Commissioner Of Hindu Religious & ... vs U. Krishna Rao & Ors on 17 October, 1969

Equivalent citations: 1970 AIR 1114, 1970 SCR (2) 917, AIR 1970 SUPREME COURT 1114

Author: J.C. Shah

Bench: J.C. Shah, K.S. Hegde

PETITIONER:
COMMISSIONER OF HINDU RELIGIOUS & CHARITABLEENDOWMENTS. MYS

Vs.

RESPONDENT:
U. KRISHNA RAO & ORS.

DATE OF JUDGMENT:
17/10/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
HEGDE, K.S.

CITATION:
1970 AIR 1114 1970 SCR (2) 917
1969 SCC (3) 451

ACT:
Madras Hindu Religious and Charitable Endowments Act, 1951, as amended by Act 27 of 1954-Sections 76(1) and 100-Nature of contribution leviable-Rules prescribing the levy need not be framed for individual temples.

HEADNOTE:
In 1955 the Government of Madras framed Rules under the Madras Hindu Religious and Charitable Endowments Act, 1951, as amended by Act 27 of 1954, prescribing a graduated scale of rates of contribution under s. 76(1) of the Act. The rules remained in force in the State of Mysore after reorganisation of the State of Madras and applied to the temples in the South Kanara district which was incorporated in the Mysore State. On a petition by the respondents,-

trustees of a temple in the South Kanara district, the High Court of Mysore in Devraja Shenoy v. The State of Mysore [1960 Mys. L.J. 245] declared invalid certain provisions of the amended Act imposing control upon the administration of temples governed by the Act. Thereafter the Assistant Commissioner of Religious Endowments directed the respondents to pay the arrears of contribution and audit fee. The respondents again moved the High Court challenging the validity of the demand. The High Court upheld their plea on the ground that no rules had been framed under s. 100 of the Act, and, therefore, the demand for recovery of contribution was premature. The decision of the High Court was largely influenced by some observations made in the judgment in Devraja Shenoy's case. The court observed that since what was stated in that case on behalf of the State wag that the amount of contribution payable by the petitioner (respondent) temple had to be prescribed by a rule which 'remained to be made it meant that what was decided was that no contribution could be recovered from the temple until such a rule was made. Regarding the demand for arrears of audit fee the court held that the Commissioner had not "determined" the cost of auditing the account of the respondent temple under s. 76 (2) of the Act and the demand was "on that account without competence or authority of law." In appeal to this Court,

HELD : (i) It is true that the High Court declared invalid certain provisions of the Act imposing control over the administration of temples governed by the Act. But on that account the power to make rules was not restricted nor were the rules framed by the government rendered invalid. The assumption made by the High Court that the Government had to make under s. 100 rules applicable to each temple separately and prescribing the levy for determining contribution, finds no support in the provisions of the Act or its scheme. Under the Act a fee though levied for rendering services of a particular type need not be co-related to the services performed for each individual who is intended to obtain the benefit of the services. The co-relation must be between the expenses incurred by the authority levying the fee for generally providing the service and the aggregate of the levy from persons who are to be made subject thereto. It is a necessary corollary that general rules prescribing the levy of fee from religious endowments have to be made and not rules governing individual endowments. Such general rules were in fact framed and were in operation when the

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demand was made. The concession made by the Advocate-General at the hearing in Devraja Shenoy's case did not oblige the State to frame separate rules in respect of each individual religious institution. Even if the respondent! temple did not need the services or did not obtain benefit of the services provided the contribution would still be recoverable. Because the rules were framed at a time when

several different kinds of services were intended to be rendered and the court later- struck down certain provisions of the Act under which services were to be rendered, the rules framed in 1955 cannot be held to be inapplicable. [921 A-B, G; 922 E, G-923 B]

H. H. Sudhindra Thirtha Swatniar v. Commissioner for Hindu Religious & Charitable Endowments, Mysore, [1963] Supp. 2 S.C.R. 302, referred to.

(ii) It was not the case of the respondents in their petition in the High Court that the Commissioner had a not "determined" the audit fee under s. 76(2). It was merely asserted that the fee demanded was excessive. Since the High Court proceeded upon the ground of absence of determination by the Commissioner which was never pleaded and the High Court had not determined whether the audit fee demanded was for meeting the cost of auditing the accounts of the respondent temple, the order passed by the High Court must be set aside and the case remanded. [924 C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2312 of 1966. Appeal from the judgment and order dated November 7, 1962 of the Mysore High Court in Writ Petition No. 781 of 1960. M. C. Chagla, S. S. Javali and S. P. Nayar, for the appellants.

M. K. Nambyar, G. L. Sanghi and J. B. Dadachanji for respondents Nos. 1 to 5.

The Judgment of the Court was delivered by Shah, J. The Madras Religious and Charitable Endowments Act 19 of 1951 was enacted to provide for the better administra- tion and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras. This Court in The Commissioner of Hindu Religious and Charitable Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt(1) held that ss. 21, 30(2), 31, 55, 56 and 63 to 69 of Act 19 of 1951 were ultra vires, in that they infringed the guarantee of the fundamental rights in Arts. 19(1)(f), 25 and 26 of the Constitution of India. This Court also-held that S. 76(1) providing for imposing liability for payment of contribution which was of the nature of a tax and not a fee, was beyond the legislative competence of the State Legislature.

The Legislature then amended the Act by Madras Act 27 of, 1954. On August 11, 1955, the Government of Madras framed Rules under the Act prescribing a graduated scale of rates of contribution under s. 76(1).

(1) [1954] S.C.R. 1005.

The respondents who are trustees of the Venkataramana Temple at Mulki, District South Kanara, moved a petition in the High Court of Madras for an order restraining the Commissioner of Hindu Religious and Charitable Endowments from enforcing the provisions of the Amending Act 27 of

1954. Under the scheme of reorganization of State of Madras, the petition was transferred for trial to the High court of Mysore. The High Court of Mysore by order dated March 16, 1959, held that ss. 21, 30(2), 31, 63 to 69 and 89 as amended by Act 27 of 1954 were invalid : Devraja Shenoy v. The State of Madras(1).

The Assistant Commissioner of Religious Endowments Mysore, issued on September 30, 1959 directing the respondent to pay the arrears of contributions and audit fee under the Commissioner's demand notice dated June 25, 1957. The respondents moved another petition in the High Court of Mysore challenging the validity of the demand. The High Court upheld the plea on the ground that no rules had been framed under S. 100 of the Act, and therefore, the demand for levy of contribution was Premature, and that audit fee demanded by the Commissioner was without determination under s. 76(2) of the Act and was "on that account without competence or authority of law". With certificate granted by the High Court, the Commissioner of Hindu Religious & Charitable Endowments has preferred this appeal. The provisions of the Act which are relevant may first be read:

> S. 71 "(1) The trustee of every religious institution shall keep regular accounts of all receipts and disbursements.
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> (2) The accounts of every religious institution, the annual. income of which as calculated for the purposes of section 76 for the fasli year immediately preceding is not less than sixty thousand rupees, shall be subject to concurrent audit, that is to say, the audit shall take place as and when expenditure is incurred.
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> (4) The audit shall be made-
>
> (a) in the case of a religious institution the annual income of which calculated as aforesaid for the fasli year immediately preceding is not less than one thousand rupees, by auditors appointed in the prescribed manner,
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> (b) (1) (1960) Mys. L.J. 245.
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> S. 76-"(1) In respect of the services rendered by the Government and their officers and for defraying the expenses incurred on account of such services every religious institution shall from the income derived by it, pay to the Commissioner annually such contribution not exceeding five per centum of its income as may be prescribed. (2) Every religious institution, the annual income of which, for the fasli year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is not less than one thousand rupees, shall pay to the Commissioner annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income as the Commissioner may determine.

> (4) The Government shall pay the salaries, allowances, pensions and other beneficial remuneration of the Commissioners, Deputy Commissioners, Assistant Commissioners and other officers and servants (other than exe-

cutive officers of religious institutions) employed for the purposes of this Act and the other expenses incurred. for such purposes, including the expenses of Area Committees and the cost of auditing the accounts of religious institutions.

S. 100-"(1) The Government may make rules to carry out all or any of the purposes of this Act and not inconsistent therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, they shall have power to make rules with reference to the following matters

(c) the method of calculating the income of a religious institution for the purpose of levying contribution and the rate at which it shall be levied;

Rules were framed by the State of Madras on August 11, 1955 authorising the imposition of a graded levy of contribution. The Rules framed by the Government of the State of Madras remained in force in the State of Mysore after reorganization of the State. of Madras, and applied to the temples in the South Kanara District which was incorporated in the Mysore State. It is true that the High Court of Mysore declared invalid certain provisions of the Act imposing control upon the administration of temples governed by the Act. But on that account the power to make rules was not restricted, nor were the rules framed by the Government rendered invalid. The decision of the High Court that no rules for the levy of contribution were framed was largely influenced by the observations made in the judgment in devraja Shenoy's case(1). It was observed in that case that since the respondents had applied for restraining the State from enforcing any of the provisions of the Act, an investigation into the sustainability of that claim would have involved determination of the validity of s. 76(1) and of any demand for contribution under its provisions and since the Advocate General appearing for the State, in that case had informed the Court that the question did not fall to be determined because rules prescribing the contribution payable by the respondent-temple "had yet to be made, which meant that until such rule was made no contribution could be demanded", the conclusion reached by the Court was in truth "a decision on one of the material questions arising in that case, and binding on all the parties to that case." The Court proceeded to observe :

> "In that view of the matter it is incontrovertible that what was stated in the previous case on behalf; of the State was that the amount of contribution payable by the petitioners (respondent) temple should be prescribed by a rule which remained to be made which means that what was decided by this Court was that no such contribution could be recovered from that temple until such a rule was made.
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> The impugned demand made on June 25, 1957 before this Court rendered its decision in Devraja Shenoy's case(1) on March 10, 1959 having no efficacy or effect, since it was a plainly premature demand made even before the liability to Day the

contribution came into existence, has to be and is accordingly quashed."

This view, in our judgment, proceeds upon an incorrect view of the true nature of the contribution leviable under s. 76(1) of the Act. The assumption made by the Court that under the Act the Government had to make under S. 100 rules applicable to each temple separately and prescribing the method for determining contribution finds no support in the provisions of the Act or its scheme.

The true nature of the contribution eligible under S. 76(1) under Madras Act 19 of 1951 was explained by this Court in H. H. Sudhindra Thirtha Swamiar v. Commissioner for Hindu Religious & Charitable Endowments, Mysore (2) It was pointed out that (p. 323) (1) (1961) Mys. L.J. 245.

(2) [1963] Supp. 2 S.C.R. 302.

> "A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the ac- tual services rendered by the authority to individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax. It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said that it is of the nature of a tax. A fee being a levy in consideration of rendering service of a Particular type, co-relation between the expenditure by the Government and the levy must undoubtedly exist, but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contri- butories do not obtain the same degree of service as others may."

Under the Act a fee though levied for rendering services of a particular type is not to be, co-related to the services performed for each individual who is intended to obtain the benefit of the services. The co-relation must be between the expenses incurred by the authority levying the fee for generally providing the service and the aggregate of the levy from persons who are to be made subject thereto. It is a necessary corollary that under the Act general rules prescribing the levy of fee from religious endowments have to be made, and not rules governing individual endowments. The Act does not contemplate separate rules to be made in respect of each religious institution likely to obtain the benefit of services rendered by the State for which the contribution is to be levied. The concession by the Advocate-General at the hearing in Devraja Shenoy's case(1) does not oblige the State to frame separate rules in respect of each individual religious institution. The rules under the Act have to be general. And such rules were in fact framed and were in operation. We are unable therefore, to agree with the High Court that appropriate rules were not in existence at the time when the demand was made, and on that account the demand was premature.

If services are provided, assuming that the Venkataramana temple either does not need the services, or does not obtain the.

(1) (196)) Mys. L. J. 245.

benefit of the services, the contribution would still be recoverable. We are also unable to accept the argument raised that because the rules were framed at a time when several different kinds of services were intended to be rendered and the Court later struck down certain provisions of the Act under which services were to be rendered, the rules framed in 1955 were rendered inapplicable. The order passed by the High Court upholding the claim of the respondent-temple on this part of the. case must therefore, be set aside.

The High Court has not investigated the question whether there is a reasonable relation between the expenditure incurred by the Government for providing services and the amounts intended to be collected from the religious institutions for whose, benefit the services are to be rendered. Since this is a matter to be decided on evidence, we do not propose to enter upon that question in this appeal.

The second question relates to the levy of audit fee. Under S. 76(2) of the Act audit fee is not to be prescribed by rules : the Commissioner has to determine the fee for auditing the accounts of each religious endowment. The power of the Commissioner is subject to a three-fold restriction : (1) that the annual income of the religious institution for the relevant year preceding the year is Rs. 1,000/- or more; (2) that the fee does not exceed 11/5% of the income; and (3) that the fee is levied for meeting the cost of auditing the accounts of the religious institution. In the present case, conditions (1) & (2) are satisfied. But the High Court was of the view that the Commissioner had not determined the cost of auditing- the accounts of the respondent-temple, and proceeded to observe "It is sufficient to say that the demand made of the petitioners' temple for the payment of a sum of Rs. 1, 1 62- 8 3 nP towards the audit of its accounts in respect of the year 1963 fasli does not rest upon any determination made under Section 76(2) and is therefore one made without competence or the authority of law."

In so observing, in our judgment, the High Court erred. It was not the case of the respondents in their petition that the Commissioner had not determined the audit fee under s. 76(2). In paragraph-12 of the petition it was merely asserted that the fee determined by the Commissioner at the rate of 1-1/2% of the income was excessive. It is true that the Commissioner may not under S. 76(2) of the Act impose a flat rate of audit fee on the religious institutions governed by the provisions of the Act : he has to determine audit fee for meeting the costs of auditing the accounts as a per-

centage of the income of each religious institution. The Commissioner has to determine, having regard to the facts and circumstances of each case, the fee (being not more than the maximum prescribed) for meeting the cost of audit of the institution. That im.plies that the Commissioner has to form an estimate of the reasonable cost which may be incurred in making an effective audit of the accounts of the religious institution, and to state it in terms of a percentage of the income. The percentage of income levied as audit fee must of necessity be based on an estimate, and the demand

will not be struck down merely because it turns out that the amount demanded is not precisely equivalent to the cost actually incurred for auditing the accounts. Since the High Court has proceeded upon the ground of ab- sence of determination by the Commissioner, which was never pleaded, and the High Court has not determined whether the audit fee ;demanded was in truth for meeting the cost of auditing, the accounts of the Venkataramana temple, the order passed by the High Court in respect of this part of the case must also be set aside.

The order of the High Court is set aside and it is directed that the case do stand remanded to the High Court and that the High Court do dispose of the case according to law and in the light of the observations made in this judgment. Costs of this appeal will be costs in the High Court.

Y.P. Case remanded.