

(1999) 10 KL CK 0042
In the High Court Of Kerala
Case No : O.P. No. 22070 of 1999 (B)

Guruvayoor Devaswom Employees" Association	APPELLANT
Vs	
State of Kerala and Others	RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Guruvayoor Devaswom Act, 1978 — Section 4(1)

Citation : AIR 2000 Ker 1 : (2000) 1 ILR (Ker) 69

Hon'ble Judges : S. Sankara Subban, J;P.K. Balasubramanyan, J;K.K. Usha, J;C.S. Rajan, J;Ar. Lakshmanan, J

Bench : Full Bench

Advocate : S. Sreekumar, for the Appellant; U.K. Ramakrishna, Standing Counsel, GDB, Ashok H. Desai (Sr.), General, K.K. Ravindranath, Sr. Govt. Pleader, K. Radhakrishnan, M.K. Damodaran and Pallav Shishodia, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyam, J.—This Original Petition filed by the Guruvayur Devaswom Employees" Association through its Secretary challenges the Constitutional validity of Section 4(1)(d) of the Guruvayur Devaswom Act, 1978. When the Original Petition was admitted by the learned single Judge, the learned single Judge also ordered that this Original Petition also be listed with other connected Original Petitions which were pending before a larger Bench. That is how this Original Petition has come up before us for decision.

2. The famous Guruvayur temple in the erstwhile Malabar of this State was originally governed by a scheme decree and the provisions of the Madras Hindu Religious and Charitable Endowments Act, HR and CE Act for short. In the year 1971 Guruvayur Devaswom Act, 1971. Act 6 of 1971 was enacted by the Kerala Legislature. u/s 3 of that Act administration, control and management of the Devaswom was vested in a Committee constituted in the manner provided by that Act. The Committee was to be known as Guruvayur Devaswom Managing

Committee and it was to be a body corporate having perpetual succession and a common seal. Section 4 of the Act provided that the Committee was to consist of (a) the Zamorin Raja who shall be the Chairman, (b) the Karanavan for the time being of the Mallisseri Illom at Guruvayur, who shall be the Vice-Chairman; (c) the Administrator, ex-officio; (d) the Chairman of Guruvayur Township Committee provided he is a person professing Hindu religion, Ex-officio; (e) the Thantri of the temple, Ex-officio; (f) a representative of the employees of the Devaswom nominated by the Government and (g) not more than eleven persons nominated by the Government of whom one shall be a Harijan. Though Sub-Section (2) of Section 4 provided that the nominees under clause (g) of Section 4(1) should be a person who professes the Hindu religion, no such specific qualification was mentioned regarding a representative of the employees of the Devaswom to be nominated by the Government. But Section 19(8) provided that a person who did not profess the Hindu religion shall be disqualified for being appointed as or for being an officer or servant of the Devaswom. Substantive provisions of the Act were struckdown as unconstitutional by this Court in Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others, . Among the Sections struck down, was Section 4 of the Act providing for the Constitution of the Managing Committee. Accepting the decision of this Court and in the light of the directions contained therein, the Legislature enacted Guruvayur Devaswom Act, 1978. Guruvayur Devaswom Act, 1971 was repealed by Section 41 of Guruvayur Devaswom Act, 1978, Act 14 of 1978. Section 4 related to the composition of the Committee in which the administration, control and management of the Devaswom was to vest in terms of Section 3 of the Act. The Committee was to consist of (a) Zamorin Raja, (b) Karanavan for the time being of the Mallisseri Illom at Guruvayur, (c) The Thantri of the temple Ex-officio, (d) a representative of the employees of the Devaswom nominated by the Hindu among the Council of Ministers and (e) not more than five persons to be nominated by the Hindu among the Council of Ministers from among persons having interest in the temple. The validity of the Guruvayur Devaswom Act, 1978. Act 14 of 1978 was also challenged before this Court. In the decision in K.V. Narayanan Namboodiri and Others Vs. State of Kerala and Others, the Full Bench struck down Section 32 of the Act providing that no notification issued, order passed, decision made or proceedings or action taken under the Act by the Government or the Commissioner shall be questioned In any Court of law. Sections 33 and 35 were directed to be read down. Clauses (d) and (e) of Sub-Section (1) of Section 4 relating to nomination of members to the Committee by the Hindu among the Council of Ministers was directed to be interpreted as Hindus among the Council of Ministers having faith in temple worship. In other respects validity of the Act was upheld.

3. In the connected Original Petition in which a separate judgment is being pronounced, the question involved is whether the direction of the Full Bench in K.V. Narayanan Namboodiri and Others Vs. State of Kerala and Others, qualifying the Hindu among the Council of Ministers as Hindus having faith in temple

worship was justified and whether the worshippers in the temple could insist that only Hindu Ministers having faith In temple worship were qualified to make the nominations u/s 4(I)(d) and 4(I)(e) of the Act. The answer given by the Full Bench does not have any impact on the question sought to be canvassed for by the petitioner in this Original Petition. But it may be noted that the view taken by the Full Bench is that in K.V. Narayanan Namboodiri and Others Vs. State of Kerala and Others, the learned Judges were not justified in directing that the expression "Hindus among the Council of Ministers" should be interpreted as "Hindus in the Council of Ministers having faith in temple worship." The question raised before us on behalf of the employees of the Devaswom is that Section 4(I)(d) of the Act is violative of Articles 14 and 19 of Constitution of India in that the provision has not provided any guidelines for the mode of making the nomination from among the employees and the vesting of the right to nominate a representative of the employees on the Council of Ministers without leaving it to the employees themselves, was violative of the rights of the employees under Article 19 of the Constitution.

4. In the counter-affidavit filed on behalf of the State, it is submitted that it was a case of nomination of an employee to the Managing Committee and it was not the case of an election of a representative, that the power to nominate is vested in a very responsible body like the Hindu members in the Council of Ministers and that the method of nomination and the provision for nomination are matters of policy and the employees cannot claim any fundamental right to be nominated in the Managing Committee or to insist that a representative from among themselves would be chosen only by themselves and that there was no infirmity attached to Section 4(I)(d) of the Act.

5. Before proceeding further we may briefly notice the history of the administration of the temple. The right to manage the temple originally vested with the Zamorin of Calicut and the Karanavan of the Mallissery , Illom. When the sthanam of Zamorin was in the management of the Court of wards, gradually the entire management was assumed by the Court of wards. After the Court of wards surrendered rights back to the Zamorin, on the Zamorin attaining majority, Zamorin refused to recognise the right of the Karanavan of the Mallisseri Illom to participate in the management of the temple and its properties. The Karanavan of the Mallisseri Illom thereupon filed a suit, O.S. 1 of 1929 on the file of the District Court of South Malabar to establish or get back his right in the management of the temple. Certain worshippers filed O.S. 2 of 1929 in the same Court complaining that the scheme that was framed for the management of the temple at their instance, required to be modified since the Hindu Religious Endowments Board constituted under the HR and CE Act had merely accepted the scheme put forward by the Zamorin of Calicut and had not provided for sufficient safeguards to ensure the proper management of the institution and seeking an amendment of the scheme by adding to the number of trustees and the placing of the management of the temple In the hands of a board of five trustees three of whom were to be nominated and a Manager who

was to be appointed by the Board. The Zamorin resisted both the suits. The learned trial judge upheld the claim of the Mallisseri Nambudiri to be a hereditary trustee of the temple with rights in the management as declared in an earlier decree of the High Court of Madras in A. S. 35 of 1887. The learned trial Judge also made certain amendments in the scheme of administration settled by the Board as a consequence of his conclusion regarding the right of the Mallisseri Nambudiri. The decrees in these two suits O.S. Nos. 1 and 2 of 1929 were challenged by the Zamorin before the High Court of Madras in A.S. Nos. 211 and 212 of 1930. The Zamorin contended that the trial Judge was in error in recognising any right in the Mallisseri Nambudiri and that the Zamorin by himself was entitled to manage the temple. By judgment dt. 21-11-1930 reported as *Manavikrama Raja, the Zamorin of Calicut Vs. Thattamangalath and Others*, the decision of the trial Judge was more or less upheld and certain directions were issued regarding the provisions to be incorporated in the scheme. Pursuant to the directions thus given, a scheme was framed in which it was provided :--

"Administration of the Guruvayur temple. Ponnani Taluk. South Malabar and its property and endowments vest in the hereditary trustees, the Zamorin Raja of Calicut and the Karanavan for the time being of the Mallisseri Illom, present trustees being the present Zamorin Raja and the present Karanavan of the Illom, Thathamangalath alias Mallisseri Illath Krishnan Namboodiripad."

As far as the worshippers were concerned, the only rights given were the right to be present when the "bhandaram" was opened and the right to inspect the accounts and the copy of the register maintained u/s 38(4) of the HR and CE Act. This scheme was subsequently modified by the District Court of South Malabar in O.S. 1 of 1933. The said modification is not relevant for our purpose. It was while this scheme was in operation and the right of management of the temple and its assets vested in the Zamorin and the Karanavan of the Mallisseri Illom that the Guruvayur Devaswom Act, 1971 was brought into force. The said Act by Section 36 provided that the scheme framed for the temple by the High Court of Madras in Appeals Nos. 211 and 212 of 1930 as modified by the District Court, South Malabar in O.S. 1 of 1933 shall cease to apply to the temple. Thus as per the 1971 Act, administration, control and management of the Devaswom came to vest in the Committee but in view of the striking down of Sections 3 and 4 of that Act by this Court in *Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others*, , the scheme decree revived. But this Court while rendering the decision in *Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others*, directed that since it would not be in public interest to create a hiatus in the matter of the administration of the Devaswom even for any short period, operation of the judgment rendered by the Court would stand stayed for a period of two weeks from the date the Judgment was rendered, in order to allow time to the State to take such steps as it may deem fit in the light of the observations in the Judgment. The judgment in *Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others*,) was rendered on 15-11-1977. Before the expiry of the period granted by the Full

Bench for taking steps, the Guruvayur Devaswom Ordinance, 1977, Ordinance 25 of 1977 was promulgated on 29-11-1977 providing for the management of the temple and the same was followed by the Guruvayur Devaswom Act, 1978 vesting the administration, control and management of the Devaswom in the Committee constituted.

6. Sections 10 and 27 of the Guruvayur Devaswom Act, 1971 were first challenged before this Court in *Manavedan and Others Vs. The State of Kerala and Others*,). The Full Bench rejected the challenge and upheld the validity of the provisions impugned. It is thereafter that the Act came to be challenged as a whole leading to the decision of a larger Bench in *Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others*,). Mr. Justice G. Viswanatha Iyer who was a party to both the decisions specifically observed in Krishnan's case that in the earlier decision in *Kunshettan Thampuran v. State of Kerala* the attack was confined to clauses (a), (b) and (g) of Section 10 and clause (b) of Section 27(2) of the Guruvayur Devaswom Act, 1971 and a detailed examination of the validity of the various provisions in the Act was not precluded by the earlier decision. The Full Bench in *Krishnan v. Guruvayur Devaswom* essentially took the view that Section 4(1) of the 1971 Act had to be held to be bad for the reason that the power of nomination conferred on the Government was naked and arbitrary and without any safeguard being provided for ensuring that the Committee will be a body representing the denomination of Hindus who worship at the temple. It was further held that the right to administer the temple being vested in the denomination, any statutory provision which completely ignored the denomination in the matter of setting up the Committee to administer the religious institution belonging to the denomination would necessarily be violative of Article 26 of the Constitution. It is thereafter that the 1978 Act was enacted which provided for the nomination of a representative of the employees of the Devaswom and of five members to be nominated by the Hindus among the Council of Ministers, from among persons having interest in the temple. In other words, the nominee to the Committee had to be a Hindu having interest in the temple. Section 2(f) defined a person having interest in the temple as meaning a person who was entitled to attend at, or was in the habit of attending, the performance of worship or service in the temple or who was entitled to participate or was in the habit of participating in the benefit of the distribution of gifts thereat. A person was disqualified to be nominated as one among the five referred to in clause 4(1)(a) of the Act if he practices untouchability or did not profess the Hindu religion or believe in the temple worship. Every member of the Committee before entering into his office had to subscribe to an oath to the effect that he swears in the name of God that he professes the Hindu religion and believe in temple worship and that he did not believe in the practice of untouchability. As far as the employees were concerned, u/s 18(6), a person who did not profess the Hindu religion or believe in the temple worship was disentitled for being appointed as an officer or employee of the Devaswom. Thus an employee who believed in temple worship was to be

nominated as the representative of the employees to the Managing Committee and the nomination was to be done by the Hindus among the Council of Ministers. In the judgment in the connected Original Petition we have held that the Council of Ministers who are to make the nomination need only be Hindus and need not necessarily be Hindus who believe in temple worship.

7. It can be seen that for the first time, a representative of the employees of the Devaswom got the right to be associated with the management of the temple only by the coming into force of the Guruvayur Devaswom Act, 1971. But since Section 4(1) of that Act of 1971 was struck down as unconstitutional, the right was effectively obtained only on the coming into force of the Act of 1978. There was no pre-existing right in the employees of the temple to be associated in the management of the temple. There was no such argument also on behalf of the petitioner. There was therefore no question of any right of the petitioner or of the employees under Articles 25 and 26 of the Constitution of India being violated. The only argument raised on behalf of the petitioner is that the right to be associated in the management of the temple having been conferred on the employees by enabling them to have a representative of theirs in the Managing Committee, the right to elect that member or to recommend their nominee must be with the employees and the provision for the exercise of power of nomination by the Council of Ministers was arbitrary and unreasonable and it also violated the fundamental rights of the employees to be associated in the management. As the reference to the history above made shows, there was no right in the employees of the Devaswom to participate in the management of the temple at any time before the Act came into force and the Act for the first time provided for representation to the employees in the manner prescribed by the Act. The right to have a representative in the Managing Committee is thus only a statutory right conferred on the employees and the very provision which conferred on them the said right also provided for the mode of identifying that representative. The employees cannot say that even while they accept the right conferred on them to have their representative in the Managing Committee, they can challenge the mode of identifying that representative or can insist on having a right to elect their own representative to the Managing Committee. This Court had occasion to consider the nature of the right conferred by Section 4 of the Act in *K. Krishnankutty, M.L.A. and Others Vs. State of Kerala*, . Therein, dealing with a challenge by a Legislator to the provision in the Travancore Cochin Religious Institutions Act providing that the Legislator would be entitled to participate in the election of a member to the Travancore and Cochin Devaswom Boards only if he was a believer in God, professed Hindu religion and believed in temple worship, the Full Bench accepted the submission of the learned Government Pleader that the right to elect a member is a statutory right and it was therefore well within the power of the legislature earlier to take away that right or to restrict that right.

The Full Bench held :--

"In this case also the right to elect a member to the Board is a right created by statute and not a fundamental right. In the exercise of the right conferred by the statute, conditions prescribed by the statute have also to be followed. The right to elect is thus subject to the condition so imposed. In this view also, the contention of the petitioner based on as alleged violation of a fundamental right cannot be accepted."

Earlier a Full Bench of the Travancore-Cochin High Court in *Brahmadathan Namboodiripad v. Cochin Devaswom Board* AIR 1956 ker 19 had held :--

"Whether the voting should be by all the adults professing the Hindu faith or by an electoral college is but a matter of policy. So also are the qualifications which the members of an electoral college should possess and there is apparently nothing wrong in saying that the members of the college shall be not merely Hindus but also members of the Cabinet or of the Legislative Assembly thus emphasising the ability and aptitudes implicit in the membership of such democratic institution."

8. Learned counsel for the petitioner referred to the decision of the Supreme Court in *All India Bank Officers' Confederation and Others Vs. Union of India and Others*, and contended that when a nomination of a representative of the employees was provided by the statute, the scheme envisaged must be implemented so as to give the maximum scope for the concerned employees to exercise their choice in the selection of their representative and an uncanalised power given to the Hindus among the Council of Ministers was arbitrary and violative of Article 14 of the Constitution. We are afraid that the petitioner cannot derive any support from the decision referred to, where both the statutory provision and the scheme made pursuant thereto, specifically laid down the mode of appointment from out of a pannel submitted by the association of workers. When the right conferred on the employees to have a representative of theirs in the Managing Committee is a right conferred by the statute which has also prescribed the manner of finding that representative of the employees by way of nomination by the Hindus among the Council of Ministers, it is not open to the employees to successfully challenge the mode of nomination. The statute which provides for representation, also provide for the manner of that representation. In the light of the decision referred to above, it is clear that the challenge at the hands of the petitioner to Section 4(l)(d) of the Act is unsustainable.

9. It may also be noted that dealing with the question of nomination under this Act. in *K.V. Narayanan Namboodiri and Others Vs. State of Kerala and Others*, , the Full Bench stated that It could not be said that there are no guidelines in the Act for the nomination of members to the Administrative Committee. There is no ground established to go behind the said observations of the Full Bench.

10. In our Judgment in O.P. No. 16192 of 1999 rendered separately, relevant decisions of the Supreme Court have been cited in extenso to indicate that the

power to create the body to be in management of the affairs of the temple can be exercised by the secular authority and a provision for providing for such exercise cannot be considered to be unconstitutional or void. It does not appear to be necessary to refer to those decisions in detail in this Judgment also. Suffice it to say that the argument that a provision providing for exercise of right of nomination of the representatives of the employees in the Hindu in the Council of Ministers is unconstitutional or violates the fundamental rights of the employees cannot be accepted.

11. Learned counsel for the petitioner referred to Exts. P-1 and P-2 in an attempt to say that the real intention was to give a true right of representation to the employees. Ext. P-1 is a letter dt. 9-3-1971 from the Secretary to the Government, to the Manager of the Guruvayur Devaswom informing him that the Government would like to ascertain the wishes of the employees as to who should be their representative in the Committee and requesting the Manager to arrange for a meeting of all the employees to ascertain their views and if necessary even by a secret ballot. Ext. P-2 is a Notification issued two days thereafter on 11-3-1971 constituting the Guruvayur Devaswom Managing Committee. Therein it is stated that one of the members will be "a representative of the employees who will be nominated after consulting the employees". It is seen that until the filing of this Original Petition in the year 1999, no complaint had been raised before this Court by the employees regarding the mode or manner of nomination of their representative. Nor was it brought to our notice that any particular nomination of their representative had been challenged before this Court by the employees. What Ext. P-4 Notification stated is that a representative of the employees would be nominated after consulting the employees. There is no case that there is no process of consultation at all before a representative of the employees is nominated. In any view, there is no material which would suggest that there was any arbitrary exercise of power in that regard. Even assuming that there was any such arbitrary exercise of power. It would only give the petitioner or the employees of the Devaswom. the right to question a particular nomination. That would not enable them to challenge the very provision providing for their representation by way of a nomination by the Hindus among the Council of Ministers.

12. Since it has also been noticed that there is no fundamental right in the employees or pre-existing right in the employees to have a representative in the Managing Committee of the Devaswom, the challenge based on Article 19(1) of the Constitution is found to be without substance.

13. Even assuming that the challenge to Section 4(l)(d) of the Act as conferring an arbitrary or uncanalised power on the Hindus among the Council of Ministers in the matter of nomination of a representative of the employees Is accepted, that would only result in Section 4(l)(d) of the Act being struck down as unconstitutional. That would mean that the employees will not have any representation at all in the Managing Committee. This aspect also cannot be

forgotten while dealing with the contentions now sought to be raised by the petitioner.

Thus on a consideration of the relevant aspects, we are not satisfied that the petitioner is entitled to any relief. The challenge to Section 4(1)(d) of the Guruvayur Devaswom Act. 1978 has to fail.

Hence we dismiss this Original Petition.