

South Central India Union of SDA, Bangalore and another - Petitioners @HASH Govt. of Karnataka and Another

Court: KARNATAKA HIGH COURT

Date of Decision: June 15, 2016

Acts Referred: Constitution of India, 1950 - Article 226, Article 25

Citation: (2016) AIR(Karnataka) 185 : (2017) 1 AirKarR 349 : (2016) ILRKarnataka 3943 : (2016) 6 KantLJ 577 : (2016) 4 KCCR 362 : (2016) 4 KLT 82

Hon'ble Judges: Aravind Kumar, J.

Bench: Single Bench

Advocate: Sri. R.A. Devanand, Advocate, for the Petitioner; Sri. Puttige R. Ramesh, Amicus Curiae, D. Nagaraja, AGA, Smt. Pramodini Kishan, HCGP, for the Respondents

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mr. Aravind Kumar, J. - Petitioner is seeking for issuance of a writ of mandamus to direct the respondents to take steps to facilitate the Seventh

Day Adventist Group of students from taking up examination scheduled to be held on 02.07.2016 and 09.07.2016 in Economics and History

subjects by re-scheduling the same to any other day of the week and to facilitate the said group of denominations of Christians to write examination

by issuing a revised time table.

2. Learned Additional Government Advocate has taken notice on behalf of respondents and filed statement of objections. Sri. Puttige R. Ramesh,

learned Advocate practicing at this Bar was requested to assist the Court as Amicus Curiae. Accordingly, he has assisted the Court.

3. I have heard the arguments of Sri. R.A. Devanand, learned Advocate appearing for petitioners, Sri Nagaraj learned Additional Government

Advocate and Smt. Pramodini Kishan, learned HCGP for respondents and Sri. Puttige R. Ramesh, Amicus Curiae. Perused the records.

4. It is the contention of petitioners that first petitioner is a Union representing ""Seventh Day Adventist"" denomination and its one of the primary

welfare scheme is for establishment of educational institutions throughout the State and has established 35 schools all over the State, imparting

education from elementary to degree courses and said educational institutions are public institutions for persons of any faith. It is also stated that a

good percentage of students are studying or practicing faith as members of Seventh Day Adventist who are denomination world wide protestant

group of Christian denomination and core faith of members of that denomination is that they should abstain from any activities from 6.00 a.m. to

6.00 p.m. on all Saturdays, as otherwise, it would amount to breach of faith owing to committing an act of sin. They contend that Saturday of the

week throughout English calendar year is practised as a ""Sabbath day"" and it should be observed as a day of total rest to oneself restraining from

engaging any kind of work, as it is a religious dictum and it is divine.

5. Grievance of the petitioners is, second petitioner is a student of Indo Asian Pre University College, Kalyanagar, Bengaluru and he had to take

annual examination for the first time of IIPUC (Arts group) during the month of March, 2016 and as per the time table of subject-wise

examination, it would commence from 11.03.2016 and end on 28.03.2016. It is contended that second petitioner who was pursuing Seventh Day

Adventist faith, was stopped from appearing for examination of two subjects namely, Economics and History which fell on 12.03.2016 and

26.03.2016 as they have fallen on "Sabbath day" and on account of second respondent not considering the petitioner's prayer to conduct

examination on any other day and on account of their inaction, they had approached this Court in W.P.No.5964/2016 seeking for a direction to

respondent No. 2 to take steps to facilitate the students who are following the Seventh Day Adventist faith for re-scheduling of examination dates

from 12.03.2016 and 26.03.2016 to any other day of the week. Said writ petition came to be disposed of by this Court by order dated

11.02.2016 with an observation that in future, prior to finalisation of time table, petitioners can approach the respondents with such a request and

respondents shall look into the same and assess feasibility of accommodating the second petitioner to take up examination on any other day other

than Saturday. It is stated that second petitioner intended to attend supplementary examination scheduled to commence from 01.07.2016 to

13.07.2016 and he has already paid the fees as per Annexure-B. It is further contended that as per time table - Annexure-C published by the

second respondent, it would indicate that supplementary examinations of "History" and "General English" in the Arts group and so also,

"Computer Science", "Statistics" and "Home Science" are scheduled to be held on Saturdays namely, on 02.07.2016 and 09.07.2016 and same

being "Sabbath" day, petitioners would not be able to appear on said dates of examination.

6. It is further contended that team of respected Pastors attached to petitioner No. 1 and father of petitioner No. 2 approached respondent No. 1

in the light of directions issued in W.P. No. 5964/2016 on 11.02.2016 by submitting a representation dated 06.05.2016 which has not been

considered and supplementary examinations now being scheduled to be held from 01.07.2016 to 13.07.2016, papers in which second petitioner

intend to appear for the examination, would be unable to do so and it would result in going against tenets of the religious faith which petitioners

practise and so also, majority of the students who have grounded their faith in Seventh Day Adventist denomination and cannot rescue themselves

from appearing for examination and ultimately, it is betrayal of word of God.

7. On these factual aspects, it is contended that action of respondents compelling petitioners to write examination would offend Article 25(1) of

the Constitution of India and Seventh Day Adventist group of Christians are unable to practise the laws of God in view of scheduling of

"Economics" and "History" subjects on 02.07.2016 and 09.07.2016 and participation or appearing for examination on Saturdays would amount

to committing breach of practise and profess the laws of God. Therefore, it is contended that it is the duty of the State to take steps to prevent

breach of religious activity associated with religious practise. Having not considered petitioners' prayer in this regard would tantamount to violation

of Article 21(1) and Article 25(1) of the Constitution of India. It is also contended that State is having a duty to protect and preserve the religious

observation of the petitioners and State cannot force members of Seventh Day Adventist group to take part in the examination which falls on

Saturdays and it has resulted in violation of Article 25(1) of the Constitution of India. It is also contended that petitioners ought to follow the

religious laws and it is to be mandatorily observed as same being of the core faith and any intervention by the State in this regard would encroach

upon petitioners freedom to profess, practise and propagate religious activities as per the mandate of Article 25(1) of the Constitution of India and

it amounts to infringement of rights of Seventh Day Adventist Group from practicing religious laws and hence, petitioners are seeking for the reliefs

referred to herein above.

8. Learned AGA appearing for respondents has filed statement of objections. It is contended that in order to examine the claim of petitioners, it is

necessary to find out as to whether "Sabbath" day observance by Seventh Day Adventist denomination is an essential and integral part of their

religious practise. It is also contended that petitioners have not placed any material like doctrines of that religion, tenets and their historical

background to establish that observance of "Sabbath" day is essential and integral part of their religion nor have they placed any material while

submitting representation to the Government. It is further stated, practise in question is religious in character and whether it is an essential and

integral part of the religion, petitioners are required to establish the same by adducing evidence in this regard. Having relied upon 1911

Encyclopedia Britannica to contend that "Sabbath day" means "cessation from work" which is meant for labourers and workers to take rest and it

only demands such cessation from daily toil and it especially applies to agriculture labourers and only to those persons who work for six days in a

week and entitled to rest and it is nowhere stated that students are also entitled for such rest. It is further contended that if interpretation as sought

to be made out by petitioners is accepted, it would definitely be in conflict of rights of large number of students who belong to other religions, who

prosecute their studies. State has also relied upon an article published in "'Grace Communion International'" wherein a question was posed before

the International Committee as to whether "Sabbath" is required for the present day Christians and whether fourth Commandant can be considered

as obsolete. It is also contended that there is no evidence in the Bible that God commanded the Sabbath before the day of Moses. Hence, they

contended that it is only a day to avail rest by the labour class, agriculturists, etc. and when large number of students i.e., 2,72,355 who are

appearing for examination and who write approximately 7,30,572 papers, if under the guise of "Sabbath" day and in order to accommodate a very

few persons like petitioners, if such interpretation is accepted, it would definitely affect the entire process of examination, evaluation, announcement

of results and further admission to next higher studies or classes and in turn, it affects student community at large. It is also contended that

observance of "Sabbath" is not an essential and integral part of Seventh Day Adventist denomination and therefore, petitioners cannot claim

protection under Article 25(1) of the Constitution of India. On these grounds, respondents have sought for dismissal of writ petition.

Sri Nagaraj, learned AGA and Smt. Pramodini Kishan, learned HCGP have reiterated the contentions raised in their statement of objections. They

have also relied upon judgment of Apex Court in the case of Bijoe Emmanuel and others v. State of Kerala & others, reported in (1986) 3

SCC 615 and Commissioner of Police & others v. Acharya Jagadishwarananda Avadhuta & another, reported in AIR 2004 SC 2984

in support of their contention.

8-A. Sri. Puttige R. Ramesh, learned Amicus Curiae who has supplemented his submission by relying upon judgment of Apex Court in the case of

Tilkayat Shri Govindlalji Maharaj, etc. & others v. State of Rajasthan & others, reported in AIR 1963 SC 1638 would contend that it is

correct and true to say that "Sabbath day" is a day of rest and it need not be Saturday. He would further elaborate his submission by contending

that "Sabbath day" does not even find a place in the list of festivals recognised by the Government of India and as such, an authority cannot be

directed not to work on such days. He would also contend that rights conferred under Article 25 of the Constitution of India is not absolute and it

is subject to such restrictions as envisaged under Article 25(1) of the Constitution of India Drawing the attention of the Court to various definitions

found in various Books and specifically referring to Holy Bible, he contends that "Sabbath" would commence at 6.00 p.m. on Saturday and run till

6.00 p.m. Sunday and would be lengthened at the other end to allow Sunday evening service. Hence, he seeks for suitable orders being passed.

9. Sri. R.A. Devanand, learned Advocate appearing for petitioners, in reply, would reiterate the contentions raised and grounds urged in the writ

petitions and would submit that petitioners claim for not taking up examination on Saturday - "Sabbath day" cannot be brushed aside lightly,

inasmuch as, an act complained by a citizen of an infringement of right to profess as envisaged under Article 25(1) of the Constitution of India,

should be examined on the basis of genesis of the said issue by looking into religious tenets. He would draw attention of the Court to the old

testament Chapter 20 verse 8 and contended that "Sabbath day" is to be devoted to God to be kept as holy and not doing any work and if

petitioners are forced to appear for examination on "Saturday", it would offend their right to profess their religion and it also encroaches upon their

right to profess their religion and would be hit by Article 25(1) of the Constitution of India.

10. He would also refer to Chapter 5 verse 12 and 14 under the heading "DEUTERONOMY" where God has issued mandate that Seventh day

is "Sabbath day" of the Lord and none shall do any work and may rest as well, which would mean that command of the God is to rest on Saturday

and as such, petitioners should not be compelled to attend the examination on a Saturday and in that view of the matter, representations submitted

by the petitioners were required to be considered, examined, adjudicated and dealt with by appropriate Government and respondents ought to

have granted the prayer sought for by the petitioners in their representations. On account of their inaction, yet again, petitioners have been

performed to approach this Court seeking for re-scheduling of the examination and as such, he prays for issuing writ to respondents to reschedule

the examinations falling on Saturdays.

11. Having heard learned Advocates appearing for the parties and after bestowing my careful attention to the rival contentions raised at the Bar,

this Court is of the considered view that following point would arise for consideration:

Whether petitioners are entitled to contend that working on a Saturday - "Sabbath" day would infringe upon their right to profess and practise the

freedom granted under Article 25(1) of the Constitution of India or it amounts to infringement?

12. In order to answer the point for consideration, it would be necessary to ascertain as to the definition of the word "religion". In Black's Law

Dictionary, 9th edition, at page 1405, it has been defined as under:

Religion. A system of faith and worship usu. involving belief in a supreme being and usu. containing a moral or ethical code; esp., such a system

recognised and practised by a particular church, sect, or denomination. In construing the protection under the Establishment Clause and the Free

Exercise Clause, courts have interpreted the term religion quite broadly to include a wide variety of theistic and nontheistic beliefs. (Cases:

Religious Societies).

A bare reading of the above definition would indicate that faith and worship would involve any belief in a supreme being containing moral or ethical

code practised by a particular Church or sect or denomination is to be construed as religion. Articles 25 and 26 of the Constitution of India

constitute fundamental right to freedom of religion guaranteed to the citizens of this Country. Article 25(1) protects the citizens' fundamental right to

freedom of conscience and his right freely to profess, practise and propagate religion. The protection given to this right is, however, not absolute. It

is also subject to the laws existing or future as specified in Article 25(2). Article 26 guarantees freedom of the denominations or sections thereof to

manage their religious affairs and their properties. Article 26(b) provides that subject to public order, morality and health, every religious

denomination or any section thereof shall have the right to administer the property of denomination in accordance with law. Article 26(c) refers to

right of denomination to own and acquire movable and immovable property and it is in respect of such property that clause (d) makes the

provision.

The word "religion" used in Article 25(1) came up for consideration before Apex Court in the case of The Commissioner, Hindu Religious

Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri. Shirur Mutt, reported in AIR 1954 SC 282 and it has been held as under:

Religion is a matter of faith with individuals and communities and it is not necessarily theistic. There are well known religions in India like Buddhism

and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines

which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is

nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals

and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might

extend even to matters of food and dress.

13. As to what amounts to matters of religion as indicated in Article 26(b) of the Constitution of India, came up for consideration before Apex

Court in the case of Sri. Venkataramana Devaru and others v. State of Mysore and others, reported in AIR 1958 SC 255 and it was

observed as under:

The expression ""matters of religion"" in Article 26(b) embraces not merely matters of doctrine and belief pertaining to the religion but also the

practise of it, or to put it in terms of Hindu theology, not merely its Gnana but also its Bhakti and karma Kandas.

Thus, it would be clear that religious practise to which Article 25(1) of the Constitution of India refers to in the matter of religion to which Article

26(b) refers, include practices which are an integral part of the religion and protection guaranteed by Articles 25(1) and 26(b) extends to such

practices. It is in this connection, Apex Court in the case of Tilkayat Shri. Govindlalji Maharaj, etc. v. State of Rajasthan and others,

reported in AIR 1963 SC 1638 was examining if the practise in question is purely secular or affairs which are controlled by the statute is

essentially and absolutely secular in character which cannot be urged that Article 25(1) or Article 26(b) of the Constitution of India has been

contravened and in that context, it came to be held by Apex Court as under :

59. In this connection, it cannot be ignored that what is protected under Articles 25 (I) and 26 (b) respectively are the religious practices and the

right to manage affairs in matters of religion. If the practise in question is purely secular or the affair which is controlled by the statute is essentially

and absolutely secular in character, it cannot be urged that Article 25 (1) or Article 26 (b) has been contravened. The protection is given to the

practise of religion and to the denomination's right to manage its own affairs in matters of religion. Therefore, whenever a claim is made on behalf

of an individual citizen that the impugned statute contravenes his fundamental right to practise religion or a claim is made on behalf of the

denomination that the fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, it is necessary to consider

whether the practise in question is religious or the affairs in respect of which the right of management is alleged to have been contravened are affairs

in matters of religion. If the practise is a religious practise or the affairs are the affairs in matters of religion, then, of course, the rights guaranteed by

Article 25 (1) and Article 26 (b) cannot be contravened.

14. Thus, from the above, it would necessary to examine in the instant case as to what constitutes an essential part of a religion or religious practise

and it has to be decided by the Courts with reference to doctrine of a particular religion and includes practices which are regarded by the

community as a part of its religion, as held by Apex Court in His Holiness Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami etc. v. The

State of Tamil Nadu, reported in AIR 1972 SC 1586.

15. Religion is the belief which spiritual nature of men to supernatural being. It includes worship, belief, faith, devotion etc. and also extends to

rituals. Religious right is a right of a person believing in a particular faith or sect to practise it, to preach it and profess it. Religion may not laid down

a code of ethics or rules, but may also prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of

that religion. It is in this background, contention of Mr. R.A. Devanand is required to be examined and for the said purpose, verses of Holy Bible

pressed into service are being extracted herein below:

Exodus - Chapter 20

8. Remember the Sabbath day, to keep it holy.

9. Six days shalt thou labour, and do all thy work.

10. But the seventh day is the sabbath of the LORD thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant,

nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates:

Deuteronomy - Chapter 5

12. Keep the sabbath day to sanctify it, as the LORD thy God hath commanded thee.

13. xxx

14. But the seventh day is the sabbath of the LORD thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, nor thy

manservant, nor thy maidservant, nor thine ox, nor thine ass, nor any of the cattle, nor thy stranger that is within thy gates: that thy manservant and

thy maidservant may rest as well as thou.

16. Thus, what is to be examined is, what is "Sabbath day?" According to Exodus 20:8-11 it is seventh day of the week of which, according to

Holy Bible, the command of the God is to rest for the purpose of remembrance of the God who created Universe in six days and then he rested on

the seventh day. The reason given in both Genesis 2:3 and Exodus 20:11, it would indicate that God blessed and hallowed the seventh day or in

other words, God rested from all other work in which he has done creation. It means, he was fully satisfied with the work he had done i.e.,

creation and intended to stand back and savour in leisure his creation. Various interpretations have been sought to be put forward to consider

"Sabbath day" to "keep it holy" and five comments which would emanate is as under:

(1) Remembering

(2) Keeping it Holy

(3) One out of Every Seven

(4) No Fudging

(5) God's Rest After Creation

Reading of the above verses of Holy Bible does not remotely suggest that a day of the week would commence from Sunday to end on a Saturday;

it also does not state that Saturday alone should be a "Sabbath" day, It only indicates that after working for six days, a day for rest is to be

earmarked or in other words, if a person has worked for six days in a hot sun, to give that seldom time for him to rest and reflect upon himself to

the deeds he has done in the past days, that would be a "Sabbath" day. It can be Sunday or Saturday or any other day.

17. Yet another interpretation which is sought to be given relates to Saturday Evening Service rendered as devotion to the God and Saturday

Service or Saturday worship is considered as replacement of Sunday Sabbath and Biblical/Jewish way of reckoning time and say that a week

begins at 6.00 p.m. on Saturday and Saturday Services would in fact be on the first day of the week and Sabbath could run till 6.00 p.m. on

Sunday. In fact, the words of apostle Romans 14:5, it is said that "one man judges one day above another, while another man judges all days alike.

Let every one be fully convinced in his own mind", which would imply that some think that all days qualify for Sabbath, some think that only

Saturday qualifies and others think only Sunday qualifies. Such disagreements between the denomination cannot be held to arrive at a conclusion

that Saturday alone must be considered as "Sabbath" day as sought to be contended by Mr. R.A. Devanand, learned Advocate appearing for

petitioners.

18. In fact, Apex Court in the case of Commissioner of Police & others v. Acharya Jagadishwarananda Avadhuta and another reported

in AIR 2004 SC 2984 was examining as to whether Tandava dance is essential religious rite of Ananda Margis when that order was first

established in 1955 and for the first time it was introduced as religious rite in the year 1966 and it was held that an essential part or practise of a

religion is now the matter for elucidation and such parts or practices are definitely not the "core" of religion where belief is based and religion is

founded upon. It could only be treated as embellishments to the non-essential part or practices (majority judgment).

19. Article 25 of the Constitution of India would indicate that it guarantees all persons equally in the matter of entitlement to freedom of conscience

and right to profess, practise and propagation of religion. Article 25(2)(a) provides that nothing in Article 25 shall affect operation of any existing

law or prevent the State from making any law, regulating or restricting any economic, financial, political or other secular activities which may be

associated with religious practise. It would also indicate that it is protective in nature by which freedom of practise, profess and propagate enjoined

would be subject to public order. The State if it makes any provision affecting freedom of conscious, right to freely practise, profess and propagate

religion, will have to justify such legislation on the ground of public order, morality and other provisions of Part III of the Constitution. It is in this

manner, Article 25 becomes workable. In the instant case, such situation has not arisen. The contention of learned Advocate appearing for

petitioners that forcing the petitioners to appear for the examination on a Saturday - "Sabbath" day would affect their right to profess religion, when

examined in the background of above discussion, it would clearly emerge that said contention is without any basis, inasmuch as, neither the verses

in Chapter 5 and Chapter 20 of the Holy Bible would indicate that Saturday alone would be a "Sabbath" day or in other words, on a "Sabbath"

day, a student is not to carry out his studies or continue to study or thereby it would take away right of denomination to profess its religion or

offend it in any manner whatsoever.

20. In the light of the above discussion, this Court is of the considered view that there is no merit in this writ petition and accordingly, it stands

rejected.

This Court places its appreciation on record services rendered by Sri. Puttige R. Ramesh, Amicus Curiae in placing relevant materials before this

Court.

Ordered accordingly.