(2000) 12 MAD CK 0119

In the Madras High Court

Case No : Writ Petition No. 9366 of 89

Sthanikam C. Rajagopala Dikshithar APPELLANT

Vs

The Executive Officer, Sri Rajagopalaswamy Devasthanam, Mannargudi, Thanjavur District RESPONDENT

Date of Decision : 13-12-2000

Acts Referred:
Constitution of India, 1950 — Article 25(1), 25(1)(b), 26(b)

Citation : (2000) 12 MAD CK 0119

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : K. Subramaniam, for M/s C. Thiruvengadam and B. Babu Manohar, for the Appellant; T.R. Rajagopalan, Addl., Advocate General for Mr. K. Sridhar, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—In W.P. No. 9366 of 89, Sthanikam C. Rajagopala Dikshithar has prayed for issuance of a Writ of Mandamus directing the respondent/ Executive Officer, Sri Rajagopalaswamy Devasthanam, Mannargudi, Thanjavur District, not to implement the newly introduced Archanai Ticket system of Re. 1/- per ticket or any other Archanai ticket system for performing Archanais in Sri Rajagopalaswamy Temple, Mannargudi. In W.P. No. 3799 of 96, three Dikshitars joined together and prayed for similar direction to the respondents therein not to implement the newly introduced Archanai Ticket system of Re. 0.50 paise per ticket or any other Archanai ticket system for performing Archanais in the same temple.

2. Since the issue arising in both the writ petitions is one and the same, I shall refer to the case of the petitioner in W.P. No. 9366 of 89. According to the petitioner, Sri Rajagopalaswamy Temple is situated in Mannargudi Town of Thanjavur District. The said temple is one of the ancient temples of Tamil Nadu. It is a Vaishnavite temple. The petitioner and his fore-fathers are doing

continuously the poojas in the said temple from time immemorial. The said temple was in fact managed by the Archakas and it was the Archakas who had all the powers, right from appointing the servants of the temple collecting the incomes from the landed properties belonging to the temple. When the Government managed all the other temples, the right of management of the said Sri Rajagopalaswamy Devasthanam was entrusted only to the fore-fathers of the petitioner. Similarly when the Government managed the affairs of the temple, the rights of the petitioner''s forefathers were recognised. Subsequent to the enactment of the Endowment Act, collection of income, appointment of servants of the temple, disbursement of salary and other management activities of the temple were entrusted with a Board of Trustees and an Executive Officer was also appointed to look after the affairs of the temple. The poojas are all performed by the Sthanika Archakas. The Sthanika Archakas belong to four Nirvagams viz., 1st Nirvagam, 2nd Nirvagam, 3rd Nirvagam and 4th Nirvagam. The petitioner herein belongs to the 3rd Nirvagam Group of Archakas. In a year of 365 days, the Poojas for Perumal and Thayar Sannadhi are divided into 96 murais (turn systems) and these 96 murais are divided equally amongst the four groups of Nirvaga Archakas. The Sthanika Archakas belonging to these four Nirvagams alone are entitled to perform the poojas in Sri Rajagopalaswamy Temple and no one else other than the Sthanika Archakas of the four Nirvagastars can perform the poojas in the said temple. Performing the poojas in the said temple is the birth right of the petitioner and the Sthanika Archakas of the said temple. These Sthanika Archakas including the petitioner herein are not paid any emoluments for performing poojas in the said temple. As such these Archakas are not temple servants. The Sthanika Archakas are performing the poojas in the said temple from time immemorial without receiving any emoluments for performing the poojas. However, the Sthanika Archakas are entitled to the Karpooja Kanickai and the Archana Kanickai paid by the devotees to the temple. This is in vogue from time immemorial. The Archak''s family depend upon the income derived from the Kanickais earned during their turn system (murai). The Archak''s family are all very poor families and they are below the poverty line.

3. During 1955, the Board of Trustees of Sri Rajagopalaswamy Devasthnam introduced the Archanai Ticket system for performing the Archanais in the temple. A devotee will have to pay 0-50 paise for performing the Archanai in the Sannadhis. The Sthanika Archakas protested the introduction of Archanai Ticket system. Under the old ticket system, the Sthanika Archaka was paid 25 paise out of 50 paise collected for Archanai. While so, all of a sudden, the respondent without giving any notice to the Sthanika Archakas arbitrarily introduced a new ticket system and enhanced the cost of Archanai Ticket from 50 paise to Re. 1/-. Under this new system, the share of the temple was 60% and the Sthanika Archaka was entitled to only 40% of the cost of the Archanai Ticket. Immediately on introduction of the new ticket system by the respondent, the petitioner and the other Sthanika Archakas protested against the introduction of the new

system as the share of the Sthanika Archakas was reduced to 40% as against the existing 50%.

4. The petitioner and the other Sthanika Archakas of Sri Rajagopalaswamy Devasthanam are not paid-servants and they are the holders of Pooja-mirasu right from the inception of the temple. They are entitled to the Archanai Kanickais, Deeparadhanai Kanickais and the other Kanickais paid by the devotees during the daily worship and during festival times. As such the respondent cannot interfere and curtail the rights of the petitioner by introducing the Archanai Ticket system. As per Section 57 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, the respondent has got no power or authority to introduce the Archanai ticket system or to determine their apportionment. The introduction of the present Archanai ticket system is contrary to the provisions of Section 57 of the said Act. Further, no notice was given to the petitioner and other Sthanika Archakas about the introduction of the new ticket system. Hence the introduction of new ticket system by the Executive Officer is liable to be struck down. It also amounts to gross violation of principles of natural justice. Similar averments have been made in the other writ petition, viz., W.P. No. 3799 of 96.

5. The Executive Officer, Sri Rajagopalaswamy Temple, Mannargudi has filed a counter affidavit disputing various averments made by the petitioner. The stand of the temple is briefly stated hereunder. The petitioner has misled this Court into believing as though a new Archanai Ticket System was introduced which gave rise to a cause of action for filing the writ petition. On the contrary ticket system has been in force right from 1975 onwards, pursuant to the resolution passed by the Board of Trustee as early as 19-10-1975. The claim that it is a new system introduced just prior to this writ petition is totally false. What is challenged in this writ petition is not the ticket system which was introduced much earlier in 1975 but the enhancement of the value of the ticket from 50 paise to one rupee and the division of the share between the temple and the Archagars. The ticket for Archanai was issued to the devotee for 0-50 paise originally which was enhanced to Re. 1. The Archakar was getting 0.25 paise originally, now he is entitled to 0.40 paise. The enhancement is in consonance and within the powers of the Board of Trustees/Fit Person u/s 57 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. No right of the petitioner has been infringed nor the respondent failed in his statutory duties warranting issue of a Writ of Mandamus.

6. Arulmigu Sri Rajagopalaswami Temple at Mannargudi is an ancient and famous temple of the Vaishnavites. There are several Deekshidars performing pooja etc. inside the sanctorum. They were only Archakas performing religious functions. From time immemorial according to their records, it was only a committee of renowned public persons of eminence who had been in the management and administration of the temple and they alone were in charge of the day to day administration of the temple. Even now the same system continues with Board of

Trustees having been appointed for looking after the administration with an Executive Officer to carry on the day to day affairs of the temple. After the abolition of the Board of Trustees, their powers have been vested with the Assistant Commissioner, H.R.C.E., Thanjavur, who has been appointed as Fit Person. Like in all temples in Tamil Nadu, the Archakas give an undertaking for safe custody and the jewels for day to day use, namely jewels called Sathupadi is given to them subject to supervision and constant verification of the department. All the other jewels are with the Fit Person and Executive Officer. They are liable for the disciplinary action in the event of loss of jewels or theft and in fact action also has been initiated against the Archakas for loss of jewels and theft also. After the advent of the Act 22 of 1959 viz., Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the entire management of the temple is vested with the Board of Trustees and the Executive Officer to look after the temple. The entire administration and maintenance of the temple, the powers and duties of the Executive Officer are enumerated in the Scheme framed by the Commissioner dated 14-3-1966. The Archakas are coming within the disciplinary control of the Executive Officer. The service of the Archakas to the Deity is purely secular. The petitioner cannot object to the enhancement of ticket rates as the respondent is only obeying the lawful resolution of the Board of Trustees. The Archakas have other avocation and the pooja in this temple is not their main work or source of livelihood. The Archakas have spread all over the country and well placed and come and perform pooja during their turn for a couple of days in a year. The records will go to show that the Archagars have cooperated and accepted the system and have also received their share in the proceeds from the Executive Officer after giving proper receipt for the same. The increase is not introduced by the Executive Officer, but the Board of Trustees now represented by the Fit person and duly approved by the Deputy Commissioner, Hindu Religious and Charitable Endowment. With these averments, the Executive Officer has prayed for dismissal of the writ petition.

7. In the light of the above pleadings, I have heard Mr. K. Subramaniam, Senior Counsel for the petitioners and Mr. T.R. Rajagopalan. Additional Advocate General for the respondents-executive officer of the temple.

8. Mr. K. Subramaniam, learned Senior Counsel for the petitioners, would contend that in the light of the fact that the petitioner and the Sthanika Archakars were performing poojas in the respondent temple from time immemorial and by usage and custom, they are entitled to Archanai Kanickai; hence the respondent namely, Executive Officer has no power or authority to introduce ticket system. He also contended that in the light of savings in Section 105 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, even with the power u/s 57 of the said Act, the Executive Officer or the Board of Trustees can alter the custom or usage for introducing ticket system. He further contended that in as much as the petitioner and Sthanika Archakas were not heard and notices issued to them in fixing fees for Archakas, the action of the respondent cannot be sustained. On the other hand, Mr. T.R. Rajagopalan,

learned Additional Advocate General, after pointing out the Resolution of the Board of Trustees and also the fact that ticket system was introduced long back and the same was not objected to, would contend that they are aggrieved with regard to the quantum and division between the temple and the Archakas. He also contended that in the light of the statutory provision, namely, Section 57 of the said Act and also of the fact that the Board has passed the resolution introducing the ticket system and also of the fact that Archakas are entitled to reasonable share in the ticket collection and also of the fact that Archakas are coming within the disciplinary control of the Executive Officer and also of the fact that service of the Archakas to the Deity is purely secular, there is no merit in the writ petitions; accordingly prayed for dismissal of the same. He also fairly stated that the respondent has no objection in giving notices to the Archakas for considering their grievances, if any.

9. I have carefully considered the rival submissions.

10. There is no dispute that Arulmighu Sri Rajagopalaswami Temple at Mannargudi is an ancient and famous temple of the Vaishnavites. It is the definite case of the petitioner that Poojas are being performed by the Sthanika Archakas by turn system. It is also their case that Sthanika Archakas are performing the poojas in the said temple from time immemorial without receiving any emoluments for performing the same. However, according to them, they are entitled to Archanai Kanickai and Karpoora Kanickai paid by the devotees to the temple. It is also contended that the introduction of the Archanai ticket system is not only contrary to Section 57 of the Tamil Nadu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act"), but also exceeded the power and jurisdiction of the respondent. Though the learned Senior Counsel for the petitioners contended that the introduction of ticket system is against the usage and custom, as rightly pointed out by the learned Additional Advocate General, there is not even a whisper in the earlier writ petition, namely, W.P. No. 9366 of 89 regarding their usage and custom. Only in the subsequent writ petition, namely, W.P. No. 3799 of 96, in para 5 of the affidavit, the petitioners therein have stated thus:

.... We are advised to file the present Writ Petition by way of Writ of Mandamus by directing the respondents herein not to implement the newly introduced archanai ticket system of 0.50 paise per ticket in the temple since the introduction of the ticket system is not only against the usage and custom that has been prevailing in the temple but also the said introduction is against the spirit and letter of Section 57 (1) of the H.R. and C.E. Act, 22 of 1959.

Here again, the petitioners therein have not explained the details regarding the usage and custom as claimed. However, during the course of argument, one of the petitioners in W.P. No 3799 of 96 filed a reply affidavit (the Executive Officer has filed counter affidavit only in W.P. No. 9366 of 89 and no counter affidavit has been filed in W.P. No. 3799 of 96) highlighting that there was a long usage and custom in the matter of receiving honours, emolument and perquisites by the archakas in Sri Rajagopalaswami temple, Mannargudi. The petitioners therein have also filed an additional typed-set of papers containing various orders in support of their said contention. As stated earlier, the respondents in M.P. No. 3799 of 96 have not filed counter affidavit; hence there is no question of filing reply affidavit in that writ petition. Whatever may be, at the time of hearing, certain materials have been placed before this Court in support of their contention that there was a long usage and custom in the matter of receiving honours, emoluments and perquisites by the archakas.

11. Now I shall consider the statutory provisions, particularly two provisions referred to by the learned Senior Counsel for the petitioners. He very much relied on the following two provisions of the Act:

Section 105. Savings, - Nothing contained in this Act shall -

(a) Save as otherwise expressly provided in this Act or the rules made thereunder, affect any honour, emoluments or perquisite to which any person is entitled by custom or otherwise in any religious institution, or established usage in regard to any other matter; or

(b) authorise any interference with the religious and spiritual functions of the head of math including those relating to the imparting of religious instruction or the rendering of spiritual service.

Section 57 Power to fix fees for services etc. and to determine their appointments,--Notwithstanding anything contained in any scheme settled or deemed to have been settled under this Act or any decree or usage to the contrary, the trustee of a religious institution shall have power, subject to such conditions as the Commissioner may, by general or special order direct to fix fees for the performance of any service, ritual or ceremony in such religious institution and to determine what portion, if any of such fees shall be paid to the archakas or other office-holders or servants of such religious institution.

By pointing out the fact that petitioners and Sthanika Archakas are entitled to Archanai Kanickais, since the same being prevalent from time immemorial and in the light of the Savings clause, namely, Section 105 (a) of the Act and the absence of the words "custom" or "established usage" in Section 57, learned senior counsel for the petitioners would contend that the present action of the respondent in introducing the ticket system cannot be sustained. "Custom or otherwise in any religious institution, or established usage" though saved in Section 105 of the Act, in view of non-obstante clause in Section 57 and it also enables the trustee of a religious institution to fix fees for the performance of any service, ritual or ceremony and determine apportionment and fees paid to Archakas or other office-bearers or servants of such religious institution, the introduction of ticket system by the trustees of the respondent institution cannot be faulted with.

12. It is useful to refer the earliest decisions of this Court giving details regarding

introduction of Archanai ticket, apportionment of the same between the temple administration and the Archakas.

13. The earliest Division Bench decision is in the case of Sri Meenakshi Sundareswarar, etc., Devasthanams v. N. Subramania Bhattar, reported in 1953 II M.L.J. Short Notes page 3. Since their Lordships in the Division Bench, namely, Govinda Menon and Basheer Ahmed Sayeed, JJ. had considered the religious endowments, position of archakas, power of Executive Officer or trustee to regulate the distribution of the income by sale of archana tickets, Section Section of the Madras Hindu Religious and Charitable Endowments Act (XIX of 1951) etc., in detail, I have called for the original judgment of their Lordships rendered in Appeal No. 611 of 1948 dated 11-3-1953 from the Registry. The said appeal was against the decree of the Court of the Subordinate Judge, Madurai dated 22-3-1948 and passed in O.S. No. 6 of 1947. The said suit is for the recovery from the defendants of the 2/3rd archana fee collected by them for the period between 8-1-1944 till 6-8-1944. The defendants therein contended that the suit is not maintainable for the reason that in the fees received from the worshipers the authorities of the temple have no right to any portion but that from time immemorial it has been the perquisite of such of the Bhattars who do the archana to get from the devotees the fee for doing the archanas, which has been sanctified by the name "swarnapushpam." It is also stated that the system by which rates of fees were prescribed for the archanas in the temple was an innovation which the Executive Officer of the temple had no jurisdiction to introduce and such being the case, whatever may be the nature of the undertakings, no relief can be given to the plaintiffs. The learned Subordinate Judge accepted the said contention and held that the action of the Executive Officer was illegal. While considering the disputed question, their Lordships have observed as follows:

We do not propose to elaborate in detail the events that led up to the introduction of the ticket system by which every worshipper who has to perform an archana in his name is obliged to pay a fixed sum for a particular archana as prescribed by the Devasthanam authorities and purchase a ticket by payment of the requisite fee, when alone he would be enabled to have the archana performed in his name to the God or Goddess.

The following observation relating to archaka and trustee is relevant:

The position of an archaka vis-a-vis the trustee of a temple is, if we may say so with respect, correctly stated in Seshadri Aiyangar v. Ranga Bhattar (ILR. 35 Mad 631, 633) where Benson and Sundara Ayyar, JJ. observed, with regard to the position of an archaka in the great Vaishnavite temple at Srirangam, as follows:

The trustee was not a servant of the Committee which possessed only the power of supervision over him, conferred on it by statute. The position of an archaka on the other hand, though he may have a hereditary tenure in the office, is, in our opinion, essentially that of a servant. The trustee is the representative of the temple and the archaka must be subject to his disciplinary authority.

Their Lordships have also held that,

...If at all, a careful reading of the judgment of Varadachariar, J. (in Sri Mahant v. Govindacharlu (68 M.L.J. 295) shows that a sharing of the archana fee between the temple and the archakas is a permissible practice....

The other decision somewhat akin to the present one is a judgment of Rajamannar, C.J. and Panchapakesa Ayyar, J. in The Tirumalai Tirupati Devasthanams Committee by its Commissioner v. Archakam Seshachalam Dikshitulu and others (S. As. No. 2221 and 2222 of 1945 reported in 1990-1-L.W. 33, J.S.). There the learned Judges had to consider the right of the Tirumalai Tirupati Devasthanams Committee to introduce the ticket system for the Sahasranama archana and the ashtothara archana in the Sri Venkateswaraswami temple at Tirumalai and Sri Govindarajaswami temple at Tirupathi. The question was whether it was open to the Devasthanam Committee to reduce the fee for these archanas and compel the archakas to perform the worship for individual worshippers at the reduced rate. The trial court in that case held that out of the amount collected for each archana, the archaka is entitled to 2 annas for every ashtothara archana and 8 annas for every sahasranama archana performed for each individual. The lower appellate Court enhanced the fees to 4 annas in the case of ashtothara archana and maintained the rate for the sahasranama archana. In Second Appeal it was contended that the archakas are not entitled to receive any extra remuneration whatever for performing the archanas and that the Devasthanam Committee can take the whole amount towards the temple funds. This contention was not upheld and the decision of the lower appellate Court was confirmed. With regard to the position of the archakas and the trustees the learned Judge referred to the passage in the Full Bench decision in Venkataramana Ayyangar v. Kasturiranga Ayyangar (I.L.R. 40 Mad 212 F.B.) quoted by us above. They also were of opinion that the fees collected for the archana tickets represented in part the remuneration due to the archaka who performs the archana. We are fortified in our conclusion that it is within the competence of the trustees to introduce a fixed fee for archana and divide that amount between the temple and the archakas by reason of the decision of Rajamannar, C.J. and Panchapakesa Ayyar, J. referred to above.

...When once it is conceded, as has been done in the present case, that the archana fee includes the price of the flowers, camphor and other accessories for the performance of the archana, then the whole amount cannot be said to be a voluntary gift made to the archaka, who gets a portion of the amount for his services....

Though the custom obtaining in other temples cannot be usefully called in aid for justifying an innovation in the Sri Meenakshi Sundaraswarar Devasthanam, still it is interesting to note that the ticket system has been introduced without objection in the famous temples in South India such as in Tirupathi, Palni and

Rameswaram, where the same has been in vogue for some time. The learned Subordinate Judge thinks that the introduction of this system in the suit Devasthanam cannot be justified by analogies obtaining in other Devasthanams where usages are different. Even if that were so, we have no doubt that with regard to the archanas in most of the temples, the procedure is somewhat secular. Therefore, in our opinion, there is nothing illegal, or contrary to law, in the introduction of the ticket system and the apportionment of the fee received between the archakas and the temple.

After holding so and after referring Section 50 of the Madras Hindu Religious and Charitable Endowments Act, 1951, they held that the said provisions made it clear that the trustee has the power to fix fees for archanas and determine their apportionment. In view of the statutory provisions in the Madras Hindu Religious and Charitable Endowments Act, 1951, their Lordships have concluded thus:

...Therefore, apart from the statute, the question as to whether the trustee has the power to fix fees for the performance of archanas, would be purely academical hereafter. For these reasons, we are inclined to disagree with the learned Judge on his finding on issues 1 to 3 and hold that it is competent to the Executive Officer to introduce the ticket system whereby the proceeds of the collections are to be shared between the archakas and the temple....

The reading of the above referred Division Bench decision would clearly show that there is nothing illegal or contrary to law, in the introduction of the ticket system for archanas by an Executive Officer of a temple whereby the proceeds of the collections are to be shared between the archakas and the temple. It is further clear that the trustee is a representative of the temple and the archaka must be subject to his disciplinary authority. It is further clear that irrespective of the position of an archaka though he may have a hereditary tenure in the office, it is within the power and jurisdiction of the managing authorities of the temple to regulate the exercise of such rights for the welfare of the institution. Section 57 of the Tamil Nadu Act 22 of 1959 has made it clear that the trustee of a religious institution has the power to fix fees for archakas and determine their apportionment.

14. Another important decision on this aspect is Sambamurthi Gurukkal and others v. Shanmugam Pillai and others, reported in 1940 -II- M.L.J. Short Notes page 81. Here again, in view of the importance of the case, I have summoned the full judgment by His Lordship Patanjali Sastri, J. rendered in Second Appeal No. 12 of 1938 dated 22nd day of November, 1940 from the Registry. The appeal viz., Second Appeal No. 12 of 1938 arose out of a suit brought by the appellants who are the hereditary Archakas and Sthanikas of Sri Vridhagiriswaraswami temple at Vridhachalam against the respondents who are the trustees thereof for a declaration that a resolution passed by the latter prescribing certain fees to be paid by worshippers for the performance of certain religious services at the shrine is void and not binding on the appellants, and for a permanent injunction restraining the respondents from interfering with the exercise of the appellants''

"mamool right" of receiving voluntary payments or perquisites from the worshippers for whom such services are conducted. In that case, the courts below had found that the practice prevailing in the temple till 1933 was for the archaka to receive whatever was voluntarily paid by the devotees who resort to the temple for the performance of worship, but in view of complaints received that the archakas were demanding exorbitant fees for the performance of the services at the shrine, the respondents passed a resolution (Exhibit I-a) providing that every worshipper desiring to have this form of worship done should buy a ticket at the Devasthanam Office by payment, in the case of local residents of Re. 0-1-3 on ordinary occasions, and 0-2-3 on special occasions, and in the case of non residents of 0-2-3 on all occasions. It is further seen that the sums so received from the worshippers are paid over to the archakas, and it has not been suggested that the trustees have prevented the archakas from receiving any higher fees from such persons as may choose to pay them. In this background, the learned Judge has held as follows:

...It is therefore difficult to see how the rights of the archakas have been invaded by the resolution passed by the trustees, or what cause of action can arise by reason of such resolution. The appellants as servants of the temple are subject to the disciplinary control vested in the trustees u/s 43 (1) of the Madras Hindu Religious Endowments Act, and they are remunerated by the payment of what is called paditharam from out of the temple funds for the due performance of their duties in the temple. It cannot be seriously contended that they are not bound to do this archana for worshippers who resort to the temple during the usual hours of worship unless they are paid a fee, nor was any such contention put forward before me. All that they claim is that voluntary payments made by the worshippers should go to them. It is true that till 1933 no attempt was made to interfere with their receipt of whatever payments they could manage to obtain from the worshippers. But if the respondents in exercise of their powers of control and management of the institution have deemed fit, in view of complaints received, to regulate the conduct of worship at the temple by requiring worshippers to buy tickets on payment of a prescribed fee in order to prevent undue exactions by the archakas, it cannot be held that the appellants'' rights have been invaded. No doubt the resolution imposes upon the appellants the duty of conducting the service on production of the ticket for which the prescribed fee has been paid. But if, according to their own case, they have no right to demand any payment for such service, they cannot complain against the resolution, especially when the fees collected by the issue of such tickets are paid over to them. If anybody can have a right to complain against this innovation, it is the worshipper but he has apparently accepted it as being beneficial to him, and it is unnecessary to consider whether the arrangement amounts to an infringement of his rights. I am clearly of the opinion that the resolution passed by the trustees is within their general powers of regulation and control of the affairs of the Devasthanam and is binding upon the appellants.

15. Both the above referred well-known decisions would show that even if the

Sthanika archakas do poojas from time immemorial, it is open to the trustee of the temple to introduce ticket system and determine the apportionment between the archakas and the temple. As observed by their Lordships, now the position is clear in view of Section 57 of the Act.

16. Learned Additional Advocate General has very much relied on a decision of S.S. Subramani, J. rendered in Second Appeal No. 1190 of 1987 dated 17-4-1997 (C. Vasantha and others v. The Executive Officer, A/M Kottaimariamman Temple, Salem). An identical question was considered by the learned Judge. In that case, the plaintiffs in O.S. No. 129 of 1998, on the file of Sub Court, Salem are the appellants. According to the plaintiffs, they are the hereditary poojaries of Sri Kottai Mariamman Devasthanam, Salem. The plaintiffs and their ancestors obtained a decree in A.S. No. 207 of 1926 on the file of Sub court, Salem, declaring their hereditary right to the office of Poojariship and to receive ''Kanikkais'' as remuneration for their service. In Second Appeal No. 185 of 1935, the said decree was modified to a certain extent. "Poomalai Kannikkai" consists of offering of flowers to the deity and payment of moneys to the poojaris for decorating the deity. "Thattu Pichai Kannikkai" is offered by the worshippers to the poojaries for performing pooja, Abhishegam and Archana to the deity. The poojaries had borne the expenses of performing ''poojas''. While so, the respondents directed that ''Archana'' and ''Abhishegam'' in the temple would be regulated by sale of tickets. At that stage, on direction by this Court in W.P. No. 4758 of 1976 and subsequent order of the Government dated 25-7-1978 in G.O.Ms. No. 978, the Commissioner had directed the respondents to issue notice to the appellants and to pass orders after hearing them. It is at that time, the present suit was filed. According to the plaintiffs, the introduction of ticket system affects their right and the same is illegal. The trial court after hearing both parties, dismissed the suit. The matter was taken before the lower appellate court as A.S. No. 108 of 86. The lower appellate court found that the appellants have got a customary right to receive the ''Kaanikkai'' for Archana and Pooja done by the poojaries in the suit temple. After holding that they have got a customary right, the lower court further found that in view of Sections 57 and 105 of the H.R. and C.E. Act, the respondents are entitled to introduce ticket system and, therefore, the relief sought for in the plaint cannot be granted; accordingly, the appeal was dismissed The said judgment of the lower appellate court was under challenge in Second Appeal No. 1190 of 87 before S.S. Subramani, J. After considering the decision of the Apex Court in A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, the learned Judge has held as follows -"...If it is ultimately found that they are under the disciplinary control of the trustees, the question whether they are entitled to get remuneration directly from the temple or from the worshippers will not make any issue. That is also on the basis of arrangement between the temple and the Atchakas. Naturally, that right is one which can be controlled by the Trustees under the H.R. and C.E. Act."

Similar contention with regard to distinction in the words of Sections 57 and 105 of the H.R. and C.E. Act, as raised before me by the learned Senior Counsel for the petitioners, was also raised before the learned Judge. The learned Judge, after referring well-known decisions of this Court in Sambamurthi Gurukkal and others v. Shanmugham Pillai and others (1940-II M.L.J. 81 (Short Notes); and in Sri Meenakshi Sundareswarar Devasthanams v. N. Subramania Bhattar, (1953 -II -M.L.J. 3 (Short Notes), rejected the said contention and accepted the conclusion arrived by the lower appellate Court. The learned Judge has also agreed with the conclusion of the lower appellate Court, namely, that "it will not make any distinction since Section 105 begins with the words "save as otherwise expressly provided in this Act." As rightly contended by the learned Additional Advocate General, the decision rendered in Second Appeal No. 1190 of 87 is directly on the point and I am in entire agreement with the view expressed by the learned Judge. It was also brought to my notice by the learned Additional Advocate General that the decision rendered in Second Appeal No. 1190 of 87 was taken up to the Supreme Court in S.L.P No. 13502 of 97. The Hon''ble Supreme Court, after notice to the Executive Officer of the temple and after considering both parties, dismissed the said petition on 19-01-98. Though learned Senior Counsel for the petitioners has relied upon several decisions of the Supreme Court regarding binding nature of orders of the Supreme Court passed in S.L.Ps., and Merger etc., I am of the view that it is unnecessary to go into those aspects for the following reasons. I have already referred to two leading judgments of this Court, the first one is by Patanjali Sastri, J., in 1940-II-M.L.J. (S.N.) page 81 and the second is by Govinda Menon and Basheer Ahmed Sayeed, JJ. in 1953-II-M.L.J. (S.N.) page 3, as well as Section 57 of the Act, holding that archakas are under the disciplinary control of trustee of the temple and the trustee is entitled to introduce ticket system for archanas and apportion the proceeds of the collections between the archakas and the temple. I am also unable to accept the argument of the learned Senior Counsel for the petitioners that the learned Judge in Second Appeal No. 1190 of 87, referred to above, has not considered the matter in detail. As stated earlier, after referring to the earlier decisions, the learned Judge (S.S. Subramani, J.) has upheld the order of the lower appellate Court regarding the introduction of ticket system and apportionment of proceeds of the collection between the archakas and the temple, and the appeal filed against the said decision had been dismissed by the Supreme Court. The elaborate argument made by the learned Senior Counsel for the petitioners stating that the judgment of the learned single Judge in S.A. No. 1190 of 87 is not a binding decision cannot be accepted. On the other hand, I am of the view that the said decision is directly on the point and with respect, I am in agreement with the view expressed by him. In the light of the said conclusion, it is unnecessary to refer the various decisions cited by the learned Senior Counsel for the petitioners.

17. It is useful to refer the decision of the Supreme Court in A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, The learned Additional Advocate General has pressed into service the following conclusion of their

Lordships in the said decision:- (para 119 page 604)

119. The real question, therefore, is whether appointment of an archaka is governed by the usage whether hereditary succession is a religious usage? If it is religious usage, it would fall squarely under Article 25 (1) (b) of the Constitution. That question was posed in Seshammal and Others, Vs. State of Tamil Nadu, wherein this Court considered and held that though archaka is an accomplished person, well-versed in the Agamas and rituals necessary to be performed in a temple, he does not have the status of a head of the temple. He owes his appointment to Dharmakarta or Shebair. He is a servant of the temple. In K. Seshadri Aiyangar v. Ranga Bhattar (ILR 35 Mad 631) : (21 MLJ 580) the Madras High Court had held that status of hereditary archaka of a temple is that of a servant, subject to the disciplinary power of the trustee who would enquire into his conduct as servant and would be entitled to take disciplinary action against him for misconduct. As a servant, archaka is subject to the discipline and control of the trustee. The ratio therein was applied and upheld by this Court and it was held that u/s 56 of the Madras Act archaka is the holder of an office attached to a religious institution and he received emoluments and perks according to the procedure therein. This Court had further held that the act of his appointment is essentially a secular act. He owes his appointment to a secular authority. Any lay founder of a temple may appoint an archaka. The Shebait or Manager of temple exercises essentially a secular function in choosing and appointing the archaka. Continuance of an archaka by succession to the office from generation to generation does not make any difference to the principle of appointment. No such hereditary archaka can claim any right to the office. Though after appointment the archaka performs workship, it is no ground to hold that the appointment is either religious practice or a matter of religion. It would thus be clear that though archaka is normally a well-versed and accomplished person in the Agamas and rituals necessary to be performed in a temple, he is the holder of an office in the temple. He is subject to the disciplinary power of a trustee or an appropriate authority prescribed in the regulations or rules or the Act. He owes his existence to an order of appointment -- be it in writing or otherwise. He is subject to the discipline on a par with other members of the establishment. Though after appointment, as an integral part of the daily rituals, he performs worship in accordance with the Agama Shastras, it is no ground to hold that his appointment is either a religious practice or a matter of religion. It is not an essential part of religion or matter of religion or religious practice. Therefore, abolition of the hereditary right to appointment u/s 34 is not violative of either Article 25 (1) or Article 26 (b) of the Constitution.

Their Lordships have also held that at (para 128, at page 609):

...Therefore, with the abolition of the hereditary right, the right to receive customary payment associated with an office equally stood abolished u/s 144. Section 144 is consequential to Section 34 and other similar rights like Section 16 of the Act. Resultantly, the right to receive a share in the prasadam etc. stood abolished. Holder of an office is entitled to payment of salary prescribed under the Rules for services rendered by an archaka etc. Consequently, the right to a share in customary practices or usages or under a contract with management also stood abolished....

No doubt, learned Senior Counsel for the petitioners would state that in the said Supreme Court decision, the Andhra Pradesh legislature intervened and passed an Act and abolished even the customary right to receive share by archakas, and in the absence of any such legislation in the cases on hand, the respondents cannot introduce ticket system and determine the apportionment of receipt. I am unable to accept the said contention. I have already demonstrated with reference to various decisions and more particularly, in the light of Section 57 of Tamil Nadu Act 22 of 1959, that the trustee of a temple is competent to introduce ticket system for archanais and also determine the apportionment of the proceeds of the collections.

18. It is also useful to refer a judgment of Kailasam, J. (as his Lordship then was) in Chidambaram Gurukkal v. Subramaniaswami Devasthanam (79 Law Weekly 155). Rejecting the similar contention, as raised by the learned Senior Counsel for the petitioners herein, the learned Judge has held thus:- (at page 157)

...I am unable to accept this contention, for, there are temples, in which the priest who performs the Arati is not permitted to give the worshippers the Vibhuti or Prasadham, which is usually given after Deeparadhanai. Learned Counsel relied on Sec. 57 of Madras Act XXII of 1959 in support of his contention. He stated that under that Section the trustees of a religious institution or empowered to fix the fees for the performance of any service, ritual or ceremony in such religious institution, while Section 50 of Act XIX of 1951 empowered the trustee to fix the fees for the performance of Archana alone. From the difference in phraseology, learned counsel submitted that while Section 57 of Act 22 of 1959 is wide enough to include Arati, Section 50 of the earlier Act specifically excluded Arati. This contention cannot be accepted because Section 57 of Act XXII of 1959 does include the fixing of fees not only for Archanai and Arati, but for all kinds of services, ritual or ceremony, in such religious institution.

In the light of the statutory provision, namely, Section 57 of Act 22 of 1959, I am in respectful agreement with the view expressed by the learned Judge. It was also brought to my notice a decision of Govindarajan, J., in W.P. No. 12768 of 2000 dated 28-7-2000. The petitioner therein has filed a writ of Mandamus forbearing the respondent-Executive Officer, Arulmighu Ramanathaswami Thirukkoil, Thiru Rameswaram, Neelamangalam Taluk, Thiruvarur District from collecting Archanai ticket system of Re. 1/- or Rs. 2/ - per ticket or any other Archanai ticket system for performing Archanais in the said temple. According to the petitioner therein, if such a system is allowed, he will lose his income by getting Kanikkais from worshippers. Rejecting the said contention, the learned Judge has observed thus:- (para 4)

4. It is unfortunate that the petitioner has come forward with such a writ petition preventing the temple from collecting such income by way of issuing archanai tickets for the purpose of development of the temple. Merely because the petitioner is losing his income, he cannot challenge the jurisdiction of the temple as the respondent is having power u/s 57 of the Tamil Nadu Hindu Religious and Charitable Endowment Act. When the respondents are having powers to fix the amount, the petitioner cannot sustain the writ petition.

As stated earlier, I am also in agreement with the view expressed by the learned Judge; accordingly I am unable to accept the contention raised by the learned Senior Counsel for the petitioners.

19. Apart from this, it was brought to my notice that even as early as on 19-10-1975 the trustees of the temple passed a Resolution introducing ticket system fixing 50 paise for performance of archanai. As per the archanai ticket system, the archakas were paid 25 paise out of 50 paise collected for archanai. Though it is stated in the affidavit that the introduction of ticket system was objected to by the petitioners and archakas, admittedly, the same was not challenged before the Authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act or before this Court by way of writ petition. Only in 1989, when the respondent Board enhanced the price of the ticket for archanai from 50 paise to Re. 1/-, the petitioner has filed W.P. No. 9366 of 89 before this Court. It is seen that originally the archakas were getting 25 paise and by the enhancement, they are entitled to get 40 paise; accordingly, as rightly contended, the petitioners are not questioning the introduction of the ticket system, but they are questioning only the ratio, namely, 60:40. In other words, it is the definite case of the respondent that none of the archakas protested the enhancement of the ticket price and only the share of the archakas in the ratio of 60:40 was resented. The records produced by the respondents clearly show that the archakas have cooperated and accepted the ticket system and have also received their share in the proceeds from the Executive Officer after giving proper receipt for the same. Necessary records have been produced before me which show the archakas have received their share in the proceeds from the Executive Officer without any protest. Accordingly, it is clear that the present protest in W.P. No. 9366 of 89 is only in respect of enhancement of cost of the archanai ticket from 50 paise to Re. 1/- and the proportion of the share between the temple and the archakas and not the ticket system itself. As observed by me earlier, the introduction of ticket system is lawful in view of Section 57 of the Act. The petitioners are not entitled to the various Kanikkai enumerated by them as a matter of right. All the Kanikkai are subject to the regulatory measures of the temple administration.

20. Coming to the last contention that petitioners and other Sthanika Archakas were not given any notice about the introduction of new ticket system, it is fairly admitted that before variation of fees fixed, the temple Authorities ought to have issued notice to the archakas. In this regard, it is useful to refer the decision of

S. Nainar Sundaram, J., (as he then was) in Sivananda Gurukkal v. Chairman, Sri Subrahmaniaswami Devastanam, reported in 1985-1-M-L-J. 140. In an identical contention, after referring Section 57 of the Act as well as the earlier decision of Mohan, J., (as he then was) in S.A. No. 723/79, the learned Judge has held thus:- (para 3)

3. Section 57 of the Act contemplates power to fix fees for services, etc., and to determine the portion of such fees payable to the Archakas or other office-holders or servants of the religious institutions. If there is going to be a variation, whether it be an increase or decrease, the archakas, the office holders or the servants concerned, must definitely be heard. As to whether the increase is in their favour or not, cannot be visualised without their say being on record. That there should be a notice before there could be a fixation u/s 57 of the Act has also been recognised by Mohan, J. in The Executive Officer, Sri Arthanareeswarar Devasthanam, Thiruchengode v. Balasubramania Gurukkal and others, S.A. No. 723 of 1979 judgment dated 28th July, 1978. Fixation would also take in subsequent variation. It will not be in order to prejudge as to whether the variation would be beneficial or otherwise, and that is a matter that could be gone into by the determining authority himself after hearing the party or parties concerned. This principle stands violated in the present case.

I have already stated that in view of the view expressed by Nainar Sundaram, J. (as he then was), as well as Mohan, J. (as he then was) in the above referred decision, the learned Additional Advocate General has fairly stated that there cannot be any objection in giving notice to the Archakas; accordingly I hold that the petitioners and other Sthanika Archakas who are performing archanais/ poojas are entitled to notice before determining the increase in fees for the ticket for the services in the temple pursuant to the Resolution of the Board. Then the question is what is the remedy that can accorded to the petitioners and other Sthanika Archakas. Though the respondent has enhanced and fixed the fee of Re. 1/- per archanai ticket, even as early as on 18-7-89 in W.M.P No. 13415 of 89, this Court restrained the Executive Officer of Sri Rajagopalaswami Devasthanam, Mannargudi from issuing any Archanai ticket under the newly introduced Archanai ticket system of Re. 1/- and the same is in force even to-day. Like-wise, this Court has granted injunction order in W.M.P No. 6110 of 96 on 2-4-96 with regard to Archanai ticket system of 50 paise per ticket and the same is also in force even now. Further, by order dated 09-10-2000, both the interim orders were made absolute. In such circumstances, in view of my conclusion that Archakas are entitled to notice prior to variation of the amount for Archanai ticket, the parties are directed to maintain status-quo prevailing as on date till completion of the fresh determination by the respondent Executive Officer as mentioned above. Likewise, in the absence of any details regarding the number of Archakas, the respondent-Executive Officer is permitted to issue notice to the petitioners and other Archakas who are actually performing archanai as on date in the temple, and after hearing them, he (respondent) shall determine afresh the variation of the service "fees payable to them.

In the light of " what is stated above, the following order is passed in both the writ petitions:

(1) The trustee of the respondent Temple is fully justified in the introduction of the Ticket System for Archanais/Poojas of the Temple whereby the proceeds of the collections are to be shared between the Archakas and the Temple. There is nothing illegal or contrary to the law in the introduction of Ticket System for Archanais/Poojas by the trusteed/Executive Officer of the Temple;

(2) In view of Section 57 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959), it is within the power and jurisdiction of the Managing Authorities of the Temple to regulate the exercise of such rights for the welfare of the Institution;

(3) as per the Statute, the trustees have disciplinary control over the Archakas and other servants of the Temple;

(4) If there is going to be a variation whether it be an increase or decrease in the Archanai Ticket System and fixation of fees for services etc., the Archakas are entitled to Notice and they must be heard before determining the said amount.

Accordingly, Writ Petition No. 9366 of 89 is ordered to the extent mentioned above and Writ Petition No. 3799 of 96 is dismissed. No costs.

