d) --

(e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter:

(f) --

(g) --

9. If at all any Sub-sec. of Section 63 applies, it can only be (e) and therefore, we will examine only 63(e). This Sub-sec. relates to two kinds of disputes, one is whether either by custom or otherwise a person is entitled to any honour, emolument or perquisite in any religious institution and the other is what is the established usage of a religious institution in regard to any other matter. Should the second half of the sub-section be read along with the first half so as to deal with the established usage of the institution in relation to entitlement of any person to any honour, emolument or perquisite? I think not. One reason for this is, the first half of the sub-section is separated by a semicolon. Therefore, the second half must be read disjunctively. The section itself makes it clear that the words "established usage" is not with the relation to a person's honour, emolument or perquisite, because it says that it is in relation to any other matter. Therefore, the only construction possible is that Section 63(e) gives the Deputy Commissioner the power to examine whether there is any established usage prevalent in the religious institution relating to any matter other than the right to honour etc. If a dispute arises whether a certain issue must be decided in

one manner because of established usage, he has to decide whether such a usage exists and whether it is an established usage of the religious institution. It is very clear from a reading of the Deputy Commissioner's order in this case that he had kept this in mind while deciding the issue. That there is a dispute is very clear. There are about 16 persons who had given their statements before the Deputy Commissioner that the appellant should be allowed to resume his office and about 27 persons had given their statements that he should not be allowed to resume office. The Deputy Commissioner had considered in detail the various statements. One such person who had given his objections is Yagyavara Thathachariar. He had submitted that temples have certain common "dharma"s. Vaishnava temples have some specific common dharmas and each temple has its own special rules. This particular temple follows the Vaishnava "Pancharathra Agama" and poojas are offered according to this and the person performing pooja must also follow this. 40 qualifications are prescribed for a person performing pooja and kinkarya and the person who goes abroad becomes a pathitha, a fallen or a disqualified person. It is not possible to compare the practice of this temple with other temples. This temple has never followed other temples. This temple cannot follow what is permitted in Sreerangam. Previously in this temple, one Ragava Battar went to Rangoon. The then administration did not permit him to resume his right to perform pooja. A person who goes abroad can do certain expiatory acts which are called "prayaschithas". Performance of these "prayaschithas" may make a person eligible to do certain personal rites or rituals. It will not render him eligible to perform the poojas in a temple.

10. In contrast, the persons who have supported the appellant have stated that the resumption of kinkaryas by the appellant will in no way affect the kinkaryas performed by anyone else. In the changing modern world, it is only prudent to move with the times and what was considered a "dosha" or a defect in the olden times cannot be continued to be considered a defect. In olden times, overseas travel took several days and even months. Therefore, the daily rituals which were bound to be performed by a person like the appellant could not be performed, but in these days, when one can go from place to place within the 24 hours span, it could be ridiculous to follow the old rituals.

11. The Deputy Commissioner thereafter considers the view expressed by the person:

12. Therefore, it could only seem that the Deputy Commissioner was considering the special rules followed by each temple, since each temple is not only renowned but also possesses a long heritage. As regards precedents, he held that there was only one similar occasion, that of Ragava Battar who went to Rangoon and was not permitted to resume office and that there is no precedent of a person who travelled overseas, but was allowed to resume duties. As regards the fact of "prayaschitha", this is what the Deputy Commissioner has stated:

13. Finally, the Deputy Commissioner has held that if the tradition of this

particular temple is taken into consideration, what applies in other temples cannot be applied to this temple and therefore, the Deputy Commissioner had arrived at the conclusion that the established usage of this temple was not to permit a person who is gone abroad to render service to the temple. This order was passed on 25.8.1992. From the records, I am not able to find out when the revision was taken on file, but the final hearing was on 1.12.1992 and the order is dated 3.2.1993. The proceedings are referred to as revision u/s 21. If we look at Section 69(1) and (2), they read as follows:

69. (1) Any person aggrieved by any order passed by the Deputy Commissioner under any of the foregoing Sections of this chapter may, within 60 days from the date of the publication of the order or of the receipt thereof by him, as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit. (2) Any order passed by the Deputy Commissioner in respect of which no appeal has been preferred within the period specified in sub section (1) may be revised or reviewed by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by the Deputy Commissioner. Any such order passed by the Commissioner in respect of an order passed by the Deputy Commissioner shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub section (1).

14. Section 69 (2) gives the Commissioner the power to revise suo motu any order passed by the Deputy Commissioner in respect of which no appeal has been preferred within the period specified in sub-Section (1). Both Section 21 and Section 69(2) give the Commissioner powers of revision to call for and examine the records of proceedings to satisfy himself as to the regularity, but Section 21 gives the power to the Commissioner to decide proceedings in respect of which no suit or appeal is provided under the Act nor an application for revision been preferred u/s 21 (a).

15. Now, let us examine the order of the Commissioner. As regards the word "usage" referred to in Section 63(e), the Commissioner referring to *Srinivasachariar v. Thatha Desika Thathachariar* 83 L.W. 407 held stated that the essentials of custom and usage are that they should be ancient, long-established, uniform and not open to objection on the ground of public policy or otherwise and not opposed to a statute. Then the Commissioner poses the following question and then comes to the following conclusion:

Has the appellant acted contrary to the customs and usage established by this particular temple where by as alleged, he has deliberately and with the full knowledge of the temple authorities, violated such customs?" "We should also note that the customs, practices and usage of any temple is something internal where as a journey undertaken is external and outside the precincts of the temple. In the circumstances, I tend to hold the view that the appellant has not violated any of the norms as laid down by the customs of the temple and

therefore he is entitled to be reinstated into temple service.

16. Therefore, what the Commissioner had also decided is the established usage of the particular temple and whether the appellant had followed it. According to the Commissioner, the appellant had not followed the norms and the customs of the temple. It is clear from the above extract of the Commissioner's order that the Commissioner had also considered the question of what the established usage of the particular temple is. Therefore, it is apparent from the discussions of both the authorities that they were aware, they were deciding what the established usage of this temple is. This is clearly a dispute that falls u/s 63(e). Against an order passed by the Deputy Commissioner u/s 63(e), appeal is provided. Therefore even if the Commissioner had exercised his powers of revision, it cannot be one u/s 21. It has to be u/s 69(2). By the fiction created in Section 69(2), it is a deemed appeal. Therefore, even if it is called a revision, it is only an appeal which is decided by the Commissioner u/s 69(1).

17. In fact, the decision reported in *Srinivasachariar v. Thatha Desika Thathachariar* 83 L. W. 407 appears to have been brought to the notice of both the authorities. In that case, the suit was filed to set aside and order passed by the Commissioner of H.R. & C.E. u/s 62, of the Madras H.R. & C.E. Act of 1951. The plaintiff in that suit had sought not only for a declaration of his right to worship in a particular manner but also to set aside the order of the Commissioner. The dispute was whether there was an established custom and usage to take the idol of Sri Vedantha Desikar on His birthday round the various shrines of Alvars and Acharyas in the temple of Lord Varadarajaswamy at Kancheepuram and that songs composed by the said Saint in Sanskrit and Tamil would be recited. The plaintiff belonged to the "Vadakalai" community of Vaishnavas. This claim was resisted by the defendants who belonged to the "Thenkalai" group and they stated that only Thenkalai manthrams and Prabandams would be recited on that day and that what the plaintiff wanted to establish was contrary to the custom and usage. The Division Bench of this Court while construing Clause 57(e) of the 1951 Act which is the same as Section 63(e) of the present Act held:

Cl. (e) of Section 57 extracted above consists of two parts. The first part enables the Deputy Commissioner to decide whether any person is entitled by custom or otherwise to any honour, emolument or perquisite in any religious institution.

The Legislature has combined in Cl.(e) two different aspects. The first relates to a right of a person by custom or otherwise of any honour, emolument or perquisite in a religious institution. This involves a subjective consideration of the dispute or matter. But the second part is worded differently. Under that provision, what the Deputy Commissioner is required to decide is what the established usage of a religious institution is in regard to any other matter. This calls for an objective consideration in which the personal right of the persons

raising the dispute does not arise for decision. These two concepts appear to have been deliberately adopted by the Legislature, for there may be usages out of anybody in its observance. The intention of the Legislature appears to be to enable even a person having no benefit arising out of the enjoyment or observance of the usage to seek an adjudication as to the established usage of the institution.

In that case also, evidence was let in regarding the custom and on the side of the defendants, the "Thenkalai" group, reliance was placed on the Adhyapakam Miras case. In the present case though there is no earlier express and clear adjudication there is definitely a reliance on an earlier occasion when another person had been declared and disqualified because he had left the shores of our country. From this and the other statements made before him, the Deputy Commissioner came to the conclusion that there was an established usage in the temple in dispute, that a person suffers disqualification if he went abroad. At least in the case reported in *Srinivasachariar v. Thatha Desika Thathachariar* 83 L. W. 407 the plaintiff tried to advance a case that there was an established custom as pleaded by him which of course was rejected. In this case, the appellant does not even plead that there is an established custom in the temple in dispute to permit persons like him to render service. Section 63(e) clearly refers to established usage in the said religious institution. The Deputy Commissioner had therefore decided that the established usage in Devarajaswamy temple was that persons who had travelled abroad should not render service.

18. As regards the maintainability of the suit. Section 70(1)(i) reads thus:

70. (1) Any party aggrieved by an order passed by the Commissioner-

(i) under sub-Section (1) or sub-Section (2) of Section 69, and relating to any of the matters specified in Section 63, Section 64 or Section 67.

The 1st respondent herein is definitely a person aggrieved by the order passed by the Commissioner because he is amongst the person who had agitated and objected to the resumption of duties by the appellant as an "ulthurai" servant. The order was passed u/s 69(2), but, deemed to be one u/s 69(1) and, this is important, it also relates to one of the matters specified in Section 63. Therefore, it is futile to urge that a statutory suit will not lie against the order passed by the Commissioner. It is true that the appellant has called it a revision u/s 21. But, as I have already stated that since the powers of the Deputy Commissioner have been exercised u/s 63(e), the revisional powers of the Commissioner can only be exercised there against u/s 69(2).

19. Now, let us look at the decisions relied on by the learned Counsel for the respondents:

(i) In the decision reported in *A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others*, the Supreme Court recognised the authority of "Agama",

which has gained judicial recognition by various courts including the Supreme Court. It was held in that judgment that "Agamas", customs and usages prevalent in the temple are an integral part of the religious faith and duty and to that extent, the Legislature cannot intervene to regulate it and the courts have, as stated earlier, judicially recognised it.

(ii) In the decision reported in *Seshammal and Others, Vs. State of Tamil Nadu*, the Supreme Court allayed the fears expressed therein that the Government may prescribe qualification which takes no note of "Agamas" or Agamic rituals and may prescribe a simple standardized curricula for poojas ignoring traditional poojas and rituals by holding that the power contained in section 116 only applies to the purposes of the Act which are essentially secular. Not only does Section 107 clearly state that the Act will not affect the rights under Article 26 of the Constitution of India. Section 105 clearly states that nothing in the Act shall affect any honour, emolument or perquisite to which any person is entitled by custom or its established usage in regard to any other matter. This is precisely the dispute that the Deputy Commissioner is called upon to decide u/s 63(e). In the judgment, this is what the Supreme Court has held:

Moreover, if any rule is framed by the Government which purports to interfere with the rituals and ceremonies of the temples the same will be liable to be challenged by those who are interested in the temple worship. In our opinion, therefore, the apprehensions now expressed by the petitioners are groundless and premature.

Therefore, this also seems to indicate the sanctity of established usage and the necessity for the Deputy Commissioner to decide what it is so that it is preserved and not violated.

(iii) In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, the famous Shirur Mutt case, the Supreme Court decided what constitutes the essential part of religion.

(iv) In *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*, which is the excommunication case, this is what was held therein:

Coming back to the facts of the present petition, the position of the Dai-ul-Mutlaw, is an essential part of the creed of the Dawoodi Bohra Sect. Faith in his spiritual mission and in the efficiency of his ministration is one of the bonds that hold the community together as a unit. The power of excommunication is vested in him for the purpose of enforcing discipline and keep the denomination together as an entity. The purity of the fellowship is secured by the removal of persons who had rendered themselves unfit and unsuitable for membership of the sect. The power of excommunication for the purpose of ensuring the preservation of the community, has therefore a prime significance in the religious life of every member of the group. A legislation which penalises this power even when exercised for the purpose above indicated cannot be sustained as a measure of social welfare or social reform without eviscerating the guarantee

under Article 25(1) and rendering the protection illusory.

20. In this case, since it has been held that the suit is maintainable, I am not deciding the issue whether, when this is not a dispute that can be decided by the Deputy Commissioner, the suit will still be maintainable under Order 7, Rule 1, C.P.C.

21. All the decisions referred to by the learned Counsel for the Ist respondent preserve the right of the temple to follow their own rules and follow the usage established according to the Agamas or otherwise and also held that there cannot be any interference with the same. Section 105 of the Act also preserves the established usage from being affected by any provisions of the Act. The Deputy Commissioner after a detailed enquiry of the various persons, had not only decided that there was an established usage as claimed by the respondents, but also that it was not possible to deviate from that merely because the temple at Sreerangam has differed in its practice. The trial court has considered all the materials before it and had rightly found that the suit was maintainable u/s 70. Since the only question advanced before me is regarding maintainability of the suit and since I have held that the suit is maintainable against the appellant, the appeal is dismissed. No costs.