
(1960) 02 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 765 of 1959

Vasudeva Palamangalathaya

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 25-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) KLJ 534

Hon'ble Judges : S. Velu Pillai, J

Bench : Single Bench

Advocate : T. Chandrasekhara Menon, T. Karunakaran Nambiar and T. Unnikrishna Menon, for the Appellant;

Final Decision : Dismissed

Judgement

S. Velu Pillai, J.—The prayers in this petition under Article 226 of the Constitution, by the managing trustee of a temple, are to bring up the records for quashing a demand made on him, u/s 76, sub-sections (1) and (2) of the Madras Hindu Religious and Charitable Endowments Act, 1951, as amended by the Amendment Acts XXVII of 1954 and IX of 1956, hereinafter referred to as the Act, for the payment of contribution and audit fee, in respect of the temple, and to strike down the above provisions of the Act as ultra vires the powers of the Legislature of the State which passed it. Section 76 (1) and (2), as they now stand, may be extracted below: 76(1). "In respect of the services rendered by the Government and their officers and for defraying the expenses incurred on account of such services, every religious institution shall, from the income derived by it, pay to the Commissioner annually such contribution not exceeding five per centum of its income as may be prescribed."

(2). "Every religious institution, the annual income of which, for the fasli year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is not less than one thousand rupees, shall pay to the Commissioner annually, for meeting the cost of auditing its accounts, such

further sum not exceeding one and a half per centum of its income as the Commissioner may determine.

The contention of the learned counsel for the petitioner was, that the contribution u/s 76(1) and the audit fee u/s 76 (2), are in the nature of a tax, which the State Legislature is not competent to impose, and not of a fee. Under sub-sections (1) and (2) of Section 76, as originally enacted, the contribution and the audit fee were payable to Government annually, and were therefore merged in the general revenues of the State, the expenses for which they were raised, being met out of them, though perhaps by a proper method of appropriation. On this and other grounds which need not be detailed, these collections were held to be in the nature of a tax and not of a fee, and Section 76, before it was amended, was struck down, by the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, . At the same time, in *Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another*, , the corresponding provision, Section 49, of the Orissa Hindu Religious Endowments Act, IV of 1939, and in *Ratilal Panachand Gandhi v State of Bombay*, AIR 1954 S.C. 338, the corresponding provision Section 58, of the Bombay Public Trusts Act, 1950, both of which provided for the payment of contribution, not to Government, but into a separate fund constituted under, and earmarked for carrying out the purposes of, each of the above statutes, were held to be valid. A similar provision in Section 70 (1) of the Bihar Hindu Religious Trusts Act, 1950 was also held to be valid by the same court, in the more recent case of *Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others*, , following *Sri Jagannath Ramanuj Das v State of Orissa*. The ratio of these cases decided by the Supreme Court, as distinguished from the case under the Act, referred to above, was, that the contributions under the concerned statutes were earmarked for carrying out their purposes and therefore co-related to the expenses which they were intended to defray, and did not partake of the characteristics of a tax, and were in the nature of a fee. The gradation of the amount of the levy in proportion to the gross annual income of the payer, was treated as inconsequential in the case under the Bombay statutes. 2. After the decision in *Commissioner, Hindu Religious Endowments, Madras v L.T. Swamiar of Sri Shirur Mutt* was rendered, sub-sections (1) and (2) of Section 76 were re-enacted in the form in which they now stand, and Chapter IX entitled "Endowments Administration Fund", in which Sections 80 and 81, which are relevant for the present purpose find a place, was introduced into the Act, by the Amendment Act XXVII of 1954. Sections 80 and 81 (1) and (2) are reproduced below: 80: "The Commissioner shall be a corporation sole and shall have perpetual succession and a common seal and may sue and be sued in his corporate name."

81(1): "There shall be established a Fund to be called the Madras Hindu Religious and Charitable Endowments Administration Fund. The Fund shall vest in the Commissioner."

(2): "The contributions payable u/s 76 (1) and the further sums payable u/s 76 (2) shall, when realised, be credited to the said Fund. It shall be lawful for the Commissioner to accept to the credit of the said Fund grants or loans from the Government and grants from any private person. The Commissioner shall, out of the said fund repay to the Government sums paid by the Government u/s 76 (4) and loans received from the Government."

Section 76 (4) is referred to in Section 81 (2) and may therefore be quoted:

76 (4): The Government shall pay the salaries, allowances, pensions and other beneficial remuneration of the Commissioner, Deputy Commissioners, Assistant Commissioners and other officers and servants (other than executive officers of religious institutions) employed for the purposes of this Act and the other expenses incurred for such purposes, including the expenses of Area Committee and the cost of auditing the accounts of religious institutions.

One of the grounds on which the Supreme Court struck down the corresponding provision in the Act before its amendment has now disappeared. The validity of the provisions as they now stand, was again made the subject of challenge in the Madras High Court in *Shri H.H. Sudhindra Thirtha Swamiar, Senior Swamiar of Puthige Mutt and Others Vs. The Commissioner of Hindu Religious and Charitable Endowments and Another*, but was upheld, the validity of the rules prescribing the rate of the levy u/s 76(1) as amended, being left open. All the same, the court indicated its view, that the rate of the levy to be valid must be reasonable, and for that purpose, must bear a just proportion, though not with arithmetical precision, to the expenses to be met out of it. In view of the pronouncements of the Supreme Court, and of the Madras High Court, the learned counsel had nothing more to urge against the validity of Sections 76 (1) and (2) of the Act as they are; but he pressed the contention that the rules, so far as they have prescribed a graduated levy based on the annual income of the religious institution, are invalid, as violative of the principle of *quid pro quo*, which was said to distinguish a fee from a tax. Once it is established, as it must now be taken to be, that the levy u/s 76 (1) and (2) is no longer a tax, but is a fee, it is difficult to hold, that the character of the levy will necessarily undergo a change, by reason of the rules. More than this, I cannot reconcile myself to the notion, that the income basis for the rate of levy is a negation of the principle of *quid pro quo*, for, on the contrary, I should have thought, that the annual income of the institution alone can furnish a reliable yardstick, with which to gauge the quantum of services rendered to it, under the Act, to defray the expenses of which, the levy is imposed. This was the view taken by a Division Bench of the Mysore High Court in *K. Mukundaraya Shenoy v State of Mysore*, AIR 1960 Mys 18, a case which arose from the South Kanara District, now part of the Mysore State, where the Act is applicable. As in that case, the learned counsel, who appeared for the petitioner in this case too, was unable to suggest an alternative standard which may be adopted to assess the services which may be rendered. In the case cited, the court was also invited to consider, whether the rate of the

levy is reasonable, having regard to the expenses actually incurred by the department of the Mysore State which was charged with carrying out the provisions of the Act, but the court declined to express an opinion and left the question of the validity of the rule open. In the present case, the point as to the reasonableness of the rates has not been taken at all, and there is no indication whatever, as to the collections or as to the total expenses which they are intended to meet. There is also no prayer in this petition, to strike down the rules as invalid or as illegal. The learned Government Pleader had also a contention, that if the reasonableness of the rate were to be raised, a proceeding like this under Article 226 is ill-suited for its consideration, relying on the decision of a Full Bench of this court in Travancore Rayons Ltd. v The Municipal Council, Perumbavoor, 1957 K.L.J. 1072. It is unnecessary to pursue this matter, as it is sufficient to note, that the reasonableness of the rate was not put in issue, and was not the subject of challenge.

It was faintly argued, that audit had not been conducted for the period in question, and so no audit fee is payable. A general objection had of course been taken in the affidavit, that the services, for the performance of which the Contribution is levied, and the audit, for the conduct of which the fee is imposed, had not been performed or conducted. In my view, the legality of the rule cannot be made to depend on, whether or not in a particular year, the services or any part of them or the audit, had been performed or conducted. If the petitioner was serious about this, he could have taken the point in the revision petition which he had preferred to Government u/s 99 (1). For the foregoing reasons I decline to go into it. The petition is therefore groundless, and is dismissed with costs, including advocate's fee Rs. 150/-.