T.C. Appanda Mudaliar (Dead) By L. Rs. vs State Of Madras on 11 March, 1976

Equivalent citations: AIR1976SC2450, (1976)4SCC821, AIR 1976 SUPREME COURT 2450, 1976 4 SCC 821

Author: A.N. Ray

Bench: A.N. Ray, Jaswant Singh

JUDGMENT

A.N. Ray. C.J.

1. This appeal is by special leave from the judgment D/- 22-11-1972 of the Madras High Court.

2. The appellant challenged the notification dated 21st May, 1964 bearing No. 1462 of the Revenue Department. The contention of the appellant before the High Court was based on Article 14 that there were no guidelines to apply the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter called the Act) to the Jain Institutions. The High Court did not accept the contention of the appellants.

3. Counsel for the appellant with fairness realised that there was no force in the contention based on Article 14. He also pointed out that the reason why he did not press it was that the notification was made eleven years ago and there was an order of stay of operation of the impeached order. Counsel submitted that the stay order for over eleven years should not be continued for a further period if the matter were to be adjourned again on the ground of Article 14 being involved in the Appeal. Counsel, therefore, did not rely on Article 14.

4. Counsel for the appellant contended that real submission was that Section 2 of the Act could not be applied to an individual Jain institution. This point was not canvassed in the High Court. This is one of the points mentioned in the Special Leave Petition. Ordinarily this Court does not allow a new point to be taken because this Court would always like to have the views of the High Court. In view of the fair attitude of Counsel for the appellant we gave him leave to urge this new point because it is a pure question of the construction of the statute.

5. The contention based on Section 2 of the Act is that the provisions can be applied to all Jain institutioins and not to one isolated Jain institution. The reason advanced is that this Act does not apply to Jain institutions and if this has to be applied there has to be a notification. The historical background for which the Jain institutions were excluded from the operation of the Act save by notification has principally three features. First, Jain institutions have always been managed by elected bodies and have by and large been very well run. Cases of mismanagement have been very few (vide para. 14 of Chap. IX of the Report of the H.R.E. Commission, 1960) Second, Jain

institutions do not have any mahant in charge of religious institutions in order to do anything corresponding to the shebaits of Hindu temples and their acharyas do not own any property or accept any offerings (see paragraph 6 of the same Report). Third, hereditary trusteeship is not prevalent among the Jains.

6. The provisioins of the Act are clear and plain. The Government may, by notification, under Section 2 of the Act extend to Jain public institutions and endowments, all or any of the provisions of the Act, and thereupon the provisions so extended shall apply to any institution. If the Act is to be applied to one Jain institution on the ground of mismanagement of a particular institution it is not reasonable to suppose that the Act will therefore have to be applied to all jain institutions. The reason is obvious. All the institutions may not be mis-managed like the one to which the Act is being applied.

7. Another contention which was brought in aid by counsel for the appellants was that Section 2(2) of the Act said that wherever the word 'Hindu' occurred, it shall, in respect of Jain Public Religious Institutions and Endowments to which the provisions of the Act have been extended, be construed to mean 'Jain'. Counsel referred to Sections 9, 10, 12, 14, 96 and 107 of the Act and submitted that a Jain Commissioner would have to be appointed. The appellant submitted that it would be difficult and impracticable to get a Jain Commissioner from the members of Judicial Service. It was also said that a special fund would have to be created.

8. Counsel for the respondent rightly submitted that the provision in Section 2(2) of the Act said that the word 'Hindu' would be construed to mean 'Jain' unless the context otherwise requires. He relied on the decision of this Court in Commr. of Wealth Tax, West Bengal v. Champa Kumari Singh: where this Court has held that Jains are Hindus. The provisions of the Act particularly those relating to appointment of Commissioner or creation of a fund pertain to administration and working of the Act. It has not been disputed that there is any interference with any religious ceremonies of the institution. Therefore, even a Hindu Commissioner in the context of the provisions of the Act is competent to perform the duties contemplated by the Act.

9. It has to be seen as to why this notification was made in this particular case. The Government exercised the power under Section 2(1) of the Act for the reasons that the accounts were not maintained properly, that surplus funds of the temple were not invested in Banks and that temple funds were being utilised for the personal interests of the trustees. These are serious charges relating to the accounts of the temple. It can hardly be said that the notification proposing to apply the Act to an institution in these circumstances requires assistance of a Jain Commissioner or a Jain to administer the institution.

10. Counsel for the respondent rightly submitted that the reason why the Act was not to apply to Jains was to confer a benefit on Jains because of the Report relating to Jain institutions. There were no instances of mismanagement or maladministration of Jain institutions. This benefit given to Jain institutions can be departed from when the Act is applied to a Jain institution as has happened in the present case. We have already pointed out that the Act can apply to one institution because there is no compelling reason to read the Act in plurality in relation to Jain institutions. Mismanagement

or mishandling of accounts is not a ubiquitous feature. It may be found only in a single instance.

11. For the foregoing reasons the contentions of the appellant are not accepted.

12. The appeal is dismissed. Parties will pay and bear their own costs.