(1925) 08 BOM CK 0018

Bombay High Court

Case No: None

Shankarlal Purshottam Gor and Others		APPELLANT
	Vs	
Dakor Temple Committee and Others		RESPONDENT

Date of Decision: Aug. 25, 1925

Acts Referred:

- Civil Procedure Code, 1882 - Section 30

Citation: AIR 1926 Bom 179

Hon'ble Judges: Fawcett, J

Bench: Division Bench

Judgement

Fawcett, J.

The facts out of which this application arises have been fully stated in this Court''s judgment of April 11, 1919, in Appeal No. 223 of 1915, and need not be re-stated. That judgment, and the consequential one of September 22, 1919, have been set aside under the judgment of their Lordships in Privy Council in Appeal No. 95 of 1923. In that judgment it is said : "The High Court at Bombay had power conferred upon it by Clause 20 of the scheme confirmed by His Majesty''s Order in Council upon an application made to it with that object to alter, modify or add to the rules sanctioned by the District Judge, but it had no other power, and that power it did not exercise; it may, however, still be exercised upon application properly made to it." Accordingly the present application has been made by twelve Gors "for themselves and on behalf of the other Tarwadi Mewada Gors, residing at Dakore." Their main contention is that the rules framed by the Temple Committee and sanctioned by the District Judge are illegal and ultra vires, so far as they impose fixed fees in payment for passes, whether on the Gors or the general public entitled to worship in the temple at Dakore. They also urge that some of the rules are objectionable, so far as they impose on the Gors the necessity of obtaining a free pass for entering the Nij

Mandir and ascending the Sinhasan for the purpose of performing worship and other religious rites. Detailed modifications of certain rules are proposed.

2. We have heard all the parties concerned in the matter. The Advocate-General supports the contention that no fees should be charged, but is in favour of free passes being required for entry to the Niz Mandir and ascending the Sinhasan. This view is also taken by Opponent No. 3, the representative of the Tambekar family who have a special position with reference to this temple. On the other hand, the Temple Committee and the representatives of the Sevaks oppose the modification of the rules.

3. Before considering the questions that arise upon their merits, it is necessary to dispose of a preliminary objection that was raised by Sir Chimanlal Setalvad for the Sevaks. He contends that under Clause 20 of the scheme it is not competent to this Court to interfere with the rules framed by the Temple Committee and sanctioned by the District Judge; and that the powers of this Court under that clause are confined to an alteration of the provisions of the scheme itself.

4. Clause 20 says:

The provisions of this scheme may be altered, modified or added to by an application to His Majesty''s High Court of Judicature at Bombay.

5. Clause 12 says:

The Committee shall have power:

(1) To take the temple property into their custody and to provide for efficient cheeks for its preservation, maintenance and growth.

(2) To make rules for the guidance of their business.

(3) To make rules for securing the punctual performance of the Seva by the Sevaks in due conformity with the established practice of the institution.

(4) To make rules for the issue of passes as to the admission into the Nij Mandir and on the Sinhasan Patia in order to prevent overcrowding and pre serve order at those places, provided that such rules shall not affect any member of the Tambekar family or interfere with the decided rights of the Sevaks and the Gors.

(5) To make rules for keeping accounts in a proper manner.

(6) To provide for punishment for the breach of the rules.

(7) To have all the rules framed by them sanctioned by the District Court of Ahmedabad to the intent that the rules, which sanctioned, shall have the same force as if they were part of this scheme.

(8) To modify, alter and rescind any of the rules made by them with similar sanction.

6. In view of the express provision in Clause 12(7) that "the rules, when sanctioned, shall have force as if they were part of this scheme" we feel no doubt that the objection fails. Sir Chimanlal contends that this does not make the rules part of the scheme, but only means that the rules are to be executed and obeyed, as if they were part of the scheme. This distinction is not, in our opinion, justified. The case is analogous to one where an Act confers power to make rules under the Act and enacts that rules so made " shall be of the same effect as if they were contained in "the Act. In such a case there is the high authority of Lord Herschell for saying that such words can be given no" other meaning than this, that you shall for all purposes of construction or obligation or otherwise treat them exactly as if they were in the Act : "see Institute of Patent Agents v. Lockwood [1894] A.C. 347 . Similarly Lord Watson says at p. 365 (of A.C.) : "Such rules are to as effectual as if they were part of the statute itself." A similar view was taken by a Full Bench of this Court in Secretary of State v. Bhaskar AIR 1925 Bom. 485 in regard to rules made under the Indian Forest Act, 1878, which, u/s 77 of that Act, "have the force of law." The Bench held that in view of this provision such a rule " must be considered as taking its place within the Act."

7. Accordingly we hold that the effect of the words I have referred to in Clause 12(7) of the scheme is to make the rules now under consideration part of the scheme for the purposes of Clause 20. This is ha accordance with the opinion already-expressed both by this Court (see the paper of the appeal to the Privy Council, P. 227, lines 39 - 41) and the Privy Council in the extract from their judgment already given. The latter opinion is necessarily entitled to the greatest weighty even if it is not binding on us.

8. The main question to be decided is the legality of (a) requiring passes and (b) imposing fees for passes (1) in the case of Tarwadi Mewada Gors, residing at Dakore and (2) in the case of worshippers at the temple. As to (1) it is, in my opinion, clear that to impose fees on Gors would " interfere with the decided rights of the.... Gors" within the meaning of Clause 2(4) of the scheme, and that any rules purporting to impose such fees would be ultra vires. The legality of rules levying such fees was the main issue in Suit No. 18 of 1887 between the Gors and the Sevaks, and was decided in favour of the Gors by Mr. Dayaram Gidumal (P.C. paper-book, pp. 320 and 323). The decision was upheld by this Court in First Appeal No. 36 of 1888 (ib. pp. 330 and 332). The learned Judges went further and held that the levy of fees from worshippers also was illegal-that is a question which can best be considered later. But, so far as the Gors are concerned, I agree with Diwan Bahadur Rao that rules imposing fees for passes on them would be ultra vires.

9. Sir Chimanlal Setalvad contended the contrary. His first point was that there was nothing in the decrees passed in Suit No. 18 of 1887 or First Appeal No. 36 of 1888 to make the present rules inconsistent. So far as they provide for free passee to Gors, this must be conceded unless we go further and hold that to require any passes at all is an interference with the decided rights of the Gors. The latter was the

view which Diwan Bahadur Rao asked us to adopt; but, in my opinion, this is going too far. The declared rights of the Gors were made "subject to the right of the Sevaks to enforce orderliness and decency of worship," and the pass-system is one which, if properly designed and worded, can help considerably towards the maintenance of such orderliness and decency. The rules requiring free passes from Gors are based on this ground (cf. R. 56), and I think the District Judge rightly distinguished between Gors having to take a pass and having to pay a fee for it (P. G. paper-book, p. 116). With due deference I do not agree with the view taken in the Appeals of 1915 (ib., p. 229) that Rules 56 and 57 should be amended, so far as they require free passes, as being restrictions upon the established rights of the Gors to enter with their Yajmans into the Nij Mandir. They are in a sense " restrictions " but they are very small ones and fall within the excepted rights of the Sevaks mentioned in the decree that I have already referred to. Those rights have also to be regarded under Clause 12(4) of the scheme, and the Temple Committee in working the rules can, I think, be trusted to see that the requirement of a free pass does not unduly interfere with a Gor''s right of free access to the Nij Mandir and of ascending the Sinhasan Patia with the permission of the attendant Sevaks; and the requirement is one calculated to promote the general interests of the institution and one of which the Gors cannot reasonably complain. The gravamen of their complaint in the suit of 1887 was the loss of emoluments caused by the levy of fees (cf. P.C. paper-book, pp. 286 and 328), and not the requirement to take out passes apart from such levy.

10. Sir Chimanlal contended that the decrees in the litigation between the Gors and the Sevaks could not bind the Temple Committee, who were not parties to that litigation. With this may be taken Diwan Bahadur Rao''s contention that the rules must be in accordance with the established practice of the institution. Both contentions, in my opinion, go too far. The Privy Council no doubt approved the direction of this Court that in framing the scheme due consideration was to be given to the established practice of the institution : Chotalal v. Manohar Ganesk Tambekar [1899] 24 Bom. 50. But that does not mean that the scheme and any rules thereunder must always conform to such established practice. A scheme in fact supersedes established practice : Ramanathan Chetti v. Muruyappa Chetti Q , and the interests of the institution and the facilitating of the work of management are the primary matters for consideration both in preparing the scheme and making any modifications in it : Mahomed Ismail Ariff v. Ahmed Moolla Daivood [1916] 43 Cal. 1085. There should be means of progress, even if this involves some departure from established practice, and the provisions of Clause 12, especially Sub-clause (1), (4), (9) and (11), show that the framers of the scheme had this in mind. On the other hand, the scheme directs that the established practice of the institution is to be regarded in framing rules under Sub-clause (3) and 18 of Clause 12, and Rule 17 speaks of a reasonable regard to the past practice." Inasmuch as Sub-clause (4) of Clause 12 especially provides for rules for the issue of passes, and does not say that in framing such rules " regard must be had to the established practice of the

institution," whereas it does say such rules shall not " interfere with the decided right of the Sevaks and Gors " it seems perfectly clear that the committee are not tied down to past practice. In fact this would prevent them making any rules for passes at all, if the practice prior to 1883 is to be observed, as Diwan Bahadur Rao contends it should. This can clearly never have been intended. Equally it is quite clear that, as Sub-clause (4) expressly says the rules shall not interfere with the decided rights of the Sevaks and the Gors, the decrees in the litigation between them cannot be put entirely on one side, as Sir Chimanlal Setalvad asks us to do.

11. Nor do I think his contention, that those decrees can only be given effect to in favour of the individual plaintiffs in the suit of 1887, and not in favour of the Gors as a class, is on any sounder footing. It is quite clear that the plaintiffs sued not merely on their own behalf, but on behalf also of their brother Gors as a class ; and permission to sue on behalf of all having the same interest was in fact asked for u/s 30 of the Code of Civil Procedure, 1882, corresponding to Order 1, Rule 8, of the present Code. The prayer was apparently not allowed, and instead the various other Gors affected were joined as plaintiffs (see per Parsons, J., at P. 331 of the paper book). But the suit was treated as a representative suit and a decree granted in regard to the general rights and privileges of the Gors against the Sevaks (ib. pp. 292 and 323). Parsons, J., thought this irregular, but that interference was not called for (ib. pp. 331-2). In the circumstances, the decrees must obviously be treated as establishing the rights of Gors generally, at any rate of those-Gors who are Tarwadi Mewada Gors residing at Dakore, the class to which all the plaintiffs belonged. Order 1, Rule 8, Civil P.C. is merely an enabling rule and does not prevent a representative suit being brought in any other manner that the law permits. Thus one or two persons can sue in respect of maladministration of property belonging to the community : Thakersey Dewraj v. Hurbhum Narsey [1883] 6 Bom. 432 and an injunction obtained by them will enure for the benefit of all others similarly affected : Purandas Mohandas v. Girdharlal Mathuradas [1897] P.J. 165 . See also Halsbury''s Laws of England, Vol. IV, Article 1134 and foot-notes (q) and (r) at pp. 518,519. The case is one which, in my opinion, clearly falls under Explanation VI to Section 11 of the Civil P.C. Moreover, the scheme impliedly recognizes that the suit in question was a representative one by providing in Clause 12(4) for "the decided rights of the Sevaks and the Gors." The suit of 1887 (it was originally filed in 1884) was the only litigation in regard to rules for passes; and it is absurd to suppose that the framers of the scheme meant that only the rights of the individual plaintiffs and defendants to that suit should be respected. I agree, therefore, with the view taken by the District Judge that the concession as to a free pass should ''apply to all ''the Tarwadi Mewada Gors who hold Vrittis at present (P.B., p. 116), a view upheld by this Court in Appeals of 1915 (ib., p. 229).

12. The remaining contentions of Sir Chi'' manlal Setalvad on this point may be taken together. He argued that the rights of the Gors, as so decreed, were not allowed to prevail against the Receiver or subsequently against the Temple Committee, and

that was equivalent to a judicial decision that the decrees in the litigation referred to did not bind the Temple Committee. He also contended that, as Rule 13 of the scheme as sanctioned by the Privy Council allows the pass rules with fees to continue, until the rules mentioned in Clause 12 are framed and sanctioned, there was no longer any objection to those rules being allowed under Clause 12(4). Both these arguments unduly ignore the provisional nature of the orders and directions referred to. They merely amount to allowing the old rules to continue, without prejudice to the contentions of the respective parties, to be dealt with when rules were made and sanctioned under Clause (12). Mr. Me Corkell''s judgment (P.B., p. 341) refers to the necessity of having some rules pending the framing of a scheme so as to avoid the necessity of referring every current question of management for orders to the District Judge; and he naturally preferred to continue rules which had been working since 1883 and not been interfered with by the Receiver to the task of drawing up interim rules, which were sure to be objected to by one side or the other. In my opinion, it is absurd to treat this order, or Rule 13 of the scheme, as anything but provisional and ''without prejudice.'' Sir Chimanlal referred to In re Sultan Goldfield Grammar School [1881] 7 H.L.C. 91 in support of his contention that Rule 13 should be given some degree of finality, though it was expressed to be of a provisional nature. But that was an entirely different case. A scheme was framed, which in form was final and not provisional. It was argued that it was not final,'' because it contained a clause saying that it might in whole or in part be varied by a future scheme. It was held that this merely reserved the statutory right to make future schemes, which the present scheme could not either then or thereafter prejudice. The contention that the continuance of the rules for passes with fees was not a purely "temporary arrangement" has al-ready been twice rejected by this Court (P.B., pp. 227 and 258); and, I think, there is clearly no substance in it.

13. There remains the question of the legality of levying fees for passes from ordinary worshippers. No doubt this was stigmatized as improper, illegal and ultra vires in the previous litigation (P. B., pp. 320 and 332). But these remarks seem to me obiter dicta so far as the rights of worshippers and not the rights of Gors, which were the subject-matter of the suit, are concerned. They must of course, be treated with great respect, and we propose to do this in dealing with the present application. But, on the other hand, it is, I think, clear that a right of worship at a temple is not an absolutely unrestricted right. It obviously must be subject to reasonable regulations for preventing overcrowding, etc. Thus in Ankepeti Subba Reddi (died) and Others Vs. Tippana Narayana Reddi and Gani Subba Reddi, it was held that the mere fact that a person had offered worship at a particular place for a number of years would not necessarily give him a right to do so; and that the Courts should be slow to recognize, without proper evidence, claims of right which would materially interfere with the rights of trustees to regulate the worship and ceremonial of temples in the interests of the whole community.

14. Similarly in England a parishoner''s right to attend Church is subject to his obeying the reasonable directions of the Churchwardens as to which seat he shall occupy; and fees or rents can be charged for pews or enclosed seats in a Church : of. Halsbury''s Laws of England Vol. XI, Articles 1453-1457, at pp. 737 to 741. The argument that, because there is a statutory duty upon members of the Church of England to go to Church, there is a correlative general right to go to Church on those who are obliged to go Taylor v. Timson [1888] 20 Q.B.D. 671 does not apply to Hindus and others in India. There is also, as pointed out in my learned brother''s judgment which I have had an opportunity of perusing, a distinction between the temple and the inner sanctuary, which should be borne in mind. The levy of fees for admission to the Hatter is not on the same footing as a similar levy for admission to the main hall of the temple. Accordingly, I can see no sufficient ground for treating the rules prescribing the paas system as illegal and ultra vires in so far as they have imposed fixed fees in payment for the passes, "whether upon the Gors or the general public entitled to worship in the temple at Dakore," as was done in this Court''s judgment of April 11, 1919, (ib. p. 227) which has been set aside. So far as the judicial decisions of 1887 and 1893 treat of rights other than those of the Gors and the Sevaks, they are not recognized in Clause 12 (4) of the scheme as prevailing over the general power of the Committee "to make rules for the issue of passes," &c; and for reasons, I have already given, I do not think it is legitimate to bring in "the established practice of the institution" in considering this question. The words to make rules for the issue of passes" are wide enough to cover what is as is pointed out by Lord Herschell in Institute of Patent Agents v. Lockwood [1894] A.C. 347 an ordinary accessory right to fix such fees as may be thought reasonable and necessary for carrying into effect the object of the rules. Also the rules allowed to continue under Clause 13 of the scheme provided for the levy of fees. Therefore, so far as yajmans are concerned, I do not think it was beyond the legal competence of the Temple Committee to frame, and of the District Judge to sanction, such rules as are now before us, and I accept the view put before us by the learned Advocate-General on this point.

15. But of course in dealing with the application, we are not confined to the question of legality alone. As a controlling authority, by virtue of the power reserved to us in Clause 20 of the scheme, it is our duty to consider also the objections that have been urged to allowing fees to be charged for passes. It is an important question in which we can, in my opinion, properly interfere, having due regard to the well - known principles on which alone a controlling authority should interfere with the bona fide exercise of the power to make and sanction rules which has been entrusted to specific bodies or persons. I am prepared to accede to the statement that the levy of such fees is not unprecedented or confined to this temple alone : thus I see it is stated by Seshagiri Ayyar, J. in Venkataramana Ayyangar v. Kasturiranga Ayyangar [1916] 40 Mad. 212 that "in all the important temples in Southern India, devotees are called upon to pay a fixed sum for the archana that has to be performed." On

the other hand, such payment is opposed to Hindu sentiment on the subject, as stated by Mr. Dayaram Gidumal (p. 320) and Mr. Kennedy (p. 116), though the supposition that no other temple in India does anything of the sort seems incorrect. In the present case I agree with my learned brother that the onus lies on the Temple Committee to establish a case justifying the levy of fees from the public visiting the temple, and that they have not done this. The financial position of the institution certainly does not indicate any such necessity.

16. In my opinion, therefore, the rules (as printed at p. 119 to 132 of the paper-bcok) only require modification to the extent detailed in my learned brother''s judgment, and we order accordingly.

17. As to costs, after hearing the parties, we order that, as the Gors and the Sevaks have each partially failed and partially succeeded and the appearance of the representative of the Tambekar family was not really necessary, each party should bear his own costs, except the Advocate-General, whose costs should be paid out of the funds of the institution by the Temple Committee.

18. Mr. Batanlal has kindly agreed to translate the modifications of the rules which we have directed; and the translation, if agreed to, should be appended to the decree, otherwise the translation will be settled on speaking to the minutes of the decree.

Madgavkar, J.

19. This is an application by certain Gors of Dakore, asking this Court to alter certain rules framed by the Dakore Temple Committee and sanctioned by the District Judge, Ahmedabad, under the scheme framed by this Court as modified by the Privy Council. The applicant had applied to the District Judge, Ahmedabad, in a Miscellaneous Application No. 21 of 1912 and to this Court in Appeal No. 223 of 1915. The opponents, Sevaks Jairanchod and others, after obtaining leave in this Court, appealed to the Privy Council in Appeal No. 95 of 1923. That appeal was allowed by their Lordships of the Privy Council, who held that the judgment of this Court, in appeal dated September 22, 1919, was not competent and must be set aside on the ground of jurisdiction. Their Lordships of the Privy Council added an expression of opinion that this Court had power conferred upon it by Clause 20 of the scheme to alter, or modify or add to the rules sanctioned by the District Judge and that this power would be exercised upon application properly made to it.

20. Accordingly, the Gors who had succeeded in appeal to this Court, but who failed in the appeal before the Privy Council, make the present application asking this Court under Clause 20 above, to modify certain rules made by the Dakore Temple Committee.

21. The opponents are, firstly : the Temple Committee by its Manager, secondly the Advocate-General as representing the public; and, thirdly, added on his own

application, Gopalrao Manohar Tambekar, the manager of the Inam villages. The five Sevaks, the appellants to the Privy Council, were, on their own application, added as opponents by this Court. All the interested parties are, therefore, represented.

22. Details apart, the main grievance of the Gors applicants relates, firstly, to passes; and, secondly, to fees imposed by the Committee. ''Again, speaking broadly, the application is supported by Tambekar and, in regard to fees, by the Advocate-General, and is opposed by the Sevaks and the Temple Committee.

23. A preliminary objection as to jurisdiction was taken on behalf of the Sevaks. The scheme itself, as framed by this Court and amended by the Privy Council, is to be found at pages 282, 284, Part III Exhibits, the rules as sanctioned by the District Judge at pages 119 to 131 of the printed book, and the judgment of this Court in Appeal No. 293 of 1915 on pages 224 to 232 of the Privy Council record.

24. The objection of jurisdiction is that the last clause of the scheme under which alone this application would lie does not apply to rules framed by the Committee but only to the provisions of the scheme itself. That clause is as follows : "The provisions of this scheme may be altered, modified or added to by any application to His Majesty''s High Court of Judicature at Bombay." The words on ''necessity arising'' after the words ''may,'' which had originally been inserted by this Court, were omitted by direction of the Privy Council.

25. It is argued for the Sevaks that this power applies only to the provisions of the scheme itself and not to rules framed by the Committee under Clause 12 of the scheme. Sub-clause 7 and 8 of Clause 12 are as follows:

The Committee shall have power:

(7) To have all the rules framed by them sanctioned by the District Court, Ahmedabad, to the intent that the rules, when sanctioned, shall have the same force as if they were part of the scheme;

(8) to modify, alter and rescind any of the rules made by them with similar sanction.

26. It is contended that even though the rules framed by the Committee and sanctioned by the District Court have the same force as if they were part of the scheme, this does not make them provisions of the scheme within the meaning of the last Clause 20 above. To this position the Committee assent hut the other parties oppose on the ground that the rules sanctioned by the District Court are part of the scheme and therefore within the purview of Clause 20.

27. I am of opinion that the objection for the Sevaks and the Committee is not tenable. The scheme read as a whole is clear. It had to be framed because of the previous mismanagement of the temple by the Sevaks and Tambekar and the quarrels and litigation between these two parties and the Gors, to the prejudice of

the temple, the Deity and the worshippers. To safeguard these last supreme interests, a Committee was appointed with a resident member on the spot and with powers as defined in Clause 12. The power of making as well as of altering rules was, however, subject to sanction by the District Court of Ahmedabad, and the power to alter the scheme itself was kept in reserve by this Court. This power applied to all the provisions of the scheme at any time, Under Clause 12, Sub-clause 7, the rules framed by the Committee and sanctioned by the District Court become part of the scheme, and it is only because they become part of the scheme that they have force in law. The argument for the Sevaks pressed to its logical conclusion would mean either that the rules framed by the Committee, and once sanctioned, are irrevocable except on the initiative of the Committee and sanction by the District Court under Clause 12, Sub-Clause 8, or that this Court would have in the first instance to add an express clause to the scheme, empowering itself to alter the rules and then allow an application such as the present. I do not think that the first alternative is consistent with the reservation of powers in this Court under Clause 20. The second alternative is merely a round-about way, which serves no purpose and leads to the same result as the present application, Even apart from the continuous litigation in regard to the temple, neither upon, the scheme as a whole nor the pertinent clause is it reasonable to hold that the procedure contended for on behalf of the Sevaks was the one contemplated. I am of opinion that Clause 7 has exactly the same construction as though it read that the rules shall be part of the scheme and shall have the same force. In other words they are as liable to alteration or modification by this Court as any other provision of the scheme itself. The preliminary objection against the application, in my opinion, fails.

28. On the merits it is contended for the Gors that the system of passes and of fees is opposed, firstly, to the established practice; secondly, to the decided rights of the applicants Gors, which are expressly safeguarded by Clause 12 of the scheme, and, thirdly, to the conclusion of the Courts in the judgment of the Assistant Judge of Ahmedabad in Suit No. 18 of 1887, which is to be found on pages 285 and 323, Part III, and to the judgment of this Court in First Appeal No. 36 of 1888 from this decree, pages 328 to 332. It is also argued that the necessity for passes or tickets or fees is not shown.

29. For the Sevakas and the Committee it is contended that in the interests of the temple both the passes and the fees are indispensable and that they are not contrary to the decided rights of the Gors. These rights are the rights not of a class but only of the particular plaintiffs in the suit of 1888; and passes and fees have worked well in practice from 1883 to 1919. There are also affidavits to show that fees are levied in numerous other temples of both Vaishnavas and Shaivaits such as Dwarka, Rameshwar and others, and it is argued that this Court ought not to interfere with the rules framed by a practical body such as the Committee, which contains leading and disinterested Vaishnava gentlemen of weight and experience.

30. With this last contention I entirely agree both on general principles as well as on the scheme as framed. As I have said above, the management is intended to be left in the hands of the Committee and the framing of the rules is within the power of the said Committee, subject only to the sanction of the District Court. Once that sanction is obtained, it would ordinarily require very good grounds before this Court would allow or lightly entertain any, application to alter such rules. The managing member who is always on the spot, the Committee which can often meet there, the District Judge who is within easy distance and knows the local conditions, are authorities far better placed to judge ordinarily all matters within the scope of the rules than we are. As was observed in Attorney-General v. Bishop of Worcester [1852] 9 Hare 328 : This Court is in the constant habit of altering schemes which have been settled under its decrees, as the alterations of times and circumstances have required; and it has frequently done so upon petition in the causes in which the decrees have been made; and I do not think that the power of the Court to make such alterations can depend upon the character in which the decree has been made by the Lord Chancellor....

It is obvious, I think, that the Court must proceed upon such applications with the utmost possible caution; that what has been done by the Court must not be disturbed, except upon the most substantial grounds, and upon the clearest evidence, not only that the scheme does not operate beneficially, but that it can by alteration be made to do so consistently with the object of the foundation.

31. Similar observations were made by Lord Alverstone, C.J., in London County Council v. Bermondsey Bioscope Co. Limited [1911] 1 K.B. 445.

32. It is in this spirit that the present application should, in my opinion, be disposed of and it appears preferable to dispose of the question of passes or tickets separately from that of fees. In spite of the elaborate arguments for the applicants, the passes do not, in my opinion, affect their right as decided by the Courts. The present Rule 56 expressly makes reference to their decided rights in Appeal No. 36 of 1888 and the concluding words "and they will be given a free pass for the same" show that no obstruction in the way of their exercise of these rights is implied or achieved. On the other hand, the opinions of the Courts from the time the passes have been issued are practically unanimous that the confined space of the Nij Mandir and much more of the Sinhasan and the large number of pilgrims who desire to enter it, particularly on Punam day and festival days, as well as the necessity for the safe custody of the valuable ornaments on the person of the idol - all these circumstances render some regulation of entrance into the Nij Mandir absolutely necessary; and other than passes or tickets no other means of regulation are suggested. The mere fact that passes were not issued for centuries is no argument. Railways did not then exist, the population was not so numerous, nor travel so safe; and even in the old days, as is pointed out on behalf of the applicants Gors in other applications the management of the temple both on the part of

Tambekar and of the Sevaks left a great deal to be desired. On all these grounds it appears to me that no case is made out for our interference in the matter of the passes, even as regards Gors. The only point in favour of the application as regards the passes is perhaps Rule 60 under which Vaishnavas of Dakore Gam can apparently enter the inner temple without passes. There is nothing on the record to show the number of families of Vaishnavas or the number out of these, who habitually resort to the inner temple ; and in any case the concluding sentence of Rule 60 gives the manager the power to exclude the Vaishnavas at times of crowd or for any other proper reason. For these reasons, as regards the free passes in general and Rule 56 in particular, the application, in my opinion, fails.

33. As regards the fees, it appears that they were first imposed by Sevaks and continued by the Receiver appointed by the Court and then by the Temple Committee. The scale of fees is moderate; and at a late stage of the case a clerk in the office of the temple has put in an affidavit with annexures showing the number of passes and the amounts realized. Here again the argument for the applicants rests on two bases. Firstly, of legal rights, and, secondly, of custom. No fees are charged to the applicants themselves. They are levied on the pilgrims desirous of entering the Nij Mandir and of performing certain special ceremonies, which involve the touching of the Deity, ascending the Sinhasan and remaining for some time near the idol. In the judgment in the original suit of 1888, the idea of taking fees in Hindu temples was characterized as repugnant to Hindus and was the subject of very strong comment. It appears that while there are other famous temples such as Pandharpur, where no fees are levied, there are equally others not less famous such as Dwarka, which is second, if at all, only to Dakore, and Rameshwar, where fees are levied. On the first point it appears to me necessary to distinguish between the levy of fees in the main body of the temple, such as the Sabha Mandap, and the levy of fees in, so to speak, the Holy of Holies and for special rites, as distinguished from the general worship or Darshan and sight of the idol. As far as I know, it is undoubted that every Hindu has ordinarily a right to enter a Hindu temple and obtain sight of the idol and perform his act of worship from a distance in the main body of the temple, such as the Sabha Mandap here, without any payment of fees; and payment for mere entrance would, I think, undoubtedly be repugnant to Hindu ideas. On the other hand, not only in a Hindu temple but also in other places of worship, there is often a Holy of Holies to which access is not equally free and is regulated by special rules for the special right to enter and perform worship therein; and there does not appear to me to be the same sentiment against the regulation of entrance into this Holy of Holies by whatever rules that may be necessary from the point of view of that particular religion and that particular form of worship in that particular temple. Thus, in the ordinary Hindu temple, the Sevak is not always present, the doors of the inner temple where the idol is kept are not always open but are locked up, while he is away, so that without his presence and permission contact with the idol is impossible. At the same time it is, I think, undoubted that

until the Sayaks started and the Receiver continued the system of fees for entrance in the Nij Mandir, and for special forms of worshipt such compulsory fees were not known in the Dakore temple. Therefore, to a certain extent, the onus is, in my opinion, on the Committee, which wishes to perpetuate these fees, to show that they are necessary or at least advisable. And, as it happens, these passes and fees have been enforced for a period of exactly thirty years from 1887 to 1918 till the decision of this Court in 1919 in Appeal No. 223 of 1915, which decided against the fees-Pending the appeal by the Sevaks to the Privy Council, the Sevaks applied to this Court in Civil Application 828 of 1919 that the levy of fees for passes should be continued pending the decision of the Privy Council. That application was dismissed on September 22, 1920, and fees have not since then been levied. We are, therefore, now in a position to see the consequences of the imposition of these fees for a period of thirty years, and their cessation for a period of five years, as shown in the annexure A, B, by the clerk to the temple.

34. From these annexures it would appear that the cessation of fees has caused the number of passes both for Darshan and for Charansparsha and Kesarsnana to rise enormously from 11,208 and 13,641 in 1921 to 21,600 and 66,400 respectively. Column 4 of annexure A shows that daring the later years the total sale, proceeds from these passes and tickets varied from Rs. 7,000 to Rs. 8,000 a year. Under the judicious management of the Committee the income is nearly Rs. 2,00,000 and the expenditure about Rs. 1,65,000. After the total expenditure there is usually a surplus of at least Rs. 15,000 in ordinary years. There is a total reserve of nearly Rs. 1-3/4 lacs.

35. The net balance is divided in equal shares between the temple funds and the Sevaks. From these figures I conclude-that from a pecuniary point of view the imposition of these fees is not necessary for the temple itself and serves the interests of the Sevaks more than that of the temple. If so, and particularly in view of the Advocate-General representing the general public, I am of opinion that the cessation of the fees has gone on for five years, not only without prejudice of the temple, but also to the substantial convenience of the worshippers in the inner temple, as is apparent from the large increase in their members. The cessation of fees should, therefore, continue, at least until a clear case of necessity for their imposition is made out by the Temple Committee to the satisfaction of the District Court of Ahmedabad, in which case under Clause 12, Sub-clause 8 of the scheme, it would be open to the Committee to re-impose them. Whether such a necessity will arise, as was argued before us, from famine years or other fall in the revenue of the temple, necessary for the up-keep for the services of the idol and the maintenance of the cattle or otherwise, must be a matter for the future on which it is not advisable for us to express any opinion at present.

36. In the result, therefore, the application in my opinion fails as regards free passes or tickets, and succeeds as regards fees. As regards fees the payment, whether to

the temple or to the Sevaks or to the Gors should be, as far as possible, entirely a matter of option with the worshippers and not a matter of compulsion.