

(1965) 10 KL CK 0010
In the High Court Of Kerala
Case No : O.P. 2252 of 1965

Narayana Lal

APPELLANT

Vs

Mankuzhi Madhavan and Others

RESPONDENT

Date of Decision : 11-10-1965

Acts Referred:

Hindu Religious Institutions Act — Section 32, 4

Citation : (1965) KLJ 1042

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : K.G. Kunhukrishna Pillai, C.K. Sivasankara Panicker, P.G. Parameswara Panicker and K.S. Parameswaran Nair, for the Appellant; K. Velayudhan Nair, V.S. Moothathu, M.C. Sen, T.K.M. Unithan, N.R.K. Nair and V.G. Sankaranayana Pillai for Respondents 1 to 3, for the Respondent

Judgement

M. Madhavan Nair, J.—This petition under Sections 9 and 32 of the Hindu Religious Institutions Act (Travancore-Cochin Act XV of 1950)--hereinafter the Act--is by a Hindu praying:

(1) that the respondents be removed from their office of members of the Travancore Devaswom Board; (2) that an auditor be appointed to make a report, specifying all cases of irregular, illegal or improper expenditure or of failure to recover money or other property due to the Travancore Devaswom Board or to institutions under the management, or of loss or waste of money or other property, caused by neglect or misconduct on the part of the members of the Board; (3) to pass an order of surcharge against the respondents on consideration of the said report; (4) to make such orders as to costs as this Honourable Court deems proper; and (5) to pass any order just, necessary and incidental as this Honourable Court deems fit and proper in the circumstances of this application.

The prayers Nos. (2) and (3) can be disposed of easily. They are for action u/s 32 of the Act which provides for annual audit of the accounts of the Board by

auditors appointed by this Court. By Proceedings No. AI-2006/58 dated October 30, 1958, this Court has appointed the Examiner of Local Fund Accounts, Trivandrum, to be the Auditor "from 1956-57 onwards" and he has since then, been submitting regular reports of his audit. Considering the volume of accounts that he has to check -- accounts of the Board as well as of the numerous institutions under its management -- it will naturally take some time for the auditor to prepare his report. Audit reports are come for the years 1961-62 and 1962-63 and they are pending consideration in this Court. The reports for later years are awaited. The consideration of audit reports u/s 32 of the Act is done by this Court at a public hearing. Section 32(12) of the Act directs a copy of the audit report to be given "to any person who duly applies for the same". The petitioner himself has and attested copy of the report for the year 1962-63. It is open to him to intervene when the relevant audit reports are taken for consideration in this Court and press his views and solicit the Court to pass appropriate orders thereon. It cannot be done on this application in which the Devaswom Board, whose accounts are sought to be audited, is not a party. Section 4 of the Act provides: "The Board shall be a body corporate....and.....shall by its name sue and be sued and the Secretary to the Board shall represent the Board in such suits." A proceeding against the members of the Board--who alone are respondents here--cannot in the light of Section 4 of the Act be reckoned as a proceeding against the Board. The prayers for appointment of an auditor and for passing an order of surcharge on consideration of his report are therefore infructuous and unnecessary. They need not and cannot be heard here.

The only prayer that is material and relevant before me is prayer No. (1), which is for action u/s 9 of the Act. That section requires an application for removal of a member of the Travancore Devaswom Board--hereinafter the Board--to be heard by a single Judge in the first instance, who shall, if he finds no prima facie case, reject the same, or, if he finds a prima facie case, refer the same, stating his reasons therefor, to a Division Bench. The question therefore is whether on the averments made by the petitioner and the answers given thereto by the respondents, a prima facie case for removal of the respondents from their office as members of the Board is made out.

2. Certain preliminary objections raised by counsel for respondents may first be considered. It is pointed out that in the application misbehaviour is not charged against the respondents as the members of the Board, but only against "the Board", who is not made a party to the application. Counsel for the petitioner submitted that it is only a clerical error and all the allegations are meant, as may be clear from a reading of the application as a whole, against the respondents as members of the Board and not against the Board in the corporate sense. The explanation is accepted for the present, and the words "the Board" in the application will be read as "the members of the Board" if the context requires so.

Another preliminary objection is that the application is incompetent as Section 9

of the Act warrants removal only of "a member of the Board", and not of all of them, which, if done, will create a hiatus in the statutory administration of Devaswoms. Reliance is placed on the wording of Section 9, which reads:

A member of the Board may be removed from his office by the High Court on the ground of proved misbehaviour or incapacity on an application made to the High Court.

I do not find much force in this objection. Section 12 of the Interpretation and General Clauses Act, 1125, which applies to the Act, provides that in all Acts, words in the singular shall include the plural. "A member of the Board" in the section must then be construed to include the plurality of members of the Board. It would then follow that an application for removal of all or any of the members of the Board must be found to be competent u/s 9 of the Act.

It was next contended that an application u/s 9 of the Act must be based on "proved misbehaviour", that is to say, on some misbehaviour that has already been proved in some prior proceeding, and that the present application based on allegations of misbehaviour cannot be heard under the Section. The contention is not acceptable. "Proved misbehaviour" is mentioned in the section as ground for removal from office of a member of the Board and not as ground for an application under the Section. Section 9 expressly contemplates an enquiry -- which may even be of two stages, a preliminary enquiry by a single Judge and another fuller enquiry by a Division Bench -- which can only be of the charge of misbehaviour or incapacity in the application. I must therefore hold that an application calling for an enquiry into charges of misbehaviour or incapacity on the part of members of the Board can be moved u/s 9 of the Act.

3. Seven acts of misbehaviour, amounting to violation of statutory duties of the Board under Sections 24, 26, 30 and 31 of the Act, are pressed into service by counsel for the petitioner, as making out prima facie grounds for removal of the respondents from office, and they are:

(1) that the respondents have either stopped or reduced the rituals and ceremonies, like Namaskaram, Nivedyam, Masavishesham and Aattavishesham in Devaswoms;

(2) that they have, without attending to their obligatory duty of renovating dilapidated or damaged temples, diverted Devaswom Funds to non-obligatory matters, like establishment of colleges;

(3) that they undertook unnecessary travels and drew huge amounts as travelling allowances from the Devaswom fund;

(4) that they are not carrying out the religious services for which specific endowments have been made by devotees, like the free distribution of Nivedyam in the Aranmula temple on Thiru Onam day instituted by Mangatt Bhattathiri;

(5) that they diverted illegally the private funds of P. D. Devaswoms to purposes

unconnected with those Devaswoms;

(6) that they spent Devaswom Surplus Funds for purposes, like purchase of a school and deposits of security with the University of Kerala for running colleges, which are not warranted by Section 36 of Act; and

(7) that they have removed gold accumulated out of offerings in temples, like Ettumanur Mahadevar temple, with the object of dissipating the same in utter disregard of "the sentiments of the worshippers".

4. It is conceded that the respondents have abolished all "Namaskarams" (daily feeding of Brahmins or virtuous people) in temples, stopped "Masavishesams and Aattavishesams" (monthly and other ceremonies) falling simultaneously with other more important ceremonies in the same temple, and have reduced Nivedyams in every temple to 325 ml. (one nazhi) of rice per pooja with effect from October 1, 1965. The petitioner avers that the faith is that such changes would affect the virtue of Devaswoms and are in law violations of Section 31 of the Act. Section 31 reads;

.....the Board shall manage the properties and affairs of the Devaswoms, both incorporated and unincorporated, as heretofore, and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage.

It is stated that Namaskarams are part of the rituals of daily worship, and Masavishesams and Aattavishesams are ceremonies which the respondents are enjoined to conduct "as heretofore according to usage", and that the usage has always been that Nivedyam (oblation of cooked rice to the deity) in every temple should be proportionate to the status of the temple. Counsel read from page 135 of the Devaswom Handbook "the belief is that the virtue of a pagoda is proportionate to the quantity of Nivedyam offering" to contend that a reduction in the quantum thereof would reduce the vitality of the temple. The observation at page 135 of the Devaswom Handbook (cited above) is a quote from Shri. Ramachandra Rao's report on Devaswoms and is not shown to be supported by any text. It is well known that Nivedyam in the Sree Padmanabhaswamy temple, one of the most important pagodas in the State, is of a small measure of rice--even less than one nazhi or rice. But the belief of all Hindus throughout India is of a very high virtue in that pagoda. Consistent with the Hindu faith that idols in temples are only representations of the Divinity for purposes of concentration in worship for the ordinary people and that the Divinity is the omnipresent and omnipotent power, which manifests in various forms of Life and Energy in the universe, one cannot think that the efficacy of worship or the vitality of an idol is dependent, not on the concentration or devotion in worship but on the volume of materials offered in the service. In the book on "Hindu Way of Life" by President Dr. S. Radhakrishnan, a profound scholar and Philosopher of the day, it is observed:

There has been no such thing as a uniform, stationary, unalterable Hinduism

whether in point of belief or practice.

In the *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, Mukherjea J. speaking for unanimous Bench of Seven learned Judges of the Supreme Court, observed:

Of course, the scale of expenses to be incurred in connection with the religious observance would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities.....

It may be that in good old days, before the assumption of "378 odd temples with landed properties and 1171 temples with" no landed property by Colonel Munro, the Dewan of Travancore, in 1811-12 A. D., when the annual yield of Devaswom lands was 18 lakhs parahs of paddy and Rs. 80,000/- (Vide the Devaswom Handbook, page 126), the rituals in the major Devaswoms that owned properties included large offerings of Nivedyam. But they cannot be claimed as immutable. Since then, circumstances have changed largely: the Devaswoms have now to survive on the fixed money-grant of the State and the prices of things required for services in temples have shot up tenfold and above. Even before the Act, several reductions in rituals had been made and several ceremonies stopped by the Government and the Ruler of Travancore, who were then in control of the Hindu Religious institutions. "Ootu", the feeding of Brahmins in large numbers, which was a usage in most, if not all, of the major Devaswoms had been stopped completely long before the Act. In 1943 "the rice and paddy for Keezheedu, were "reduced to one-fourth of the quantities mentioned in the Pathivus"-- Pathivus are schedules of rates for rituals in temples---, and "the quantity of coconut oil fixed in the Pathivus reduced to one-third". Even in 1949, that is to say, just before the enactment of the present Act, the quantum of Nivedyam in every temple was reduced by 1/3 and feasts and Namaskarams stopped in all temples excepting somewhere Namaskaram was observed as a rite, where also it was reduced to feeding one virtuous Hindu instead of a number of Brahmins. It is then evident that the prior usage was not to regard Nivedyam, Namaskaram, Masavishesham and Aattavishesham as immutable but was to allow reductions of Nivedyam and termination of ceremonies. The acts of the respondents in the same line cannot then be violations of "heretofore usages" of Devaswom.

5. As to the propriety of such acts, the respondents have stated in paragraph 16 of their counter-affidavit:

.....What the present Board did was only in furtherance of the steps already taken and for the purpose of limiting the expenditure within the means.....

Rice having been made a controlled commodity by the State Government, the respondents, it is stated at the Bar, applied to the Government for sanction for its purchase for Nivedyams when the Government restricted it to 325 ml. for every pooja in a temple. Reduction of Nivedyams to the quantum of rice thus allowed by the State cannot be reckoned an act of misbehaviour on the part of the respondents.

As regards stoppage of Namaskarams and Masavishesams and Aattavishesams: Counsel for respondents challenged Namaskaram (in the sense of feeding) being a rite, and no text or ritual has been cited to me saying it to be a rite. Feeding an individual cannot be a religious service of such high merit as not to admit its termination in any circumstance. The respondents have stated categorically that it is only where a monthly or other ceremony is over-lapped by a more important ceremony that the former has been directed not to be conducted and that, as a matter of practice, on such occasions in most temples, only the more important ceremony used to be conducted, even formerly, though such occasions afforded opportunities for temple servants to mis-appropriate. It is common knowledge that prices of produces have risen above ten times of what they had been during the period 1090 to 1100 M. E. when most of the Pathivus have been fixed. Such rise in prices justifies abolition of items of less religious merit. In the circumstances, the "stoppage of Namaskarams and overlapped ceremonies cannot, in my opinion, be characterised as acts of misbehaviour.

6. It has been strenuously contended that, in Section 24 of the Act, the functions of the Travancore Devaswom Board have been classified into obligatory and non-obligatory items, and the Board is enjoined always to prefer the obligatory items in the application of Devaswom funds, and to expend any portion of the fund to non-obligatory items only if there is a surplus after exhausting the others. Section 24 reads:

The Board shall, out of the Devaswom Fund.....maintain the Devaswoms mentioned in Schedule I, keep in a state of good repair the temples, buildings, and other appurtenances thereto; administer the said Devaswoms in accordance with recognised usages, make contributions to other Devaswoms in or outside the State and meet the expenditure for the customary religious ceremonies and may provide for the educational uplift, social and cultural advancement and economic betterment of the Hindu community.

The contention is that whatever follows the word "shall" is obligatory and whatever follows the word "may" is non-obligatory. If such a construction is adopted, contribution to other Devaswoms not under the management of the Board, whether in or outside the State, would be an obligatory item which being of unlimited scope might exhaust the entire fund in every year never leaving anything for the cultural advancement of the Hindu community, even in matters of faith, piety or morality, which latter would be a non-obligatory item. Likewise, renovation or repair of unserviceable temples would be an obligatory item, while construction of a new temple in a fast expanding area where the Hindus crowd in large numbers without an institution for the conduct of their religious services, would be a non obligatory item. I cannot imagine such to be the intention of the Section. T would construe the word "shall" as calling for a primary consideration and the word "may" for a secondary consideration. If that be the correct construction, there is no compulsion to prefer always the items in the first series to those in the second, and whether a particular item of work is to be preferred

to the other may depend largely on the circumstances of the case at hand.

7. The grievance of the petitioner is that, while the obligatory function of renovating old temples demands a minimum of Rs. 14/- crores, which may absorb the entirety of the available funds for decades, the respondents are diverting funds for establishment of colleges, putting off the former, which is an unjustifiable violation of their statutory duty. The respondents have, in their counter-affidavit, stated that most of the one thousand odd temples under their management are structures over 100 years of age and stand in need of repairs or renovation at a cost of several crores of rupees, that every year some temples are taken for renovation and some others for repair, and that that only is practically possible. Instances of works so attended to are also given in the counter-affidavit. I find considerable force in the reply, and I am afraid, if all the available funds are directed to renovation of temples, the interest of the community would only be prejudiced.

8. The contributions given to the establishment of two colleges in localities where the respondents found such institutions to be conducive to the educational uplift and the social and cultural advancement of the Hindu community, cannot be said to be totally unauthorised. It is pointed out by counsel for respondents that when the religious organisations of other communities in the State undertake educational activities through schools and colleges of their own, it would prejudice the interests of the Hindu community if it alone stood aloof in the field and that the establishment of such educational institutions is within the purview of Section 24 of the Act. To me the explanation appears acceptable.

9. In regard to travelling allowance: the respondents have, in their counter-affidavit, stated that for the proper supervision and control of the large number of institutions entrusted to their management and for the organisation and consolidation of the Hindus and for the promotion of their cultural and religious activities, frequent travels have to be undertaken by the respondents and that they have not drawn travelling allowance for any travel that was not for one of the above purposes. That statement of the respondents has not been controverted by proof of appropriation of travelling allowance by any of the respondents for a travel undertaken for a different purpose. It cannot then be said that the respondents are guilty of any misbehaviour in undertaking travels or drawing allowances fixed therefor. The allegation in paragraph 38 of the petitioner's reply-affidavit "....the tour particulars of the 3rd respondent would disclose that during the last General Election in the State he under the guise of travel for Devaswom, has been conducting election propaganda for a political party" is denied by the respondents and there is no proof of the allegation. One would wonder how the tour programme of the 3rd respondent can prove the petitioner's allegation. Proof, if at all, can only be elsewhere. The allegation fails as unsubstantial and unsubstantiated.

10. In reply to the allegation that the respondents have misused Devaswom funds to give grants to the Hindu Mission Society, which is not doing any work to

justify their receipt, they have pointed out that, though the Hindu Mission Society was not functioning properly during an interval, the respondents had discussed matters with the President of the Society, when the latter convinced them that the Mission had schemes for organised work which required adequate funds to be put through, and that it was only on that conviction that the grants have been made by the respondents to the Society. I do not think that the grant can be counted as a wanton misuse of Devaswom Funds or as an act of misbehaviour on the part of the respondents as members of the Devaswom Board.

11. It is alleged that the respondents are guilty of non-observance of religious ceremonies for which endowments have been made by devotees, and, as an instance thereof, it is stated that Mangatt Bhattathiri has made a big endowment to the Aranmula temple for the Thiru Onam Pooja on a grand scale and the free distribution of the "Prasadam" out of the Nivedyam to the Devaswom employees and every Hindu family of the locality, but the free distribution of "Prasadam" has been stopped by the respondents. In reply, the respondents have stated that they could not trace any such endowment in the records available to them and that whatever endowment they are aware of they have been carrying out to the extent that the proceeds therefrom would allow consistently with the current price of things required therefor. The answer appears to me adequate.

12. The complaint that Rs. 3.50 lakhs out of the P. D. Devaswom Fund has been diverted by the respondents to the general purposes of the Board does not seem to carry much force. No doubt, Section 30 of the Act provides:

The properties and funds of the unincorporated Devaswoms shall be kept distinct and separate as heretofore and shall not be utilised except for the purposes of those Devaswoms.

The respondents admit that on an occasion of emergent need--counsel clarifies it as the purchase of rice under orders of Government which had to be done forthwith--they had to take Rs. 3.50 lakhs from the P. D. Devaswom Fund, but the same has soon been re-deposited when funds became available to the Board.

13. It is urged that the Devaswom Surplus Fund cannot be utilised for any purpose not indicated in Section 26 (2) of the Act, but contrary thereto, the respondents have spent sums out of it for compromising a suit against the Board that was decreed by the Court of first instance, for the purchase of a school at Kangazha, and for making security deposits with the University of Kerala for the running of two colleges. I have already said that such complaints could well be heard when the relative audit report is taken up for consideration in public hearing by this Court, and it will be open then to the petitioner himself to intervene and challenge the expenditure. In the light of what has already been said, the acts mentioned above cannot be found to be "misbehaviour" on the part of the respondents.

14. The last charge pressed into service is that the respondents have taken a

large quantity of gold out of accumulated offerings in temples for depositing the same in Gold Bonds issued by the Central Government. The respondents have, in their counter-affidavit, pointed out that they have reserved sufficient gold for the future use of the temples (for instance, 1500 sovereigns in the Ettumanur temple) and that only the excess thereof has been taken for investment in Gold Bonds in answer to the national call for the metal, and that the conversion of idle gold that was yielding no income into Gold Bonds yielding a fair income to the temples by way of interest offered by the Government is beneficial to the temple. Counsel for the petitioner contended that, if the gold is sold in public auction among licensed dealers, it would fetch a greater value than is offered by the Government. I cannot think that delivery for a national purpose for value offered by Government, overlooking advantages of a private sale to dealers, is an unworthy conduct, much less a misbehaviour. The Travancore Devaswom Board, constituted under Act XV of 1950, is a high functionary to whom "all rights, authority and jurisdiction belonging to or exercised by the Ruler of Travancore" as Sovereign of the State over Devaswoms and Hindu religious institutions have been assigned. Even the power of assuming religious institutions run by private individuals or families has been assigned to them u/s 37 of the Act. To remove the members of such a high body, the Court has to be convinced of a grave misbehaviour or serious incapacity on their part. Counsel for the petitioner urged that no gravity of misbehaviour is contemplated by the provisions of the Act and that u/s 9 of the Act any act of misbehaviour on the part of the members would entail their removal from office by the Court. Section 9 does not compel this Court to remove any member of the Board on proof of any misbehaviour on his part. It gives a large discretion to this Court in the matter, and a discretion vested in a Court of law is not a blank cheque. Its exercise must not be arbitrary or fanciful, but judicial and judicious. As pointed out in *Annaji Raghunath Gosayi v Narayanan Sitaram* (I.L.R. 21 Bombay 556), even for removal of a Devaswom trustee it is not enough if his management is found to be "lax and improvident, but not fraudulent and dishonest". The members of the Board are certainly of a higher status than the trustees of a Devaswom, and any consideration of their conduct has to be done with a greater sense of responsibility. The charges levelled against the respondents relate to acts calculated either to bring down the scales of expenditure in Devaswoms commensurate with their income and consistent with the current prices of things required for services therein, or to serve emergent national requirements, or the educational and cultural needs of the Hindu community. I am of opinion that no prima facie case for removal of the respondents from office on ground of misbehaviour is made out in this application, which must therefore be rejected.

It is not the respondents' case that the application is actuated by mala fides. On the other hand, the averments therein show that it is actuated by a genuine desire to improve the conditions of Devaswoms,--a commendable public spirit--though, the applicant has misjudged the facts. I would, in the circumstances, direct both parties to suffer, their respective costs on this application.

Judgment accordingly.