

MADRAS H.R.E. ACT

SECTIONS HELD VOID

ISSUE OF FREEDOM OF RELIGION

(FROM OUR LEGAL CORRESPONDENT.)

NEW DELHI, March 16.

The Constitution Bench of the Supreme Court, while declaring to-day certain provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951, to be void as contravening Articles 19 (1) (F), 25 and 26 of the Constitution, explained the scope and meaning of the Articles which guarantee the right to "freedom of religion."

The Court also declared Section 76 of the Madras Hindu Religious and Charitable Endowments Act 1951, which made it compulsory for every religious institution to make a contribution to the State not exceeding five per cent of its income, to be beyond the legislative competence of the Madras Legislature since it was in the nature of a "tax" and not a "fee", and dismissed the appeal of the Government.

The judgment of the Court was given in the appeal preferred by the State of Madras against the decision of the High Court which had declared Sections 18, 20, 21, 25 (4), 26, 28, 29, 30 (2), 39 (2), 42, 53, 55, 56, 58 (3), 63 to 69, Clauses 2, 3 and 4 of 70, 76, 89 and 99 to be invalid on an application made under Article 226 of the Constitution by Sri Lakshmindra Thirthaswamiar, Mathadhipati of Shirur Math in South Kanara, praying for a writ to prohibit the Hindu Religious Endowments Board from taking further steps in the matter of settling a scheme for the administration of the Math.

Mr. Justice Mukherjea, who delivered the judgment of the Bench of seven Judges which heard the appeal said, that, on merits the High Court had found that in the circumstances of the case, the action of the Board was perverse exercise of its jurisdiction and that it should not be allowed to proceed in regard to the settlement of the schemes and, since the findings of fact had not been challenged before this court, the order of the High Court would stand irrespective of the decision they might arrive on the constitutional points raised before them.

FUNDAMENTAL RIGHTS

After examining in detail the scope and meaning of Article 19 (1) (F) of the Constitution which guarantees the right to acquire, hold and dispose of property as well as Articles 25, 26, and 27 which deal with the Fundamental Right to Freedom of Religion, Mr. Justice Mukherjea declared Sections 21, 30 (2), 31, 55, 56, and 63 to 69 of the Madras Hindu Religious and Charitable Endowments Act, 1951, to be invalid as conflicting with the Fundamental Rights of the Mathadhipati of the Shirur Math, and Section 76 (1) to be void as beyond the legislative competence of the Madras State Legislature.

Section 21 of the Act empowered the Commissioner appointed under the Act and his subordinate officers and also persons authorised by them to enter the premises of any religious institution or place of worship for the purpose of exercising any power conferred or any duty imposed by or under the Act. Section 30 (2) of the Act laid down that the trustee, while incurring expenditure out of the funds in his charge should be guided by such general or special instruction as the Commissioner or the Area Committee might give in that connection.

Section 31 of the Act enabled the trustee to spend the surplus left with him for the purposes specified in Section 59 (1) with the previous sanction of the Deputy Commissioner.

Section 55 of the Act which dealt with the power of the Mahant over the *pathakanikas* laid down that he should spend it only for the purposes of the Math. Section 56 gave power to the Commissioner to require the trustee to appoint a manager for administration of the secular affairs of the institution and, in case of default, the Commissioner could make the appointment himself. Sections 63 to 69 related to notification of religious institutions.

As regards the interpretation of the relevant provisions of the Constitution the question that required consideration by the Supreme Court was whether a Mathadhipati had right to property, in the legal sense, in the religious institutions and its endowments, which would enable him to claim the protection of Article 19 (1) (F). So far as Article 25 of the Constitution was concerned, the point raised was, whether this Article, which, it was said, was intended to protect religious freedom only so far as individuals were concerned, could be invoked in favour of an institution or organisation.

"FEE" OR "TAX"?

On the question of the validity of Section 76 (1) His Lordship said that our Constitution made a distinction between a "fee" and a "tax" and the State Legislature would be competent to levy a "fee" in respect of the subjects on which it could legislate. But the levy of fees should, in the face of the legislative provision, be correlated to the expenses incurred by Government in rendering services, since a fee was to be regarded as a sort of a return or consideration for services rendered.

Section 76 of the Madras Act, His Lordship observed, spoke definitely of the contribution being levied in respect of the services rendered by the Government. But, it might be noticed, Mr. Justice Mukherjea said, that the contribution that had been levied under Section 76 of the Act had been made to depend upon the capacity of the payer and not upon the quantum of benefit that was supposed to be conferred on any particular religious institution. Further, the institutions which came under the lower income group and had income less than Rs. 1,000 annually, were excluded from the liability to pay the additional charges under Clause (2) of the Section. These were undoubtedly some of the characteristics of a "tax" and the imposition bore a clear analogy to Income-Tax.

In their opinion, therefore, His Lordship said, the High Court was right in holding that the contribution levied under Section 76 was a tax and not a fee and consequently it was beyond the power of the State Legislature to enact this provision.

The appeal was dismissed.

Mr. V. K. T. Charl, Advocate-General of Madras, with Mr. R. Ganapathi Aiyar, appeared for the State of Madras while Messrs. B. Somayya and C. R. Pattabhiraman, with Messrs. M. S. K. Sastri and Krishna Rao and Dr. C. V. L. Narayanan appeared on behalf of the Math. The Attorney-General of India with Mr. P. A. Mehta, Government Advocate, appeared for the Union of India.