

(1960) 02 KL CK 0042

High Court Of Kerala

Case No: O.P. No"s. 905, 1106, 1154 and 1155 of 1959

Sankaran
Nambudiripad

APPELLANT

Vs

Dy. Commr., H.R. and
C.E., Kozhikode and
Another

RESPONDENT

Date of Decision: Feb. 10, 1960

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 19(1)(f), 19(5), 226

Citation: (1960) KLJ 429

Hon'ble Judges: S. Velu Pillai, J

Bench: Single Bench

Advocate: V. Bhaskaran Nambiar in O.P. 905/59, A. Achuthan Nambiar, T.P. Kelu Nambiar in O.P. 1106/59 and C.K. Viswanatha Iyer, R. Krishnaswamy in O.P. 1154 and 1155/59, for the Appellant; K.P. Madhava Menon For 3rd Respondent in O.P. 1154 and 1155/59, for the Respondent

Final Decision: Dismissed

Judgement

S. Velu Pillai, J.

These are petitions under Article 226 of the Constitution, by the trustees of different temples, challenging the action taken by the Deputy Commissioner, Kozhikode, the first respondent in these petitions, u/s 58(5) of the Madras Hindu Religious and Charitable Endowments Act, 1951, which may hereafter be referred to as the Act, appointing "fit persons" in their place, to discharge the functions of the trustees pending the framing of schemes for the administration of the temples. One of the questions raised, which is common to these petitions, relates to the constitutionality of the above provision, as infringing or not, the fundamental right of the petitioners under Article 19(1)(f) of the Constitution, and may be disposed of first. It was common ground between the learned counsel who appeared for the petitioners and the learned Government Pleader who

appeared to support the action taken by the Deputy Commissioner, that the right of hereditary trusteeship, such as the petitioners possess, is a right to hold property which is guaranteed under Article 19(1)(f). Even so, if the provision impugned is a reasonable restriction on the exercise of the above right, within the meaning of Article 19(5) it cannot be struck down.

2. As observed by Venkatarama Aiyar J. as he then was, in [Kidangazhi Manakkal Narayanan Nambudiripad and Others Vs. State of Madras and Another](#), even before the date of the Constitution of India, though not in matters of religion in its doctrinal and ritualistic aspects, the State used to exercise control over the administration of properties endowed for religious institutions, as if they were dedicated to the public, and this responsibility of the State was untouched by the Constitution. The Act and the earlier statute of 1926 which it replaced, appear to have been enacted in the fulfillment of this responsibility. The object of the Act, as disclosed by the long title itself is, "to provide for the better administration and governance of the Hindu Religious and Charitable Institutions and Endowments in the State of Madras". Chapter II of the Act deals with the constitution and the composition of the controlling Authorities under the Act, such as the Commissioner, Deputy Commissioners, Assistant Commissioners, and Area Committees, and Chapter III prescribes and assigns specific duties and functions to them, as well as to the trustees. Section 20, which finds a place in Chapter III provides, that "subject to the provisions of the Act the administration of all religious endowments, shall be subject to the general superintendence and control of the Commissioner" and this includes "the power to pass any order which may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist". Section 58 is in Chapter V, headed "Inquiries" and Section 58(1) empowers the Deputy Commissioner to frame a scheme for the proper administration of a religious institution, when he sees reason to do so, after consultation with the "Area Committee" and the persons interested, in the prescribed manner. Section 58(2) lays down, that the scheme so framed may provide inter alia for the removal of a trustee, and the appointment of a new trustee. Section 58(5) which is impugned, reads:

Pending the framing of a scheme for a temple or for a specific endowment other than one attached to a math, the Deputy Commissioner may appoint a fit person to discharge all or any of the functions of the trustee thereof and define his powers and duties.

Though several provisions of the Act were struck down by the Madras High Court, many of them, including Section 58, were held to be valid, on appeal to the Supreme Court, in [The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.](#), . It is true, that Section 58(5) was not singled out for attack in that case, and was not therefore dealt with, or considered independently of the other provisions in Section 58.

3. But in a later case, [Moti Das Vs. S.P. Sahi, The Special Officer In Charge of Hindu Religious Trusts and Others](#), in considering the validity of the several provisions of the Bihar Hindu Religious Trusts Act, 1950, the analogous provision in Section 28(2)(h) of that Act, which gave power to the Bihar State Board of Religious Trusts to remove a trustee from office in certain contingencies, was specifically adverted to by the Supreme Court, and while holding that the right of the trustee was within the protection of Article 19(1)(f), the court also ruled, that:

having regard to the position of a trustee as respects the trust property which he holds and the object or purpose of the Act, the restrictions imposed are really for the purpose of carrying out the objects of the trust and for better administration, protection and preservation of the trust properties; they are, therefore, reasonable restrictions in the interests of the general public within the meaning of Cl. (5) of Art. 19 of the Constitution.

The observations at page 949 of the report, by which Their Lordships distinguished the provisions of the Act, have reference really to those provisions which had been struck down by the Supreme Court in Sirur Math case. No doubt, in Moti Das's case, in upholding the reasonableness of the restrictions, the court also relied on the safeguard against unwarranted exercise of the power u/s 28(2)(h) furnished in the statute, for recourse to the District Judge for varying, or modifying, or setting aside the order; even so, u/s 61 of the Act, any order which may be passed u/s 58, including an order u/s 58(5) of the Act, is made appealable to the Commissioner, and u/s 62, any order that he may pass may be challenged by suit, and further, by appeal against the decree in the suit to the High Court. After all, Section 58(5) is only for an interim measure, pending the framing of a scheme; there can be no doubt, that in the Sirur Math case, the Supreme Court upheld the more drastic provision in Section 58(2) of the Act, by which a trustee could be permanently removed and a new trustee appointed in his place, through the machinery of a scheme. It is impossible to accede to the argument that in maintaining the constitutional validity of Section 58, the Supreme Court did not have in mind, the provisions in Section 58(2) and 58(5) of the Act.

4. It was also contended for one of the petitioners, that the power of removal u/s 58(2), as also u/s 45 read with Section 47(2) of the Act is different, in that, under them, the trustee is replaced only by the person who is next in order of succession in the family, the argument being, that the trusteeship is of the family and not of the individual. I should have thought, that the parties directly and immediately affected by the orders passed u/s 58(5) are the petitioners, and if they profess that they are not personally aggrieved by their removal from trusteeship, I should be extremely reluctant to hold, that they have a locus standi to invoke a discretionary remedy, as under Article 226. It seems to me that Section 58(5), and a similar provision in Section 45, viz., Section 45(3), are designed to meet cases of emergency, and intended to provide a suitable arrangement, pending the finalisation of the scheme in one case, and the completion of the enquiry into the charges against the trustee, in the other. Having regard to the scheme and the object of the Act, the provision in Section 58(5), conferring a power on the Deputy Commissioner to appoint

a "fit person" to manage the affairs of the religious institution pending the framing of a scheme and as ancillary to it, is only a reasonable restriction within the meaning of Article 19(5) of the Constitution.

5. The vires of Section 58(5) was also challenged by the learned counsel for the petitioner in O.P. 905 of 1959 as violative of Article 14 of the Constitution. The contention was that the Act has left to the unregulated and arbitrary decision of the Authority under it, as to who among the several delinquent trustees belonging to the same category, or placed in similar situations, may be proceeded against u/s 45(3), u/s 58(5), or u/s 89 of the Act, and that this in itself is discrimination, on the authority of The [The State of West Bengal Vs. Anwar Ali Sarkar](#), , and [Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another](#), and [Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another](#), . Two parallel statutes, one of which was less advantageous or more onerous to the citizen, were concerned in each of these cases, and without any reasonable classification between them as to their objects or the persons affected by them, both gave power alike to the Government, to make the choice as to the particular statute to be applied in a given case, and for that reason, the provisions impugned were struck down. It seems to me, that they bear no analogy to the present case, and the contention advanced is itself lacking in the necessary foundation. Section 45(1) is in the following terms:--

The Deputy Commissioner in the case of any religious institution over which an Area Committee has jurisdiction, and the Commissioner in the case of any other religious institution, may suspend, remove or dismiss any hereditary or nonhereditary trustee or trustees thereof.

Section 45(2) provides, that when it is proposed to take action u/s 45(1), appropriate charges may be framed against the trustee and enquired into; Section 45(3), which may be said to correspond to Section 58(5), authorises that pending the disposal of the charges, the Commissioner or the Deputy Commissioner may place the trustee under suspension and appoint a fit person. After enquiry, in the event of the charges being established, the trustee may be suspended or removed or dismissed. Section 89(1) reads:--

89(1) If any trustee including the executive officer or other person in whom the administration of a religious institution is vested or any agent of, or person working under the trustee.

(a) "refuses, neglects or fails to comply with the provisions of section 25 or section 26, or

(b) "refuses, neglects or fails to furnish such accounts, returns, reports, or other information relating to the administration of the religious institution or its funds, property or income or the application thereof, at such time and in such manner as the Commissioner, Deputy Commissioner, Area Committee or Assistant Commissioner may require, or

(c) refuses to permit, or causes obstruction to, inspection by the Commissioner, a Deputy Commissioner, a member of an Area Committee duly authorised in this behalf or an Assistant Commissioner, of any movable or immovable property belonging to, or of any records, correspondence, plans, accounts and other documents relating to, the religious institution or neglects or fails to produce them for inspection, the trustee, or where there is more than one trustee, each of the trustees shall be punishable with fine which may extend to two hundred rupees; and in case the act or default complained of continues for more than one month with a further fine which may extend to one hundred rupees for every week or part thereof during which the act or default so continues.

But as observed, Section 58 is a provision which authorises a scheme to be framed, or modified or cancelled, and the power u/s 58(5), can never be exercised except as ancillary to the framing of the scheme. Sections 45, 58 and 89 have thus different objects in view, the areas of their operation are not identical, though perhaps they may overlap in portions but not to any appreciable extent, and the conditions for their operation are distinct and separate. A classification as can reasonably be provided for, having also a rational nexus with the object of the Act, is therefore apparent, and if, as apprehended, there is still a danger, that the Authority concerned may act arbitrarily, though I am by no means clear as to this, I conceive, that the vice is not in the law, but is in the functionary who is called upon to administer it. In my judgment, the case is governed by the following observations of the Supreme Court in [Pannalal Binjraj Vs. Union of India \(UOI\)](#), :

Even if there is a possibility of discriminatory treatment of persons falling within the same group or category, such possibility cannot necessarily invalidate the piece of legislation..." and in paragraph 30:

...where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law.... What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself.

I am of the view, that Section 58(5) cannot be struck down as discriminatory. I am not also satisfied, that there are sufficient materials for holding that the action taken by the Authority u/s 58(5) has been discriminatory.

6. A further contention in O.P. 905 of 1959 was, that the power u/s 58(5) can be exercised, only after the preliminary consultations prescribed by rules framed u/s 58(1) have been made by the Deputy Commissioner, and he is satisfied, that it is necessary or desirable to frame a scheme and orders that such a scheme be framed, and not before; in support of this, counsel relied on the use of the words "settled" and "frame" in Section 58(1), which he maintained is distinctive. There is no substance in this contention which, if pressed to the logical extent, will imply, that Section 58(5) can come into play only when the final decision to settle a scheme has been taken, and all that remains, is perhaps to write out a scheme and finalise it. I do not understand this to be the import of the word "framing" in the expression "pending the framing of a scheme" in Section 58(5), which, as

contended, contemplates one integrated process, starting with the Deputy Commissioner's "entertaining a belief that a scheme is necessary" and ending with the finalisation of the scheme. I repel this contention.

7. A point which is common to O.P. 905 and O.P. 1106 of 1959 was, that in appointing fit persons u/s 58(5), the trustees were not heard and the rules of natural justice were violated. It strikes me, that a similar argument too may be available, in the case of an appointment of an interim receiver of property under Order 40, Rule 1, C.P.C. on a motion ex-parte, but is likely to be repelled. The learned Government Pleader met this argument relying on the observations of the Supreme Court in [New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.](#), thus:

the question whether the rules of natural justice have been observed in a particular case must itself be judged in the light of the constitution of the statutory body which has to function in accordance with the rules laid down by the legislature

and in Mahendra Nath Bore v. Commissioner of Hills Division, AIR 1958 SC 393, thus:

the rules of natural justice vary with the varying constitution of the statutory bodies and the rules prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravened should be decided not under any preconceived notion but in the light of the statutory rules and provisions.

There is no provision u/s 58(5) of the Act for the issue of notice to the trustee who is affected. A recognised exception to the audi alteram partem rule is

"Where legislation expressly provides for notice and hearing for certain purposes, but imposes no procedural requirements for other purposes"--Judicial Review of Administrative Action by S. A. De Smith, page 118.

Section 58(1) provides for "consultation," and to secure this elaborate rules have been framed for the issue of notice to and for hearing, interested persons including the trustees. The omission in this respect in Section 58(5) and the absence of rules therefor, cannot be regarded as accidental. It cannot also be overlooked, that the remedy u/s 61 is always at hand. This objection too therefore fails.

8. In O.P. 905 of 1959, a scheme framed previously had been set aside by the Commissioner on appeal. An argument was therefore addressed to me, that the Deputy Commissioner had no further jurisdiction to frame a scheme. It was not contended, that in proposing to frame a scheme u/s 58(1), the Deputy Commissioner is still acting upon the same materials as before. If so, his jurisdiction u/s 58(1) cannot be doubted.

9. The further points taken in the several petitions, except O.P. 1155 of 1959, relate, in my opinion, only to the adequacy or the sufficiency of the grounds for taking action u/s 58(5), and cannot form the subject of judicial review under Article 226. If the parties are

aggrieved, they have a right to move the Commissioner on appeal u/s 61 of the Act, with a right of suit u/s 62. But in O.P. 1155 of 1959, the ground alleged for appointing a fit person in the place of the second petitioner therein, was only that the latter is a permanent resident in Wynad, which is no ground whatever. Ext. A order is bad to that extent and is hereby quashed, and in other respects O.P. 1155 of 1959 is dismissed. O. Ps. 905 and 1106 and 1154 of 1959 are also dismissed. In view of the contentions raised, I also order, that the petitioners in O.Ps. 905, 1106, and 1154 and the first petitioner in 1155 of 1959 do pay the costs of the first respondent in their petitions, including advocate's fee Rs. 100/- in each petition.