

**(1972) 02 KL CK 0005**  
**In the High Court Of Kerala**  
**Case No : Original Petition No. 563 of 1972**

K. Reghunath

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

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**Date of Decision :** 11-02-1972

**Acts Referred:**

Constitution of India, 1950 — Article 27

**Citation :** AIR 1974 Ker 48

**Hon'ble Judges :** T.C. Raghavan, C.J;P. Unnikrishna Kurup, J

**Bench :** Division Bench

**Advocate :** S.A. Nagendran, for the Appellant; Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Raghavan, C.J.—We dismissed the writ petition with no order regarding costs stating that we would give our reasons for the dismissal later.

2. The petitioner is an advocate practising in Tellioherry; and he as a tax-payer, has filed this writ petition for the issuance of a writ of mandamus or other appropriate writ, direction or order directing the State of Kerala and the District Collector. Cannanore to forbear from spending any amount from the public funds of Kerala State to reconstruct the places of worship destroyed during the recent disturbances at Tellicherry and the villages nearby. On the night of 29th-30th December 1971 (the counter-affidavit says it was on the night of 28th-29th) there were some unfortunate incidents at Tellicherry and the surrounding villages between two sections of the people. Hindus and Muslims; and as a result, some shops, buildings and places of worship of both the sections were destroyed. The Government started relief measures; and a sum of Rs. 25,000/- was sanctioned from the Distress Relief Fund for distribution of ad hoc grants to those who were rendered homeless and to those whose houses were damaged. Arrangements for the free supply of one week's ration to the affected families were also made. The Government constituted a Peace Committee; and the Committee was requested to make a report regarding the damage caused by the incidents to religious and

educational institutions private houses including homes of some serving defence personnel, fishing vessels, etc. The Committee consisted of 16 members. Members of the Legislative Assembly, Chairman of the Municipal Council, representatives of political parties, other prominent persons, etc. Ultimately, the Government passed an order on 13th January 1972 (Ex. R-1), wherein was stated in paragraph 2:

"Government order that the cost of repairs or reconstruction for the restoration to the condition existing prior to the incidents of religious and educational Institutions and the houses of serving defence personnel damaged will be met by the Government."

It was stated further in the order that, to meet the costs of restoration of buildings and for other relief measures, the Government sanctioned an additional contribution of Rs. 10,00,000/- to the Distress Relief Fund; and a direction was also given that the Finance Secretary and Treasurer of the Distress Relief Fund would place the amount at the disposal of the District Collector, Cannanore. The District Collector was authorised to sanction expenditure not exceeding Rs. 5000/- in each individual case of repair or reconstruction for restoration of religious and educational institutions and houses of serving defence personnel. All this, as already indicated, was in addition to the Rs. 25,000/- sanctioned by the Government from the Distress Relief Fund to meet the expenditure for immediate relief to the victims. And it is this order that is under attack. The contention is that, under Article 27 of the Constitution, the petitioner should not "be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of a particular religion or religious denomination."

3. The State has filed a counter affidavit, wherein is averred that the damage or the destruction caused was not confined to the houses and places of worship belonging to members of any particular religion or religious denomination, but was more general and widespread; and that the moneys allotted for relief work were from the Distress Relief Fund. The constitution of the Peace Committee is admitted; but it is averred that the Committee was directed that, in assessing the damage, the cost of restoration to the condition existing prior to the incidents was to be the guiding factor. The averment of the petitioner that the amount sanctioned under Ex. R-1 was to reconstruct the places of worship of a particular religious denomination is denied; and it is submitted that what is forbidden under Article 27 of the Constitution is only the "specific appropriation" of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religion or religious denomination; and that, in the present case, there is no question of favouring any particular religion or religious denomination. The counter-affidavit continues to state that the Government has not sought to utilise any State fund for promoting any particular religion or its cause; and that Article 27 prohibits only the compulsion to pay any tax the proceeds of which are specifically appropriated in payment of expenses for the promotion or

maintenance of any particular religion or religious denomination. And it is further averred that Article 27 does not preclude the application of the general revenues of the State in payment of expenses for the promotion of any religion. It is also pointed out in the counter affidavit that the Distress Relief Fund "is made up of contribution by the Government, District and Taluk Committees and by the Public Associations, Clubs, etc."

4. The petitioner has filed a reply affidavit too.

5. The main decision brought to our notice is the decision of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, which was in appeal against the decision of the Madras High Court in *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The Commissioner, Hindu Religious Endowments, Madras and Others*, Article 27 is in these terms:

"No person shall be compelled to pay any taxes the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination."

Mukherjea. J. who spoke for the Court observed in paragraph 50 of the judgment of the Supreme Court:

"What is forbidden by the Article is the specific appropriation of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. The reason underlying this provision is obvious. Ours being a secular State and there being freedom of religion guaranteed by the Constitution, both to individuals and to groups, it is against the policy of the Constitution to pay out of public funds any money for the promotion or maintenance of any particular religion or religious denomination."

This decision was approved in the later decision of the same year in *Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another*, wherein also Mukherjea J. wrote the judgment. And the only other decision of the Supreme Court brought to our notice is the decision in *Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others*, which again approved the earlier decisions.

6. Yet another decision brought to our notice is the decision of the Madras High Court in *Shri H.H. Sudhindra Thirtha Swamiar, Senior Swamiar of Puthige Mutt and Others Vs. The Commissioner of Hindu Religious and Charitable Endowments and Another*; and we do not think we need consider this decision in any detail.

7. In the course of the discussion, the decision of a Single Judge of this Court in *Varkey Devassy v. State of Kerala* 1966 Ker LT 805 has also been brought to our notice. The question considered by the Single Judge there was whether the acquisition of a property by the Government for the purpose of a temple was a public purpose coming within the Kerala Land Acquisition Act of 1961. In the course of the judgment, the learned Judge has observed, in considering Article

27 of the Constitution.

"This restriction on the wording of the Article only applies to compulsion to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. This Article of the Constitution does not preclude the application of the general revenues of the State in payment of expenses for the promotion or maintenance of any particular religion. In fact, it appears to me that the Article implies that the general revenues may be utilised for such purposes."

Both sides have complained that the language of the learned Judge is very wide and the above observation is not warranted by the language of Article 27, though the State has relied upon this decision too in their counter affidavit. We feel that this criticism is justified, especially in the light of the passage extracted hereinbefore from the judgment of Mukherjea J.

8. The further question we have to consider is as to what is meant by the expression "specifically appropriated" in the Article. If a particular Act imposing a tax does not contain any specific appropriation of the proceeds of the tax for a particular unconstitutional purpose, can it be said that, since there is no such specific appropriation in the Act itself, the tax is not unconstitutional? Under Article 204 of the Constitution, appropriations out of the Consolidated Fund are provided for: and the appropriation contemplated by Article 27 when it says "specifically appropriated" is only such appropriation as is contemplated by this Article. Therefore, for the reason that there is no specific appropriation in the Act imposing a tax, it cannot be said that the impost is not unconstitutional if such appropriation is made by a separate appropriation Act under Article 204.

9. In the case before us, the first thing to be considered is whether the fund, the Distress Relief Fund, is really a fund of the Government constituted by taxes collected by the Government. The counter affidavit of the State has averred that the Distress Relief Fund is made up of contributions by the Government, by District and Taluk Committees, by the Public, by Associations, by Clubs etc. so that it is not possible to say that this is a fund of the Government constituted out of taxes collected by the State. And since the Distress Relief Fund is not a fund constituted out of taxes collected by the Government, no question of "specific appropriation" can also arise as contemplated by Article 204.

10. Even if the Distress Relief Fund is a fund constituted out of taxes collected by the Government and even if a "specific appropriation" therefrom is possible, still there is the further question whether there is any promotion or maintenance of a particular religion or religious denomination in this case. Houses, schools and places of worship belonging to both religious groups, Hindus and Muslims, were damaged, and in restoring them to their original condition, there is no question of promotion or maintenance of any particular religion or religious denomination: buildings of both sections are repaired and restored: it is not because the buildings belonged to a particular religious denomination that they are restored,

but because they were damaged in the incidents. Even otherwise, we mean, even if places of worship belonging to one religious denomination alone were damaged and they alone are to be reconstructed even then there is no question of promotion or maintenance of that particular religion or religious denomination. If a mad and fanatic mob attacked only the places of worship of a particular religious denomination, then the restoration or reconstruction has necessarily to be of the places of Worship of that particular religious denomination: still (and this is evident), there is no question of promotion or maintenance of that particular religion or religious denomination.

11. Thus, in the case before us there is no question of any specific appropriation of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. None of the elements contemplated by Article 27 of the Constitution are present in this case. And it was for these reasons that we dismissed the writ petition though without any order regarding costs.