

(1958) 09 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 115 of 1955

Sri Narayanadoss Mahant and Another

APPELLANT

Vs

Sri T. Neeladri Rao and Another

RESPONDENT

Date of Decision : 05-09-1958

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3, 3(1), 5(3)
Constitution of India, 1950 — Article 25, 26
Criminal Procedure Code, 1898 (CrPC) — Section 102, 103

Citation : AIR 1959 AP 148

Hon'ble Judges : Satyanarayana Raju, J;Basi Reddy, J

Bench : Division Bench

Advocate : B.V. Subrahmanyam and A. Gangadhara Rao, for the Appellant; A.G. and Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Basi Reddy, J.—This is a petition under Article 226 of the Constitution of India for the issue of a writ of certiorari or any other appropriate writ or direction to quash two notifications issued by the Government of Andhra under the Commissions of Inquiry Act, 1952, (hereinafter referred to as the Act). The petitioner is the "mahant" of Sri Hathiramjee Mutta, Tirupathi. The first respondent, Sri T. Neeladri Rao Naidu, is the Special Officer, Hindu Religious and Charitable Trusts, Andhra State at Masuli-patam, and the second respondent is the Secretary to the Law Department, Government of Andhra.

2. The facts leading upto this writ petition may be briefly stated:

In exercise of the powers conferred by Section 3 of the Act, the Government of Andhra published in the Andhra Gazette dated, 16-9-1954 a notification in the following terms:

"G.O.Ms. No, 959, Law (Endowments), 8th September 1954.

No. 570.

With effect on and from the date of taking charge, Sri T. Neeladri Rao Naidu, B. A., B. L., now acting as temporary Assistant Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Rajahmundry Division, is appointed as Special Officer to enquire into the alleged widespread mismanagement of properties belonging to Hindu Religious and Charitable Trusts created for public purposes and in particular whether there has been wrongful enjoyment of such properties (including cases of breaches of trust, express or constructive) and to suggest the methods by which the said properties can be recovered and properly administered."

3. On the 14th of October 1954, the Andhra Government published another notification in the Andhra Gazette, conferring additional powers on the Special Officer by making all the provisions of Sub-sections (2), (3), (4) and (5) of Section 5 of the Act applicable to him. The notification ran as follows;

"G.O.Ms. No. 1053. Law (Endowments), 4th October 1954.

No. 601.

Whereas in Law Department Notification No. 570 dated 8-9-19,54, published at page 995 of Part I of the Andhra Gazette, dated 16-9-1954, Sri T. Neeladri Rao Naidu, B.A.B.L. was appointed as Special Officer to enquire into the alleged widespread mismanagement of properties belonging to the Hindu Religious and Charitable Trusts created for public purposes and in particular whether there has been wrongful enjoyment of such properties (including cases of breaches of trusts, express or constructive) and to suggest the methods by which the said properties can be recovered and properly administered;

"And whereas the Government of Andhra are of opinion that all the provisions of the Commissions of inquiry Act, 1952 (Central Act LX of 1952), should be made applicable to the Special Officer aforesaid:

"Now therefore, in exercise of the powers conferred by Section 11 of the said Act, the Governor of Andhra hereby directs that all the provisions of the said Act, shall apply to the Special Officer aforesaid;

No. 602.

Whereas the Government of Andhra are of opinion that, having regard to the nature of the enquiry to be made and other circumstances of the case, all the provisions of Sub-sections (2), (3), (4) and (5) of Section 5 of the Commissions of Inquiry Act 1952 (Central Act LX of 1952), should be made applicable to the Special Officer mentioned in Law Department Notification No. 601, dated 4-10-1954, published at page. 1117 of Part I of the Andhra Gazette, dated 14-10-1954.

Now, therefore, in exercise of the powers conferred by Sub-section (1) of the said Section 5, the Governor of Andhra hereby directs that all the provisions of the said Sub-sections (2), (3), (4) and (5) shall apply to the Special Officer

aforesaid."

4. It will be seen that the combined effect of the aforesaid two notifications was that the first respondent was appointed as Special Officer to inquire into the alleged widespread mismanagement of properties belonging to Hindu Religious and Charitable Trusts created for public purposes and in particular to ascertain whether there has been wrongful conversion or misappropriation of such properties and to recommend the steps to be taken for the recovery of properties so misappropriated and for the proper management of the endowments; and for the effective discharge of those functions, the Special Officer was invested with additional powers u/s 5 of the Act.

5. In pursuance of the said notifications, Sri T. Neeladri Rao Naidu entered upon his duties and, after satisfying himself that the properties of Sri Hathiramjee Mutt, Tirupathi, were being grossly mismanaged by the petitioner, issued a summons to the petitioner on the 13th January, 1955, requiring him to appear in person before the Special Officer on 25-1-1955, with all documents and accounts pertaining to the affairs of the Mutt. The summons was in the following terms;

"To S.O.I. No. 125/1954.

Sri Narayandoss, Mahant,

Sri Hathiramjee Mutt, Tirupati, Chandragiri Taluq.

Whereas your attendance is deemed necessary in connection with the inquiry touching the administration, management and present condition of the endowments of Sri Hathiramjee Mutt, Tirumalai-Tirupathi, Chandragiri Taluk, you are hereby required to appear personally before me on 25-1-1955 at 2 p.m., in my camp at Tirumalai-Tirupati with all the documents, accounts and other materials in your custody, control, possession or power relating to the above institution.

Failure to comply with this summons will subject you to the consequences of non-attendance laid down in Rule 12 of Order 16 of the Code of Civil Procedure, 1908."

6. On 15-1-1955, the petitioner filed a memorandum before the Special Officer stating that certain proceedings were then pending in Courts wherein the petitioner was challenging the applicability of the Madras Hindu Religious and Charitable Endowments Act of 1951 to Sri Hathiramjee Mutt, and questioning the jurisdiction of the Special Officer to investigate into the affairs of the Mutt. The petitioner, however, did not obey the summons issued to him by the Special Officer.

7. The Special Officer then held an informal inquiry and received detailed information about the malversation of the Mutt properties by the petitioner. He also came to know that the petitioner was manipulating the accounts of the Mutt and an attempt was being made to secrete valuable jewellery belonging to the

Mutt. Being thus satisfied that prompt action was necessary and in view of the fact that the petitioner is an influential person, the Special Officer took the help of the local Police and on 12-3-1955 went to the Mutt, and in the presence of the petitioner's men, seized the records of the Mutt.

8. In this petition the validity of the notifications issued by the Government and the legality of the action taken by the Special Officer pursuant thereto, are questioned on various grounds. Firstly, it is contended that the notification appointing a Commission of Inquiry is bad in that it "does not relate to a definite matter of public importance; secondly, that the Special Officer had acted in excess of the powers conferred on him by the notifications inasmuch as he had not held a preliminary inquiry into the question whether the property of Sri Hathiramjee Mutt is in fact a Hindu Religious and Charitable Trust created for a public purpose, which alone would give him jurisdiction to, hold an inquiry into the affairs of the Mutt; thirdly, that the summons issued by the Special Officer is contrary to law in that it did not specify the particular documents or account-books which the petitioner was required to produce; and lastly, that Section 5 of the Act is unconstitutional in that it gives the Commission of Enquiry an uncontrolled and arbitrary power.

9. Before dealing with these contentions, it must be mentioned at the outset that the constitutionality of the Act was questioned before the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, (which will be referred to for the sake of brevity as *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*), and their Lordships have held that the Act is constitutionally valid. It is, therefore, not really open to the petitioner to canvass the validity of the Act or any of the provisions thereof.

10. The first notification appointing Sri T. Neeladri Rao Naidu as Special Officer to inquire into the alleged widespread mismanagement of properties belonging to Hindu Religious and Charitable Trusts created for public purposes, is attacked on the ground that the inquiry contemplated by the notification does not relate to any definite matter of public importance, and emphasis is laid on the adjective "definite".

It is argued that the matter referred to in the notification is vague and indefinite inasmuch as the institutions into whose affairs the inquiry is to be made, are not specified in the notification and the Special Officer is authorised to make a roving inquiry into the affairs of all Hindu Religious and Charitable Institutions. It is said that there is no schedule attached to the notification enumerating, the institutions in which there is alleged mismanagement, as was done in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and a fishing inquiry is not envisaged by the provisions of Section 3 of the Act.

11. In our view, there is no force in this contention, Section 3 of the Act not only empowers the Government to appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance but also to direct

the commission to perform such functions as may be specified in the notification. Further by reason of "the direction given by the Government that the provisions of Sub-sections (2) and (3) shall apply to the Commission, the latter acquires the power to require any person to furnish information on such points or matters as in the opinion of the. Commission may be useful for, or relevant to, the subject-matter of the inquiry, and also to enter any building or place where the Commission has reason to believe that the books of account or other documents relating to the subject-matter of the inquiry may be found, and to seize any such books of account or documents.

Thus, the Commission is empowered to collect information relevant to the subject-matter of the inquiry. In this case the Government took note of the prevalence of a pernicious malady, namely, mismanagement and misappropriation of properties belonging to religious and charitable trusts, and appointed a Special Officer to ascertain which of the religious and charitable institutions in the State are afflicted by this malady, in what form and to what extent, and to suggest remedies therefor. It is not disputed that the impugned notification relates to a matter of public importance; but it is contended that the matter is not "definite" in character.

12. Reference is made in this context to the notification issued in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , and it is argued that had a schedule been attached to the notification in the present case, naming the institutions whose affairs had to be investigated by the Special Officer, no exception could have been taken to the notification. But a close reading of the notification in *Dalmia's* case shows that there the Commission of Inquiry was authorised to inquire into the affairs of not only the companies specified in the schedule but also into the affairs of such other companies and firms as the Commission may during the course of its inquiry find to be companies or firms connected with the companies referred to in the schedule. Thus the schedule was in no sense exhaustive of the matters which could be inquired into by the Commission. The relevant clauses of the Notification in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, provided:

"1. The Commission shall inquire into and report on and in respect of:

(1), The administration of the affairs of the companies specified in the schedule hereto;

(2) The administration of the affairs of such Other companies and firms as the Commission may during the course of its enquiry find to be companies or firms connected with the companies referred to in the schedule and whose affairs ought to be investigated and inquired into in connection with or arising out of the inquiry into the affairs of the companies specified in the schedule hereto."

13. Now the dictionary meaning of the word "definite" is : determinate, distinct, precise, not vague; (see the Concise Oxford Dictionary, 4th Edition). In our opinion, widespread mismanagement of public endowments dedicated to

religious and charitable purposes and the eradication of that evil, are a definite matter of public importance, within the meaning of that expression in Section 3 of the Act. The section does not require that the institutions whose affairs should be investigated, should be named in the notification before an inquiry could be ordered into a definite matter of public importance.

The Section speaks only of a definite matter and not of particulars or instances of such matter. The duty of ascertaining the institutions in which there is mismanagement, is cast on the Special Officer and it is for him to inquire into the affairs of such institutions and make the necessary recommendations to the Government. The Special Officer is constituted as a fact finding body for the purpose of finding out which of the institutions are being mismanaged, in what way and to what extent. He would proceed to hold an inquiry only if he is "prima facie" satisfied that a particular institution is a public temple or mutt or the like, and that its properties are being mismanaged and diverted to private purposes.

14. It appears from the counter-affidavit filed by the first respondent that the petitioner, who is the "mahant" of Sri Hathiramjee Mutt, has been mismanaging the affairs of the Mutt and embezzling its funds, and it was for that reason that a summons was issued to the petitioner to appear in person and to produce all material documents and accounts for the purpose of the inquiry. Thus the first respondent has acted within the powers conferred on him by the notifications, and it cannot be said that he has acted without jurisdiction or in excess of his jurisdiction.

15. It is next contended that Sri Hathiramjee Mutt is not a public mutt, and, therefore, the Special Officer has no power to probe into its affairs. This contention is obviously untenable in view of the previous history of this Mutt which is set out in the counter-affidavit filed on behalf of the first respondent. It appears from the said affidavit that Sri Hathiramjee Mutt, Tirupathi, was recognised as a public religious institution coming within the definition of a mutt in Clause (I) of Section 6 of the Madras Act XIX of 1951 which corresponds to Section 9(7) of the Madras Act II of 1927.

The late Sri Mahant, Prayagdasjee Varu, the predecessor of the petitioner, applied for the exemption of the Mutt from the operation of the provisions of Madras Act II of 1927. The Government of Madras in G.O. No. 4935 L.M. dated 13-12-1927 exempted the said Mutt from the operation of all the provisions of the Act except Sections 38, 39, 42, 61(b), 68, 69, 70, 73 and 74 of the Act. On the death of the said "mahant" Sri Prayagdasjee Varu in 1947,, disputes arose as to the succession to the office of the "mahant".

In consequence of the dispute a Special Officer was appointed u/s 42 of Madras Act II of 1927 as an interim Trustee. Subsequently, the "chelas" of the late "mahant" including the petitioner, entered into a registered agreement dated 29-10-1947. Under the agreement the petitioner and the junior "mahant Sri

Chaitanya Doss, were entrusted with the management and control of the Mutt and its properties. After the dispute between the "chelas" had been settled, the petitioner herein applied for the recognition of his office by the Hindu Religious and Charitable Endowments Board, which directed, the interim Trustee to hand over to the petitioner and the junior "mahant" all the properties of the Mutt.

After taking control of the Mutt, the petitioner began to mismanage its affairs and failed to deposit a sum of Rs. 1,79,000/- in the name of the Mutt, which he was bound to do. He also set up claims-adverse to the trust. In view of his conduct and gross mismanagement, the Government of Madras in G.O. No. 65 F.D. dated 21-1-1949 cancelled the exemption granted in 1927. The petitioner applied for a reconsideration of the order but his application was rejected. A scheme was also settled; for the administration of the Mutt by the Hindu Religious Endowments Board in B.O. No. 3813 dated 18-11-1949.

The petitioner filed O.S. No. 1 of 1950 on the file of the District Court, Chittoor, for cancelling the said scheme. The District Judge confirmed the scheme settled by the Board subject to a few modifications. The petitioner preferred an appeal in A.S. No. 27 of 1953 on the file of the High Court, and the same is pending. In view of all this, it is not open to the petitioner now to contend that the said Mutt is not a public religious institution. In any event there was sufficient material before the Special Officer to warrant action being taken under the notifications.

16. Another limb of the above contention is that the Special Officer should have held a preliminary inquiry as to whether the Mutt is a public religious institution before proceeding to act under the notifications issued by the Government, and only then, he would have had jurisdiction to conduct the inquiry into the affairs of the Mutt. Neither Section 3 of the Act nor the notifications contemplate such a preliminary investigation by the Special Officer. The Officer was acting on information which more than "prima facie" showed that the Mutt is a public Mutt, and he had also information that the affairs of the Mutt were being grossly mismanaged by the petitioner.

He was, therefore, quite justified in proceeding with the inquiry. It is not suggested that the Special Officer had acted "mala fide" and so his action cannot be challenged as being without jurisdiction. It was certainly open to the petitioner to have adduced evidence and satisfied the Special Officer that the Mutt is not a public Mutt or that there was in fact no mismanagement of the affairs of the Mutt. The petitioner did not choose to do so but took up a defiant attitude and questioned the very jurisdiction of the Special Officer to hold the inquiry.

17. The next ground of objection is as to the form of the summons issued. It is argued that the summons should have specified the particular documents or .account-books which had to be produced by the petitioner instead of requiring him to produce "all the documents, accounts and other mate-dais in your custody, control, possession or power relating to the above Institution . The

Special Officer was trying to find out in what manner and to what extent there had been mismanagement of the properties of the Mutt, and in the nature of things he could not have furnished a list of documents and accounts to be produced by the petitioner.

The petitioner was asked to produce all documents, accounts etc., relating to the Mutt and u/s 4(b) of the Act, the Commission of Inquiry has the power to require the discovery and production of any document. The summons did mention, however, that the documents and accounts of the Mutt were necessary in connection with the inquiry touching the administration, management and present condition of the endowments of Sri Hathiramjee Mutt, Tirupathi."

18. The last contention advanced on behalf of the petitioner is as regards the constitutional validity of Sub-section (3) of Section 5 of the Act. Sub-section (3) authorizes the Commission or any Officer not below the rank of a Gazetted Officer specially authorized by the Commission to enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject-matter of the inquiry may be found and seize any such books of account or documents or take extracts or copies therefrom, subject to the provisions of Sections 102 and 103 of the Code of Criminal Procedure, in so far as they may be applicable.

It is contended that the aforesaid provisions confer an uncontrolled and arbitrary power of entry and seizure and are violative of the fundamental rights of the petitioner guaranteed by Articles 25 and 26 of the Constitution. It is urged that the said provisions of the Act are on a par with Section 21 of the Madras Hindu Religious and Charitable Endowments Act (Madras Act XIX of 1951), which was struck down by the Supreme Court as being unconstitutional in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, Section 21 of Madras Act XIX of 1951 ran thus:

"21(1). The Commissioner, Deputy and Assistant Commissioners and such other officers as may be authorized by the Commissioner or the Area Committee in this behalf shall have power to enter the premises of any religious institution or any place of worship for the purpose of exercising any power conferred, or discharging any duty imposed, by or under this Act.

(2) If any such officer is resisted in the exercise of such power or discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such officer, direct any Police Officer not below the rank of Sub-Inspector to render such help as may be necessary to enable the officer to exercise such power, or discharge such duty.

(3) Nothing in this section shall be deemed to authorize any person who is not a Hindu to enter the premises or place referred to in Sub-section (1) or any part thereof."

The relevant passage in the judgment of the Supreme Court may be usefully

extracted:

"This section empowers the Commissioner and his subordinate officers and also persons authorized by them to enter the premises of any religious Institution of place of worship for the purpose of exercising any power conferred or any duty imposed by or under the Act. It is well known that there could be no such thing as an unregulated and unrestricted right of entry in a public temple or other religious institution, for persons who are not connected with the spiritual functions thereof.

It is a traditional custom universally observed not to allow access to any outsider to the particularly sacred parts of a temple as for example, the place where the deity is located. There are also fixed hours of worship and rest for the idol when no disturbance by any member of the public is allowed. Section 21, it is to be noted, does not confine the right of entry to the outer portion of the premises; it does not even exclude the inner sanctuary, "the Holy of Holies" as it is said, the sanctity of which is zealously preserved.

It does not say that the entry may be made after due notice to the head or the institution and at such hours which would not interfere with the due observance of the rites and ceremonies in the institution. We think that as the section stands, it interferes with the fundamental rights of the Matadhipathi and the denomination of which he is head, guaranteed under Articles 25 and 26 of the Constitution,"

It will thus be noted that Section 21 of that Act was held to be invalid because it interfered with religious custom and usage, and gave the officers named therein an unrestricted right of entry at all times, without previous notice, into any part of any religious institution or place of worship for the purpose of exercising any power conferred, or discharging any duty imposed by or under that Act.

19. In our opinion there is no analogy between that Section and Sub-section (3) of Section 5 of the Act. Whereas Section 21 of the Madras Act XIX of 1951 gave a sweeping power to the officers concerned to enter the premises of any religious institution or any place of worship, Sub-section (3) of Section 5 of the Act gives only a limited power to the authorised officers to enter any building or place where the- Commission of Inquiry has reason to believe that any books of account or other documents relating to the subject-matter of the inquiry may be found; and the search and seizure of books of account or documents can be done only after observing the formalities prescribed by Ss. 102 and 103 of the Code of Criminal Procedure.

Under Section 103 a search shall be made in the presence of two or more respectable inhabitants of the locality; a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by the officer conducting the search and shall be signed by the witnesses; and further, the occupant of the place searched or some person in his behalf shall, in every instance, be permitted to attend during the search, and a

copy of the list prepared under the Section, signed by the said witnesses, shall be delivered to such occupant or person.

The power of search and seizure is thus hedged in by several restrictions and safeguards. Moreover in a search conducted u/s 5(3) of the Act, there is little danger of the search party interfering with the worship in the religious institution or violating the sanctity of the inner sanctuary, for it can hardly ever happen that books of account and documents relating to the management of a religious institution, would be kept in the sanctum sanctorum.

Thus the right of entry, search and seizure, conferred by Section 5(3) of the Act, does not violate the sanctity of the institution nor is it likely to wound religious sentiment. That power is not an unbridled and unregulated power as in the case of Section 21 of the Madras Act XIX of 1951. In the present case the Special Officer seized the records from the Mutt, only after the petitioner had failed to produce them, and only after giving due notice to the Manager of the Mutt and after observing all the formalities prescribed by law.

20. There are thus no merits in any of the contentions advanced on behalf of the petitioner. The writ petition is accordingly dismissed with costs. Advocate's Fee Rs. 100/-.

21. We should now like to refer to a point which struck us after arguments had been heard in the writ petition and judgment had been reserved. The point was not raised in the writ petition nor was it hinted at during the hearing of the petition. We have, however, thought it proper to consider it in the light of the Supreme Court's ruling in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . The point is that in the original notification issued by the Government the time within which the Special Officer was to complete the inquiry, was not specified.

Section 3 of the Act, however, lays down that the notification appointing a Commission of Inquiry should specify the functions and the time within which those functions should be performed, and the Commission shall make the inquiry and perform the functions accordingly. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, the original notification" did not fix the time within which the Commission was to complete the inquiry and make its report; but by a subsequent notification that mistake was rectified and a period of two years was fixed within which the Commission of Inquiry should exercise the functions conferred on it and make its report.

Objection was taken before the Supreme Court that since the original notification was defective, the subsequent notification fixing a time limit, could not cure that defect, but their Lordships of the Supreme Court overruled that objection and observed as follows:

"There was nothing to prevent the Government from issuing a fresh notification appointing a Commission and fixing a time. If that could be done, there was no

reason why the same result could not be achieved by the combined effect of two notifications. In any case, the amending notification taken together with the original notification, may be read as a fresh notification within the meaning of Section 3 of the Act, operative at least from the date of the later notification."

Thus Their Lordships regarded the defect as a curable irregularity.

22. In the present case, however, the defect in the original notification remains uncured even to this day. In our view, till that defect is cured, the Special Officer is debarred from functioning under the notifications notwithstanding the fact that I the notifications themselves are not invalid. He would be, so to speak, in a state of suspended animation.