

(1959) 09 GAU CK 0003

In the Gauhati High Court

Case No : Second Appeals Nos. 38 and 39 of 1958

Gotimayum Birahari Sarma

APPELLANT

Vs

Thingnam Ibomcha Singh

RESPONDENT

Date of Decision : 01-09-1959

Acts Referred:

Constitution of India, 1950 — Article 13, 13, 19(1)(g), 19(1)(g), 25, 25

Citation : AIR 1960 Manipur 34

Hon'ble Judges : T.N.R.Tirumalpad, J

Bench : Single Bench

Advocate : N.Budhachandra Singh, W.Kulabidhu Singh, Advocates appearing for Parties

Judgement

1. These two appeals 38 and 39 of ,1958 arise out of the decisions of the learned District Judge, Manipur, in Civil Appeals 164 and 165 of 1955 by which he allowed the said appeals and reversed the judgments and decrees passed by the learned Munsiff, in favour of the present appellant in title suit Nos. 170 and 171 of 1954.

(2) The appellant filed the two suits for a declaration that he was the priest of the village and that he was entitled to officiate as priest on the occasion of the Sradh ceremonies among the villagers of the said village. In T. S. No. 170 of 1954, Th. Ibomcha Singh, who is the first respondent in second appeal No. 38 of 1958 was the first defendant and Kakchingtabam Iboyaima Sarma the second respondent was the second defendant. In T. S. No. 174 of 1954, Thingnam Hema Singh, the first respondent in second appeal No. 39 of 1958, was the first defendant and Kakchingtabam Iboyaima Sarma, the second respondent was the second defendant.

The appellant's case was that this Iboyaima Sarma officiated as priest on the two occasions of the Sradh ceremonies consequent on the deaths of the daughter of Ibomcha Singh and of the daughter of Hema Singh and realised Rs. 10/ as fees and Rs. 15/ as price of offerings in each instance. His further case was that

Sir Chandrakirti Singh, the late Maharaja of Manipur had installed an image of Shri Krishnachandraji at Kakching Khullen for the benefit of the three villages Kakching Khullen, Kakching Wairi and Kakching Khunou and appointed appellant's grandfather, Tolen Sarma as the Shebait of the said deity and further ordered that the Shebait of the said deity should be priest of these three villages. Accordingly, his grandfather appointed as the priest of the three villages and after the death his father worked as such and after his death the appellant has been working as the priest.

In December, 1952, the daughter of Ibomcha Singh, resident of Kakching Khunou village died and Iboyaima Sarma, without the knowledge and consent of the appellant worked as priest on the occasion of her Sradh ceremony and received the fees and offerings. Similarly, in July, 1954, the daughter of Henia Singh of Kakching Khunou died and Iboyaima Sarma again officiated as priest for the Sradh and received the offerings and fees. The appellant claimed that in both cases he being the hereditary priest for the families of Ibomcha Singh and Hema Singh, was entitled to officiate as priest and receive the offerings and fees. He therefore asked for a declaration in the two cases that he is the priest in the village and wanted to recover the fees and offerings in the two respective cases.

(3) The respondents in the two appeals who are the defendants in the two cases denied the installation of the image by the late Maharajah of Manipur and the alleged grant of the exclusive right of Purohitship for the 3 villages on the appellant's grandfather and denied that the appellant's grandfather or father or the appellant was the priest for the Kakching Khunou village.

(4) The learned Munsiff held in both the cases that the appellant was the Shebait of Krishnachandraji and as such had the exclusive right to officiate as the Purohit of the 3 Kakching villages by a grant made by the then Ruler Sri Sir Chandrakirti Singhji. It was argued before the learned Munsiff that the grant by the Maharajah of this exclusive right to officiate as a priest in the three Kakching villages amounted to a law as far as the three villages are concerned which law was sought to be enforced through Court by preventing the villagers from exercising their right to freely practice their religion guaranteed to them under Art. 25 of Constitution and further that it interfered with the right of other priests of the three villages under Art. 19(1)(g) of the Constitution to practice any profession or to carry on any occupation, trade or business and that such a law which was inconsistent with the fundamental rights guaranteed under Part III of the Constitution was void and unenforceable.

But the learned Munsiff rejected the arguments holding that it was a private grant by the Ruler of the State which did not have the force of law or customary usage amounting to law and that there was nothing repugnant in the grant. He therefore gave a decree granting the declaration and allowing the recovery of the offerings made during the Sradh ceremonies against Iboyaima Sarma.

(5) In the appeals filed against the said decisions the learned District Judge

found on the question of fact that it was established that the appellant was the hereditary Shebait of the deity Krishnachandraji and according to the grant of Sir Chandrakirti Singhji the Maharajah, the Shebait of the said deity had the exclusive right to officiate as the priest of the 3 Kakching villages. But he disagreed with the learned Munsiff and held that the grant of the exclusive right of the Purohitship to the Shebait of Krishnachandraji by the Maharajah had the force of law and that such a grant became void after the passing of the Constitution and the Shebait can no longer enforce the exclusive right on the basis of such a grant. He therefore allowed the appeals and dismissed the two suits.

It is against the said decisions in appeal and second appeals have been filed. The concurrent findings of both by the lower Courts that the Maharajah Sir Chandrakirti Singhji had granted the Shebaitship of the deity of Krishnachandraji, hereditarily on the appellant's ancestors and further that the Shebait of Krishnachandraji was given the exclusive right to officiate as priest for the religious ceremonies of the villagers in the 3 Kakching villages were not challenged before me by either side. The fact of the grant cannot be challenged as admittedly it has been engraved on copper plate and there are decisions of successive Maharajahs giving, decrees to the appellant's father and grandfather for the value of the offerings when other priests officiated at such ceremonies in one or other of the three villages.

(7) The questions which therefore arise for decision in these appeals are whether the said grant by the Maharajah has to be treated as a private grant to the appellant's ancestors or whether it amounted to a law or order having the force of law in the Territory of India and if so whether the said law infringed the fundamental rights of the respondents guaranteed under Part III of the Constitution.

(8) I shall first deal with the question whether it was only a private grant of the Maharajah not having the force of law in the territory of India. The respondents relied on the decision *Sihnu, v. Lachman Dass*, AIR 1952 Himachal Pradesh and Bilaspur 41. That was a case where the then Ruler of Mandi made a grant of a Santha or leasehold right to Lachman Dass to run a watermill and the Santha provided that no other water mill could be run by any one else within a radius of four kos from the said mill.

Sihnu set up a water mill within the said distance. An injunction was granted against Sihnu on the ground that the Santha was a private grant by a Ruler, which was not an enactment in force in any State. The argument advanced for Sihnu was that the Santha offended against the fundamental right under Art. 19 (1) (g) of the Constitution to carry on any occupation, trade or business.

The said argument was repelled on three grounds firstly, because Sihnu had (not?) been allowed to set up a water mill within a certain radius of Lachman Dass's mill and hence it cannot be said that his right had been interfered with as

he could set up a mill beyond that radius. Secondly, it was held that Art. 19 did not give a "carte blanche" to a citizen so as to entitle him to exercise any of the rights mentioned therein even though they might encroach upon similar rights of other citizen*. Thirdly, it was held that the Santha was only a private grant and not a law in force in the Territory of India.

(9) It is clear from the facts of that case that the decision will not apply to the present case. In the first place that decision held that a leasehold right was one which the Ruler of Mandi had the power to grant to his subject and that any other subject if he was to have a leasehold right interfering with the previous leasehold right must obtain a similar grant from the Maharajah. It was a clear case of a private grant. The question dealt with was only the fundamental right under Art. 19(1)(g). But in the present case the fundamental right dealt with is the freedom to practice religion. It cannot be said that when the Ruler of a State grants the exclusive right of officiating as a priest in the three villages of his State to a particular person hereditarily the Ruler was making a private grant of a property vested in him as in the case of a leasehold right.

The Ruler was thereby not only granting the exclusive right to a particular person, but restricting the right of the villagers of the three villages from utilising the services of any other priests for their religious ceremonies. Such a grant cannot be called the private grant of the Ruler. A private grant to a person by a Ruler or by any other authority means the vesting of the person with a right in property which vested in the Ruler or in the other authority. It cannot be said that the right to officiate as a priest in the three villages vested in the Maharajah which he could grant on any particular person. It goes without saying that the Maharajah did not have the exclusive right to officiate as a priest in the villages and hence he cannot make a private grant of the said right on any person hereditarily.

The villagers were no doubt forced to submit to the order of the Maharajah that they shall not employ any other priest in the three villages to officiate for their religious ceremonies. It is a clear case of a restriction imposed on the villagers in the exercise of their religious rights. It was a order passed by the Maharajah imposing a particular rule of conduct on the villagers and not merely a grant of a right to the appellant and his ancestors. In other words it has the force of a law passed by the Maharajah which forced the villagers to obey his direction.

(10) "Law" as defined by Holland in his Treatise on Jurisprudence is a general rule of external human conduct enforced by a sovereign political authority. Salmond defines laws as the body of principles recognised and applied by the State in the Administration of justice.

(11) Applying the above definition of law we see in the present case that by his edict the Maharajah as the sovereign political authority of his State forced the villagers not to employ any other person to officiate at their religious ceremonies and forced every other priest in the three villages to abstain from officiating in

such ceremonies. He enforced this rule even in a Court of law by granting a decree in favour of the person to whom he had given the exclusive right to officiate as priest for the value of the fees and offerings when any other priest officiated in such ceremonies. It cannot be said therefore that it was a mere private grant not having the force of law.

(12) Thus there can be no doubt that this particular grant to the appellant's forefathers was not merely a conferment of certain rights to the appellant and his forefathers but amounted to an order to his subjects in the three villages forcing them to a particular course of conduct. Such an order has certainly the force of law within the meaning of Art. 133(a) of the Constitution. Though the subjects of the Maharajah were forced to accept that order, the validity of the said order after the said subjects became citizens of India would depend on the question whether it infringed the fundamental rights guaranteed to the citizens under Part III of the Constitution.

It was urged that this order of the Maharajah related only to the three villages and that it cannot therefore be called a law in force in the Territory of India. I cannot understand that argument. The three villages are part of the Territory of India. It is not necessary that a law should be applicable to the entire Territory of India. There may be local laws or laws of general applicability throughout the country. Even local laws are subject to Art. 13 of the Constitution that they shall not be inconsistent with the provisions of Part III.

(13) The question now is whether this law offends any one of the fundamental rights. Article 25 of the Constitution guaranteed to a citizen the freedom to practice his religion. Religious ceremonies which have to be performed by a citizen are part of the practice of his religion. For the performance of such religious ceremonies, a Hindu has to get the aid of a priest. If any law says to a Hindu that he shall call only a particular priest to officiate in his religious ceremonies, it is certainly an interference in the freedom to practice his religion. There is no doubt therefore that this particular law which says that the villagers of the three Kakching villages shall call only the Shebait of Sri Krishnachandraji to officiate in their religious ceremonies, is such an interference and such a law is certainly void under Art. 13.

(14) A case almost similar to this came before the Judicial Commissioner of Himachal Pradesh in *Bajinath v. Ramnath*, AIR 1951 Him. Pra. 32, of certain yogis claiming to have the hereditary right of presiding over the Navamala ceremonies, based on custom and seeking to enforce their rights against the Yajmans in Chamba town. It was held then that the said right infringed the fundamental right of freedom of religion conferred on all persons under Art. 25 of the Constitution and that the yogis can only practice their profession and carry on their occupation subject to their not trespassing on the freedom of the Yajmans to practice their religion in any manner they chose.

It was further held that even if there had been prevalent in Chamba any such

custom, it would have been a custom inconsistent with the provisions of Part III of the Constitution and hence void and unenforceable under Art. 13 as under the said Article law included custom or usage. I express my entire agreement with the said decision. The only difference between that case and the present case is that here the right is claimed on the basis of an order of the Maharajah, while there it was claimed as based on custom.

(15) I would even say that such a law infringes Art. 19(1)(g) of the Constitution also in so far as it interferes with the right of a priest like ilboyaima Sarma to practice his profession as a priest in his village. Just as the appellant has the right to practice the profession of a priest in the three villages Iboyaima Sarma has an equal right to practice the said profession if he so choose. The order of the Maharajah granting the exclusive right to the appellant cannot be said to come under Art. 19(6) of the Constitution as imposing reasonable restriction in the exercise of the right to practice the profession in the interests of the general public. The order of the Maharajah was not sought to be justified on any such ground.

(16) I, therefore, entirely agree with the learned District Judge that the right claimed by the appellant was inconsistent with the provisions of Part III of the Constitution and hence void and unenforceable under Art. 13.

(17) Both the appeals are therefore dismissed with the costs of the respective respondents.

Appeals dismissed.