Sri-La-Sri Subramania Desika ... vs State Of Madras And Another on 10 February, 1965

Equivalent citations: 1965 AIR 1578, 1965 SCR (3) 17, AIR 1965 SUPREME COURT 1578

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, M. Hidayatullah, J.C. Shah, S.M. Sikri

PETITIONER:
SRI-LA-SRI SUBRAMANIA DESIKA GNANASAMBANDAPANDARASANNADHI

Vs.

RESPONDENT:
STATE OF MADRAS AND ANOTHER

DATE OF JUDGMENT:
10/02/1965

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
BENCH:
GAJENDRAGADKAR, P.B. (CJ)
HIDAYATULLAH, M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1965 AIR 1578 1965 SCR (3) 17

ACT:
Madras Hindu Religious and Charitable Endowments Act,1951, (Mad. Act 19 of 1951), s. 64(4),--Order under whether quasi-judicial--Reasonable opportunity, whether necessary.

HEADNOTE:
By a notification issued in 1937 the respondent State of Madras had made Ch. VI-A of the Hindu Religious Endowments Act, 1926, applicable to the Thiyagarajaswami temple at Tiruvarur. In 1956 the aforesaid notification was extended for a period of five years beginning on September 30, 1956. This was done in exercise of powers under s. 64(4) of the Madras Hindu Religious and Charitable Endowments Act, 1951. The appellant challenged the issue of the notification

under s. 64(4) in a writ petition before the High Court. At the hearing it was urged that the impugned notification was invalid as it had been passed without giving a reasonable opportunity to the appellant to show cause against it. The High Court while accepting this contention, nevertheless refused to issue. the writ prayed for because: (1) the said plea had not been taken in the writ petition and (2) the period for which the notification had been extended was shortly due to expire. The appellant came to the Supreme Court with certificate of fitness.

It was contended on behalf of the appellant that the two reasons given by the High Court for not issuing a writ were wrong. The respondent State on the other hand contended that no quasi-judicial enquiry was necessary for extending an existing notification under s. 64(4) although such an enquiry was necessary before issuing a notification for the first time under s. 64(3).

HELD: (i)' Whether f,or issuing a notification under 64(3) or for extending an existing notification under s. 64(4) the process of dec.ision is the same. In either case the Government had to satisfy itself whether supervision by the Executive Officer under the notification is required for public good. The Government cannot legitimately and satisfactorily consider the question as to whether the notification should be cancelled without hearing the party asking for cancellation; nor can it legitimately and reasonably decide to extend the notification without hearing the trustee. Circumstances could arise after the issue of the first notification which would help the Trustee to claim that the notification should either be cancelled or should not be extended. The nature of the order which can be passed under s. 64(4) and its effect on the rights of the Trustee are exactly similar to the order which can be passed under s. 64(3). [25 A-E]

The High Court was therefore right in holding that it was obligatory on the respondent State as a matter of natural justice to give, notice to the appellant before the impugned notication was passed by it. [25E]

Shri Radeshyam Khare & Ant. v. State of Madhya Pradesh and Ors. [1959] S.C.R. 1440, distinguished.

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(ii) Although the plea of denial of natural justice had not been taken by the appellant in his writ petition, it had been taken in the rejoinder, and the respondent thereafter had full notice of the said plea. Therefore the first reason given by the High Court for refusing the writ was wrong. [25G-H]

(ii) The High Court ignored the fact that before it delivered its judgment a new Act had come into force, namely, Madras Act XXII of 1959, whereby the life of the impugned notification had been extended. Therefore the second reason which weighed with the High Court in not issuing a writ in favour of the appellant, that the impugned

notification would remain in operation for a very short period after it delivered its judgment, was also wrong. [26C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: CIVIl. APPEAL No. 560 or 1964.

Appeal from the judgment and order dated August 11, 1961 of the Madras High Court in Writ Petition No. 295, of 1958. A.V. Viswanatha Sastri. R. Thiagarajan for R. Ganapathy lyer, for the petitioner.

A. Ranganadham Chetty and A.V. Rangam, for the respon- dents.

The Judgment of the Court was delivered by Gajendragadkar,C.J. On August 4, 1956, the Governor of Madras issued a notification in exercise of the powers conferred on him by sub-section (4) of s. 64 of the Madras Hindu Religious and Charitable Endowments Act. 1951 (Madras Act XIX of 1951) directing that notification No. 638, dated the 25th May, 1937. relating to Sri Thiyagarajaswami Temple, Tiruvarur, Nagapattanam Taluk, Tanjor District, be continued for a period of five years from September 30, 1956. The earlier notification which was thus continued had itself been issued by the respondent State of Madras in exercise of the powers conferred on it by clause (b) of sub-section (5) of s.65A of the Hindu Religious Endowments Act, 1926 (Madras Act 1I of 1927). declaring that the temple in question and the specific endowments attached thereto shall be subject to the provisions of Chapter VI-A of the said Act. In other words, the earlier notification which brought the temple of Sri Thiyagarajaswami at Tiruvarur under the purview of the earlier Madras Act has been extended by the notification issued on 4th August, 1956. for a further period' of five years. By a writ petition filed by the appellant, Sri-la-Sri Subramania Desika Gnana Sambanda Pandarasannadhi, Hereditary Trustee of the Rajan Kattalai of the temple in question, in the High Court of Madras the validity of this latter notification was challenged. The High Court has rejected the pleas raised by the appellant in support of his case that the impugned notification is invalid, and has dismissed the writ petition filed by him. It is against this order that the appellant has come to this Court with a certificate granted by the High Court. The controversy between the parties as it has been presented before us in appeal. really lies within a very narrow compass. but in order to appreciate the points raised for our decision, it is necessary to set out very briefly the background of the present litigation.

In the town of Tiruvarur in Thanjavur Dist. there is an ancient temple. The Presiding Deity is Sri Thyagarajaswami. A distinguishing feature of this temple is that apart from an allowance called the Mohini allowance', there is no other property which can be treated as devoted for its general maintenance. A large number of specific endowments called 'Kattalais' with specific reference to special services in the temple, its festivities and several charities in glorification of the principal deity, have however been made in respect of this temple. It is said' that there are 13 such Kattalais, the important amongst them being Rajan Kattalai, Ulthurai Kattalai, Abisheka Kattalai and

Annadanam Kattalai. In respect of these Kattalais, large endowments have been made. According to the appellant, these endowments were made by the Indian Rulers who ruled Thanjavur before the establishment of the British Rule. It appears that the management of each one of these Kattalais is vested in a certain Trustee or Trustees hereditarily. The trusteeship of Rajan Kattalai vests in the head of the Dharmapuram mutt in the Thanjavur district. The Dharmapuram mutt itself has large endowments of lands in Thanjavur and Tirunelveli districts. The head of this mutt is known as Pandarasannadhi and under his management there are about 27 temples. Having regard to the nature of the duties of the head of a mutt of this importance and magnitude, it is not possible for the Pandarasannadhi to supervise all the temples personally, and so, Deputies are appointed on his behalf to supervise and look after the management of the various institutions. With regard to the services connected with the Rajan Kattalai in Sri Thyagarajaswami temple at Thiruvarur, the head of Dharmapuram mutt generally functions through a deputy known as Kattalai Thambiran. Ordinarily, a Kattalai is a specific endowment in respect of which it would be competent for the founder to prescribe the line of trustees for its management, and so, the property endowed for the performance of the Kattalai in question cannot be held to be transferred in trust to the trustee vesting the legal estate therein in him; such legal estate would vest in the deity itself. Thus, the position of the Kattalai trustee would normally be no more than that of a manager of a Hindu Religious Endowment. It, however, appears that Kattalais which are attached to Sri Thyagarajaswami temple at Thiruvarur have been treated as constituting a slightly different category by the Madras High Court in Vythilinga Pandara Sannadhi v. Somasundara Mudaliar(1) but with that aspect of the matter, we are not concerned in the present appeal. In practice, a scheme appears to have been evolved that in .regard to the various services in the temple in respect of which Kattalais had been endowed, the management of the allotted properties vested in separate trustees and in that sense, all the trustees administering separate Kattalais could be said to constitute a kind of corporation in which (1)[1894] I.L.R. 17 Mad. 199.

the management of the temple properties vested. each one of its members being in charge of particular items of properties the proceeds of which would be utilised for the performance of a specific Kattalai.

In course, of time, however, this practice did not work harmoniously and coordination between the duties of the various trustees worked unsatisfactorily, because more emphasis came to be placed on the individuality of the Kattalais and that led to anomalies in the actual administration of the said Kattalais. As a result. in 1910, a suit was flied under s.92 of the Code of Civil Procedure for the settlement of a scheme to manage the affairs of the temple in the Sub-Court at Thanjavur. A scheme was accordingly settled. and when the matter was taken in appeal, the High Court substantially confirmed the said scheme (vide Gnana Sambanda v. Vaithilinga Mudaliar). (1) The scheme thus framed governed the management of the temple thereafter.

It appears that the affairs of the said temple again came up for consideration before the Madras High Court in Ramanathan Chettiar v. Balayee Ammal(2). In that case, the High Court rejected the contention of one of the Kattalai trustees that subject to the performance of services, the endowments in question had to be treated as his .property; the view taken by the High Court on this occasion was that all the Kattalais were appendages of the temple; though each Kattalaidar was a

separate trustee, there was no question of private ownership.

In the year 1931, there was another suit under s.92 of the Code on the file of the District Court, East Thanjavur for the modification of the scheme already framed. It was urged that certain defects in the scheme had been noticed in the actual working, and so, it was necessary to make some modifications. Accordingly, some modifications were made.

Meanwhile, the Madras Legislature passed the Madras Hindu Religious Endowments Act, 1927. The object of this Act was to provide for the proper administration and governance of certain Hindu Religious Endowments. The Act contemplated the supervision of these endowments through a statutory body called the Madras Hindu Religious Endowments Board. It divided the temples into "excepted and non-excepted temples". It also provided for the framing of a scheme for the management of the temples. This Act was amended by Madras Act IX of 1937. The result of the amendment was that Chapter VI-A was added to the Act of 1927. The provisions .of this chapter laid down that notwithstanding that a temple, or specific endowment attached to a temple was governed by a scheme previously framed by the Board or settled by a Court, the Board if it were satisfied that the temple or endowment was being mismanaged and that in the interests of the administration of the temple or endowment it was necessary to take (1) [1928] 18 L.W. 247. (2) [1923] 27 L.W. 33.

proceedings under the said Chapter, might "notify" the temple or endowment. and on the publication of such notification, the administration of the temple or endowment would go under the control of the Board notwithstanding the scheme which might have been framed already. On taking management of a notified temple or endowment, the Board was authorised to appoint an Executive Officer and define his duties. In consequence, such Executive Officer would virtually displace the trustee and would function under the control of the Endowment Board. The result of the notification in substance would. be that the previously existing scheme would be suspended, and the management would vest in the Board.

Soon after this Act was passed, proceedings were commenced by the Board for the purpose of notifying the temple with which we are concerned in the present appeal, and the Kattalais attached thereto. The Trustees of the various Kattalais naturally opposed this step, but their objections were over-ruled, and on May 25, 1937, a notification was issued. To this notification we have already referred. In pursuance of this notification, an Executive Officer was appointed by the Board on July 12, 1937. On July 30, 1937, the Board defined the powers of the Executive Officer and directed him to take charge and be in possession of the temple and the various Kattalais attached thereto. As a result of this order, the Executive Officer began to exercise all the Dowers and discharge all the functions of a trustee of a non-excepted temple, and that left very little powers in the hands of the trustees of the several Kattalais.

The Pandarasannadhi of the Dharmapuram Mutt who was then the hereditary Trustee of the Rajan Kattalai instituted C.S. No. 20 of 1938 in the Madras High Court for a declaration that the said notification was illegal and for setting aside the orders issued by the Board in pursuance of the said notification. It appears that the suit did not proceed to a trial, because the parties entered into a compromise. In substance, as a result of the compromise, the notification was maintained, but the

possession of the Kattalai properties was restored to the Trustee who was to manage the same by a staff under his control. and had to keep accounts. Certain other provisions were made to safeguard the efficient management of the said trust, and the overall control and supervision of the Executive Officer was maintained. One of the clauses of the compromise, clause

(k) expressly reserved to the Board liberty to re-define the powers and duties as specified above in case the trustee commits any wilful breach of the above terms and conditions or is guilty of wilful neglect of the duties specified above, provided that the Board shall not do so except on notice to the trustee and after giving reasonable opportunity to him to be heard in his defence. This compromise decree was passed on August 1, 1940, and since then, the administration of the Kattalai in question has been conducted jn accordance with the terms of this decree.

After the Constitution came into force on January 26, 1950,the Hindu Religious Endowments Act of 1927 was repealed and in its place Act XIX of 1951 was substituted. This latter Act came into force on September 30. 1951. Section 5 of this Act repealed the earlier Act of 1927. The Chapter relating to notification of temples and endowments was numbered as Chapter VI in the new Act. Section 64 of this new Act provided for the notification of a temple or a religious institution, and sub-s.(4) laid down that every notification published under this section shall remain in force for a period of five years from the date of its publication; but the Government may at any time on an application made to them cancel the notification. This section had made provision for the notification of religious institutions after this new Act came into force.Section 103(c) dealt with cases where notifications had been made trader the previous enactment. That section provided that the notification published under s.65A. sub-s.(3) or sub- s.(5) of the said Act and in force immediately before the commencement of the new Act would be deemed to be a notification published under s.64 and would be in force for five years from the date of the commencement of the new Act (No. XIX of 1951).

In 1956, another Amending Act (No. IX of 1956) was passed. Section 2 of this Amending Act substituted a new sub-section in the place of s.64(4). Under that provision, every notification published or deemed to be published under that section shall remain in force for a period of five years. but it may by notification be cancelled at any time or continued from time to time for a further period or periods not exceeding five years at a time as the Government may by notification in each case think fit to direct. As a consequence, s.103(c) was also amended, and the words "and shall be in force for five years from the date of the commencement of this Act" were omitted. The result of this amendment was that the notification issued or deemed to be issued under the relevant provisions of the new Act would remain in force for a period of five years; it can be cancelled even before the said period expired, or it can be continued after the expiry of the said period from time to time for such further period or periods as the Government may deem fit. We have already seen that the impugned notification has been issued under s.64(4) of Act XIX of 1951. That, broadly stated, is the background of the present dispute between the appellant and the respondent State of Madras.

Two principal contentions were urged before the High Court by the, appellant in support of his plea that the impugned notification is invalid. It was argued that the trusteeship of the Rajan Kattalai being hereditary in the head of the Dharmapuram Mutt. is a right of property under Art. 19(i)(f) of

the Constitution, and since s.64 of the Act empowers the respondent State to take away that right of property in an arbitrary and capricious manner. that provision is Constitutionally invalid. The second ground which was urged by the appellant was that the notification was issued without giving an opportunity to the appellant to show cause why the earlier notification should not be extended. and that made the notification invalid. The High Court has rejected the first contention,and we are really not called upon to consider that finding of the High Court in the present appeal, because the arguments urged before us covered a much narrower ground. In regard to the second contention raised by the appellant. the High Court has found in favour of the appellant that the proceedings authorised to be taken under s.64(4) are in the nature of quasi-judicial proceedings. and the order which can be passed under the said provision is a quasijudicial order; and so, the High Court conceded that before making such an order, it was necessary that the appellant should have been given an opportunity to be heard, for that is the requirement of natural justice; but the High Court thought that this specific point had not been taken by the appellant in his writ petition; that is why it was not inclined to allow it. The High Court refused to uphold the said point for the other reason that the impugned notification would soon expire on September 30, 1961 and the Government would then have to consider whether it should be renewed or not. and the High Court thought that on that occasion, the Government would certainly hear the appellant before making up its mind on that issue. The judgment of the High Court was delivered on August 11. 1961, and since the High Court thought that the impugned order can last only for a short period thereafter, it would serve no purpose to issue a writ quashing the said order on the ground that the principles of natural justice had not been complied with before passing it. Mr. Viswanatha Sastri for the appellant contends that both the grounds given by the High Court in support of its refusal to issue a writ are plainly erroneous, and were satisfied that Mr. Sastri is right. Before dealing with these grounds, however, it is necessary to consider the argument urged by Mr. Raganathan Chetty on behalf of the respondent State that the High Court was in error in holding that the Order which has been passed under s.64(4) is a quasi-judicial order and can be legitimately passed only after complying with the principles of natural justice. He argues that though the proceedings contemplated by s.63 and s.64(1), (2) and (3) are quasi- judicial proceedings. the position in regard to the Order which can be passed under s.64(4) is entirely different. He concedes that in making the first order notifying an institution under s.64(3). principles of natural justice have to be complied with: in fact. express provisions have been made in that behalf, but he argues that the said principles do not apply where a notification validly issued under s.64(3) has merely to be cancelled or extended under 64(4).

Chapter VI of Act XIX of 1951 which consists of sections 53 to 69, deals with the notification of religious institutions. Secion 63(1) in terms requires the issue of notice to show cause why a specific institution should not be notified. Sub-section (2) requires that the said notice shell state the reasons for the action proposed, and specify a reasonable time, not being less than one month from the date of the issue of the notice, for showing such cause. Subsection (3) allows objections to be filed by the trustee; and sub-s.(4) requires that such objections shall be in writing and shall reach the Commissioner before the period specified. Having provided for the issue of a notice and for objections to be filed by the trustee, s.64 deals with the consideration of the objections, if any, and notification of institution. S.64(2) requires an enquiry to be held by the Commissioner at which the validity of the objections would have t9 be examined. Section 64(3) authorises the Commissioner to make, a report to the Government that in his opinion, the institution should be notified. Thereupon,

the Government can issue the notification in question. Thus, it is plain that the issue of a notification has to be preceded by an enquiry and the trustee in question is entitled to urge his objections against issue of such a notification; and so, there can be no doubt that these proceedings are quasi-judicial, and if a notification is issued under s.64(3) without complying with the requirements of the provisions of s.63 and s.64(1) and (2), it would be invalid.

Mr. Cherry. however, contends that the position under s.64(4) is entirely different. We have already quoted this provision. According to Mr. Cherry, the decision as to whether a notification should be cancelled before the period of five years is over, or continued from time to time, is a purely administrative decision. The Government is already in possession of the material relevant for the purpose of deciding the question. This material has been placed before the Government at time of the enquiry which is held by the Commissioner under s.64(2) before the initial notification is issued, and all that the Government has to do on subsequent occasions is to consider whether the said notification should be cancelled or continued. Such a decision needs no further enquiry and cannot be characterised as quasi-judicial. That is how Mr. Cherry supports the validity of the impugned notification, though it has been issued without giving notice to the appellant. In support of this contention, he has relied upon the decision of this Court in Shri Radeshyam Khare & Anr. v. The State of Madhya Pradesh and Others. (1) In that case, it was held that ss. 53A and 57 of the C.P. and Berar Municipalities Act, 1922, differed materially in their scope and effect, and that the nature of the orders which can be passed under the two respective sections was not the same. That is why this Court found that whereas in taking action under s.53A the State Government was required to act judicially, the same could not be said to be true about s.57. We' do not see how this decision can afford any assistance to Mr. Chetty in support of his argument that s.64(4) is entirely different (1)[1959] S.C.R. 1440.

in character from s.64(3). It is plain that just as while acting under s.64(3) the Government has ultimately to consider whether a case has been made out for the issue of a notification, so while acting under s.64(4), Government has to consider whether a case has been made out for cancelling the notification or for extending it. and on each occasion, where a decision has to be taken under s.64(4), the process of reaching the decision is exactly similar to the process in reaching a decision under s.64(3). All relevant facts in regard to the management of the endowment must be taken into account, and the question to be considered on each occasion would be whether or not supervision by the Executive Officer under the notification is required in the interests of public good. It is difficult to see how the Government can legitimately and satisfactorily consider the question as to whether the notification should be cancelled, unless it hears the party asking for such cancellation. Similarly, it is difficult to understand how Government can legitimately and reasonably decide to extend-the notification, unless it gives an opportunity to the Trustee to show cause why it should not be continued. One can imagine several circumstances which may arise after the issue of the first notification and which would help the Trustee to claim that the notification should either be cancelled or should not be extended. The nature of the order which can be passed under s.64(4) and its effect on the rights of the trustee are exactly similar to the order which can be passed under s.64(3). We are. therefore, satisfied that the High Court was right in holding that it was obligatory on the respondent State as a matter of natural justice to give notire to the appellant before the impugned notification was passed by it. That takes us to the consideration of the question as to

whether the two reasons given by the High Court in support of this decision are valid. The first reason, as we have already indicated, is that the High Court thought that the plea in question had not been raised by the appellant in his writ petition. This reason is no doubt, technically right in the sense that this plea was not mentioned in the first affidavit filed by the appellant in support of his petition; but in the affidavit-in-rejoinder filed by the appellant this plea has been expressly taken. This is not disputed by Mr. Chetty, and so, when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the appellant challenged the validity of the impugned Order was that he had not been given a chance to show cause why the said notification should not be issued. We are, therefore, satisfied that the High Court was in error in assuming that the ground in question had not been taken at any stage by the appellant before the matter was argued before the High Court.

The second reason given by the High Court appears to be plainly erroneous. In assuming that the impugned Order would come to an end on September 30, 1961, the High Court appears to have ignored the fact that before it delivered its judgment, a new Act had come into force (Madras Act XXII of 1959). This Act came into operation on January I, 1960. Section 72(7) of this Act provides that any notification published under sub-s.(1) or sub-s.(3) of s. 64 of Act XIX of 1951 before the commencement this Act shall be as valid as if such notification had been published under this Act. This provision has again been subsequentlyamended by Act XL of 1961, and the amended provision is retrospectively brought into operation from January 1. 1960. We do not propose to consider in this appeal the effect of these amendments, because it is enough for our purpose to state that as a result of the subsequent Act which had already come into force on the date when the High Court delivered its judgment, it is obvious that the impugned notification would not automatically come to an end on September 30, 1961. This position is not disputed by Mr. Chetty and appears to be plain; so that the main reason which weighed with the High Court in not issuing a writ in favour of the appellant that the impugned notification would remain in operation for a very short period after it delivered its judgment, is found to be erroneous; and the impugned notification would continue in operation without the appellant getting an opportunity to show cause why it should not continue to be in operation. We are, therefore, satisfied that the High Court should have granted the prayer made by the appellant for the issue of an appropriate writ cancelling the impugned notification. Though the impugned notification has been issued in 1956 for five years, its life gets statutorily extended, and the only way in which the appellant. 'would be able to show cause why the said notification should not be extended .in respect of his Kattalai is to quash the said notification. In the result, we allow the appeal, set aside the order passed by the High Court, and direct that an appropriate writ or order be issued quashing the notification issued by the respondent State on August 4, 1956. The appellant would be entitled to his costs throughout.

Appeal allowed.