

(1933) 12 MAD CK 0013
In the Madras High Court

N.K.R.M. Rajagopala Chettiar

APPELLANT

Vs

Hindu Religious Endowment Board and Others

RESPONDENT

Date of Decision : 08-12-1933

Acts Referred:

Citation : AIR 1934 Mad 555 : (1934) 40 LW 288

Hon'ble Judges : Cronish, J

Bench : Division Bench

Judgement

Cronish, J.—This revision petition relates to the Sri Rajagopalaswami Temple at Ammayappan in the Tanjore District. The Hindu Religious

Endowments Board by an order dated 19th July 1929 declared the temple to be an "excepted" temple. This it did in the exercise of the jurisdiction

conferred by Section 84(1), Religious Endowments Act. 1927, which says that if any dispute arises as to whether a temple is one to which the Act

applies or is an excepted temple such dispute shall be decided by the Board.

2. Apparently the question of the status of the temple was raised by the present trustee-petitioner for the purpose of getting the decision of the

Board. Mr. Rajah Ayyar has taken the point that in the circumstances there was no dispute within the contemplation of Section 84. But it is

conceded that the Board can initiate a dispute by challenging the status of a temple and can decide the question against the trustee who asserts that

it is not a public temple or that it is an excepted temple, as the case may be : Vythilinga Pandara Sannadhi v. T.S. Sadasiva Ayyar 1928 Mad.

1272 and Iswara Nanda v. Board of Commissioners for Hindu Religious Endowments, Madras 1931 Mad. 574. I think there is equally a dispute

if it is the trustee who agitates the question for the purpose of obtaining the

Board's decision upon the status of the temple. In my view there was a dispute which the Board was competent to decide u/s 84(1), and it is clear from the order that the Board treated it as a dispute for decision under that section. The order of the Board, as I understand it, was that the temple came within para. (a), Clause 5, Section 9. The definition clause as it then stood ran as follows:

Excepted temple means (a) a temple which before 1801, was, and since 1863 has continued to be under the sole management of a trustee whose nomination did not vest in, nor was exercised by the Government nor was subject to the confirmation of the Government or of any public officer; or (b) a temple founded since 1842, the right of succession to the office of trustee whereof is hereditary or specially provided for by the founder.

3. The Board found that the temple was in existence before 1801 and that it had never been managed by a committee constituted under Act 20 of 1863. It also found that the temple belonged to the Sowrashtia Community. The trustee was satisfied with this decision and there was no

application made to the Court to set aside or modify the Board's order. Consequently, in accordance with the provisions of Section 84(2), the order of the Board became final. Subsequently, the respondents (other than the Board) to this revision petition persuaded the Board to reconsider

its order on the ground that, as a result of the altered definition clause introduced into the Act in 1930, the temple had ceased to be an "excepted temple. The new Clause 5 which was substituted for the old clause runs:

Excepted temple means and includes a temple, the right of succession to the office of trustee or the offices of all the trustees (when there are more trustees than one) whereof has been hereditary, or the succession to the trusteeship whereof has been specially provide for by the founder.

4. Mr. Venkatachari has argued that there is no substantial difference between the new and the old definitions. But I think that, as a matter of construction, it by no means follows that a temple would be an excepted temple within Clause 5(a) of the old definition it would be an excepted temple within the amended definition. As a result of its enquiry the Board found that as the present petitioner failed to prove that his office of trustee was hereditary, an essential factor in the definition of an excepted temple was wanting, and it declared by order dated 31st January 1931 that the

temple was not an excepted temple. The question that arises in this revision petition is whether the Board had jurisdiction to reverse its 1929 order,

that order having become final. The learned District Judge disposes of the question by observing:

Obviously a decision based upon a certain definition is final only so long as that definition is not changed.

5. That line of reasoning cannot be accepted. The point is not whether under the new definition the Board could rightly hold that the temple is not

an excepted temple, but whether the Board has the power to re-open its former final order. In *Lemm v. Mitchyell* 1912 A.C. 400, their Lordships

of the Judicial Committee have laid it down that there must be explicit language in an Act which alters the previous law to justify a Court in holding

that the Legislature intended not merely to alter the law, but to alter it so as to deprive a litigant of a judgment rightly given and still subsisting. Again

in *Delhi Cloth and General Mills Co. Ltd. v. Income Tax Commissioner* 1927 P.C. 242, They said:

Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders which, when the

statute came into force, were final are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at

the date when it came into force, it must be clearly so provided.

6. The later order of the Board undoubtedly affected the existing rights of the temple confirmed to it by the former order of the Board. For

example, one-effect of the later order would be to render the temple subject to make contribution from its revenue to a Temple Committee as well

as to the Board. The learned Government Pleader in his argument for the Board does not, of course, question the principle of the two cases

above-mentioned. But he suggests that an order by the Board u/s 84 is to be regarded simply as an exercise by the Board of its superintendence

over temples under the Act. But I fail to see why this should exempt from the foregoing principle an order of the Board which has been declared

by the Act to be final. The Act does not provide that an order of the Board should lose its finality as a consequence of the altered definition of an

excepted temple. If this had been the intention of the Legislature it could have said so. I therefore hold that the 1929 order was final with respect to

the status of the temple and that the Board had no jurisdiction to re-open the question which had been decided by that order. The District Court in upholding the Board's wrongful assumption of jurisdiction: must be held to have exercised its jurisdiction illegally. The civil revision petition is allowed and the order of the Board and of the District Court confirming it will be set aside with costs throughout.