

(1984) 06 MAD CK 0006
In the Madras High Court
Case No : W.P.S.R. No. 147800 of 1983

K. Rajendran

APPELLANT

Vs

Government of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-06-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1985 Mad 44

Hon'ble Judges : Ratnavel Pandian, J

Bench : Single Bench

Advocate : A.R. Jagadeesan, K.P.H. Thulasiraman, P. Rajamanickam and M. Ramamoorthy, for the Appellant;

Judgement

1. This unnumbered writ petition has been filed by one Rajendran, seeking the issuance of a writ of mandamus or any other appropriate writ or

order in the nature of writ, directing the Government of Tamil Nadu, represented by the Secretary to Government, Commercial Taxes and Hindu

Religious Endowments, viz., the first respondent, to declare that respondents 2 to 4 viz., Sri Swaminathan alias Chandrasekharendra Saraswathi,

the Sankaracharya of Kamakoti Peetam, Kanchipuram, Sri Venkataraman alias the Junior Sankaracharya of Kamakoti Peetam, and Sri

Narayanan alias the Sub-Junior Sankaracharya of Kamakoti Peetam are not the Jagatguru Sankaracharyas, and to pass such further orders as the

Court may deem fit.

2. The averments made in the affidavit filed, in support of the writ petition are briefly as follows: In the 8th Century A. D., Aadi Sankara of Kaladi

established four Sankaracharya Mathas based on the four Vedas in four places viz., the Jyothi Math in the Himalayas (Badri) in the North, the

Govardhan Math at Puri in Cuttack in the East, the Sharada (sic. Kalika) Math at Dwaraka in Gujarat in the West and the Shringeri (sic. Sharada)

Math at Shringeri in the South. Each of these Maths was given exclusive jurisdiction over the then provinces (now the States surrounding the

Maths). The Sankaracharyas of these Maths were enjoined to minister to the spiritual, theological, religious and social needs of the congregations

within their respective jurisdictions and also given rights to call for and receive pecuniary and other offerings from the people in their charge. The

Shringeri Math Acharya is entitled to and is in enjoyment of the above said status, style and position of Sankaracharya and all rights, title, privileges

and dignities appurtenant to the gaddy of Shringeri Math, which has, exclusive jurisdiction over the southern States including Tamil Nadu and

Andhra. The four preceptors of the second respondent from 1814 and after them the second respondent herein have fraudulently assumed the title

of Sankaracharya of Kumbakonam, which was later rechristened as Kanchi Kamakoti Peetam in 1942. This Peetam is not one of the four Maths

established by Aadi Sankara. Under this assumed title, respondents 2 to 4 call for and receive pecuniary and other offerings from the people at

several places in the southern States which are exclusively within the jurisdiction of the fifth respondent, viz., the Jagatguru Sankaracharya of

Shringeri Math at Shringeri in Karnataka State, to the serious detriment of the fifth respondent and to the derogation of the status, style and dignity

of the Sankaracharya of the said Shringeri Math.

3. The Sankaracharya of Shringeri Math established branches at Kanchipuram, Madras, Rameshwaram and other important religious centres in

Tamil Nadu. There are branches (1) near the Mallikarjuna Temple in Linghi Chetty street, Madras, (2) adjoining the sanctum sanctorum of

Meenakshi Amman Temple at Madurai, and (1) adjoining the compound wall of Ramanathaswami Temple at Rameswaram. The archakas

(priests) of Ramanathaswami Temple have to get the approval of the Shringeri Math even today for their appointments and the temple sends

umbrellas and other presents to the Shringeri Math branch even to this date. All these facts confirm that the Shringeri Math is the acknowledged

Math in the South established in Tamil Nadu. The Branch maths established by Kanchi Acharya are quite removed from the temples aforesaid and

these buildings are of very recent origin whilst the buildings of the branch maths established by Shringeri Math are very old. Further, all the

aforesaid four Maths have their Mathamanayas in Sanskrit, whilst the Kanchi Math has no such Amnay. The fact that Aadi Sankara established

four Maths is spoken to by the High Courts of Patna and Bombay and the Supreme Court in their judgments whereby it is established that the

Kanchi Kamakoti Math is not a recognized Math.

4. All the above four Maths have categorically refused to recognize the Kanchi Kamakoti Math. The pundits of Varanasi (Benaras) have passed a

resolution in 1886 denouncing the Kanchi Math as a bogus and a pseudo one. The ruling pontiff of Kanchi Math (the second respondent herein)

claims to be the 68th pontiff in a long line of succession to the Math known as Kumbakonam Math. The fact remains that this Math originally called

the Kumbakonam Math was founded in 1814 with Chandrasekhara-I as its pontiff. He was succeeded by Chandrasekhara-II and

Chandrasekhara III in 1891 and 1897 respectively and by Madhava in 1907. The fourth pontiff. Madhava occupied the gaddy for only seven days

and died of small pox leaving the gaddy vacant for the second respondent to occupy it on 9-5- 1907. There is thus an attempt to attribute a hoary

past to the Kanchi Math. The third and the fourth respondents are the nominees to succeed the second respondent in that order. The book

Jagatguru DivyaCharitram written by Sambamurthi Shastrigal, the brother of the second respondent, in 1957, bears testimony to the above.

Sankaracharya's is a high religious office with quasi-judicial functions on questions of religion, law and rituals in the Hindu society and the

organisation of the four maths with exclusive jurisdictions was necessary to prevent conflicts of authority and jurisdiction. Further, no sanyasi

(ascetic) can accept pecuniary gifts unless he is a Sankaracharya. The name ""Sankaracharya"" means ""Preceptor Sankara"" which originally

belonged to Adi Sankara. After his death, the heads of the four maths have adopted the said as a title. Respondents 2 to 4 being not entitled to the

style and privileges of Sankaracharya for the reasons stated in the affidavit, their act in assuming the same is fraudulent and wrongful. Respondents

2. to 4 have disturbed and interfered with the office of the fifth respondent. AdiSankara, in his last literary works, had denied God and decried

Varnasrama, wearing of caste marks, idol worship etc. But, respondents 2 and 3 are idol worshippers, encouraging Varnasrama Dharma.

Respondent-2 has dedicated his life for the perpetuation of Varnasrama Dharma and established trusts for helping indigent Brahmin families,

especially of the Smartha sect to perform the sacred-thread ceremonies and has been promoting group yagnopaveetha every year. He has also laid

stress on the initiation of Brahmin boys to Brahmacharya at a very early age and on the child marriage of girls in their community.

5. The second respondent had influenced the then British Government and got himself appointed the sole trustee of Kamakshi Amman Temple in

Kanchipuram in November 1942, and after such appointment, the Kumbakonam Sankaracharya assumed the title of Kanchi Kamakoti

Peethathipathi. Kanchi Math did not exist till 1942. There was the Kumbakonam Math till then and it was rechristened as Kanchi Math after 1942.

The Kanchi Math is a pseudo and bogus math promoted by Smartha Brahmins in 1814 and not founded by AdiSankara. It is a fraud on the

Hinduism, pure and simple. The petitioner has also alleged that though the title "Jagatguru" implies that he is the Guru for all the Hindus, the

nomination of successors to the math by the second and third respondents belies the title, proving that Sankaracharya is the Guru for the Smartha

Brahmins only. The second respondent has nominated the third respondent to the gaddy and the third respondent has recently nominated the fourth

respondent its the Junior Sankaracharya, and they have done so for the purpose of making an assurance for the dominant Brahmin community for

two generations. The Shringeri Sankaracharya is Still the accredited Sankaracharya for the South And the Kanchi Math has encroached on the

rites and privileges of the Shringeri Math (5th respondent). When the second respondent undertook journey to the north in 1919, the Pandits of

Varanasi refused to recognise him as the Sankaracharya. The second respondent has taken active part in Tamil Nadu politics and has encouraged

the formation of the R. S. S. organization In Tamil Nadu and has promoted his own community men to organise the Hindu Munnani, the Vishwa

Hindu Parishad and the like to counter the reservation policy of the Government intended for the development of the Backward Classes. The

second and the third respondents are vehemently opposing these reservations made community-wise. The second respondent has in his treatise

"Deivathin Kural" (Voice of God), has written lauding the division of the Hindu society into four Varnas, viz, Brahma, Kshatriya, Vaishya and

Shudra, and as a natural corollary, the fifth estate Panchama and the need for the observance of the various Dharmas laid down in the scriptures,

smrithis, shastras etc., laying emphasis on the existence of these artificial divisions. The second respondent wants untouchability to continue in

breach of Art. 17 of the Constitution of India. Instead of taking suitable measures, the Chief Minister the Minister for Hindu Religious and

Charitable Endowments and other Ministers have participated it, the Hindu (Indian) Religious Conference, held in Madras in April, 1983, and

thereby put their seal of approval for the communal activities of these Shankaracharyas, especially the third respondent the rein. As no other

remedy against the action of the State Government according recognition of these pseudo and bogus Kanchi Math by their approval in appointing

and continuing the pontiff of the Kanchi Math as the sole trustee of Kamakshi Amman Temple, Kanchipuram, and encouraging the second and the

third respondents conducting the Hindu Conference by active participation in it by the Chief Minister and other Ministers, this Writ Petition is filed

before this Court for the, relief sought for therein.

6. This un-numbered writ petition has been listed before me to decide the maintainability or otherwise of this writ petition.

7. Mr. A. R. Jagadeesan, learned counsel appearing on behalf of the writ petitioner, took me through the averments made in the affidavit and

contended that this writ petition is maintainable in view of the past and present circumstances that this Kanchi Math should not be kept in charge of

a public place of worship and as the Government of Tamil Nadu has a duty, to declare that respondents 2 to 4 are not entitled to the style, status

and dignities of a Sankaracharya.

8. This writ petition is filed under Art. 226 of the Constitution of India praying for the issue of a writ of mandamus or any other appropriate writ or

order directing the Government of Tamil Nadu ""to declare that the respondents 2 to 4 are not Jagatguru Sankaracharyas"". Besides, there is also a

prayer for an injunction ""to injunct the respondents 2 to 4 from continuing to adopt the style, status and the dignities of a Sankaracharya pending

disposal of the above writ petition and thus tender justice. It is to be noted here

that no prayer is asked for against the fifth respondent. On the other hand, a reading of the affidavit of the petitioner would show as if the fifth respondent's rights and privileges are infringed upon by respondents 2 to 4 and therefore the petitioner wants to espouse the cause of the fifth respondent. The only question that arises for my consideration is whether the facts set out in the affidavit would make out a case for entertaining the writ petition seeking the issue of a writ of mandamus which is a high prerogative with designed to compel and authority to do his or its duty. In this connection, I would like to refer to certain decisions touching on this question.

9. In *Madhusudan Parvat v. Shri. Madhav Theerth* (1909) 11 Bom LR 58: ILR (1909) Bom 278, the facts of that case were as follow : The

plaintiff the Shankaracharya of the Sharada Math at Dwarka, sued for its declaration that the defendant was not entitled to the style, title and

dignities of it Shankaracharya and that he was not entitled to call for or receive any offerings from the people of Ahmedabad or other places in

Gujarat either in his assumed capacity of a Shankaracharya or of a Shankaracharya of the Jotir Math or of a branch of that Math, and for an

injunction restraining the defendant from styling himself as a Shankaracharya in Gujarat or from claiming or receiving offerings in Gujarat as a

Shankaracharya or as a Shankaracharya of the Jotir Math or of a branch of that Math. It was held that the suit was not of a civil nature such as the

Court would entertain. It was observed in that case as follows (vide head-note):

The office of Mohunt of the Sharada Math is in no way endangered by the defendant's action in claiming to be a Shankaracharya of the Jotir

Math, nor are voluntary offerings made to Shankaracharyas in Gujarat fees claimable as of right by the holder of the plaintiff's office. For

interference with a, mere dignity or for voluntary offerings no suit can be maintained. Civil Courts will not decide disputes as to precedence or

privilege between purely religious functionaries nor will they grant injunctions to prevent preachers from preaching where they like under any title

they please provided no office or property is disturbed or interfered with.

10. In *Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another*, , which related to two suits instituted by the Aradanaikar

and Trustee of the Emberumanar temple, dedicated to Sri Ramanujacharya,

which was one of the, group of temples built around the main temple of Athinathalwar in Tirunelveli District, for declaration of his right to the first theertham and other honours and perquisites in precedence over all other worshippers in the temple of Athinathalwar, it was held that although it was, not permissible under S. 9 of the CPC for a civil Court to entertain a suit for a declaration of religious honours and privileges simpliciter, it could entertain a suit to establish one's right to an office in a temple and to the honours and privileges attached to such office as its remuneration and perquisites, and laid down the law that the essential condition for the existence of an office is that the holder of the alleged office shall be under a legal obligation to discharge the duties attached to the said office and for the nonobservance of which he- may be visited with penalties.

11. In the above decision, reference is made to the observations made by Krishnan, J., delivering the leading judgment in Vathiar Venkatachariar

v. Ponappa Ayyengar (1918) 45 Ind Cas 959, 961, 962: AIR 1919 Mad 1026, which was a decision rendered by a Division Bench of- this High

Court. In that case, the Court had to consider the question of a claim to a religious honour which consisted of receiving theerthams and prasadam

in the temple in certain order of precedence. The learned Judge observed thus

It is clear that, to constitute an office, one, if not the essential, thing is the existence of a duty or duties attached to the office which the office-

holder is under a legal obligation to perform and the nonperformance of which may be visited by penalties such as a suspension, dismissal, etc.

12. A Division Bench of this Court in *Sunshine Co. Vs. Chief Controller of Imports and Exports, New Delhi and Others*, , has laid down the law

with regard to the right of invoking the extraordinary jurisdiction of this Court seeking a writ of mandamus, as follows:

Only if there is a violation of public duty by a public officer in the normal discharge of his duties, a writ of Mandamus, which is an extraordinary

remedy, will be issued.

13. In yet another decision rendered by a Division Bench of this Court, to which I was a party, viz., in *G.T. Venkatasamy Reddi Vs. State of Tamil*

Nadu and Another, , it has been observed as follows:

It is by now settled, that the applicant who seeks for a writ of Mandamus should have a legal right to the performance of a non-discretionary legal

duty by the person against whom a writ is sought. Even so, the right must be a public right and the duty to be enforced is of a public nature. An element of compulsion to perform the legal duty should be apparent on the record. The purpose of the writ is to compel action and not to undo what has been done. In all cases in which such an issuance is requested for, there should be a statutory duty on the part of the other party to be performed. In other words, it should be incumbent on the part of the other party to perform the duty and then only a writ of mandamus which is a high prerogative writ which could be granted as it cannot otherwise be granted as matter of course.

14. It is relevant, in this connection, to refer to the decision of the Supreme Court in *S.P. Gupta Vs. President of India and Others*, wherein it has been ruled that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some of the provisions of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision.

15. Thus, from the principles of law laid down in the above decisions, it is clear that in a case of this nature, in order to find out whether there is the existence of any office attached with duty or duties which the office holder is under a legal obligation of which may be visited with penalties such as suspension, dismissal etc., voluminous evidence, both oral and documentary, under various heads viz., historical, administrative, financial etc., and on the religious and ritual aspects, and about observances, ceremonies and modes of worship which are integral part of religion, custom. Long usage etc., has to be let in and considered, which are all not matters which can be gone into in detail on a mere affidavit in a writ petition. In fact, after hearing the learned counsel for the petitioner at length and after carefully going through the averments made in the affidavit filed in support of the Writ Petition, I am of the view that the existence of a right which is available to the petitioner has not been made out, nor has it been established that there is a duty on the part of the Government to declare a particular person as Sankaracharya, or not. For exercising such a duty, it must be cast on the Government or any authority, either under a statute or under the general law. The Tamil Nadu Legislation dealing with religious

endowments does not contain any provision for issuing such a direction. The Hindu law also does not contain any requirement in this behalf.

Moreover, the facts set out in the affidavit, in my view, do not make out a case of violation of any duty or duties attached to any office which

respondents 2 to 4 are under legal obligation to perform. Hence, I hold that no writ will lie for the relief asked for.

16. In para 17 of the affidavit, the reason given by the petitioner for impleading the fifth respondent, is that ""the Shringeri Sankaracharya, whose

rights have been encroached upon, is impleaded as the fifth respondent herein"". It is not explained why the petitioner should espouse the cause, if

any, of the fifth respondent, especially when the petitioner does not show that he is a person affected by the alleged encroachment of the rights and

privileges of the fifth respondent. A careful reading of the affidavit would show that the prayer in the petition is substantially moulded on the line of

the prayer in the Bombay decision in *Madhusudan Parvat v. Shri Madhav Theerth* (1909) 11 Bom LR, 58 wherein the Bombay High Court has

held that a suit could not be entertained. While it is so, a fortiori a writ will not lie for such a relief.

17. Thus, in my view, the present writ petition is not maintainable as no legal right of the petitioner is shown to have been infringed and as the

Government is not shown to be under a duty to make a declaration as prayed for so that the omission to exercise that power can be made good in

this proceeding.

18. For all the reasons stated above, this writ petition is rejected as not maintainable.

19. Petition dismissed.