
(2005) 05 KL CK 0012

In the High Court Of Kerala

Case No : Writ Petition (C) No. 12824 of 2004

Lakshmi Venketesh Temple

APPELLANT

Vs

Commissioner H.R.C. Endowments

RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14
States Reorganisation Act, 1956 — Section 119

Citation : (2005) 3 KLT 345

Hon'ble Judges : S. Sankarasubban, J; K.R. Udayabhanu, J

Bench : Division Bench

Advocate : A. Dinesh Rao, for the Appellant; Sreelatha Parameswaran, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Sankarasubban, J.—This Writ Petition has been filed by Shri Lakshmi Venkatesh Temple, represented by its Managing- Trustee. According to the petitioner the Temple and its properties belong to the Gowda Saraswatha Brahmin Community. Bye-laws have been adopted for the administration of the Temple. His Holiness Srimad Sudheendra Theertha Swamiji of Kashimutt Samasthan has the supreme authority in all dharmic matters concerning the Temple. The affairs of the temple are managed by the Trustees in accordance with the provisions of the bye-laws. The first respondent in this Writ Petition is the Commissioner, Hindu Religious & Charitable Endowments Administration Department, Kozhikode. Petitioner in this Writ Petition challenges Ext.P2 notice issued u/s 76 of the Madras Hindu Religious and Charitable Endowment Act, 1951 (hereinafter referred to as "the Endowment Act") demanding a sum of Rs. 25,763/- as audit fees. Petitioner challenges the provisions of Section 76 of the Endowment Act.

2. The Endowment Act was enacted by the Madras State in 1951. The Temple in question is situated in Malabar area which was formerly forming part of the

Madras State. Hence the Endowment Act was applicable to the Temple in question. After the formation of the Kerala State the Endowment Act continued to apply by virtue of the provisions of the State Reorganisation Act.

3. Section 76 of the Endowment Act deals with the payment of contribution which states as follows:

"In respect of the services rendered by the Government and their officers, every religious institutions shall, from the income derived by it, pay to the Government annually such contribution not exceeding five per centum of its income as may be prescribed. Section 76(3) says that the annual payments referred to in Sub-sections (1) and (2) shall be made, notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act for the religious institution concerned".

4. Learned counsel for the petitioner submits that Ext.P2 is invalid on the following grounds: The Endowment Act is applicable only to Malabar area and for the remaining parts of the State Endowment Act has no application. Hence it is discriminatory. No service was rendered by the respondents in order to levy fees. The sum and substance of the argument of the counsel for the petitioner is that the management of the Temple in question is by a Committee and there is no constructive role for the respondents.

5. It is true that the enactment is applicable only to the Malabar area. It is a geographical classification on historical reasons. It cannot be said that merely because the Endowment Act applies only to a part of the State it is discriminatory. This question has come up for consideration before the Supreme Court in H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, . In the said case the same question arose since the Endowment Act was applicable to a part of the Karnataka State. Dealing with the said contention, the Supreme Court has held thus:

"It is by means of Section 119 of the States Reorganisation Act, 1956 that the Madras Act of 1951 continues to apply to the South Kanara District notwithstanding the fact that from 1.11.1956 it is no longer a part of the State of Madras Section 76(1) of the Madras Act, 1951 in its application to the South Kanara District of the State of Mysore, now the State of Karnataka is valid. Dissimilar treatment does not necessarily offend against the guarantee of equality contained in Article 14 of the Constitution. The rider is that there has to be a valid basis for classification and the classification must bear nexus with the object of the impugned provision. In matters arising out of reorganisation of States, continued application of laws of a State to territories, which were within that State but which have become a part of another State is not discriminatory since the classification rests on geographical consideration founded on historical reasons".

6. In the above view of the fact, the contention that Section 76 of the

Endowment Act which is discriminatory is not correct. Of course, as the learned counsel contended that it is nearly 50 years that the State of Kerala has been formed and the Government has not done anything for enacting a uniform legislation for the Temples in the State of Kerala. Directions have been issued in In Re: Temples in the erstwhile Malabar area, , that steps should be taken to remedy the evil and injustice. Whatever that may be, we do not find that the application of the Endowment Act is discriminatory.

7. So far as the next question is concerned, i.e., the levy is illegal on the ground that no services are rendered, the position is settled by the decision of Division Bench of this Court in the judgment in O.P.No. 11282 of 1992, a copy of which is marked as Ext.R1(a). The Division Bench in that judgment has held that there is no question of adoption of the principle of quid pro quo. Hence we find that there is no question of striking out the demand on the ground of want of quid pro quo. In the above view of the matter, we do not find any merit in the contentions raised by the petitioner.

Writ Petition is accordingly dismissed.