

(2014) 10 KL CK 0232

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 30473 of 2012 (H)

G.K. Hari Hara Krishnan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)

Citation : (2014) 4 ILR 832 : (2014) 4 KHC 415 : (2014) 4 KLJ 625 : (2014) 4 KLT 576

Hon'ble Judges : P.N. Ravindran, J;P.B. Suresh Kumar, J

Bench : Division Bench

Advocate : K. Ramakumar, Sr. Advocate and Smitha George, Advocate for the Appellant; V. Krishna Menon, S.C., R. Lakshmi Narayan, Mohan C. Menon, Advocates and A. Renjith, Government Pleader, Advocate for the Respondent

Judgement

P.B. Suresh Kumar, J.—Section 39 of the Madras Hindu Religious and Charitable Endowments Act, 1951, hereinafter referred to as "the Act", as amended by the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2014, is under challenge in this writ petition.

2. The petitioners are the non-hereditary trustees of Mammiyoor Mahadeva Temple, Guruvayoor, under the supervision and control of Malabar Devaswom Board. They were appointed as non-hereditary trustees of the temple by the Commissioner of the Devaswom Board, under Section 39(2) of the Act, on 22.10.2010. Section 39(3) of the Act, as it then stood, provided that every non-hereditary trustee appointed under Section 39(2) of the Act shall hold office for a term of five years, unless in the meanwhile, the trustee is removed or dismissed or his resignation is accepted by the Commissioner or he, otherwise ceases to be a trustee.

3. According to the petitioners, while they were continuing as non-hereditary trustees of the temple, the Madras Hindu Religious and Charitable Endowments (Amendment) Ordinance, 2012 was promulgated and by virtue of Section 8 of

the Ordinance, the term of the non-hereditary trustees, as provided for under Section 39(3) of the Act, was reduced to two years from five years. Section 9 of the Ordinance provided that notwithstanding anything contained in the principal Act, the non-hereditary trustees of the temples in office as on the date of commencement of the Ordinance shall cease to hold office on the date of commencement of the Ordinance. The writ petition was filed initially, challenging the amendment made to Section 39 of the Act as per the Ordinance. They also sought a declaration that they are entitled to continue as non-hereditary trustees of Mammiyoor Mahadeva Temple, Guruvayoor, till their normal tenure expires. By interim order dated 20.12.2012, this Court directed that the respondents shall permit the petitioners to continue in office as non-hereditary trustees of the temple, irrespective of the issuance of the Ordinance, pending final disposal of the writ petition. On the basis of the said interim order, petitioners are continuing even now, as non-hereditary trustees of the temple.

4. The Ordinance referred to above was replaced on 3.2.2014 by the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2014, hereinafter referred to as "the Amendment Act". When the Ordinance was replaced by the Amendment Act, the writ petition was amended, challenging Section 39 of the Act, as amended by the Amendment Act.

5. Sub-section (2) and sub-section (3) of Section 39 of the Act read as follows:

39. Trustees and their number and term of office:

(2) Where, in the case of any such institution having a hereditary trustee or trustees; the Commissioner after notice to such trustee or trustees and after such enquiry as he deems adequate, considers for reasons to be recorded, that the affairs of the institution are not, and are not likely to be, properly managed by the hereditary trustee or trustees, the Commissioner may, by order appoint such number of non-hereditary trustees as he thinks necessary, so however that the total number of trustees does not exceed five.

(3) Every trustee appointed under sub-section(1) and subject to the result of an application, if any, filed under sub-section (4) every non-hereditary trustee appointed under subsection (2) shall hold office for a term of five years, unless in the meanwhile the trustee is removed or dismissed or his resignation is accepted by the Commissioner or he otherwise ceases to be a trustee."

Section 7 of the Amendment Act, which is impugned in the writ petition reads thus:

"7. Amendment of Section 39.--In sub-section (3) of section 39 of the principal Act, for the words "five years" the words "two years" shall be substituted."

6. The challenge to the Amendment Act is on the ground that there are no reasons at all to remove the petitioners from office and the Amendment Act was introduced with the sole objective of substituting the petitioners with the non-hereditary trustees of the choice of the Government. Petitioners have also

contended that since they were appointed by the Commissioner in exercise of the power conferred on him under section 39(2) of the Act for a period of five years in accordance with the then provision in the Act, they are entitled to continue in office for the whole tenure of five years and their cessation of office cannot be obtained by amending the statute.

7. Heard the learned counsel on either side.

8. It is settled that the validity of an enactment can be challenged only on two grounds; viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. In *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, the Apex Court has opined that except the above two grounds, there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the grounds of invalidation must necessarily fall within the four corners of the aforementioned two grounds. It was also held by the Apex Court in the said case that if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein and that no enactment can be struck down by just saying that it is arbitrary. It is worth referring to the relevant passage of the said judgment of the Apex Court, which reads as follows:

"In India, the position is similar to the United States of America. The power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness --concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary** or unreasonable."

The petitioners do not have a case that the State legislature was incompetent to bring in an enactment in the nature of the Amendment Act. The petitioners do not also have a case that the impugned enactment is violative of the equality clause enshrined in the Constitution. Their case is only that there are no reasons at all to reduce the term of office of non-hereditary trustees of the temples and that the Act was amended with the sole objective of substituting the petitioners with the non-hereditary trustees of the choice of the Government. In other words, the Amendment Act is challenged on the ground of mala fides. It is settled that the legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the objects and reasons. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. A passage in the decision rendered by the apex court in *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, which is apposite in the context, reads as follows;

".....The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if, none are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of "transferred malice" is unknown in the field of legislation."

As such, once the allegations of malafides attributed to the legislature is eschewed, what could be seen from the Amendment Act is only a manifestation of a policy decision of the Government to reduce the term of office of non-hereditary trustees of the temple as appointed under Section 39(2) of the Act, from five years to two years. It is beyond dispute that this court cannot be concerned with the wisdom of the policy. It is not for the court to consider whether there is any need for such a legislation. As pointed out earlier, the petitioners do not have a case that the policy behind the reduction of the term of office of non-hereditary trustees from five years to two years is arbitrary in any manner. As such, we find no substance in the challenge raised against the Amendment Act.

9. The contention that since the petitioners are appointed by the Commissioner in exercise of the power conferred on him under section 39(2) of the Act for a period of five years in accordance with the then provision in the Act, notwithstanding the Amendment Act, they are entitled to continue in office for the whole tenure of five years is also without any substance. Section 8 of the Amendment Act, which is relevant in the context of this argument, reads as follows:

"8. Special provisions relating to the existing members of the Area Committee and non-hereditary trustees.--Notwithstanding anything contained in the principal Act, the Chairman and the members of the Area Committee and the

non-hereditary trustees in office as on 10th November, 2012, the date of commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Ordinance, 2012 (59 of 2012), shall cease to hold office as such Chairman and members of the Area Committee or the non-hereditary trustees, as the case may be, on the said date."

Section 8 of the Amendment Act is a transitional provision. One of us (P.N. Ravindran, J.) had occasion to deal with the scope of a similar transitional provision in the order passed in and connected cases. The transitional provision dealt with in the said order was the transitional provision contained in the Kerala Cooperative Societies (Second Amendment) Ordinance, 2012. It is worth referring to paragraph 27 of the said order which reads thus:

"Section 6 of the Ordinance is a transitional provision. Francis Bennion has in his book "Bennion on Statutory Interpretation" explained the role of transitional provisions in a statute in the following terms. "Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions, which regulate the coming into operation of those enactments and modify their effect during the period of transition. Where the Act fails to include such provisions expressly, the court is required to draw such inferences as to the intended transitional arrangements, as in the light of interpretative criteria, it considers Parliament to have intended." The learned author has also pointed out that "Transitional provisions in an Act or other instrument are provisions which spell out precisely when and how the operative parts of the instrument are to take effect." and that "It is for the interpreter to realise, and bear constantly in mind, that what appears to be the plain meaning of a substantive enactment is often modified by transitional provisions located elsewhere in the Act. Often these are tucked away in an obscure place, where they can be easily overlooked." [Francis Bennion; Bennion on Statutory Interpretation, Fifth Edn. pages 314-315] G.C. Thornton in his treatise on "Legislative Drafting" has stated that "The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist when that legislation comes into force." [G.C. Thornton; Legislative Drafting, 2nd Edn. page 297]. In *Britnell v. Secretary of State*, [1991] 2 All ER 726, the House of Lords held, after referring to the above quoted excerpt, that "One feature of a transitional provision is that its operation is expected to be temporary, in that it becomes spent when all the past circumstances with which it is designed to deal have been dealt with, while the primary legislation continues to deal indefinitely with the new circumstances which arise after its passage."

Having thus understood the scope and ambit of the transitional provision contained in an enactment, we may proceed to consider the transitional provision contained in Section 8 of the Amendment Act. Section 8 of the Amendment Act provides that notwithstanding anything contained in the principal Act, the non-hereditary trustees in office as on 10/11/2012, the date of commencement of the

Ordinance, shall cease to hold office as non-hereditary trustees on the said date. Section 8 of the Amendment Act is not under challenge in this writ petition. It is beyond dispute that the petitioners were non-hereditary trustees of the temple on the date of the Ordinance. As such, in view of the non obstante clause contained in Section 8 of the Amendment Act, the arguments developed on the basis of the provisions contained in the principal Act that they have been appointed by the Commissioner in exercise of the power conferred on him under section 39(2) of the Act for a period of five years and that therefore, they are entitled to continue in office for the whole tenure of five years should fail. There is no reason why Section 8 of the Amendment Act should not apply to the petitioners who were non-hereditary trustees of a temple on the date of commencement of the Ordinance. The said provision, going by the words used, would cover the petitioners as well. Though there is no challenge against Section 8 of the Amendment Act, we find that there is no reason whatsoever to infer that the said provision is invalid on any ground whatsoever. Petitioners cannot also claim the benefit of the doctrine of legitimate expectation, if at all they are entitled to claim the benefit of the said doctrine in a matter like this, for, even legitimate expectation cannot preclude legislation. It is held by the Apex Court in Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others, as follows:

"82. The constitutional validity of an Act can be challenged only on two grounds viz. (i) lack of legislative competence; and (ii) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. In State of A.P. v. McDowell & Co. this Court has opined that except the above two grounds, there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds."

For the aforesaid reasons, we find that there is no merit in the writ petition and the writ petition is, accordingly, dismissed.