
(1991) 10 MAD CK 0004
In the Madras High Court
Case No : Writ Appeal No. 1324 of 1991

M. Palani Baba

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 31-10-1991

Acts Referred:

Constitution of India, 1950 — Article 27

Citation : (1991) 10 MAD CK 0004

Hon'ble Judges : Thanikkachalam, J;Nainar Sundaram, J

Bench : Division Bench

Advocate : S. Doraisamy, for the Appellant; K. Subramanian, Advocate General, assisted by Mr. P. Rajamanickam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Nainar Sundaram, J.—The provocation for the petitioner coming to this Court is found in the public notice issued by the second respondent

in the newspapers on 21-8-1991, hereinafter referred to as "the public notice". The public notice runs as follows :

For the reasons stated in the accompanying affidavit it is prayed that this Hon"ble Court may be pleased to issue a writ of Prohibition, prohibiting

the respondents 1 and 2 from collecting the money for the Chief Minister's Temple Renovation and Maintenance Fund and pass such further or

other orders and thus render justice.

Two contentions were raised before the learned single Judge, who heard and disposed of the writ petition, in support of the prayer put forth in the

writ petition. The first contention is that what is being done runs counter to what has been professed, namely, ""secularism"" in the preamble to the

Constitution of India as amended by the Constitution (42nd Amendment) Act,

196, which runs as follows :

An Appeal By The Chief Minister of Tamil Nadu-Tamil Nadu is the home of ancient temples. But it is a fact that thousands of small temples are in

dilapidated conditions. No renovation work has been carried out in many of them for decades together. There are many more temples which are in

such indigent circumstances that even daily worship is not possible.

I have been considering how best to help such temples. Large sums of money are needed for the renovation and maintenance of these temples. I

have considered it desirable to attract funds for this laudable purpose from the public by way of donations and contributions.

The Government of Tamil Nadu has therefore decided to constitute a ""Chief Minister's Temple Renovation and Maintenance Fund"". Donations

and contributions can be made to this fund by members of the public, philanthropists, industrialists and others. The funds will be utilised for

renovation and maintenance of deserving temples. The Authority for sanctioning funds on application will be the Chief Minister of Tamil Nadu. The

Secretary to Government, Commercial Taxes and Religious Endowments Department or any officer authorised by the Chief Minister of Tamil

Nadu will verify the utilisation of the fund by the beneficiary temple.

I have made the first contribution of a sum of Rs. 1,00,000 Rupees one lakh and eight only towards this fund This fund has been constituted with

this donation.

I appeal to philanthropists, industrialists and all members of the public to come forward to donate liberally to this laudable cause.

J. Jayalalitha

Chief Minister of Tamil Nadu.

The second contention raised was that the public notice violates what has been set down in Art. 27 of the Constitution of India, the language of

which runs as follows :

We, The people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic

Both the contentions were examined by the learned single Judge and he found no substance in them, and as a result, the learned single Judge

dismissed the writ petition This writ appeal is directed against the order of the

learned single Judge.

27. 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.

Mr. S. Doraisamy, Learned Counsel for the petitioner, would press forth the very same contentions before us, Taking up the first contention, he

would submit that there could not be any ambiguity that under the public notice, the intention was only to propagate, to encourage and to provide

facilities to persons professing Hindu religion and hence the public notice must be held to run counter to the policy of secularism declared in the

preamble to the Constitution of India. We will first go by the verbalism of the public notice. It speaks only about "temples". By its terms, there is no

reference to Hindu temples as such. When we take note of the ordinary dictionary meaning of the word "temple", it is not possible to confine it to a

place of worship by Hindus alone. The primary meanings annexed by dictionaries to this word "temple", are a building or place dedicated to, or

regarded as the house of, a God, "a place of worship". However, we find that in the appeal statement made by the second respondent, which has

been referred to in the order of the learned single Judge, there is a reference that the public notice is only a beginning, starting with Hindu religious

institutions and in course of time, similar ameliorative measures would be taken with reference to other religious institutions also When one goes by

the plain dictionary meaning of the word "temple", the only word used in the public notice, it is possible to say that the funds could be utilised for

renovation and maintenance of places of worship of all religions and not only Hindi temples. It is for the respondents to take advantage of this

legitimate construction of and meaning to be annexed to the word "temple" used in the public notice, to utilise the funds for renovation and

maintenance of places of worship of all religions. That may not give room for any grievance from persons professing other faiths, If not, it is for

them to implement the suggestion already notified, to extend the same ameliorative measures to other religious institutions.

2. Now, leaving the field of academics, we find that the first contention is built on the preamble to the Constitution of India, already extracted,

when it professes to constitute a Secular Republic. While examining this

contention, we would first like to keep in the forefront, the well accepted proposition that the preamble only brings forth the general purpose behind the several provisions of the Constitution. It has never been regarded as the source of any substantive power of the State or its authorities. Such powers could embrace only those expressly granted in the body of the Constitution and such as may be implied from those granted. What is true about the powers is equally true about the prohibitions and limitations. One cannot spell out prohibitions and limitations from the preamble alone unless they are expressly adumbrated in the body of the Constitution. Even otherwise, proceeding on the assumption that a complaint could be founded on the preamble alone, we find that the objectives as could be gathered from the public notice are renovation and maintenance of temples. These activities by themselves could not fall within the ambit of propagation, encouragement or providing facilities to persons professing Hindu religion. The renovation and maintenance of the structures of the temple where they have fallen into ruins or repairs, could not also come within the ambit of religious activities, to which alone exception is being taken as violating the policy of secularism, professed in the preamble to the Constitution of India. The ancient temples which have fallen into ruins or repairs could also be taken to be monuments of cultural heritage and aesthetic and architectural beauty and preservation of them by undertaking renovation work, and maintaining them could not be characterised as violating any concept of secularism. Learned Counsel for the petitioner would submit that the matter would not stop with the renovation and repair alone and before worship is begun in such temples, there will have to be performance of certain Hindu religious rites and the funds may have to be utilised for that purpose also, and hence it would amount to propagation, encouragement and extending facilities to a particular religion namely Hinduism. We are here concerned with the objectives of the fund as notified in the public notice, namely, renovation and maintenance of ancient temples, and after renovation and repairs in such temples, for the purpose of commencing worship, if certain rites are to necessarily follow, we cannot say that the funds are meant only for propagation, encouragement and extending facilities to a particular religion, namely Hinduism. Thus, we are obliged to eschew as done by the learned single Judge the first

contention put forth by the Learned Counsel for the petitioner.

3. Then we come to the second contention, namely, violation of Art. 27 of the Constitution of India. Straightway we must point out that the public

notice does not and could not call for payment of any taxes. No proceeds of such taxes are to be specifically appropriated in payment of

expenses, even for carrying out the objectives of the public notice. We find that no funds from the State coffers are to be diverted at all for carrying

out of the objectives as notified in the public notice. The sources for the funds are to be found from donations and contributions by members of the

public, philanthropists, industrialists and others. The assumption of any activity with regard to the administration of the fund by any agency of the

State need not necessarily have any relevance on this question because so long as the coffers of the State are not to be depleted, there is no

possibility of frowning upon the activities as coming within the mischief of Art. 27 of the Constitution of India. In fact, in the very pronouncement of

the highest Court in the land in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur*

Mutt., , relied on by the Learned Counsel for the petitioner, S. 76 of the Madras Hindu Religious and Charitable Endowments Act 19 of 1951,

which made it compulsory for all religious institutions to pay annually to the Government a contribution not exceeding 5% of their income on

account of the services rendered to them by the Government and their officers functioning under that Act, was held as not coming within the

mischief of Art. 27 of the Constitution of India. In that context, this is what the highest Court in the land observed:

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. But the object of the contribution under

S.76 of the Madras Act is not the fostering or preservation of the Hindu religion or any denomination within it. The purpose is to see that religious

trusts and institutions, wherever they exist, are properly administered. It is a secular administration of the religious institutions that the legislature seeks to control and the object, as enunciated in the Act, is to ensure that the endowments attached to the religious institutions are properly administered and their income is duly appropriated for the purposes for which they were founded or exist. There is no question of favouring any particular religion or religious denomination in such cases. In our opinion, Art. 27 of the Constitution is not attracted to the facts of the present case.

As per our preceding discussion, both the contentions raised fail. This writ appeal is dismissed. No costs.