

(1969) 03 SC CK 0052

Supreme Court of India

Case No: Writ Petition No. 347 of 1968

Digyadarsan Rajendra
Ramdassjivaru

APPELLANT

Vs

State of Andhra
Pradesh & Anr

RESPONDENT

Date of Decision: March 26, 1969

Acts Referred:

- Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 - Section 46, 47
- Constitution of India, 1950 - Article 14, 19(1), 25, 26

Citation: AIR 1970 SC 181 : (1969) 1 SCC 844 : (1970) 1 SCR 103

Hon'ble Judges: V. Ramaswami, J; J. C. Shah, J; A. N. Grover, J

Bench: Full Bench

Advocate: Kanak Ghosh and B. Datta, for the Appellant; P. Ram Reddy, A.V.V. Nair and P. Parameshwar Rao, for the Respondent

Final Decision: dismissed

Judgement

A.N. Grover, J.

This is a petition under Article 32 of the Constitution challenging, inter alia, the Constitutionality of Sections 46 and 47 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act No. 17 of 1966), hereinafter called the "Act" and for issuance of a writ in the nature of mandamus or other appropriate writs and directions to the Commissioner of Hindu Religious and Charitable Endowments, hereinafter called the "Commissioner", prohibiting him from exercising his powers or taking action under the aforesaid sections.

2. The petitioner claims to be the Mathadhipathi of Shri Swami Hathiramji Math Tripathi-Thirumalla in the State of Andhra Pradesh. It is stated that this institution was founded several centuries ago and is one of the renowned Maths in India. Hundreds of

Sadhus visit the Math throughout the year and it is the duty of the Mahant as its religious head to provide the visiting Sadhus with food and shelter and to perform all religious duties with regard to the celebration of Hindu festivals, propagation of the cult of Shri Swami Hathiramji and performance of other religious functions. It is alleged that Mahant Chettandoss, the previous incumbent died on March 18, 1962. On March 24, 1962 the Commissioner took charge of the Math and its properties u/s 53 of the Andhra Pradesh (Andhra Areas) Hindu Religious & Charitable Endowments Act, 1951, Act No. 19 of 1951, hereinafter referred to as the "Repealed Act". The petitioner filed a suit on March 26, 1962 in the court of the Subordinate Judge, Chittoor for a declaration that he was the rightful successor. The Commissioner was impleaded as a party to the suit. He also filed a revisional application u/s 92 of the repealed Act to the State Government. The Government disposed of the revisional application on June 5, 1962. It appointed the petitioner as the interim Mahant subject to certain conditions which need not be mentioned. Before this order was made the petitioner withdrew the suit filed by him in April 1962. Devendradoss, who was another claimant but who was a minor, filed a writ petition in the High Court challenging the above order of the Government but the same was rejected by the division Bench. Devendradoss then filed certain suits for a declaration of his title. On August 22, 1964, the Commissioner made an order directing the petitioner to show cause why the previous order appointing him as an interim Mahant be not recalled. According to the petitioner this was done because the State Government started claiming, contrary to the rule and custom which prevailed in the Math, that the amounts received on account of Padakanukas (personal offerings) should be paid to the Government and not taken by the Mahant. This order was challenged by the petitioner by means of a writ petition in the High Court. The High Court issued a stay order which was later on clarified to mean that the State Government was free to take such further action under the Act as it considered necessary. On September 9, 1965 the State Government framed charges against the petitioner and directed him to furnish his explanation. The petitioner was placed under suspension with immediate effect. It was further directed that the Assistant Commissioner, Tirupathi should take charge of the Math and its affairs. Meanwhile another claimant Bhagwantdoss filed a suit on September 29, 1965, claiming title to the gaddi in his own right. The writ petition which had been filed by the petitioner was allowed by the High Court on November 8, 1966. The matter ultimately came up in appeal to this Court, the judgment being reported in Secretary, Home (Endowments), Andhra Pradesh v. Digyadarsam Rajindra Ram Dasjee [1967] 3 S.C.E.891 The judgment of the High Court was affirmed. The High Court had held that the petitioner had succeeded to the office of the Mahant on the death of Chetandoss on March 18, 1962 in his own right. This Court occurred in that view and observed that the mere circumstance that the Government had also passed an order appointing him as the interim Mahant could not take away his right to function as a trustee on the basis of his original right. It followed that the Government had no jurisdiction to pass an order placing him under suspension as that virtually amounted to a removal of the trustee of the Math which could only be done in the manner provided by Section 52 of the repealed Act.

3. The Act received the assent of the President on December 6, 1966 and was enforced with effect from January 27, 1967. On May 30, 1967 the petitioner filed a petition under Article 226 of the Constitution in the High Court for declaring the present impugned provisions of the Act as ultra vires. That petition was dismissed in limine as premature. An appeal to the Letters Patent bench failed. On coming to know that certain orders were going to be passed against the petitioner whereby charges on various matters were to be preferred and an inquiry made and that the suspension of the petitioner from Mahantship was going to be ordered, the present petition was filed under Article 32 of the Constitution in October 1968. In this petition, apart from challenging the provisions of the Act a case of mala fide action has been sought to be made out against the respondent. In the order which was made by the Government on November 18, 1968, as many as 14 charges have been referred against the petitioner and his suspension has been duly ordered. The Assistant Commissioner Endowments Department has been directed to attend to the day-to-day administration of the Math temporarily and its Endowments until the disposal of the inquiry.

4. Now the Act has been enacted to consolidate and amend the law relating to the administration and governance of charitable and Hindu religious institutions and endowments in the State of Andhra Pradesh. Chapter I contains the definitions of various expressions used in the Act including the word "Commissioner". Chapter II provides for the appointment of Commissioner, Joint Commissioners etc., and gives their powers and functions. Chapter III deals with administration and management of charitable and Hindu religious institutions and endowments. Chapter IV provides for registration of such institutions and endowments. Section 42 in Chapter V defines the word "mathadhipathi" to mean any person whether known as mahant or by any other name, in whom the administration of a math or specific endowment attached to a math are vested. Sections 46 and 47 are in the following terms :

46. (1) the Commissioner may suo motu or on an application of two or more persons having interest, initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he-

(a) is of unsound mind;

(b) is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee;

(c) has ceased to profess the Hindu religion or the tenets of the math;

(d) has been sentenced for any offence involving moral turpitude, such sentence not having been reversed;

(e) is guilty of breach of trust or misappropriation in respect of any of the properties of the math;

(f) commits persistent and wilful default in the exercise of his powers or performance of his functions under this Act;

(g) violates any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like;

(h) leads an immoral life.

(2) The Commissioner shall framed charge on any of the grounds specified in Sub-section (1) against the mathadhipathi or trustee concerned and give him an opportunity of meeting such charge, of testing the evidence adduced and of adducing evidence in his favour. After considering the evidence adduced and other material before him, the Commissioner may, by order exonerate the mathadhipathi or trustee, or remove him. Every such order shall state the charge framed against the mathadhipathi or the trustee, his explanation and the finding on such charge together with the reasons therefor;

Provided that in the case of a math or specific endowment attached thereto whose annual income exceeds rupees one lakh, the order of removal passed by the Commissioner against the mathadhipathi or trustee shall not take effect unless it is confirmed by the Government,

(3) Pending the passing of an order under Sub-section (2) the Commissioner may suspend the mathadhipathi or the trustee.

(4) (a) Any mathadhipathi or trustee aggrieved by an enquiry in this behalf that an arrangement for the (2) may, within ninety days from the date of receipt of such order, institute a suit in the court against such order.

(b) An appeal shall lie to the High Court within ninety days from the date of a decree or order of the court in such suit.

47. (1) Where a temporary vacancy occurs in the office of the mathadhipathi and there is dispute in regard to the right of succession to such office, or where the mathadhipathi is a minor and has no guardian fit and willing to act as guardian, or where the mathadhipathi is under suspension under Sub-section (3) of Section 46, the Commissioner shall, if he is satisfied after making an inquiry in this behalf that an arrangement for the administration of the math and its endowments or of the specific endowments, as the case may be, is necessary, make such arrangement, as he thinks fit until the disability of the mathadhipathi ceases or another mathadhipathi succeeds to the office, as the case may be.

(2) In making any such arrangement, the Commissioner shall have due regard to the claims, if any, of the disciples of the math.

(3) ...

Section 83 confers powers on the Government to call for and examine the record of the Commissioner ... in respect of any proceedings not being a proceeding in respect of which a suit or an appeal or application or reference to a court is provided by the Act, to satisfy themselves as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed therein and if, in any case, it appears to the Government that such decision or order should be modified, annulled, reversed or remitted for consideration they may pass orders accordingly. u/s 104 where a Commissioner ... makes an enquiry or hears an appeal under the Act, the inquiry has to be made and the appeal has to be heard as nearly as may be, in accordance with the procedure applicable under the CPC, 1908, to the trial of suits or the hearing of appeals and the provisions of the Indian Evidence Act and the Indian Oaths Act have also been made applicable.

5. Learned counsel for the petitioner has assailed the Constitutionality of Section 46 although he has sought to read Section 47 along with it so as to establish that the combined effect of the provisions contained in both the sections would be hit by Articles. 14, 19(1)(f), 25, 26 and 31 of the Constitution. Before the submissions, which have been made, are examined reference may be made to 277764 in which the Constitutionality of various provisions of the repealed Act was challenged. That case related to the Shirur Math which was one of the 8 maths situate at Udipi in the district of South Kanara. The Hindu Religious Endowments Board functioning under the Madras Hindu Religious Endowments Act 1927 had taken action to frame a scheme for the administration of the affairs of the math. The challenge in the courts was confined to the Constitutional validity of the repealed Act. B.K. Mukherjea, J., (as he then was) dealt exhaustively with the rights of a Mahant to hold office as well as enjoy the property of the institution. The following observations at pp. 1019, 1020 are noteworthy :

As said above, the ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant and the Mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold his office. To take away this beneficial interest and leave him merely to the-discharge of his duties would be to destroy his character as a Mahant altogether. It is true that the beneficial interest which he enjoys is appurtenant to his duties and as he is in charge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which he is called upon to discharge. A Mahant's duty is not simply to manage the temporalities of a Math. He is the head and superior of spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to the disciples and followers of the Math and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents. This purpose cannot be served if the restrictions are such as would bring the Mathadhipathi down to the level of a servant under the State

department. It is from this standpoint that the reasonableness of the restrictions should be judged.

It was held that the Mahant was entitled to claim the protection of Article 19(1)(f). The same Shirur Math figured in another case which came up to this Court and the decision in which is reported in H.H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, Mysore [1963] Supp.2 S.C.R.302. There the Constitutionality of Section 52(1)(f) of the repealed Act, as amended, was unsuccessfully assailed. The scheme of that section was similar to Section 92 of the CPC. The Commissioner or any two or more persons having interest or having obtained the consent in writing of the Commissioner could institute a suit in the court to obtain a decree for removing a trustee of a math or a specific endowment attached to a math for any one or more reasons given in Clauses (a) to (f) which were similar to Clauses (a) to (f) of Sub-section (1) of Section 46 of the Act. Whereas previously the Commissioner could only institute a suit in a court, he has now been empowered under the Act by Section 46 to initiate proceedings himself for removing a mathadhipathi on the grounds mentioned in Clauses (a) to (h). Clauses (g) and (h) are new and Sub-section (2) gives the procedure for making the inquiry. If the mathadhipathi is aggrieved by the order made by the Commissioner, he has been given the right to institute a suit against such order in the court by Sub-section (4). The difference, in other words, is that previously the removal could be ordered only by the court but" u/s 46 the Commissioner can order the removal after following the procedure-laid down and his order is final except that it can be challenged by means of a suit by the mathadhipathi. It also requires confirmation by the Government where the annual income of the math exceeds rupees one lakh. An additional power has been conferred on the Commissioner by Sub-section (3) to suspend the mathadhipathi pending the passing of an order under Sub-section (2).

6. The view which was taken in the above case was that Section 52(1) (f) of the repealed Act did not in effect seek to cut down title authority of the Mahant which was traditionally recognized and that the said provision which authorised the institution of a suit for removal of a Mahant where he was found to have wasted the property of the math or applied such funds or property for purposes wholly unconnected with the institution did not amount to an unreasonable restriction upon the exercise of the rights of the Mahant. On behalf of the petitioner a strenuous attempt has been made to show that Section 46 of the Act is quite different from its counterpart contained in the repealed Act, namely, Section 52 and that the powers which have been conferred are clearly violative of the fundamental right to hold the office of the Mahant as also the property of the math. In H.H. Sudhundra Thirtha Swamiar's [1963] Supp.2 S.C.R.302 case it has been emphasised that the Mahant by virtue of his office is under an obligation to discharge the duties as a trustee and is answerable as such. He enjoys large powers for the benefit of the institution of which he is the head. He is to incur expenditure for the math i.e. for carrying on the religious worship for the disciples and for maintaining the dignity of his office but the property is attached to the office and the Mahant cannot incur expenditure

for personal luxury or objects incongruous with his position as a Mahant. Keeping all this in view it is difficult to see how the provisions of Section 46 would be violative of Article 19(1)(f) of the Constitution. The grounds on which his removal as mathadhipathy can be ordered have been specifically provided and no exception has been or can be taken to them. The main attack is based on the power given to the Commissioner instead of the court to make an inquiry into or try the allegations or charges against the Mahant and order his removal if such charges are established. It is not possible to see how a procedural change of this nature can be regarded as contravening either Article 19(1)(f) or Article 14 of the Constitution which is the other Article which has been pressed into service. The procedure which has been laid down makes all the proceedings before the Commissioner quasi-judicial. This is particularly so when the provisions of Section 104 of the Act are kept in view. Moreover if any order of removal is made that can be challenged in a court of law and there is a further right of appeal to the High Court. Learned counsel for the petitioner had finally to build his argument on the provisions of Sub-section (3) which give power to the Commissioner to suspend the mathadhipathi during the pendency of an inquiry and before any order in the matter of removal is made. It is pointed out that such suspension would seriously interfere with the numerous duties which a mathadhipathi has to perform as the head of a spiritual fraternity. The petitioner, in this manner, has been debarred from not only managing the institution but also from carrying out the essential work which according to the tenets and custom of the fraternity he is under an obligation to do. For instance he cannot look after the Sadhus and other disciples who constantly visit the math and come for religious instruction there nor can he preside over religious functions and other periodical festivities which are held in the seat of the math. Thus, it is urged, that there is a clear violation of Article 19(1)(f) which guarantees the petitioner's right to hold and enjoy the property, apart from the interference with his right to practice and propagate religion and manage the affairs of the math in matters of religion which rights are guaranteed by Articles 25 and 26 of the Constitution.

7. As regards Article 19(1)(f) it has to be seen whether the restrictions which have been imposed by the impugned provisions of the Act are reasonable and are in the interest of the general public. There can be little or no doubt that if a mathadhipathi is of an unsound mind or suffers from any physical or mental defect or infirmity or has ceased to profess Hindu religion or the tenets of the math or if his case falls within Clauses (d) to (h) of Section 46(1) his removal would be in the interest of the general public. A mathadhipathi cannot possibly perform his duties either as a spiritual or a temporal head nor can he properly administer or manage the trust property if he falls within the categories mentioned in Clauses (a) to (d) or has been guilty of breach of trust or wilful default etc. or leads an immoral life (vide Clauses (e) to (h) of Section 46(1)). Even under the CPC his removal could have been ordered in proceedings u/s 92 for similar reasons.

8. The suspension of a mathadhipathi, during the inquiry, is a necessary and reasonable part of the procedure which has been prescribed by Section 46. If he is allowed to

function during the pendency of an inquiry the entire purpose of the enquiry might be defeated. The mathadhipathi, may, during the pendency of the inquiry, do away with most of the evidence or tamper with the books of account or otherwise commit acts of misappropriation and defalcation in respect of the properties of the math. It is essential, therefore, in these circumstances to make a provision for suspending him till the enquiry concludes and an order is made either exonerating him or directing his removal.

9. On the question whether Sections 46 and 47 of the Act contravene Articles 25 and 26, a good deal of reliance has been placed on the observations in the first Shirur Math (1954) Supp. S.C.R. 1005. case. Mukherjea, J. (as he then was) delivering the judgment of the court had examined the scope of the language of Articles 25 and 26. It was indicated by him that freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practice as well as subject to the restrictions which the Constitution itself has laid down. Under Article 26(b), therefore, "a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion and no outside authority has any jurisdiction to interfere with its decision in such matters. Moreover under Article 26(d) it is the fundamental right of a religious denomination or its representative to administer its property in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. It was further laid down that a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under Clause (d) of Article 26. Now u/s 47 of the Act where a mathadhipathi is under suspension the Commissioner can make such arrangement as he thinks fit for the administration of the math until another mathadhipathi succeeds to the office and in making such arrangement he has to have due regard to the claims of the disciples of the math. It is maintained on behalf of the petitioner that the appointment of Assistant Commissioner, Endowments Department, Tirupathi as the day to-day administrator of the math and its endowment as a two-fold effect. The first is that the complete autonomy which a religious denomination like the math in question enjoys in the matter of observance of rights and ceremonies essential to the tenets of the religion has been interfered with. The second is that the right of administration has been altogether taken away from the hands of the religious" denomination by vesting it in the Assistant Commissioner. This clearly contravenes the provisions of Clauses (b) and (d) of Article 26 within the rule laid down in the first Shirur Math case. By doing so in exercise of the powers u/s 47 the Commissioner has also debarred the petitioner from practising and propagating religion freely which he is entitled to do under Article 25(1).

10. The attack on the ground of violation of Article 25(1) can be disposed of quite briefly. It has nowhere been established that the petitioner has been prohibited or debarred from professing, practising and propagating his religion. A good deal of material has been placed on the record to show that the entire math is being guarded by police constables

but that does not mean that the petitioner cannot be allowed to enter the math premises and exercise the fundamental right conferred by Article 25(1) of the Constitution. As regards the contravention of Clauses (b) and (d) of Article 26 there is nothing in Sections 46 and 47 which empowers the Commissioner to interfere with the autonomy of the religious denomination in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion the denomination professes or practice nor has it been shown that any such order has been made by the Commissioner or that the Assistant Commissioner who has been put in charge of the day to-day affairs is interfering in such matters. Section 47 of the Act deals only with a situation where there is a temporary vacancy in the office of the mathadhipathi by reason of any dispute in regard to the right of succession to the office or the other reasons stated therein as also because the mathadhipathi has been suspended pending an inquiry u/s 46. Its provisions do not take away the right of administration from the hands of a religious denomination altogether and vest it for all times in a person or authority who is not entitled to exercise that right under the customary rule and custom prevailing in the math. In the first Shirur math case, Section 56 of the repealed Act before its amendment by Act 12 of 1954 was struck down as power had been given to the Commissioner to require the trustee to appoint a manager for the administration of the secular affairs of the institution and the Commissioner himself could also make the appointment. It was pointed out that this power could be exercised at the mere option of the Commissioner without any justifying necessity whatsoever and no pre-requisites like mismanagement of property or maladministration of trust funds were necessary to enable the trustee to exercise such drastic power. The effect of the section really was that the Commissioner was at liberty, at any moment, to deprive the Mahant of his right to administer the trust property even if there was no negligence or maladministration on his part. Such a restriction was held to be opposed to the provisions of Article 26(d) of the Constitution. Section 47 of the Act is not in pari materia with Section 56 of the repealed Act. On the contrary Section 47 indicates quite clearly the conditions and situations in which the Commissioner can appoint someone to carry on the administration of the math and its endowments. In the present case, the Assistant Commissioner has been appointed as a day to-day administrator because of the inquiry which is pending against the petitioner and in which serious charges of misappropriation and defalcation of trust funds and leading an immoral life are being investigated. It cannot be said that Section 47 would be hit by Article 26(d) of the Constitution as the powers under it will be exercised, inter alia, when mismanagement of property or maladministration of trust funds are involved.

11. Counsel for the petitioner has not made any serious attempt to argue that in the view that we are inclined to take there would be any contravention of Article 31(1) of the Constitution. He has, however, pressed for the petitioner being allowed to take the padakanukas which are receivable by the Mahant of which he will keep an account as was directed by this Court when disposing of the stay petition on December 13, 1968. Counsel for the respondent agrees to this and has also agreed to keep accounts of whatever amount is spent on feeding the sadhus and on the management of the math

property. He has further given an undertaking that the inquiry which is being conducted u/s 46 of the Act will be concluded within a period of three months. It may be made clear that the Assistant Commissioner who is in charge of the day-to-day administration temporarily of the math and its endowments shall be fully entitled to take necessary steps for recovery of all debts and claims which could have been recovered by the Mahant from various debtors etc.

12. The writ petition, however, fails and it is dismissed, but in view of the entire circumstances we make no order as to costs.