

(1984) 07 KL CK 0032

In the High Court Of Kerala

Case No : C.R.P. No's. 272 and 2218 of 1982

G. Mohanan Unnithan and Others

APPELLANT

Vs

G. Chandrasekharan Unnithan

RESPONDENT

Date of Decision : 27-07-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 13, Order 20 Rule 4, Order 31 Rule 1, 115, 2(14)

Citation : AIR 1985 Ker 98

Hon'ble Judges : Sukumaran, J

Bench : Single Bench

Advocate : K.P. Dandapani, Sumathi dandapani, Sebastian Paul and Jaju Babu, for the Appellant; S. Sivaraman, K.C. Charles, P. Krishnamoorthy and P. Sukumaran Nair, for the Respondent

Final Decision : Allowed

Judgement

Sukumaran, J.—Ammachi Veedu in Quilon is noted for its ancestry. Among its vast assets is a famous temple. That has been the cynosure of many a devotee. The family was not without its feuds, which naturally got reflected in long drawn out litigations. One such litigation started in the year 1957, when O. S. 199 of 1957 was filed. The decree passed in 1968 underwent modification in the High Court. I.A. No. 322 of 1973 was filed invoking the provisions of an earlier scheme, for the framing of a better scheme. A scheme was evolved by the decree of the High Court passed on 10-8-1976.

2. The activities of the Trust were usefully extended to other fields. A healing touch to the ailing public, was as good as any other service it was apparently felt. A hospital aimed at serving the public, by its care and cure, was thus started. Increased activities necessitated added administration. The court was moved, in the changed circumstances.

3. The court passed an order on 29-11-1978 in I.A. No. 2576 of 1978, constituting the committee for the administration of the Trust. When the

committee was constituted, the court indicated the pattern of its functioning and expressed the hope that no quarrel would thereafter ensue. The hope, however, was misplaced. The hospital was stated on the basis of the order on 8-10-1978. The revision petition C.R.P. No. 962 of 1978 in which C.M.P. No. 7590 of 1978 was filed, was one other item of litigative exercise.

4. I.A. No. 682 of 1979 was filed on 31-3-1979 seeking appointment of an Administrator for the more effective and efficient running of the hospital. An Administrator was appointed by order dt. 5-4-1979. That appointment was, it may be noted, subject to the conditions in the petition. This in turn meant that the Administrator was to be under the strict control and supervision and authority of the Deputy Manger, whose role is referred to in the scheme.

5. In 1980, I.A. No. 998 of 1980 was moved for sanction to construct the buildings. That petition was allowed. The last paragraph of the order directed that the Administrative Officer is to be consulted in matters concerning the hospital. This direction was taken exception to by the principal personalities involved in the scheme. They moved I.A. 1469 of 1981 for expunging that direction. That petition, however, was dismissed by the court below. C.R.P. No. 2218 of 1982 is directed against that order.

6. I.A. No. 1439 of 1981 was filed on 30-11-1981. by the Administrator appointed by the court. It purported to be one invoking the powers under Clauses 35 and 13 of the Scheme. It is desirable that those clauses (translated in English) are referred to in this context, for appreciating the principal controversy arising for resolution in these revision petitions.

"Clause 5 : The power to appoint the priests for conducting the worship in the temple and the attendants necessary in that connection as also for appointing other servants in connection with the Trust, along with the power for determining the emoluments payable to them, shall vest in the Manager and the Deputy Manager; such appointments and emoluments shall, however, be subject to the approval of the Court.

Clause 13 : For the purpose of taking decisions on petitions connected with the Trust, and all institutions coming under it, and all complaints relating to the Management and employees, any member of the tarwad can file a petition in the case and seek reliefs including the removal of concerned persons."

It is also desirable to point out that notice to other members of the tarward or to those who were interested in the scheme and in the functioning of the Trust had not been given on this petition.

7. The essence of the complaint as could be seen from the affidavit in support of the petition is that there is no representation in the committee for the "youngsters". According to the Administrative Officer, there are many problems regarding the junior members of the tarwad who are, however, given no opportunity to put forward their suggestions. The committee has to play an

important role in matters of policy. The petitioner is not given representation in the committee and is therefore "not in a position to suggest any matters connecting with the hospitals etc. etc." (sic) There is a complaint that notice had not been given in connection with the application filed by the Deputy Manager in connection with administration of the hospitals. An omission to comply with the direction in the order in I. A: 998 of 1980 which has obliged the Manager and the Deputy Manager to consult the Administrative Officer is also alleged. The prayers are :

"It is therefore humbly prayed to this Honourable Court to give proper directions to the Manager and the Dy/Manager to give me notice to all matters, concerned or connected with the affairs of the temple and its other institutions. It is also prayed that I may be included or incorporated in the Temple committee for which a petition is filed herewith."

8. There were only two counter-petitioners to the above petition. They are the Manager and the Deputy Manager. Objections were filed on 11-12-1981. After a series of adjournments, the petition was posted for orders on 11-1-1982. There were many adjournments even thereafter. The order was ultimately passed on 23-1-1982.

9. The court below has allowed the petition. The petitioner was directed to be incorporated as a member of the Advisory Committee. The respondents were directed to give notice to him on all matters concerned and connected with the temple and its institutions.

10. The order, unfortunately, evidences a pointless prolixity. A roving expedition had been undertaken by that court into matters much of which could have been happily avoided, having regard to the limited scope of the petition before it. The necessity for a balanced and judicial approach while passing orders, particularly in sensitive matters, cannot be over-emphasised.

11. The discussion on points germane to the prayers, is contained in the last two paragraphs of the order. The reasons which weighed with the court below appear to be the following : --

1. The scheme does not limit the members of the committee.
2. The petitioner is a major member of the tarwad and a responsible officer.
3. His claim that he may be enlisted as a member of the Advisory Committee does not appear to be improper.
4. Barring the Manager and the Deputy Manager, no other member has objected to the prayer of the petitioner;
5. There is no harm in enlisting the petitioner as a member of the committee, when he only wants to express his suggestions in the committee regarding matters related to the Trust and its institutions.

6. In the present trend, the Manager and the Deputy Manager "sale together and nobody raises any objection in any matters," (Sic)

12. Paragraph 9 dealt with the question whether the petitioner should be given "notice of all matters concerned and connected with the affairs of the temple and its institutions." The court felt that having regard to his capacity as a member of the tarwad and that of an officer, such prayer also could be granted.

13. The order was subjected to serious attack on behalf of the revision petitioners. On behalf of the contesting respondents, it was attempted to be defended, on the basis of the background of the entire litigation, the circumstances under which the scheme had been framed, the background in which the committee had been constituted, and the expansion of the activities of the Trust.

14. It is now well settled that a scheme when once made would not lightly be changed, (See *Ahmad Adam v. M. E. Makhri* AIR 1964 SC 107). Even though no permanency for the provisions of a scheme need be conceded, it is not in the interest of a trust or other body that frequent changes are made to the governing scheme. That will in a sense impair the efficacy and efficiency of the scheme. It must also be ensured that a motion for a change in the scheme must be supported by ample materials and cogent reasons. A scheme once framed and approved by the High Court, is not to be tinkered with, almost as a routine, merely because a dissenting member puts in a petition for its alteration. It is necessary to consider whether these principles had been borne in mind by the court below in passing the order sought to be revised.

15. The petitioner cannot complain that the scheme does not take care to ensure a representation of all the branches. Minute details have been gone into before the scheme had been framed. It reflects a balancing of the interest of various branches in the tarwad and the members thereof. Adequate checks and balances are provided to see that, the persons with whom the administration rests do not abuse or misuse their powers. There is an over all superintendence by the court, which is clothed with powers to take appropriate action, including removal of erring members, when complaints about such mal-functioning are brought before it. Serious matters such as the administration of a scheme, are not to be viewed without far sightedness. The representation of the youth may sometimes have a populist appearance. The interests of the institution are, however, paramount. Uninformed enthusiasm and energy may not be conducive for the betterment of a scheme quite often, it is likely to be detrimental to its larger interests. Maturity and experience, and a sense of responsibility, involvement and dedication, would be the better claims for membership in an administrative set up in such situations. When all these aspects had been weighed and a scheme had been framed, it is not open to the court to ignore it, without compelling and justifiable reasons. No such reasons are disclosed in the petition.

16. A dichotomy in the personality of the petitioner had been projected in the court below. Viewed from the point of view of his position as an administrator, I am clearly of the view that it is not open to him to seek membership of the committee. May be, he had been appointed by the court. That does not alter the position that he is an Administrative Officer who has to function under the Manager and the Deputy Manager. The court below has devoted considerable space for discussing whether an Administrative Officer is to be relegated to the position of a menial servant. It is not necessary to look down upon the services of a menial servant either, if things are viewed from a larger perspective. Service by any person is valuable. The point, however, is that when the Administrative Officer is to carry out the directions of a committee and the Manager and Deputy Manager in whom the administration is for the time being rightly vested, he cannot seek to dictate terms to a body under which he has to function. Such an attitude would be totally disruptive of the basic requirements of discipline necessary in the running of any institution. Thus, if it is viewed as a demand from an employee --whether highly placed or lowly placed -- the enlistment in the committee is totally objectionable and is not permissible.

17. The petitioner, qua member, has certainly very many rights. If he has an idea to have a change in the scheme, that has to be agitated in the manner permissible under law and provided under the existing scheme. That is a matter in which all connected with the trust and the scheme have a voice. Known methods for altering the scheme have to be necessarily followed. The matter has to be given due publicity. Those who are affected by the modification of the scheme should necessarily be notified. Due deliberations must precede the change of a scheme. These are all conspicuous by their absence in the present case. The order cannot therefore be supported, as projecting the cause of a member of the tarwad, particularly in the factual situation of the case.

18. The petitioner stated that he could give his valuable suggestions to the committee. He alleged mismanagement by the Manager and the Deputy Manager. He indicated the existence of complaints against such management. However, there is no averment that any suggestion had been given by the petitioner either in his capacity as Administrative Officer or as a member of the tarwad to the Managing Committee. There is no evidence that suggestions from any members had been arbitrarily over-ruled or ignored by the Manager and the Deputy Manager. No details of the complaints, with specific acts or omissions, are made against the Manager and the Deputy Manager. A vague and general statement would not do duty for specific and serious allegations, which have to be taken note of by a court of law. That ground mentioned by the petitioner, has also no factual foundation to support it.

19. In more places than one, the court below appeared to stress the point that there is no harm in enlisting the petitioner as a member of the committee. It is not a question whether there is any harm in enlisting such a person in the committee. The question is whether it is warranted by the provisions of the

existing scheme and the necessity of the situation. When the reasons made mention of in the petition do not disclose any ground whatever for such action, the court cannot alter the scheme or change its working pattern, merely for the reason that there could not be any harm in doing so. In a sense, similar applications could be moved by others also. If on the basis of the logic underlying the present order of the court, all such persons are enlisted as members of the committee, the resultant position would be one of pandemonium. That would certainly be harmful to the larger interest of the institution.

20. Counsel for the respondent submitted that the court has got greater role in relation to -administration of trust and that it could even issue directions suo motu. Reliance was made on the decision of the Madras High Court in Thiruvananthapuram Vaidyalingam Pillai Charities and Others Vs. T.A. Thavasiah, The facts of that case justified the court giving the directions. The decision refers to Clause 21 whereunder the court has been given power suo motu to act (See pages 185 and 186). As indicated earlier, no justifiable grounds exist in the present case for the court below to act in the manner as it did.

21. Yet another important ground which appears to have weighed with the court below was the absence of objections from others. The reasoning is totally fallacious. The court below omitted to note that there were only two counter-petitioners in the petition. Those counter-petitioners had filed objections. When the petitioner had not made other members of the trust parties to the same, objections from such persons who are not parties, could not be expected by the court. To make an absence of objection from parties who had no knowledge of the proceedings, as a ground for the order, is totally perverse.

22. The complaint about the violation of the order in LA. No. 998 of 1980 to give notice to the Administrative Officer, is also not one which would justify the present order. The court is not powerless, if a proper direction has been wilfully flouted. The facts disclosed would not reveal such wilful disobedience of any direction passed by this court.

23. In the light of the above discussion. I have no hesitation to find that the court below acted without jurisdiction in "enlisting" the petitioner as a member of the committee, and directing the issue of notice to him in relation to matters concerned and connected with the temple and its institutions.

24. Counsel for the respondents, raised a technical objection about the maintainability of the civil revision petition itself. According to them the order amounted to a decree. And as a decree, it should have been appealed against. According to them, the appeal could be heard only by a Bench.

25. Decisions of the Supreme Court were cited by counsel appearing on both sides. While the petitioner pressed on Raje Anandrao Vs. Shamrao and Others, respondents relied on Bhogaraju Venkata Janakirama Rao Vs. The Board of Commissioners for Hindu Religious Endowment Andhra Pradesh, In the former

the Supreme Court held that the modification of a scheme invoking the powers under the scheme for moving the court, is not a decree. In the latter, it was held that the modification of a scheme which was part of a decree and of such a character as to have effected substantial change of the scheme, is a decree. Other decisions which have considered the question are :

1. Gangaram v. K. R. Vinchurkar AIR 1948 Bom 146.
2. Sree Kalimata Thakurani of Kalighat and Another Vs. Ram Chandra Chatterjee and Others,
3. A.D.K. Rangaswami Raju Vs. The Municipal Chairman, Rajapalayam and Others,

The Madras decision has considered the two decisions of the Supreme Court. On an application of the principles of the aforesaid decisions, I am of the view that the order of the court below does not constitute a decree. The petition does not purport to be one seeking a modification of the decree. The enabling powers referred to in the petition are Clauses 5 and 13. Those powers are distinct and different from the clause relating to modification of the scheme. Modification of the scheme is specifically provided for in Clause 16. It is not pretended that any such power has been invoked by the petitioner, in the present petition. The court below also does not purport to modify the existing scheme. On the other hand, its approach has been that the present order is not in conflict with the existing scheme. That is evident, when it observes in paragraph 8:

"The scheme itself does not show the number of members to be enlisted in the Advisory Committee."

On a proper consideration of the averments in the petition, the nature of the objections thereto, and the reasoning and conclusion of the court below, I am of the view that the order, though totally unjustified and denuded of jurisdiction, is not one modifying or even purporting to modify, the existing scheme. The technical contention about the maintainability of the revision petition therefore fails.

26. Shri. Krishnamoorthy appearing on behalf of the 2nd respondent submitted that an appeal from the order of the District Court would only lie to this court and having regard to the valuation of the suit, the appeal could be heard and disposed of by a single judge. There is force in that contention. It is, however, unnecessary to consider the same, inasmuch as I have already held that the order does not amount to a decree, rendering the revision technically non-maintainable on that score.

27. The complaint against the order in I.A. No. 1469 of 1981 also appears to be justified. The Administrative Officer, is not a person who is to be compulsorily consulted by the Manager and the Deputy Manager. He is to work on the basis of the directions given by those in whom the power of administration is vested under the scheme. As an Administrative officer, it is always open to him to give

his suggestions, for the better working of the institutions. Such suggestions, would be useful and would -be duly considered by those in charge of the management of the institutions. To insist, however, that he should be consulted in all matters relating to the administration of the hospital, is totally unwarranted and unjustified. It will only create problems and hitches in the working of the scheme and its institutions. Incorporation of such a direction was without jurisdiction and unjustified having regard to the interest of the trust, and the provisions of the existing scheme. A prayer for expunging such an unjustified direction, should have been allowed by the court below.

In not doing so, the court below has failed to exercise its jurisdiction. That order too is amenable to correction in revision.

28. In the result, the two revision petitions are allowed and the orders passed in I.A. Nos. 1469 of 1981 and 1439 of 1981 are set aside.

29. Regard being had to the relationship between the parties, which has necessarily to survive despite litigative exercises, I decline to make any order as to costs.