
(1975) 03 MAD CK 0016
In the Madras High Court

R. China Boyan and Others

APPELLANT

Vs

The Commissioner for Hindu Religious and Charitable
Endowments and Another

RESPONDENT

Date of Decision : 10-03-1975

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 108

Citation : (1975) 88 LW 825 : (1975) 2 MLJ 294

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—The plaintiffs are the appellants. They filed the suit in a representative capacity, representing the Boyar community

people residing in five groups of villages which are set out in the plaint. The relief asked for in the suit was a declaration that Sri Devi Badra

Kaliamman Temple at Gettimmallanpudur, hamlet of Ambarampalayam village. Pollachi Taluk, Coimbatore district, is a religious denominational

institution ""belonging to the religious denomination of the Boyar community residing in the said five groups of villages and that they are entitled

exclusively to conduct and manage the affairs of the said temple and to restrain the defendant, their agents, servants and men by a permanent

injunction from in any way interfering with the possession, management and administration of the said temple by the plaintiffs. The facts as found by

the Court below were these : The said temple was founded by the Boyar community residing in the said five groups of villages a few decades ago

and ever since the foundation of the temple, it is only that community people who have been controlling and managing the institution. The trustees of

the institution were elected by the villagers belonging to the said community.

Plaintiffs 1 to 5 were elected on 16th July, 1957. The income of the temple mainly consisted of the undidl collections. Sometimes the trustees appoint committees for the collection of funds and they collect usually at the rate of Re. per annum from every male major member of the community. One of the trustees is elected by the trustees as their Managing Trustee who is vested with the responsibility for having the pooja conducted in the temple by appointing poojaris etc. The income received in the undial and the collections made were used solely for meeting the expenses of the temple. Though it was further claimed in the plaint that the elected trustees were holding their office for their lives and the managing trusteeship was hereditary, it was not necessary for deciding the suit on these points and the Courts below also have not given any finding. On these facts, the Courts below held that the suit institution is a religious denomination within the meaning of Article 26 of the Constitution.

2. This finding was not challenged by the Department or the second defendant even in the appeal before the lower appellate Court and therefore we have to proceed on the basis that the suit institution is a religious denomination within the meaning of Article 26 of the Constitution.

3. The first defendant is the Commissioner, Hindu Religious and Charitable Endowments. In the written statement, the main plea taken was that the suit was not maintainable in view of the provisions of Section 108 of Tamil Nadu Hindu Religious and Charitable Endowments Act (XXII of 1959)

(hereinafter referred to as the present Act). This contention was accepted by both the Courts below and the suit was held not maintainable. The

first question for consideration is whether the present suit for a declaration that the suit institution is a religious denomination within the meaning of

Article 26 of the Constitution and that the right to manage and administer the temple and its properties is vested in the Boyar community residing in

the five groups of villages, was not maintainable in view of the provisions in the present Act. It is necessary to deal now with the provisions in the

Act itself before considering the cases decided on the subject.

4. Section 108 of the Act bars a suit or other legal proceedings in respect of the administration or management of a religious institution or any other

matter or dispute, for determining or deciding which provision is made in the Act, except under and in conformity with the provisions of the Act.

Section 63 (a), which was relied on by the department provides that the Deputy Commissioner, shall have power to enquire into and decide

whether an institution is a religious institution. "Religious institution" is defined in section 6 (18) as meaning a mutt, temple or specified endowment.

Temple" is defined as a place, by whatever designation known, used as a place of public religious worship and dedicated to or for the benefit of

or used as of right by the Hindu community or any section thereof as a place of public religious worship. What is meant by the words "religious

denomination" under Article 26 of the Constitution, had come up for consideration in a number of cases and it is not necessary for the purpose of

the present case to deal with those cases. Suffice it for the purpose of the present discussion to state that it is a section of the public having a

common faith and organization and designated by a distinctive name. Therefore, an institution established or maintained by that section of the Hindu

community, would be one that would be covered by Article 26 of the Constitution. The definition of "temple", as seen already, would also include a

place of public worship used as of right by a section of the Hindu community. But, on this reasoning, it could not be said that the Deputy

Commissioner will have jurisdiction u/s 63 (a) to decide whether the institution is a religious denominational institution falling under Article 26 of the

Constitution. The jurisdiction of the Deputy Commissioner under the section was to decide whether an institution is a religious institution; but it does

not confer any power on him to decide whether it exclusively belongs to a particular religious denomination. This has been so held in a number of

cases, the earliest of which is the one decided in Rao Saheb Dr. Ananda Baliga Vs. Srimat Ananteswar Temple, Manjeswar and Others, , That

case arose under the Madras Hindu Religious Endowments Act, 1926 (II of 1927) (hereinafter referred to as the 1927 Act). But, Section 84 (1)

of the 1927 Act, corresponding to Section 63 (a) of the present Act, was substantially the same and enabled the Endowment Board to decide

whether an institution is a math or temple as defined in the Act. Instead of the words "math or temple", in Section 63 (a), the words "religious

institution" are used, and a religious institution is defined in Section 6 as meaning math or temple. Sections 79 and 79-A of the 1927 Act also

conferred jurisdiction on the Board to decide any dispute as to the existence of any usage of a math or temple or the rights, honours, emoluments

and perquisites to which any person may by custom or otherwise be entitled in such math or temple. The corresponding provision in the present

Act is Section 63 (e). The 1927 Act also contained a provision barring the suit with respect to matters which are to be decided under the Act.

Considering the scope of these provisions, this Court held that the jurisdiction of the Board to decide was only whether the particular institution is a

math or temple as defined in the Act and that would not include a case where the question for consideration is whether the temple is exclusively-

owned by a particular religious denomination. Sections 79 and 79-A were also held not intended to provide a forum for the determination of the

denominational rights of the community over the temple. In the instant case also, there is no dispute that the suit temple is a religious institution

within the meaning of that expression in the Act. But, what was contended by the plaintiffs was that it exclusively belonged to the Boyar community

of the five groups of villages. The suit was therefore clearly maintainable. A similar view was taken by Ramamujam, J., in *The Nagercoil, Asarimar*

Samudayam, Muthuraman and Natesa Trust and Others Vs. Natarajan Asari and Others, , and a Division Bench, of this Court in *N.K.S.*

Sankarakumara Nadar and Others Vs. The Assistant Commissioner for Hindu Religious and Charitable Endowments, , The decision of Ismail, J.,

in *T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others*, , relied on by the Courts below, has since been

reversed in the decision in *T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others*, , and therefore the

decisions of this Court are now uniformly in one direction and there is no contrary view expressed by any of the learned Judges. We have,

therefore to hold that the suit is maintainable.

5. The next question that arises for consideration in this case is whether the injunction prayed for in the suit could have been granted. The

allegations in the plaint with respect to this prayer are as follows : At the instance of the second defendant, the Inspector of the Hindu Religious and

Charitable Endowments Department, Pollachi sealed the temple undial and prevented the plaintiffs from using the money for the expenses of the

temple. Further on 24th January, 1963 the Assistant Commissioner, Hindu Religious and Charitable Endowment, called for applications for

appointment of trustees to the temple and he followed that up with a letter on 24th March, 1973 to the first plaintiff, calling for objections, if any.

The plaintiffs sent a lawyer's notice contending that they are the legally elected trustees and that the department has no right to appoint trustees for

the temple since it is a religious denominational institution falling within the scope of Article 26 of the Constitution. On the apprehension that the

department would proceed with the appointment of trustees, they have prayed for an injunction restraining them from interfering with the

possession, management and administration of the said temple. Since the second defendant claimed that he was appointed as the fit person by the

area committee, he was also impleaded as a defendant in the suit. The contention of the learned Counsel for the department was that the

department was entitled to appoint trustees even in respect of religious denominational institutions and that no injunction could be granted. In this

connection, he relied on the provisions in sections 46, 47, 49 and 51 of the present Act.

6. It was claimed that in respect of institutions, where hereditary right of trusteeship is claimed, the Deputy Commissioner is entitled to decide

whether the office was hereditary and whether the person was entitled to be declared as a hereditary trustee. In respect of institutions where there

is no hereditary trustee, the Commissioner, or the Assistant Commissioner, as the case may be, could appoint non-hereditary trustees. I am unable

to agree with this contention of the learned Counsel. Article 26 of the Constitution guarantees every religious denomination, subject to public order,

morality and health, the right (a) to establish and maintain institutions for religious and charitable purposes ; (b) to manage its own affairs in matters

of religion ; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law. The rights in

Clauses (a) and (b) are in absolute terms, except that they are subject to public order, morality and health. But, the rights under Clauses (c) and (d)

could be regulated by law. It has been held in a number of cases that the guarantee of management of its own affairs in the matter of religion,

provided under Article 26(b), is restricted to matters of religion alone, and matters relating to administration of property would be governed only

by Clause (d)- It was the contention of the learned Counsel for the department that since administration and management of the temple and its

properties could be subjected to law, the Commissioner or the Assistant Commissioner, as the case may be, would. be entitled to appoint trustees

and no injunction shall be granted. What Article 26 (d) provides is that the administration of the property shall be in accordance with law." This

could only mean that the administration and management could be regulated by law and there is no absolute right vested in the religious

denomination in the matter of administration of the temple and its properties. But, this, in my opinion, would not include a right to take away the

entire right of the a denomination or to substantially take away the right to management leaving a mere husk. Though ""regulation"" within the

meaning of Article 19 might include a total deprivation of the right, in the context of Article 26 it would be difficult to hold that the law could take

away the entire right or deprive the religious denomination of any right in the management of its properties. In fact, in the decisions of the Supreme

Court in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., , and in Ratilal

Panachand Gandhi Vs. The State of Bombay and Others, , it was held that though a law might regulate the administration of a math, it must leave

the administration to the religious denomination to which the math belonged for the law which took away the right of administration from the hands

of the religious denomination and vested it in any other body would be void. It is true that sections 46,47, 49 and 51 are so sweeping in language

that it is possible of interpretation as if the power is vested in the Assistant Commissioner or the Commissioner, as the case may be, for

appointment of trustees even in the case of religious denominational institutions coming within the scope of Article 26. But, Section 107 of the

present Act specifically provides that nothing in this Act shall be deemed to confer any power or impose any duty in contravention of the rights

conferred on any religious denomination or any section thereof by Article 26 of the Constitution. We have, therefore to interpret these provisions

so as to be in conformity with Article 26 of the Constitution and we shall not give any construction which will amount to a contravention of the

constitutional prohibition itself- I am, therefore, of opinion that the Assistant Commissioner in this case had no power to appoint trustees for these

institutions. A similar view was taken by a Division Bench of the Mysore High Court in K. Mukundaraya Shenoy and Others Vs. State of Mysore

and Another, . It was held in that case that under Article 26 (d), it is the fundamental right of the religious denomination to administer its properties

in accordance with law and therefore the law must leave the right of administration to the religious denomination itself subject to such restrictions

and regulations as it might choose to impose. A law which takes away the right of administration from the hands of the religious denomination

altogether and vests it in any other authority would amount to a violation of the right guaranteed under Article 26. This decision was followed by

Division Bench of this Court in Muthiah Asari and Ors. v. Madasami Asari and Ors. (1965) 2 M.L.J. 220. It was further held in this case that even

the fact that the area committee purported to nominate the members of the particular religious denomination as trustees would not be enough to

cure the vice or infirmity if otherwise the right guaranteed to this body under Article 26 (d) were effectively taken away by the nomination. The

Supreme Court also, in The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others, . observed:

If the right of a denomination or a section of such denomination is adversely affected by the statute, the relevant provision of the statute must be

struck down as a whole and in its entirety or not at all....In other words, the infirmity or the vice in the statute cannot be cured by confining the

members of the proposed committee to the denomination itself.

In the circumstances, therefore, the attempt on the part of the first defendant to appoint trustees in respect of the suit institution in the place of the

plaintiffs was against the constitutional guarantee under Article 26 (d) and therefore, the plaintiffs were entitled to the injunction prayed for. But this

shall not prevent the Department from exercising such of the powers which are conferred on them by law in regard to the administration of

institution.

7. The second appeal is accordingly allowed and the judgments and decrees of the Courts below are set aside and the suit is decreed as stated

above. There will be no order as to costs. No leave.