
(2011) 04 KL CK 0027

In the High Court Of Kerala

Case No : Writ Petition (C) No. 2361 of 2011

Sreeni Pattathanam and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Constitution of India, 1950 — Article 25, 26, 27, 51, 51A
Travancore-Cochin Hindu Religious Institutions Act, 1950 — Section 3

Citation : (2011) 3 ILR (Ker) 234 : (2011) 3 KLJ 214 : (2011) 8 RCR(Civil) 1372

Hon'ble Judges : Thottathil B. Radhakrishnan, J;S.S. Satheesachandran, J

Bench : Division Bench

Advocate : T. Ramprasad Unni, M. Manoj Kumar, Chelakkadan and Smitha George, for the Appellant; T. Krishnan Unni V.V. Nandagopal Nambiar, S.C. for T.D.B., M.P. Prakash, Special Govt. Pleader, R. Lakshmi Narayanan, Sr. Government Pleader, Public Prosecutor Thajudheen, S.C. for K.S.E.B., I. Sheela Devi, V. Vijulal, R.T. Pradeep and D. Anil Kumar, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—This writ petition is filed by two persons claiming to be the General Secretary of the "Bharatheeya Yukthivadi Sangham" and General Secretary of "Manavavedi" respectively. They seek a declaration that the participation of the Government of Kerala through any one of its departments like Police, Forest, Revenue, Electricity etc. in a superstitious religious event is unconstitutional and violation of Article 27 of the Constitution of India. Petitioners further seek a direction to the Respondents not to forbid the Petitioners or similar bodies or media from conducting an enquiry in terms of Article 51A of the Constitution of India to find out whether "Makarajyothi" is a divine or super human miracle or only man-made to find out the truth and inform the public about it. They plead that a superstitious religious event called "Makarajyothi" is being performed and it is not a super human phenomenon.

2. The State Government have filed a statement prominently pointing out that matters relating to "Makarajyothi" falls purely within the realm of religious faith and it is part and parcel of religious rites, tradition, custom etc. attached to

Sabarimala temple and that no enquiry of this nature sought for by the Petitioners is required. The General Secretary of Sabarimala Ayyappa Seva Samajam and the Nair Service Society are impleaded as additional Respondents. Their affidavits filed supporting the impleading petitions are before us. We have the counter-affidavit of the 4th Respondent Travancore Devaswom Board, for short, the "TDB" through its Secretary. The Government further states that earnest efforts are being taken for proper crowd management and implementation of the Sabarimala Master Plan including disaster management.

3. TDB is constituted under the provisions of the Travancore Cochin Hindu Religious Act, 1950. It is a trustee which holds the assets of the temples and their administration in trust. The administration of the different incorporated and unincorporated devaswoms and other institutions falling u/s 3 of that Act stands vested in it. It is also involved in managing the affairs of the temples. This includes appropriate trusteeship support for the rituals and practices in connection with the temples, under the guidance of those who are authorised by the religious tenets to provide advice in that regard. This brings in the requirement for identities like Thanthries, Santhikars etc. apart from other advisors that the TDB may have. While the TDB exercises its authority and discharges duties and responsibilities as trustee, the resonance of faith and belief as recognized under the Constitution, particularly in Articles 25 and 26 thereof, cannot be obliterated by any mechanism of administration referable to the statutory provisions made under a secular Constitution. This is why the safety valves are put in place through Articles 25 and 26 of the Constitution to ensure comity in the society as a whole. Such being its role, TDB is the competent authority to speak on the issue unless there is any reliable conflicting opinion.

4. Specific averments relevant to the issue, including the different aspects attendant to faith, belief and worship in connection with the Lord Ayyappa Temple at Sabarimala are made in TDB's counter-affidavit. Hence, we advert to it, the relevant portions of which read as follows:

1. ****

2. ****

3. The Sabarimala Sree Dharma Sastha Temple at Sabarimala is one of the temples under the administration of the Board. The Sabarimala Sree Dharma Sastha Temple is a very ancient temple and it is the most famous and prominent among all the Sastha temples. It is situated at the slope of the western ghats. The Sree Dharma Sastha temple at Sabarimala is a world famous pilgrim centre. The temple attracts large number of pilgrims, not only from the southern States of Kerala, Tamil Nadu, Karnataka and Andhra Pradesh but also from other parts of the Country and from abroad. The unique feature of the temple is that it is open to people of all faiths and many non-Hindus also go on pilgrimage to this temple. The secular aspect of the temple is best exemplified by the existence of the "Vavar Thara" in honour of Muslim saint in close proximity to the main

"Ayyappa Swami" temple. Ayyappa Cult gives much importance for secularism and communal harmony. The temple has turned out to be a model for the whole world. Another significant aspect about worship at the Sabarimala temple is that all pilgrims are equal before Lord Ayyappa, whether one is rich or poor, literate or illiterate, holding position or not, master or servant.

4. Sabarimala is one among 18 "malas". The 18 malas are believed to be (1) Sabarimala, (2) Ponnambalamedu, (3) Goundal Mala, (4) Naga Mala, (5) Sundara Mala, (6) Chittambalamedu, (7) Ghalgi Mala, (8) Madanga Mala, (9) Mayiladummedu, (10) Sreepada Mala, (11) Devar Mala, (12) Neelakkal Mala, (13) Thalappara Mala, (14) Neeli Mala, (15) Kari Mala, (16) Puthusseri Mala, (17) Kalaketti Mala and (18) Inchipara Mala. Ponnambalamedu is the mountain that looms on the eastern side of sabarigiri. It can be distinctly seen along with other mountains, which form a cluster. The belief is that Sabarimala temple was founded by Parasurama. Sabarimala is even referred to in Ramayana. Lord Rama is believed to have gone to Pampa and the Ashramam of Sabari at Sabarimala.

5. It is believed that the Moolasthanam of Sabarimala temple is Ponnambalamedu. There was a temple at Ponnambalamedu in ancient days. The remnants of the temple including that of a "Sivalingom" were seen there till recently. There was also a tank there.

6. Ponnambalam means golden temple and Medu means Hill. The term Ponnambalamedu has come into use in folk songs describing the mythological stories about Dharmasastha incarnated as Lord Ayyappa. There were also a cave and a terrain upon it which are even now visible. It is believed that Devas worshipped Lord Ayyappa after he liquidated Mahishasuri near Azhutha forest. Remnants of temples including stone carvings, idols etc. can be seen at some places in most of the hills around Sabarimala. Such temple remnants are seen in Kozhikanam, Nilackal, Palliyara Kavu, Edakunnam Forest near Laha, Kothukuthy Para, Aluvom Kudi etc. At Kothukuthy Para there are remnants of 18 steps leading to the Hill temple, which is even now visible. All these areas were having human inhabitation in former days. These places are described in Tamil literature also.

7. It is believed that for such worship water was taken from the riverlet flowing down Ambala Medu and joining Pamba. Hence it is considered as a holy river. It is evident that formerly there was regular poojas in the temple which was in existence at Ponnambalamedu. As time passed on, the temple fell into ruins. Even though the temple fell into ruins the Tribals living in the area continued the pooja ceremonies including Deeparadhana on Makara Sankranthi day which is the most important day. In course of time the tribals were evicted from the area, but still poojas on that day were continued by some of the tribals who stayed back due to their employment. This practice continued. At no point of time, the Board or its officials had claimed that the light seen at Ponnambalamedu on Makara Sankranthi day is divine or that it is made by super human agency. But the fact remains that the light is seen there on Makara Sankranthi day. "Makara

Sankranthi" is an auspicious day of great religious significance at Sabarimala and Ponnambalamedu, the moolasthanam of Lord Ayyappa. The Lord Ayyappa is believed to have been born on Makarasankranthi day. The Utharayanam commences on Makara Sankranthi day. The Deeparadhana at Sabarimala temple is at the time of Makarasankranthi. A star is seen in the horizon at the time. At the same moment formerly Deeparadhana was conducted at Ponnambalamedu also. Now in memory of that, a light is seen there at the time of Deeparadhana. It can be clearly seen from Sabarimala. The Deeparadhana at the Sabarimala temple, the appearance of the star at the north-eastern portion of the sky from Sabarimala and the sight of the "deepam" at Ponnambalamedu synchronize and they surcharge the entire atmosphere at Sabarimala with religious fervor. These three events are being witnessed by devotees from time immemorial. If any one of these three events does not happen the devotees flocking at Sabarimala in large number will be terribly depressed. The deepom at Ponnambalamedu was being seen even before the formation of the Travancore Devaswom Board.

8. In the year 1999, the Kalthara where the pooja were being held at Ponnambalamedu was found destroyed. As per the direction of this Hon'ble Court in O.P. No. 407 of 1999, the Travancore Devaswom Board reconstructed the Kalthara at Ponnambalamedu and provided facilities for performance of pooja there on Makaravilakku day.

9. The poojas and ceremonies performed at the Sabarimala temple at the time of Makara Sankranthi which synatronises with the appearance of the Star (Makarajyothi) and the light at Ponnambalamedu has great religious impact on the devotees. All the three events above-mentioned have become integral parts of the worship at Sabarimala. It is submitted that for continuing the worship the Deeparadhana at Sabarimala temple and that at the Ponnambalamedu have to be continued. The Deeparadhana at Ponnambalamedu may be allowed to be performed through a Santhikaran of the Sabarimala Devaswom at the time of the Deeparadhana in the Sabarimala temple. This will remove all doubts about the Deeparadhana at Ponnambalamedu without in any manner reducing its religious sanctity. If that permission is given the Board will make necessary arrangements to perform the Deeparadhana at Ponnambalamedu with all sanctity. The effective co-operation of the Forest Department, Police Department, Revenue Department and Electricity Board are necessary for performing the Deeparadhana at Ponnambalamedu. These Departments may directed to give to the Board their fullest co-operation. The movements of unauthorized persons are restricted in the area.

10. The averments in the Writ Petition save those admitted are incorrect and are denied. The averments in paragraph 1 of the Writ Petition are not correct to the best of my information, knowledge and belief. The State is not using its police machinery or other resources to highlight superstition. The "Makarajyothi" is the star appearing in the horizon at the time of Deeparadhana on the Makara Sankramam day. It has nothing to do with the "deepam" seen at

Ponnambalamedu. The light or "deepam" seen at Ponnambalamedu is not Makarajyothi as stated by the Petitioners. Makarajyothi is the star seen at the time of Deeparadhana. It is not due to any human intervention. The Petitioners state that the Devaswom Board is conducting propaganda that light seen at Ponnambalamedu is a super human event and takes place naturally at the time of the Deeparadhana at Sabarimala temple. This is incorrect. The Travancore Devaswom Board or any of its officials have not at any time conducted any such propaganda. They have never stated anywhere, at any time, that the light seen at Ponnambalamedu is on account of any super human intervention. On the other hand, the popular belief is that the Adivasis residing there were lighting the lamp at the Deeparadhana time in continuation of and in memory of the religious rites performed there earlier. As submitted above, this light was being seen even before the formation of the Board in the year 1949 and the taking over of the administration of the Sabarimala Devaswom by the Board. The allegations against the Board are unfounded and are denied. Nobody will entertain belief that this is a super human event. On the other hand, it is well-known that the adivasis were performing poojas earlier at Ponnambalamedu and it is even now being continued through other agencies.

11. The Petitioners allege in various paragraphs of the Writ Petition that the light seen at Ponnambalamedu is not super human, that it is man-made and that the Government is participating in the huge fraud played on innocent and gullible people in the name of the light seen at Ponnambalamedu spending public money. It is further alleged that the Government action is violative of Article 27 of the Constitution. To the best of this Respondent's knowledge and belief the Government is not participating in any fraud as contended by the Petitioners in connection with the light seen at Ponnambalamedu on the Makara Sankranthi day. The Board is also not making any false propaganda as contended by the Petitioners.

12. The Kerala Yukthivadi Sangham had filed O.P. No. 2534 of 1999 praying for:
(i) call for a report from the 5th Respondent regarding the secret behind the Makarajyothi flared at Ponnambalamedu on every 1st day in the month of Marakam M.E.;

(ii) issue a writ of mandamus directing the 1st Respondent to include among the terms of reference for the judicial probe into the Pamba mishap on 14-1-1999 the following issue;

Whether the appearance of Makarajyothi at Ponnambalamedu on 1st of every month of Makaram is man-made and whether it attracts uncontrollable millions of devotees causing danger to their life;

(iii) issue a writ of mandamus directing the Respondents to desist from resisting anybody from taking the photograph of flaming of Makarajyothi on the 1st day of the month of Makaram M.E. at Ponnambalamedu;

(iv) issue writ of mandamus directing the Respondents to refrain from doing any

act or omission, thereby making the devotees to believe the Makaravilakku at Ponnambalamedu on 1st day of the month of Makaram M.E. as celestial light;

(v) award cost to this Petitioner; and (vi) such other relief as this Hon"ble Court deems fit and proper;

The said Original Petition was heard along with O.P. No. 5074 of 1999. O.P. No. 5074 of 1999 was filed by the Bharathiya Rationalists Association, contended that Article 51(A) of the Constitution which is fundamental duty for every citizen to develop and inculcate scientific temper, humanism and spirit of enquiry and that the Dooradersan and Akasavani who are broadcasting Makaravilakku and Makarajyothi should be prevented from broadcasting such things, since they are not true. A Division Bench of this Hon"ble Court disposed of the Original Petitions by common judgment dated 9-1-2001. So far as the prayer made to find out whether Makaravilakku is a natural one or artificial one this Hon"ble Court held that it is not the duty of the Court to go into such matters of belief. This Hon"ble Court also held that so far as the question of Makarajyothi (meaning thereby seen at Ponnambalamedu on the Makarasankranthi day) is concerned, according to certain believers, it is a divine revelation of God's power and that it is a matter of belief. It was also held there are a lot of persons, who would infer some divine indication by the manner in which even a manlit lamp spurts out the flame on certain religious occasion and that the correctness or otherwise of such faith cannot be determined by a Court. This Hon"ble Court also held that many of the devotees are viewing the phenomenon in a divine moment of a star rising in the sky with its splendour being augmented by the camphor lights, which are at that time lit in Ponnambalamedu, that some devotees believe that it is the rising star at the top of the hills, which is taken by them as of divine revelation and that these are all are matters of belief and the Court is not empowered to scrutinize the correctness of these matters. This Hon"ble Court also held that the reliance of Article 51(A) of the Constitution is of no avail to the Petitioners.

13. In the light of the facts stated above, it is submitted that the Petitioners are not entitled to any reliefs in this Writ Petition. It is further submitted that the Board may be given permission to perform Deeparadhana at Ponnambalamedu on Makarasankranthi day with the assistance of Forest Department, Police Department and the Electricity Board.

14. It is just and necessary, in the circumstances, to grant permission to the Travancore Devaswom Board to perform "deeparadhana" at Ponnambalamedu on "Makara Sankranthi day" and to direct the Government to give necessary instructions to the Forest Department and Police Department to give necessary protection and co-operation to the officials of the Board deputed for this.

5. O.P. No. 2534 of 1999 filed by the Kerala Yukthivadi Sangham contending,

among other things, that historically, Ponnambalamedu was the abode of Kadars and Malayars belonging to Scheduled Tribes and these aborigines used to make fire at the hill top, at dusk, during the month of Makaram, to ward off wild animals and to overcome the extreme cold, however that, those aborigines has to flee into the dense forest after the inception of Pamba Irrigation Project. They had pleaded that Ponnambalamedu is at a height of 2500 ft. and 15 kMs. away from Sabarimala shrine and that after the temple was reconstructed when it was gutted by fire, lighting at Ponnambalamedu was taken over by the Devaswom Board and Electricity Board. They accordingly sought for the intervention of this Court to call for a report from the Director General of Police regarding the secret behind the Makarajyothi. In answer to the questions raised in that original petition, the State Government had then filed a statement, inter alia, to the effect that the appearance of Makarajyothi is a matter fraught with religious sentiments and it is not for the Government to conduct any enquiry into it. The Government was of the view that if it were to do so, that would be treading an area which is best left to believers and Ors. and that any intervention by Government is likely to result in controversies and criticisms from a large majority of believers. It was accordingly stated before this Court that under those circumstances, such issues are highly sensitive and therefore, the appearance of Makarajyothi is not included in the terms of reference of the Commission appointed to enquire into the stampede tragedy that occurred at Pamba on 14-1-1999. Considering the contentions of the writ Petitioners therein and noting that the Government had appointed a former Judge of this Court to enquire into the situation which led to the stampede tragedy in which 52 pilgrims lost their lives and that the Commission had submitted a report, it was held that by the Division Bench in Ext. R-4 (b) judgment that inso-far as the prayer to find out whether Makarajyothi is a natural one or not, it is not the duty of this Court to go into such matters of belief. It was specifically held in Ext. R-4 (b) judgment as follows:

Sabarimala Temple is a famous Temple of Lord Ayyappa. Every year, lakhs of pilgrims visit Sabarimala and Makaravilakku is considered to be one of the important rituals and everybody, who is present on that day, will not go back without seeing the Makaravilakku. So far as the question of Makarajyothi is concerned, according to certain believers, it is a divine revelation of God's power. As a matter of fact, it is a matter of belief. There are a lot of persons, who would infer some divine indication by the manner in which even a man-lit lamp spurts out the flame on certain religious occasion. The correctness or otherwise of such faith cannot be determined by a court.

....Many of the devotees are viewing the Makarajyothi phenomena in a divine moment of a star arising in the sky with its splendour being augmented by the camphor lights, which are at that time lit in Ponnambalamedu. Some devotees believe that it is the rising star at the top of the hills, which is taken by them as of divine revelation. According to us, these are all matters of belief and this Court is not empowered to scrutinise the correctness of these matters. Further, we are

of the view that the reliance on Article 51A of the Constitution of India is of no avail to the Petitioners.

6. TDB states in paragraph 8 of its counter-affidavit that in 1999, the Kalthara where the poojas were being held at Ponnambalamedu was found destroyed and following the direction by this Court through Ext. R-4(a), TDB reconstructed the Kalthara at Ponnambalamedu and provided facilities for performance of pooja there, on Makaravilakku day. As per Ext. R-4(a), this Court overruled the then contention of TDB that the approval of the Forest Department was required for restoring the Kalthara which was already constructed in 1985 which, obviously, could have been had at that point of time only with the approval of the Forest Department. This Court also repelled the plea of the TDB that reconstruction of the Kalthara which was already in existence would be in violation of the directions of the Supreme Court regarding the protection of the forest lands.

7. The aforesaid Ext. R-4(b) judgment and Ext. R-4(a) order essentially contain the judicial recognition of the fact that Ponnambalamedu is accepted as intricately connected with religious faith, belief and practices of the believers and worshipers in connection with the Sabarimala Temple and that the same needs to be honoured as such.

8. The court would exclude any adjudication as regards matters affecting faith and worship unless such matters transgress the constitutional limits and makes it absolutely necessary to probe into further, as to whether it is in conformity with and does not offend public order, morality and health. Subject to those restrictions, every religious denomination has the right to freedom of conscience recognised and expressed in Article 26 of the Constitution and all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion as enshrined under Article 25 of the Constitution.

9. With the aforesaid, we advert to TDB's afore-quoted counter-affidavit. According to it, lamps are lit in Ponnambalamedu on Makara Sankranthi and this is nothing but a practice attendant to the rituals and practices, intricately connected with religion and faith and matters connected with the faith of Hindus in connection with the Sabarimala temple. The distinctions between the different terms, "Makarajyothi", "Makaravilakku" etc., may be matters of interest in the realm of religious practices. We need only notice that the TDB stands to affirm the fact that what is seen as a lighted lamp or a light in Ponnambalamedu is lit every year on Makara Sankranthi at the time of deeparadhana at Sabarimala Temple. The TDB further states that lighting of the lamp (deepam) is at Ponnambalamedu, which is stated to have been treated, traditionally, as the Moolasthanam of Sabarimala Lord Ayappa temple which is opened for dharshan only during Mandala pooja period and Makara vilakku season. It contends that the age old link between the rituals in Ponnambalamedu and the totality of the practices in connection with Sabarimala cannot be challenged at any point of time as it is intricately connected with the ritualistic practices and part of the faith of worshipers and believers. We accept this contention.

10. The afore noted stand of TDB that the light at Ponnambalamedu on Makara Sankranthi is a man-made phenomenon, as part of rituals, is to be treated as the exposition of the relevant facts. This would answer the inquisitive mind of any scientific enquiry also. The State Government stands to say that no enquiry should be permitted into the matter, as it is one affecting faith, religion and beliefs and practices in connection with religion. TDB has categorically stated by affidavit, the facts in connection with the lighting of the deepam at Ponnambalamedu on Makara Sankranthi during the deeparadhana time in the Lord Ayyappa Temple at Sabarimala. Now, no controversy survives on this. Therefore, there is no need to further probe into the matter. Reliefs sought for in that regard are hence refused.

11. Recording the aforesaid submissions of the TDB, we also notice that there is no material on record which would indicate as to whether any fund which come from the secular funds of the State was ever utilized for the purpose of lighting of the deepam at Ponnambalamedu or for providing such a facility. The State Government stands to assert that no funds are being utilized from the secular funds of the State for that purpose. We do not have to go into the question as to whether the State Government should or could fund any such ritual because, as of now, the clear stand taken by the TDB is that for all times to come, the TDB will spend the funds required for having the deepam at Ponnambalamedu on Makara Sankranthi and all that has to be ensured is that the forest and police departments provide necessary support and access through the forest, which is part of Periyar Tiger Reserve. Having regard to the submissions on behalf of the Petitioners and in the light of the controversies raised, we are clear in our mind that to ensure that the secular funds of the State would not flow for such purpose, it would suffice that the submissions of the TDB that the expenditure in relation to the aforesaid activity will be made exclusively from its funds is recorded. We do so.

12. We notice the submission on behalf of the Forest department that the activity of lighting to provide the deepam on Makara Sankranthi is a non-forest activity. Even before the area in question obtained the status of a wild life sanctuary, Tiger reserve, sometimes in 1899, this part of the land was declared as Periyar Lake Reserve and as part of forest that vested with the Government. With the progression of the statute law, the mere inclusions and modulations of the term "non-forest activity", cannot be utilized to derecognise the existing practice which has found recognition as part of faith and religious practice and which has undoubtedly been happening without any permission from the forest authorities in the forest area. We do not find that the activity of the TDB authorities in coming over to Ponnambalamedu and providing the deepam on Makara Sankranthi would, in any way, intrude the interests of the forest, flora or the fauna. It would have no adverse impact on the ecosystem. Maintaining the balance of the needs of all concerned, including the preservation of the forests, we find no reason to inhibit such ritualistic activity, but only to state that the forest and the police authorities shall oversee such activity, if needed. It being a

forest area, the forest officials and the police officials shall give sufficient aid and support to the TDB to carry out its activities as aforesaid.

In the result, the writ petition is ordered in terms of the aforesaid and the State Government authorities and the TDB are directed to act in strict conformity thereof.

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