V.S. Sivakumar and M. Pitchai Battar Vs State of Tamil Nadu

Writ Petition No''s. 15791 and 16932 of 1998 and W.M.P. No''s. 23847 of 1998 and 25575 of 1998 in respective W.Ps.

Court: Madras High Court

Date of Decision: March 19, 2008

Acts Referred:
Constitution of India, 1950 â€" Article 14, 15, 16, 17, 21

Hon'ble Judges: K. Chandru, J; Elipe Dharma Rao, J

Bench: Division Bench

Advocate: R. Venkatakrishnan in WP. 15791/1998 and Mr. V. Raghavachari in WP. 16932/1998, for the Appellant; M.R. Murugesan, Spl. GP, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
The short question that arises for consideration in these two writ petitions is as to whether the action of the official

respondents in providing for archanas to be performed in Tamil at the request of the devotees in addition to the existing practice of reciting

archanas in Sanskrit, would offend the right to profess Hindu religion guaranteed under Article 25 of the Constitution of India. In W.P. No. 15791

of 1998, the petitioner claims to be the President of the Hindu Temple Protection Committee and seeks for a direction to prevent the respondents

State of Tamil Nadu and the Commissioner for Hindu Religious and Charitable Endowments (for short, HR&CE) Department from interfering in

any manner with the ceremonies, poojas and mode of performance, daily rituals of temples by customary traditional mode of worship.

2. In W.P. No. 16932 of 1998, the petitioner, a hereditary archaka of the temple at Uthirakosamangai, Ramnad District, seeks for a prayer to

forbear the respondent State and the subordinates from implementing the Tamil language in performance of poojas / archanas in the temple

contrary to the Academic principles.

3. In both the cases, notice of motion was ordered and counter affidavits have been filed by the State. In view of the interconnectivity between the

writ petitions, the two writ petitions were taken up for hearing together.

4. Heard the arguments of Mr. R. Venkatakrishnan and Mr. V. Raghavachari, learned counsel appearing for the petitioners in W.P. Nos. 15791

and 16932 of 1998 respectively and Mr. M.R. Murugesan, learned Special Government Pleader for HR&CE and other impleaded parties and

have perused the records. Though the matter was heard quite sometime back, since one of us [K. Chandru, J.] was posted at the Madurai Bench

during the second half of 2007, the orders could not be pronounced earlier.

5. Before we proceed to determine the issue on hand, it is necessary to first understand the concept of ''Hindu religion''.

6. When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other

religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one

dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not

appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more.

7. In defining these concepts, Dr. Radhakrishnan, in his book on Indian Philosophy (Vol. I - page 48) wrote as follows:

Though philosophic concepts and principles evolved by different Hindu thinkers and philosophers varied in many ways and even appeared to

conflict with each other in some particulars, they all had reverence for the past and accepted the Vedas as sole foundation of the Hindu philosophy.

Naturally enough, it was realised by Hindu religion from the very beginning of its career that truth was many-sided and different views contained

different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and

appreciate the opponent''s point of view. That is how ""the several views set forth in India in regard to the vital philosophic concepts are considered

to be the branches of the self-same tree. The short cuts and blind alleys are somehow reconciled with the main road of advance to the truth.

8. In this context, we have to see, whether the attempt of the petitioners to bring in agamic injunctions against the authorities to permit the pooja /

rituals to be performed in Tamil in addition to the existing practice, that too, only at the request of the worshippers / devotees, can be

countenanced. Agamas are Hindu scriptures laying down the separate theological disciplines and doctrines for the worship. Agamas guide the

faithful who are moved by their devotion to the Supreme God to worship one of His manifestations.

9. While the petitioners are so certain and plead that Devanagari is the only language to communicate with the Gods and there can be no

interference with that practice and that chanting the manthras in Sanskrit is an essential part of religious practice and that the Tamil language is not

one of recognised form of worship, there has been counter view points throughout the history of the Tamil Nadu. Even before 10 centuries, which

is described by the Historians as the ''Bhakthi'' Movement or Renaissance Tamil was used as a language to propagate ''Saivism'' and

Vaishnavism''''. The ''''Devaram'''' and ''''Thiruvasagam'''' were created for the purpose of propagating the Saivite philosophy so that even the common

man can understand. Religious endowments were created to chant the ''''Devaram'''' and ''''Thiruvasagam'''' known as the Tamil Vedas in the Saivite

temples and never there have been any protest before the one which has now been brought to this Court by the petitioners,

10. In fact, the revolutionary poet Bharathidasan, in his compilation of poems titled as Tamil Resurgence (English translation by M.S.

Venkatachalam), in an angry outburst in the poem titled as

- (Inside the Temples) wrote as follows:

Inside the Temples Do you think that Tamil, which is dear like your life, is not liked by God?

If your life-like Tamil is used for prayers, wonÃ¯Â¿Â½t it be relished by God?

11. Further, he lamented in the same poem which is as follows:

If, by standing just near the sanctum

sanctorum we sing the hymns of our hoary bards, And make them reach the ears of our men, they will have a sway over all their minds.

12. In fact, the earlier attempt by one of the petitioners having failed as will be seen later and similar writ petitions have been rejected, the

petitioners have once again come forward with similar plea, that too, without disclosing the result of the earlier attempts.

13. The petitioner in W.P. No. 15791 of 1998 contended that there are two types of Temples in Tamil Nadu, viz., Saivite and Vaishnavite, and

both follow the basic Sastras in respect of Agamas for performance of periodical poojas and other festivals and most of the temples in Tamil Nadu

have the history of atleast 3 to 4 centuries and there are also temples which have history over 1000 years. The regular poojas and festivals were

performed traditionally by certain families and the founders of the temples have made perpetual provisions for their maintenance and landed

properties were also donated to the temples for carrying out these poojas. The HR&CE Act 1959 was enacted to control the administration of the

temples. But in the guise of administration, there is no vested right on the State to interfere with any aspect leading to rituals practiced in the temples

including the mode of worship of idols consecrated therein.

14. It is also stated that the respondent State had ordered the archakas and gurukkals in the temples under the control of HR&CE Department in

Tamil Nadu to do archana in Tamil. They are also compelling the persons in charge of administration of the temple to do the ''Kumbabhishekams''

only in Tamil language. In paragraph 9 of the affidavit, the petitioner had averred as follows:

Para 9: The language Devanagari is supposed to be the language to communicate with God/ Gods. Apart from that the Saivite principles of the

concept of The Lord Shiva and the Idol form of worship is one and the same and cannot be different. One cannot change the form of the Idol and

still claim that it is a particular God. Similarly the language cannot be changed and the new recitals cannot be called as Mantra. Therefore the

change in language goes to the root of the basic faith and belief of Hindus throughout this country. This cannot be perpetrated against the temples.

15. The petitioner had also stated that the respondent State had issued administrative instructions threatening the archakas and poojaris even

though they had issued a clarification that there was no compulsion in implementing their orders. In the light of the above, the petitioner sought for

the prayer referred to above.

16. Similarly, the petitioner in W.P. No. 16932 of 1998 had stated that the agamic sanctions cannot be replaced by preference to Tamil language

and by giving directions, the respondents cannot interfere with the daily rituals substituting recognised form of Sanskrit to one of Tamil and on

29.8.1997, the Commissioner, HR&CE wrote a circular letter to all the subordinate officers to perform the Laktcharchana and Kodi Archana in

Tamil. Likewise, on 18.9.1997, the Commissioner of HR&CE gave a direction to the Joint Commissioners to ensure that the Tamil archanas are

performed in all the temples. It is also stated that two Notice Boards have been placed in the temples stating that the archanas would be performed

in Tamil and also in Sanskrit and it depends upon the wishes of the devotees. According to the petitioner, agama is not merely concerned with

recitation of slogas. But it deals with heavier steps like Town Planning, Architect of temple, Astronomy, Geology, construction of tanks,

consecration of idols, daily worship and other details and, therefore, this cannot be altered by any direction and Article 25 of the Constitution of

India guarantees the citizen of India to practice, propagate and freely profess any religious order subject to the restrictions contained in the said

Article.

17. Therefore, they submitted that the persons, who do not believe in reciting manthras in Sanskrit, are well advised to construct their own temples

and utter Tamil manthras in those places and in paragraphs 19 and 23 of the affidavit, it is stated as follows:

Para 19: I respectfully submit that according to the Manthra in Sanskrit language is an established and essential part of worship. The State shall not

interfere in such affairs by calling upon the temples to offer Pooja and Archana in Tamil. Imposition of Tamil on religious worship will not enhance

the image of language or capacity of the State in its administration. On the other hand, it will have detrimental and serious effect.

Para 23: I respectfully submit that the Tamil language is not one of the recognised form of worship and compelling the Saivite to recite the Mantra

in Tamil would be against the Agamic principles....

18. In response to the averments made in the affidavit, the respondent State in their counter affidavit in W.P. No. 15791 of 1998 had categorically

stated that there was no interference with any rights of any persons and that in terms of the HR&CE Act, the authorities are having the power of

superintendence and control over the religious institutions and they are strictly adhering to the powers and responsibilities vested on them. It was

also stated that there was no compulsion on all the archakas and gurukkals to perform the archanas in Tamil. The language of the archana is the

option of the devotees and performance of such wish of the devotees is only done by the persons, who are familiar with Sanskrit or Tamil as the

case may be and there is no compulsion on the archakas and gurukkals to do archana in Tamil. There was no threat to any person so as to carry

any orders of the Department.

19. Even the Supreme Court, while disposing of Civil Appeal vide order dated 02.4.1992, had observed that performing archanas in Tamil is done

along with Sanskrit without any interference to traditional form of worship. They have also quoted from the ancient Tamil Literature Tholkappiyam

to the effect that what language the learned Saints command, that language will be the language of Gods. Even in the Tamil Literature Thirumarai

describing the worship of God by the Tamils in the olden days, it is stated that Lord Shiva expresses His desire that His devotees singing in Tamil

which itself considered as archana. In ordering for the six times poojas, the Department was advised by a committee of scholars and they have not

violated any agamic principles in this regard. After referring to the two orders of this Court and the Supreme Court, it was stated that there was no

violation of any rights on the parties.

20. Further, it was contended that by G.O. Ms. No. 520 Commercial Taxes and Religious Endowments Department dated 18.11.1997, a

Committee was formed comprising of scholars and experts to compile the archanas found in religious literature so that uniformity can be maintained

in all temples in performance of archanas in Tamil. The Committee suggested certain measures and the view of all the Religious Heads and

Madathipathis were also obtained and all of them unanimously welcomed the Tamil archana in temples in Tamil Nadu and appreciated the efforts

of the Department on the promotion of Tamil archanas. In fact, Agnihothoram Ramanuja Thatachariar, a great Scholar in Vaishnavisham, has

stated that archanas are not advocated in Agamas and it is only performed in temples to satisfy the devotees. It is further stated that Devanagari

cannot be the only language to communicate the Gods and from time immemorial, both Devanagari and Tamil have been in usage in offering

worship in the temples.

21. Similarly, in the counter affidavit in W.P. No. 16932 of 1998, it was contended by the State that the allegation made by the petitioner, who

was hereditary archaka himself, was imaginary and the Department is not concerned about the non-believers and it is only concerned about the

believers and the issue was whether the archana in Tamil could be performed in the temple by the archakas who have knowledge in it and if any

such devotee wishes any Tamil archana in a temple, that is axiomatic that the person performing Tamil archana must also be proficient in the Tamil

manthras whenever such alternative request is made by the devotees. It is also stated that it is not the intention of the Government to introduce

Tamil in the temples and only petitioner''s averments show his ego in having specific attachment to a particular language. The Supreme Court itself

has never prohibited the alternative use of Tamil language in the archanas and that there is a wealth of Tamil religious literature providing for

archanas and religious rituals to be performed using manthras written in Tamil.

22. In both the writ petitions, though there is no particular attack against any order, general statements have been made. However, in this respect,

it is necessary to recall the reply sent by the State Secretary to Government dated 10.02.1998 in response to the legal notice issued by one of the

petitioners, which is verbatim reproduced though some sentences are not clear in the original itself:

2) No circular is issued preventing performing archanas in Sanskrit as mentioned in your letter. I am advised to submit that by the circular dt.

18.11.96 by the Commissioner, H.R. & C.E. it was only advised to keep two notice boards in temples stating that

Archanas will be performed in Tamil and Archanas will be performed in Sanskrit

Further all the temples in Coimbatore district archanas were being performed both in Sanskrit and in Devanagiri according to the wishes of the

devotees. Similarly, the Government has no intention to remove all the traditional Saivite Archakas and replace them with persons of Poojaris

tradition in the guise of introducing Tamil archanas. In the letter referred by you, for the purpose of uniform understanding to the devotees advised

were given to the subordinate officers only with respect to devotees who require archanas to be performed in Tamil. While so, the Government

feels that it is not necessary to recall and withdraw the circulars issued by the Commissioner. I am advised to inform the same to you.

23. Before proceeding to deal with the rival submissions, it is necessary to note that similar issues have arisen for consideration of this Court and

the Supreme Court and those proceedings may be usefully referred to.

24. In W.P. (C) No. 294 of 1974, etc. batch cases, the Supreme Court by an order dated 02.4.1992 recorded the agreement between the

petitioner in those petitions and the respondent State, which reads as follows:

The agama form of worship adopted in temples is in Sanskrit which is according to tradition. At the same time, there is priceless Tamil devotional

literature in Thevaram and Thiruvachakam which is also adopted to suit the worshippers. Tamil Archanas in this form deserves promotion. In

general the traditional Agama form of worship will be followed. Where the Archakas are proficient in performing archanas in Tamil and where

there is a demand by the devotees for Tamil Archanas, such facility can be extended.

(Emphasis added)

25. Similarly, when the petitioner in W.P. No. 15791 of 1998, earlier, along with two other persons, filed W.P. No. 8873 of 1982 for similar

relief, a learned single Judge of this Court, vide order dated 17.6.1992, dismissed the writ petition with the following observation:

In the identical matters the Division Bench of this court in W.P. Nos. 2895/1971

1. V.N. Devanathan 2. K. Munirathna Naidu vs. State by the Secretary, Hindu Religious and Endowments, Government of Tamil Nadu, fort St.

George, Madras - 9

2. The Commissioner, Hindu Religious and Charitable Endowments Board, Madras - 34. 3. The Deputy Commissioner, Hindu Religious and

Charitable Endowments Board, Madras - 34 and 2666/1972 - Dakshinamoorthy Bhattar vs. The Rajah of Sivaganga, Hereditary Trustee of

Sivaganga Estate Devasthanam (Somanathaswami Temple at Manamadurai) 2. The Commissioner for Hindu Religious Endowments Board,

Madras, 3. The State of Tamil Nadu through the Secretary of Hindu Religious and Charitable Endowments, Fort St. George, Madras - 9 have

held that the impugned circulars are not violative of the constitution or any other law and on that view the abovesaid writ petitions were dismissed

by the Division Bench on 10th January 1974. Respectfully following the above judgments the present writ petition has also to be dismissed and

accordingly it is dismissed. No costs.

26. It is rather surprising that the petitioner had not disclosed about the disposal of his earlier writ petition, which was filed with more or less

identical relief, was rejected by this Court and had suppressed the same in the affidavit filed in the present writ petition. On this ground, the writ

petition is liable to be dismissed.

27. In the order dated 17.6.1992, this Court referred to the order dated 10.01.1974 passed in W.P. No. 2666 of 1972 in Dakshinamoorthy

Bhattar vs. The Rajah of Sivaganga, Hereditary Trustee of Sivaganga Estate Devasthanam (Somanathaswami Temple at Manamadurai) and others

where the Court observed as follows:

The Impugned circulars have nowhere stated that Archana should not be done in Sanskrit. Insistence of Archana being done in Tamil does not

necessarily mean prevention of Archanas being done in Sanskrit. The circulars are not shown to affect the freedom of conscience or the right to

freely profess, practice and propagate religion, language is no part of religion and it cannot be taken that unless religious matters are expressed in a

particular language, they ceased to be religion or religious practices.

28. Inspite of that, once again, the petitioner has come forward to wake up the issue all over again. Since there is also another writ petition, it is

necessary to deal with the legal submissions made by them in some detail.

29. The learned counsel appearing for the petitioners relied upon the judgment of the Supreme Court reported in The Commissioner, Hindu

Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., and referred to the following passage found in

paragraph 19:

Para 19: If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day,

that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or

oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or

employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or

economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Art. 26(b).

30. It is not clear as to how this passage can help the case of the petitioner. On the contrary, the Supreme Court held in that ease that in regard to

matters of religion, the right of management given to a religious body for performing activities pertaining to religion was a guaranteed fundamental

right and no legislation can take away that right.

31. Thereafter, the learned counsel relied upon the judgment of the Supreme Court reported in Ratilal Panachand Gandhi Vs. The State of

Bombay and Others, . That was a case relating to the right of the religious sect or denomination to manage its own affairs in the matter of religion

which includes the right to spend trust property or its income, But, however, the following passage found in paragraph 12 and 13 may be usefully

quoted:

Para 12; It may be noted that "religion" is not necessarily theistle and in fact there are well-known religions in India like Buddhism and Jainism

which do not believe in the existence of God or of any Intelligent First Cause, A religion undoubtedly has its basis in a system of beliefs and

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

seems to have been suggested by one of the learned Judges of the Bombay High Court, that matters of religion are nothing but matters of religious

faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well.

Para 13; Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular

doctrines. Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies are to be performed at certain times and in a

particular manner, it cannot be said that these are secular activities partaking or commercial or economic, character simply because they involve

expenditure of money or employment of priests or the use of marketable commodities. No outside authority has any right to say that these are not

essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of

administering the trust estate.

But in the present case, the State had not come up with any such directions.

32. The learned counsel placed further reliance upon the judgment of the Supreme Court reported in Sri Venkataramana Devaru and Others Vs.

The State of Mysore and Others,]. Though the said case arose under the right of entry into religious temple, the following passage found in

paragraph 31 may be usefully extracted:

Para 31: ...We agree that the right protected by Art. 25 (2) (b) is a right to enter into a temple for purposes of worship, and that further it should

be construed liberally in favour of the public. But it does not follow from this that that right is absolute and unlimited in character. No member of the

Hindu public could, for example, claim as part of the rights protected by Art. 25 (2) (b) that a temple must be kept open for worship at all hours of

the day and night, or that he should personally perform those services, which the Archakas alone could perform. It is again a well-known practice

of religious institutions of all denominations to limit some of its services to persons who have been specially initiated, though at other times, the

public in general are free to participate in the worship. Thus, the right recognised by Art. 25 (2) (b) must necessarily be subject to some limitations

or regulations, and one such limitation or regulation must arise in the process of harmonizing the right conferred by Art. 25(2)(b) with that protected

by Art. 26 (b).

33. The learned counsel further referred to the decision of the Supreme Court in Seshammal and Others, Vs. State of Tamil Nadu,]. This was with

a view to re-enforce the argument that the right conferred under Articles 25 and 26 of the Constitution of India is not limited to matters of doctrine

or belief and to extend the acts done in pursuance of religion and, therefore, the guarantee of rituals, ceremonies and modes of worship are integral

parts of religion. But, however, about what constitutes as essential part of religion, the Court, in paragraph 12 of the judgment, observed as

follows:

Para 12: ...what constitutes an essential part of a religious or religious practice has to be decided by the courts with reference to the doctrine of a

particular religion and include practices which are regarded by the community as a part of its religion.

34. In fact, in the very same judgment, the Supreme Court upheld the right of the State to oversee it that only persons who are fit to perform

archanas alone can be appointed. It was held for this purpose, there was nothing wrong in the State prescribing that the archakas to possess

Fitness Certificate, lest the archanas performed by such unqualified persons may defile and pollute the idols which right is not guaranteed on

anyone.

35. In this context, it is relevant to refer to the following passage found in paragraphs 14 and 22 of the same judgment:

Para 14: ...It was also open to the Government to make no rule at all or to prescribe a fitness certificate issued by an institution which did not teach

the Agamas or traditional rituals. The result would, therefore, be that any person, whether he is Saivite or Vaishnavite or not, or whether he is

proficient in the rituals appropriate to the temple or not, would be eligible for appointment as an Arcnaka and the trustees discretion in appointing

the Arckaka without reference to personal and other qualifications of the Archaka would be unbridled....

Para 22: ...It is submitted that the Act does not provide guidelines to the Government in the matter of prescribing qualifications with regard to the

fitness of an Archaka for performing the rituals and ceremonies in these temples and it will be open to the Government to prescribe a simple

standardized curriculum for pujas in the several temples ignoring the traditional pujas and rituals followed in those temples. In our opinion the

apprehensions of the petitioners are unfounded. Rule 12 referred to above still holds the field and there is no good reason to think that the State

Government wants to revolutionize temple worship by introducing methods of worship not current in the several temples. The rule making power

conferred on the Government by Section 116 is only intended with a view to carry out the purposes of the Act which are essentially secular.

In fact, this passage answers the contention raised by one of the petitioners that he need not undertake to study the Tamil archana and be proficient

with the same in case the devotee requests him to perform the archanas in Tamil.

36. The learned counsel took this Court to the judgment of the Supreme Court in Dr M. Ismail Frauqui and Others Vs. Union of India (UOI) and

Others, . This judgment of the Constitution Bench does not help the case of the petitioners in dealing with the present situation. In that judgment,

the Supreme Court, in dealing with religious practice, made a distinction between religious practice and what was essential and integral part of that

religion. The following passage found in paragraph 77 of the judgment makes it clear.

Para 77: The right to practice, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right

to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any

hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The

protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice

may be a religious practice but not an essential and integral part of practice of that religion.

37. Thereafter, the learned counsel took this Court through the judgments of the Supreme Court in Smt. Sarla Mudgal, President, Kalyani and

others Vs. Union of India and others, This was with a view to drive home the point that the secular ideas found in Article 44 of the Constitution of

India cannot be brought in within the guarantee enshrined under Articles 25, 26 and 27 of the Constitution of India.

38. The learned counsel also referred to judgment in Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another, In that case,

the Supreme Court dealt with the amendment made to the Andhra Pradesh Hindu Religious and Charitable Endowments Act, 1987. Paragraph 26

of the said judgment may be usefully extracted below:

Para 26: Hindus are majority in population and Hinduism is a major religion. While Articles 25 and 26 granted religious freedom to minority

religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Therefore, protection under Articles 25 and

26 is available to the people professing Hindu religion subject to the law therein. The right to establish a religious and charitable institution is a part

of religious belief or faith and, though law made under clause (2) of Article 25 may impose restrictions on the exercise of that right, the right to

administer and maintain such institution cannot altogether be taken away and vested in other party; more particularly, in the offices of a secular

Government. The administration of religious institution or endowment or specific endowment being a secular activity, it is not an essential part of

religion and, therefore, the legislature is competent to enact law, as in Part III of the Act, regulating the administration and governance of the

religious or charitable institutions or endowment. They are not part of religious practices or customs. The State does not directly undertake their

administration and expend any public money for maintenance and governance thereof. Law regulates appropriately for efficient management or

administration or governance of charitable and Hindu religious institutions or endowments or specific endowments, through its officers or officers

appointed under the Act.

39. The learned counsel placed reliance upon the judgment of the Supreme Court in A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and

Others, and the relevant passages found in paragraphs 86 to 88 and 90 may be usefully reproduced:

Para 86: ...There is nothing which a man can do, whether in the way of wearing clothes or food or drink, which is not considered a religious

activity. Every mundane or human activity was not intended to be protected by the Constitution under the guise of religion. The approach to

construe the protection of religion or matters of religion or religious practices guaranteed by Articles 25 and 26 must be viewed with pragmatism

since by the very nature of things, it would be extremely difficult, if not impossible, to define the expression religion or matters of religion or religious

belief or practice.

Para 87: In pluralistic society like India, as stated earlier, there are numerous religious groups who practice diverse forms of worship or practice

religions, rituals, rites etc.; even among Hindus, different denominates and sects residing within the country or abroad profess different religious

faiths, beliefs, practices. They seek to identify religion with what may in substance be mere facets of religion. It would, therefore, be difficult to

devise a definition of religion which would be regarded as applicable to all religions or matters of religious practices. To" one class of persons a

mere dogma or precept or a doctrine may be predominant in the matter of religion; to others, rituals or ceremonies may be predominant facets of

religion; and to yet another class of persons a code of conduct or a mode of life may constitute religion. Even to different persons professing the

same religious faith some of the facets of religion may have varying significance. It may not be possible, therefore, to devise a precise definition of

universal application as to what is religion and what are matters of religious belief or religious practice. That is far from saying that it is not possible

to state with reasonable certainty the limits within which the Constitution conferred a right to profess religion. Therefore, the right to religion

guaranteed under Article 25 or 26 is not an absolute or unfettered right to propagating religion which is subject to legislation by the State limiting or

regulating any activity - economic, financial, political or secular which are associated with religious belief, faith, practice or custom. They are

subject to reform on social welfare by appropriate legislation by the State. Though religious practices and performances of acts in pursuance of

religious belief are as much a part of religion as faith or belief in a particular doctrine, that by itself is not conclusive or decisive. What are essential

parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in

which the question has arisen and the evidence - factual or legislative or historic - presented in that context is required to be considered and a

decision reached.

Para 88: The court, therefore, while interpreting Articles 25 and 26 strikes a careful balance between the freedom of the individual or the group in

regard to religion, matters of religion, religious belief, faith or worship, religious practice or custom which are essential and integral part and those

which are not essential and integral and the need for the State to regulate or control in the interest of the community.

Para 90: ""The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion

to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between

the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and

guaranteed freedom of conscience to commune with his Cosmos, Creator and realise his spiritual self. Sometimes, practices religious or secular,

are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions

from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They

sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges

upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to

be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms,

social intensification and national unity. Law is a social engineering and an instrument of social change evolved by a gradual and continuous

process. As Benjamin Cardozo has put it in his Judicial Process, life is not a logic but experience. History and customs, utility and the accepted

standards of right conduct are the forms which singly or in combination shall be the progress of law. Which of these forces shall dominate in any

case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical

development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with

logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study

and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential

part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of

that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a

determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or

belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself.

(Emphasis added)

40. In Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others, , while dealing with the system of

worship and also the question of regulating the facts /archakas (priests), the Apex Court, in paragraph 42 of the judgment, observed as follows:

Para 42: ...In view of the settled legal position that the legislature is empowered to enact the law regulating the secular aspect of the management of

the Temple or the religious institution or endowment, panda/archaka (priest), by whatever name called, is not integral part of the religion and

performs all the religious tenets or ceremonies in a Temple as servant of the Temple. They owe their existence to an appointment. They are

servants of the Temple terminable on the ground of misconduct or unfitness to perform service, rituals / ceremonies in accordance with Hindu

Shastras, customs and practices prevailing in the Temple handed down from centuries. On abolition, the right of the holder of the office or post

stands extinguished. It does not vest in the State but is regulated by the Act....

41. Since the learned counsel for the petitioner argued at length, on the basis of the Agama principles being repugnant to allowing archanas to be

performed in Tamil at the request of the devotees, it is necessary to go into the question whether the action of the respondents in permitting the

additional facility of Tamil Archanas to be performed by the trained archakas / poojaris also to perform poojas in Tamil would offend such Agama

principles and whether such an additional facility being granted, without affecting any of the other religious practices, would be violating any such

practice, which is essential and integral part of religion.

42. In this context, it is necessary to refer to the judgment of the Supreme Court in The Durgah Committee, Ajmer and Another Vs. Syed Hussain

Ali and Others, and in paragraph 33, the following passages are found:

Para 33: ...Whilst we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the

practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise

even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a

claim for being treated as religious practices within the meaning of Art. 26. Similarly even practices though religious may have sprung from merely

superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute

an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinised; in other words, the

protection must be confined to such religious practices as are an essential and an integral part of it and no other.

43. The Supreme Court, in N. Adithayan Vs. The Travancore Devaswom Board and Others, , while considering the scope of Travancore -

Cochin Hindu Religious Institutions Act, 1950 as well as Agamas in relation to appointment of temple poojaris selected from communities other

than Malayala Brahmin, held that "there was no right based upon a custom which existed before the Constitution and which involves omission of

non-Brahmins from performing poojas in the temple if they are otherwise trained and qualified for doing the same". In this context, it is relevant to

refer to the following passage found in paragraph 10 and quoted in approval of the earlier order of the Supreme Court in Bhuri Nath and Others

Vs. State of Jammu & Kashmir and Others, , The following passage found in paragraph 13 may also be quoted:

Para 10: It has also been held that compilation of treatises on construction of temples, installation of idols therein, rituals to be performed and

conduct of worship therein, known as ""Agamas"" came to be made with the establishment of temples and the institution of Archakas, noticing at the

same time the further fact that the authority of such Agamas came to be judicially recognized. It has been highlighted that: (SCC p. 9, para 11)

Where the temple was constructed as per directions of the Agamas the idol had to be consecrated in accordance with an elaborate and

complicated ritual accompanied by chanting of mantras and devotional songs appropriate to the deity.

Thereafter for continuing the divine spirit, which is considered to have descended into the idol on consecration, daily and periodical worship has to

be made with twofold object to attract the lay worshippers and also to preserve the image from pollution, defilement or desecration, which is

believed to take place in ever so many ways. Delving further into the importance of rituals and Agamas it has been observed as follows: (SCC pp.

19-21, paras 11-12)

Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part

of the Hindu religious faith and cannot be dismissed as either irrational or superstitious. An illustration of the importance attached to minor details of

rituals is found in the case of His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu v. Prathivathi Bhayankaram

Venkatacharlu which went up to the Privy Council. The contest was between two denominations of Vaishnava worshippers of South India, the

Vadagalais and Tengalais. The temple was a Vaishnava temple and the controversy between them involved the question as to how the invocation

was to begin at the time of worship and which should be the concluding benedictory verses. This gives the measure of the importance attached by

the worshippers to certain modes of worship. The idea most prominent in the mind of the worshipper is that a departure from the traditional rules

would result in the pollution or defilement of the image which must be avoided at all costs. That is also the rationale for preserving the sanctity of

the Garbhagriha or the sanctum sanctorum....

Para 13: ""In Bhuri Nath v. State of J&K this Court while dealing with the validity of the J&K Shri Mata Vaishno Devi Shrine Act, 1988, and the

abolition of the right of Baridars to receive share in the offerings made by pilgrims to Shri Mata Vaishno Devi, observed their right to perform

pooja as only a customary right coming from generations which the State can and has by legislation abolished and that the rights seemed under

Articles 25 and 26 are not absolute or unfettered but subject to legislation by the State limiting or regulating any activity, economic, financial,

political or secular which are associated with the religious belief, faith, practice or custom and that they are also subject to social reform by suitable

legislation. It was also reiterated therein that though religious practices and performances of acts in pursuance of religious beliefs are, as much a

part of religion, as further belief in a particular doctrine, that by itself is not conclusive or decisive and as to what are essential parts of religion or

belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question arises on the

basis of materials - factual or legislative or historic if need be giving a go-by to claims based merely on supernaturalism or superstitious beliefs or

actions and those which are not really, essentially or integrally matters of religion or religious belief or faith or religious practice.

44. Further, the Court also emphasised in paragraph 16 that what constitutes essential part of religion or religious practice will have to be decided

by the Courts only and the following passage found in paragraph 16 may be quoted usefully:

Para 16: The legal position that the protection under Articles 25 and 26 extends a guarantee for rituals and observances, ceremonies and modes of

worship which are integral parts of religion and as to what really constitutes an essential part of religion or religious practice has to be decided by

the courts with reference to the doctrine of a particular religion or practices regarded as parts of religion, came to be equally firmly laid down.

45. In the very same judgment, the Court also dealt with at length in paragraph 17 that there was no customary right that Brahmins alone should be

appointed as the archakas / poojaris. What is essential is the person, who performs poojas, is bound to be qualified and fit person irrespective of

the community to which he belongs. The following passage found in paragraph 17 may be usefully extracted:

Para 17: Where a temple has been constructed and consecrated as per Agamas, it is considered necessary to perform the daily rituals, poojas and

recitations as required to maintain the sanctity of the idol and it is not that in respect of any and every temple any such uniform rigour of rituals can

be sought to be enforced, dehors its origin, the manner of construction or method of consecration. No doubt only a qualified person well versed

and properly trained for the purpose alone can perform poojas in the temple since he has not only to enter into the sanctum sanctorum but also

touch the idol installed therein. It therefore goes without saying that what is required and expected of one to perform the rituals and conduct poojas

is to know the rituals to be performed and mantras, as necessary, to be recited for the particular deity and the method of worship ordained or fixed

therefore. For example, in Saivite temples or Vaishnavite temples, only a person who learnt the necessary rites and mantras conducive to be

performed and recited in the respective temples and appropriate to the worship of the particular deity could be engaged as an Archaka. If

traditionally or conventionally, in any temple, all along a Brahmin alone was conducting poojas or performing the job of Santhikaran, it may not be

because a person other than the Brahmin is prohibited from doing so because he is not a Brahmin, but those others were not in a position and, as a

matter of fact, were prohibited from learning, reciting or mastering Vedic literature, rites or performance of rituals and wearing sacred thread by

getting initiated into the order and thereby acquire the right to perform home and ritualistic forms of worship in public or private temples.

Consequently, there is no justification to insist that a Brahmin or Malayala Brahmin in this case, alone can perform the rites and rituals in the temple,

as part of the rights and freedom guaranteed under Article 25 of the Constitution and further claim that any deviation would tantamount to violation

of any such guarantee under the Constitution. There can be no claim based upon Article 26 so far as the Temple under our consideration is

concerned. Apart from this principle enunciated above, as long as anyone well versed and properly trained and qualified to perform the pooja in a

manner conducive and appropriate to the worship of the particular deity, is appointed as Santhikaran dehors his pedigree based on caste, no valid

or legally justifiable grievance can be made in a court of law. There has been no proper plea or sufficient proof also in this case of any specific

custom or usage specially created by the founder of the Temple or those who have the exclusive right to administer the affairs - religion or secular

of the Temple in question, leave alone the legality, propriety and validity of the same in the changed legal position brought about by the Constitution

and the law enacted by Parliament. The Temple also does not belong to any denominational category with any specialized form of worship peculiar

to such denomination or to its credit. For the said reason, it be comes, in a sense, even unnecessary to pronounce upon the invalidity of any such

practice being violative of the constitutional mandate contained in Articles 14 to 17 and 21 of the Constitution of India.

46. Further, the Court also emphasised in paragraph 18 that the usage found to be pernicious and considered in derogation of law of the land or

opposed to public policy or social decency cannot be accepted. The following passage found in paragraph 18 reads thus:

Para 18: ...None of the earlier decisions rendered before Seshammal case related to consideration of any rights based on caste origin and even

Seshammal case dealt with only the facet of rights claimed on the basis of hereditary succession. The attempted exercise by the learned Senior

Counsel for the appellant to read into the decisions of this Court in Shirur Mutt case and others something more than what it actually purports to

lay down as if they lend support to assert or protect any and everything claimed as being part of the religious rituals, rites, observances and method

of worship and make such claims immutable from any restriction or regulation based on the other provisions of the Constitution or the law enacted

to implement such constitutional mandate, deserves only to be rejected as merely a superficial approach by purporting to deride what otherwise

has to have really an overriding effect, in the scheme of rights declared and guaranteed under Part III of the Constitution of India. Any custom or

usage irrespective of even any proof of their existence in pre-constitutional days cannot be countenanced as a source of law to claim any rights

when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage

which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be

accepted or upheld by courts in the country.

47. Subsequently, the Supreme Court in Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, dealt with the

question of appointment of Managing Committee in a Temple and struck a note of caution of the Court''s power to enter into any dispute of arena

and the following passage found in paragraph 64 may be usefully quoted:

Para 64: The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the

devotees as to what practices should be followed by the temple authorities. There may be dispute as regards the rites and rituals to be performed

in the temple or omission thereof. Any decision in favour of one sector of the people may hurt the sentiments of the other. The courts normally,

thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of

devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the courts also while passing an order should ensure that the

fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be

a welcome step.

48. In fact, when a writ petition, being W.P. No. 18273 of 1998 [Pazha Karuppiah v. State of Tamil Nadu], was filed in public interest seeking for

a direction that all poojas, prayers, archanas, Kumbabhishegam and other rituals should be done only in Tamil, a Division Bench of this Court

dismissed the same by an order dated 24.12.1998 and observed that the Court cannot compel the use of a particular language in exclusion of

other languages in the religious institutions of the State at the instance of the petitioner. In that case, this Court held that the plea of the petitioner is

to violate and not to protect the constitutionally guaranteed right to profess, practice and to propagate one''s religion.

49. In the light of the above and in the light of the earlier decisions, there is nothing either in the Agamas or in any other religious script to prohibit

the chanting of Tamil manthras in the temples run under the administration of the HR&CE Department. In fact, the present attempt by the

respondent State is not to replace either the existing practice with a new practice nor there is any encroachment into the time tested practice of the

rituals and customary usages and practices in the temples in Tamil Nadu.

50. On the contrary, the choice is vested with the devotees to seek for their archanas to be performed at their wishes by chanting the manthras

either in Tamil or in Sanskrit. This is not a method of replacing the traditional poojas offered 6 times or 4 times, as the case may be, but only in

addition to the regular poojas performed in the temple. Ultimately, it is the devotees or bhakthas who wish that their prayers or wishes to be

answered by the God and the petitioners cannot interdict their personal egos in the matter of a facility being provided to the devotees in the State.

Their attempt to portray as if the God can understand only Devanagari language and Tamil cannot stand on par with that language is only stated to

be rejected and it does not have any foundation based upon any scripture or religious texts.

51. If the petitions are allowed to have their own way then the fear expressed by Dr. Radhakrishnan in his book ""The Hindu View of Life"" will

come true. At page 11 of the said book, Dr. Radhakrishnan wrote as follows:

To many, Hinduism seems to be a name without any content. Is it a museum of beliefs, a medley of rites, or a mere map, a geographical

expression?

If the petitioners'' request for a restrained order is accepted, it will only result in the Hinduism becoming mere museum of beliefs. In view of the

above, both the writ petitions fail and accordingly, stand dismissed. However, there will be no order as to costs. Connected Miscellaneous

Petitions are closed.