

(1988) 01 MAD CK 0043
In the Madras High Court

Sri Panduranganathaswami Devasthanam and Others APPELLANT
Vs

The Deputy Commissioner, Hindu Religious and Charitable Endowments RESPONDENT

Date of Decision : 29-01-1988

Acts Referred:

Citation : (1988) 2 MLJ 53

Hon'ble Judges : S. Swamikkannu, J; S. Swamikannu, J

Bench : Division Bench

Judgement

S. Swamikkannu, J.—Sri Panduranganathaswami Devasthanam, Shevapet, Salem, by its trustees has come forward with this petition under

Article 226 of the Constitution of India for issuing a Writ of MANDAMUS or any other appropriate writ, order or directing the respondent viz.,

the Deputy Commissioner, Hindu Religious and Charitable Endowments, Coimbatore, to forbear taking any proceedings to appoint to the

petitioner temple pursuant to his notice No. 18576/78, dated 31.8.1979. It is INTER ALIA stated in the affidavit sworn to by one of the trustees

of the petitioner temple that the petitioner temple was founded and has been managed by the members of the Sourashtra Brahmin Community of

Shevapet, Salem, and that it has been declared as a "Denominational Temple" belonging to the said Community in O.S. No. 429 of 1968 on the

file of the Sub-Court, Salem, to which the Commissioner for Hindu Religious and Charitable Endowments of Tamil Nadu was the defendant. The

respondent/the Deputy Commissioner for Hindu Religious and Charitable Endowments, Coimbatore, previously for Salem and Dharmapuri

Districts, had published a notice No. 2109 of 1978, dated 28.2.1978, inviting applications for the appointment of trustees to the petitioner temple.

On behalf of the trustees the deponent objected to the notice in his letter to him dated 10.3.1978, enclosing a copy of the decree in the above suit.

But the respondent/the Deputy Commissioner for Hindu Religious and Charitable Endowments, had still persisting in his proposal to appoint

trustees and has again published a notice No. 18576/78, dated 31.8.1979, but this time restricting the applicants to the members of the Sourashtra

Brahmin community of Shevapet, Salem. The appointment of trustees to the petitioner temple is by election from among the members of the said

community residing at Shevapet, Salem, and that the respondent has no power nor jurisdiction to appoint trustees even though from among the

members of the said community. The respondent's proposed action amounts to interference with the management of the petitioner temple by the

members of the said community and is contrary to the guarantee made in Article 26 of the Constitution of India and in Section 107 of the Tamil

Nadu Hindu Religious and Charitable Endowments Act 22 of 1959. The said proposal of the respondent has to be restrained and as there is no

other remedy in that behalf the petitioner is constrained to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. If the

respondent is allowed to proceed with the proposed appointment, it will lead to confusion, the administration of the petitioner temple will come to a

stand still and the temple will thereby put to irreparable loss.

2. In the counter filed on behalf of the respondent/the Deputy Commissioner for Hindu Religious and Charitable Endowments, Coimbatore, has

INTER ALIA contended that the notice in Re. No. 18576/78, dated 31.8.1979 was published calling applications for appointment of trustees

from Sourashtra Brahmin residents at Shevapet in Salem on the basis of the decree granted in O.S. No. 429 of 1968 on the file of the Sub-Court,

Salem. The Court has granted the decree in O.S. No. 429 of 1968 that the above suit institution belongs to the Sourashtra Brahmins residing in

Shevapet, Salem. In these circumstances the Department has taken all statutory steps for appointment of trustees. Therefore, the notice published

in Rc. No. 18576/78, dated 31.8.1979 calling for amplications for appointment of trustees from Sourashtra Brahmins residing at Shevapet in

Salem, is legal and lawful one. The Sub-Court, Salem, granted a decree in O.S. No. 429 of 1968 that the suit institution belongs to the Sourashtra

Brahmin residents at Shevapet in Salem. This writ petition is against the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments

Act, 1959 (Tamil Nadu Act 22 of 1959) and the petitioner has not exhausted the remedy available u/s 64 of the Act 22 of 1959. But the lower

Court has not, however, granted any injunction against the Department. So the supervisory powers of the Department under the provisions of the

Act 22 of 1959, are not affected. In this stage, the Department has got rights to appoint trustees to the suit institution even from the said

Community as the petitioner has not established his right under the provisions of the Act 22 of 1959. The petitioners have no right to continue in

management of the suit institution as trustees. The petitioners are not entitled to file this petition in a representative capacity on behalf of the

Sourashtra Brahmin residents at Shevapet in Salem and are not entitled to the relief sought for in the petition.

3. Mr. O.V. Balswami, learned Counsel for the petitioner, brought to the notice of this Court the *RATIO DECIDENDI* in the decision reported in

Muthia Asari v. Madasami Asari (1965) 2 M.L.J. 220, for the proposition that the Area Committee and the Commissioner of Hindu Religious and

Charitable Endowments will have discretion to decline to accept the elected candidates who suffer from any specific unsuitability or infirmity

unfitting them from office. In that case, election may have to be held again in that particular respect. But subject to this restriction, it is the corporate

body that has to elect trustees for the administration and management of the temple and its properties. Such arrangement may be carried out by the

authorities under the directions of the Commissioner after the proper interval of time; in the meantime, the interim arrangements will continue to be

enforced. Referring to the above ratio of the decision in which the decisions reported in *Commissioner, HINDU Religious Endowments, Madras v.*

Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt 1954 S.C.J. 335 : (1954) 1 M.L.J. 596, *Retilal Panchand Gandhi v. State of Bombay* (1954)

1 M.L.J. 718 : 1954 S.C.J. 480, *Indian Metal and Metallurgical Corporation Vs. Industrial Tribunal, Madras and Another*, ; *The Durgah*

Committee, Ajmer and Another Vs. Syed Hussain Ali and Others, and *Mukundaraya v. State of Mysore* AIR 1960 Mys. 16, were referred to, it

has been contended that the ratio in these decisions has been completely ignored by the respondent herein in spite of the fact that the Commissioner

had issued circular to the effect that the ratio of the decision reported in Muthia Asari v. Madasami Asari (1965) 2 M.L.J. 220, has had the

authority with respect to the denominational temple. The Department has got the supervisory power of the activities that are done by the members

of the community through their elected trustees. So far as the administration of the temple is concerned, it does not mean the Deputy Commissioner

himself can directly call the applications for appointment of trustees and take on himself the duties that are wholly vested with the members of the

community through their representative. It is this aspect which is very much stressed by Mr. O.V. Balswami by citing the decision reported in R.

China Boyan and Others Vs. The Commissioner for Hindu Religious and Charitable Endowments and Another, . He has also submitted that the

mention of Section 64 in the counter affidavit is wrong because the said section deals only with the power of the Deputy Commissioner to settle

schemes, but perhaps by mistake instead of putting Section 63 of the Tamil Nadu Act 22 of 1959 the deponent had put Section 64. I think there is

substance in this submission because Section 63 deals with the decision of the matter relating to certain disputes and matters by the Deputy

Commissioner. Here there is no dispute in this respect, but it is relevant to note that Mr. P. Samuel learned Government Pleader, has taken me

through the provisions of Article 26 of the Constitution of India as well as Section 107 of the Tamil Nadu Act 22 of 1959. The one and the only

point for consideration is whether the notice which is now sought to be quashed emanated from the office of the Deputy Commissioner calling for

the applications for appointment of trustees is within his power and whether his attitude amounts to ignoring the time and again circular issued by

the Commissioner of the Hindu Religious and Charitable Endowments as well as ignoring the ratio of the decisions reported in R. China Boyan and

Others Vs. The Commissioner for Hindu Religious and Charitable Endowments and Another, and Muthia Asari v. Madasami Asari (1965) 2

M.L.J. 220. A careful reading of both the decisions and the affidavit sworn to in support of the petition as well as the counter that had been filed by

the respondent herein shows that the respondent herein has exceeded his jurisdiction by calling for the applications for the appointment of trustees

to the denominational temple which is not contemplated anywhere in the provisions of the Tamil Nadu Act 22 of 1959 or anywhere in the circular

issued from time to time. At the most if there is any irregularity in the procedure adopted by the members of the community for appointment of a

trustee or that the appointment of trustees suffers from any disqualification, then the Deputy Commissioner can call for any explanation or take

action as per the provisions of Section 63. In fact what was laid down in the decision reported in *Muthia Asari v. Madasami Asari* (1965) 2

M.L.J. 220 is as follows:

With regard to the actual facts, there has been some difficulty, and it appears to us that some degree of vagueness and confusion is evident in the

record. However, when arguments were submitted before us by the learned Counsel for the appellant and the learned Government Pleader, it

became fairly clear that the main conclusion of fact could not be disturbed in second appeal, and that it is specific in character. We do not think it is

necessary to set forth here the decisions of the Supreme Court to the effect that this Court, in exercise of its jurisdiction with regard to second

appeals, will really have no power to interfere with an explicit finding of fact based on the appreciation of evidence; that is the case, even if this

Court might have felt inclined to arrive at a different conclusion on the merits, on an independent appreciation of the evidence; in other words even

if this Court were of the view that the finding of fact was erroneous. In certain decisions, the matter has even been expressed in the acute form that

this Court would have no jurisdiction, in Second Appeal, to interfere with a finding of fact, pure and simple, though deemed to be erroneous. We

think it is sufficient, here, to set forth the main finding of fact in this suit in the very words of the First Appellate Court. Those passages are as

follows:

Thus the exclusive right of the five village people has not been established and the right of the Viswa Karma Brahmin Community of the district has

not been negated even by the trial Court as there is no evidence at all to that effect.

Again

All the members of the Viswa Karma Brahmin community are entitled to have an interest in the suit institution.

Thus, we may take it as established on the evidence, that this religious institution, though indisputably denominational in character, does not belong

merely to the Viswakarma Brahmin Community members of certain villages, or of five named villages, but to the members of that community in the

district as a whole. Undoubtedly, it is this corporate body which will have the right to manage the temple and to administer the endowments,

presumably through the elected trustees; undoubtedly the rights of this body will be entitled to protection under Article 26 of the Constitution,

particularly Sub-clause (d). The right of any corporate body, with regard to a denominational religious institution, to have its functions preserved

from invasion, under Article 26 of the constitution, has been statutorily embodied in Section 107 of Madras Act XXII of 1959.

4. It is really not necessary for the present restricted purpose, to deal with the case-law at any great length. The learned Judge himself referred to

the following decisions as relevant. Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt

(1954) 1 M.L.J. 596 : 1954 S.C.J. 335, Retilal Panchand Gandhi v. State of Bombay (1954) 1 M.L.J. 718 : 1954 S.C.J. 480 and Indian Metal

and Metallurgical Corporation Vs. Industrial Tribunal, Madras and Another, . In addition our attention has been drawn to two decisions of

importance upon the actual principle, one of which is The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others, and the other

is Mukundaraya v. State of Mysore AIR 1960 Mys. 18, a Bench decision. Actually the last decision deals with the precisepoint whether with

regard to a denominational temple which belongs to a corporate body like the members of a defined community, the State would be within its

powers in applying a provision like Section 41 of the Madras Hindu Religious and Charitable Endowments Act, 1951, corresponding to Section

49 of Act XXII and thereby enabling the Area Committee, an external body, to nominate trustees to the management of such denominational

religious institution, or for the administration of its properties.

5. We might very briefly state that, in the present case, we are not deciding the wider question whether Section 49 is ULTRA VIRES the powers

of the Legislature, if sought to be applied to denominational templets or religious institutions, in the light of Article 26(d) of the Constitution. It is

sufficient for us to observe that both in the Mysore decision that we have earlier referred to, and in The Durgah Committee, Ajmer and Another

Vs. Syed Hussain Ali and Others, , the relevant criterion has been expressed in explicit language. In the Mysore case, the Bench observed that if the effect of certain provisions was to totally take away the right of administration from the hands of the religious denomination and to vest such right in other authorities, this would be a violation of rights guaranteed under Article 26 of the Constitution. In the Supreme Court decision it is stated:

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.

6. We think it is sufficient to point out the position at law for the facts of the present case make it abundantly clear that there is no need, in the immediate context, to strike down any provision of law in the 1959 Act as ULTRA VIRES in view of rights guaranteed under Article 26 of the

Constitution. Certainly, the fact the Area Committee purported to nominate members of the particular religious denominations will not be enough to

cure the vice or infirmity, if otherwise the rights guaranteed to this body under Article 26(d) are effectively taken away by the nomination. But the

matter seems to be academic at the moment, since the terms of the members who were previously functioning as trustees, we shall assume as DE

FACTO trustees have come to an end. The temple, we must reiterate, belongs to the entire body of the Viswakarma Brahmin Community of the

district, and not merely to members of the five named villages or certain villages. The interim powers of the Commissioner or the Area Committee

to make arrangements for the day-to-day administration of the temple and its endowments are not in dispute. Hence, we direct that such

arrangements be made, as appear feasible and expedient. In the meantime, it is obvious that an electoral roll has to be prepared of the members of

the community in the district, which form a corporate body in whom are vested relevant rights under Article 26 of the Constitution. If such a roll is

prepared, some kind of an electoral meeting has to be convened, or an electoral college has to be formed and two or three trustees, as convenient,

will have to be elected by the electorate. Certainly, the Area Committee and the

Commissioner will have discretion to decline to accept the elected candidates who suffer from any specific unsuitability or infirmity unfitting them from office; in that case, election may have to be held again in that particular respect. But subject to this restriction, it is the corporate body that has to elect trustees for the administration and management of the temple and its properties. Such arrangement may be carried out by the authorities under the direction of the Commissioner (first defendant) after the proper interval of time; in the meantime, the interim arrangements will continue to be enforced.

Section 107 of the Tamil Nadu Act 22 of 1959 reads as follows:

107. Nothing contained in this Act shall, save as otherwise provided in Section 106 and in Clause (2) of Article 25 of the Constitution, 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

Article 26 of the Constitution of India reads as follows:

26. Subject to public order, morality and health, every religious denomination or any section thereof shall have 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.

In support of his contention that there is nothing wrong the Deputy Commissioner himself issued notice calling applications for appointment of

trustees, the learned Counsel for the respondent also brought to the notice of this Court the observation of the Revered President of India Dr.

Radhakrishnan at page 129 of the book ""Speeches and Writings"", published by the publications Division, Ministry of Information and

Broadcasting, Government of India (Second Series) which reads as follows

The other lesson which Nanak taught us is the common ground which subsists between many of our religions. In his time he was faced by

antagonism of Hindus and Muslims and he said, Why are you quarrelling about forms, about ceremonies, about dogmas, about sacred places, etc,

Like this you will find that everyone is worshipping the same Supreme; We are all

trying to find out where God is and how we can reach him. That is the lesson which he taught us. There is a common ground between the religions of the world in this time, Nanak took up Hindus and Muslims and he taught them that the Quran and the Puranas teach the same thing; whether it is a mosque or a temple, we see the same God. Nanak's rebuk we still deserve because we are still leading superficial lives. We are not truly religious; we are not caught into the depths of our consciousness and do not realize the Supreme who is there. The same Supreme dwells in every human being and if we are quarrelling among ourselves we are crucifying the Lord. The Lord is crucified and His body is torn to pieces. It is necessary for us to undersold in this age of mingling of cultures, of religions, etc, that there is a common substratum from which all religions spring. They are the varied expressions of the one and the same Reality. So, there is a spiritual dimension. That sanctity is not withdrawal from the world, that all religions preach the same gospel, and those who are quarrelling about them are not truly religious, these are some of the lessons which Nanak taught us.

7. Article 26 of the Constitution of India guarantees certain rights to every religious denomination subject to "public order, morality and health", and the rights are capable of being enforced by or on behalf of a denomination. This aspect has been considered in he decision reported in Devaraja Shenoy and Others Vs. State of Madras and Another, . The word "denomination" has been defined to mean" a collection of individuals classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name. It was so held in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., . Article 26 of the Constitution of India contemplates not only a religious denomination but also a section thereof. Hence, a Math is religious denomination within the meaning of Article 26. Similar is the Gowda Saraswat Brahmin Community; followers of the Soroastrain religion; but not the Aurobindo Society or Auroville. It was so held in Mittal v. Union of India : [1983]1SCR729 para 122. Clause (b) of Article 26 deals with the right to manage its own affairs in matters of religion. This clause guarantees to each religious denomination the right to manage its domestic affairs in matters which

are concerned with religion and the State cannot interfere in these affairs unless the denomination so exercises its right as to interfere with "Public

order, morality or health". Another limitation upon the right under Article 26(b) is that it is subject to Articles 17 and 25(2)(b). It was so held in

Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay, and Sri Venkataramana Devaru and Others Vs. The State of Mysore and

Others, . Besides these, there are no other limitations imposed by the Constitution. Hence, a right of religious denomination under Article 26(b) e.g.

to excommunicate a member on religious grounds, cannot be taken away or restricted on the ground that it would affect the civil rights of such

members, including the right of beneficial use or enjoyment of the denominational property. While the right to administer property under Clause (d)

is subject to regulation by law, the right to manage religious affairs under Clause (b) cannot be regulated by the Legislature. It was so held in

Commissioner, Hindu - Religious Endowments v. Lakshmindra AIR 1954 S.C. 1005. The protection of Clause (b) of Article 26 does not extend

to management of the property or other secular affairs of the denomination. It was so held in Mittal v. Union of India : [1983]1SCR729 . Thus we

find as per the decisions in Commissioner, Hindu Religious Endowments v. Lakshmindra AIR 1954 S.C 1005 and Ram Chandra Deb Vs. The

State of Orissa, , that the right of management includes:

(a) complete autonomy to decide what rites and observances are essential according to its religion, though the secular aspects, e.g., the scale of

expenses to be incurred in connection with such observances, may be regulated by the competent legislature;

(b) the right to spend the trust property or its income for religion and religious purposes and objects indicated by the founder or established by

usage obtaining in a particular institution. To divert the trust property or funds to other purposes, although the original objects of the founder can

still be carried out, is an unwarrantable encroachment upon the right guaranteed to a religious institution by this clause, even though such other

purposes are "charitable"; and

(e) the right to maintain the institution under the management of the spiritual head of the denomination, which would be destroyed if a statutory

authority is appointed for the purpose.

8. "Religion", in this context, is not confined to religious belief but includes the practices which are regarded by the community as part of its religion

and may extend even to matters of food and dress. Each religious denomination or organisation enjoys complete autonomy in the matter, of

deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold. But the Court has the right to determine

whether a particular rite or observance is regarded as essential by the tenets of a particular religion.

9. In the instant case before us the point stressed is that the right to select or elect or appoint a person of the community as trustees to the petitioner

temple vests exclusively with the members of the Sourashtra Brahmin Community of Shevapet, Salem, and not with the Deputy Commissioner,

Salem. This contention has to be upheld in view of one decisions referred to above with respect to the interpretation of Article 26 of the

Constitution of India which is more or less embodied in Section 107 of the Tamil Nadu Act 22 of 1959. In this view a careful scrutiny of the

averments in the affidavit sworn to and accompanied this petition and the contentions raised in the counter sworn to by the Deputy Commissioner,

Coimbatore, discloses that the right of the petitioner in appointing the trustees to the temple has to be upheld and not the contention of the

respondent herein that it is well within the purview of Section 107 and Section 63 of the Tamil Nadu Act 22 of 1959 that it can call for the

applications for the appointment of trustees. Nowhere it is contemplated that such calling is part and parcel of the duties of the respondent herein

especially when it is admitted that there are circulars which is to the effect that the officers of the rank of the respondent herein should not incharge

of calling for applications when such a right of calling for applications vests with the members of the community and the representatives therefor.

Therefore the contention raised on behalf of the petitioner herein by Mr. O.V. Balswami has to be upheld viz., that it is only the community has got

the right to call for the applications for the appointment of trustees to the petitioner temple and not the respondent. The supervisory power of the

respondent does not extend to the interference with the right vested on the members of the community which right is one which is well protected by

a petition under Article 26 of the Organic Law of the land, namely) the Constitution. Under these circumstances the writ petition is allowed. The

notice calling for the applications for the appointment of trustees issued by the respondent is hereby quashed. Under the circumstances since the

respondent herein inspite of the circulars and inspite of the decisions of the Supreme Court as well as the High Court has indulged in calling for the

applications over and beyond the powers vested with him, the petition has necessarily to be allowed with costs and is hereby allowed with costs.

10. With respect to the fee the provision of Section 33 of the Tamil Nadu Act 22 of 1959 was brought to the notice of this Court. It is made clear

that the respondent herein not to make good the loss which he is incurring by way of the order of this Court allowing this petition with costs, by

invoking the provisions of Section 93 of the Tamil Nadu Act 22 of 1959. In the result the Writ Petition is allowed with costs. Advocate's fee is

fixed at Rs. 500 (Rupees five hundred only).