A

SESHAMMAL & ORS. ETC. ETC.

v.

STATE OF TAMIL NADU

March 14, 1972

B [S. M. SIKRI, C.J., A. N. GROVER, A. N. RAY, D. G. PALEKAR AND M. H. BEG, JJ.]

The Tamil Nadu Hindu Religious and Charitable Endowments Act (Tamil Nadu 12 of 1959) as amended by Amending Act of 1970, ss. 28, 55, 56 and 116—Hereditary right of succession to office of Archaka abolished—If violative of Arts. 25 and 26 of Constitution.

C Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, gave the trustee of a temple the power to appoint the office holders or servants of the temple and also provided that where the office or service is hereditary, the person next in the line of succession shall be entitled to succeed. In only exceptional cases the trustee was entitled to depart from the principle of next-in-the line of succession, but even so, the trustee was under an obligation to appoint a fit person to perform the service after having due regard to the claims of the mem-
D bers of the family. Section 116(2)(xxiii) of the Act gave power to the Government to make rules providing for the qualifications to be possessed by the officers and servants and their conditions of service. The State Government framed the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. Rule 12 provided that an Archaka, whether hereditary or non-hereditary whose duty it is to perform Pujas, shall, before succeeding to the office or appointment to the office, obtain a certificate of fitness for performing the duties of his office from
E the head of an institution imparting instructions in Agamas or from the head of a math recognised by the Commissioner or from such other person as may be designated by the Commissioner.

The Act was amended by the Amending Act of 1970. The Amending Act did away with the hereditary right of succession to the office of Archaka. The petitioners who were Archakas of Saivite and Vaishnavite
F temples and Mathadhipatis to whose Maths temples are attached filed writ petitions in this Court contending that the amendments violated Arts. 25 and 26 of the Constitution.

Dismissing the petitions.

HELD: (1) The protection of Arts. 25 and 26 of the Constitution is not limited to matters of doctrine or belief; they extend also to acts done in pursuance of religion and therefore contain a guarantee for
G rituals and observances etc. which are the integral parts of religion. What constitutes an essential part of a religion or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion including practices which are regarded by the community as a part of its religion. [827 B-D]

Sardar Syedna Taher Saifuddin Saheb v. *The State of Bombay*, [1962]
H Supp. 2 S.C.R. 496, referred to.

(2) With the establishment of temples and the institution of Archakas in the temples, treatises on rituals were compiled known as Agamas. The rituals have a two fold aspect, to attract the lay worshippers and to

preserve the image of the Deity from pollution, defilement or desecration. Pollution or desecration may take place in a variety of ways and according to the Agamas, an image becomes defiled if there is any departure or violation of the rules relating to worship. Further, in all the temples in which images are consecrated the Agamas insisted that only the qualified Archaka shall step inside the *sanctum sanctorum* after observing certain disciplines imposed by the Agamas. Hence the Archaka of such a temple, besides being proficient in the rituals appropriate to the worship of the particular Deity, must also belong to a particular denomination; because, an Archaka of a different denomination would defile the image by his touch. [825 F-H; 826 E-G]

Sri Venkataramana Devaru v. *The State of Mysore*, [1958] S.C.R. 895, *His Holiness Peria Kovil Kelvi Appean Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu* v. *Prathivathi Bhayankaram Venkatacharlu*, 73 I.A. 156 and *Mohan Lalji* v. *Gordhan Lalji Maharaj*, 35 Allahabad P.C. 283, referred to.

(3) The hereditary principle in the appointment of an Archaka had been adopted and accepted from antiquity and had also been fully recognised in the unamended s. 55. But the change effected by the amendment to s. 55, namely, the abolition of the principle of next-in-the-line of succession is however, not invalid, because, the usage is a secular and not a religious usage. [833 A-C]

(a) An archaka has never been regarded as a spiritual head however accomplished and well-versed in the agamas and rituals he may be. He is a servant of the temple subject to the discipline and control of the trustee as recognised by the unamended s. 56 of the Act. That being his position the act of his appointment by the trustee is essentially secular, though after appointment he performs some religious functions. That after his appointment he performs worship is no ground for holding that his appointment is either a religious practice or a matter of religion. He owes his appointment to a secular authority. Any lay founder of a temple may appoint him and the Shebaits and Managers of temples exercise an essentially secular function in choosing and appointing the Archaka. The fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. [832 A-G]

K. Seshadri Aiyanagar v. *Ranga Bhattar*, I.L.R. 35 Mad. 631, *Kali Krishna Ray* v. *Makhan Lal Mookerjee*, I.L.R. 50 Cal. 233, *Nanabhai Narotamdas* v. *Trimbak Balwant Bhandare*, (1878-80) Vol. 4 (Unreported printed judgments of the Bombay High Court p. 169) and *Maharanee Indurjeet Koer* v. *Chundemun Misser*, XVI Weekly Reporter, 89, referred to.

(b) The power given to the trustee under the amended section to appoint any body as an Archaka so long as he possessed a fitness certificate under r. 12 was not an unqualified power, because the power had to be read with s. 28 of the Act which controlled it. Section 28 directs the trustee to administer the affairs of the temple in accordance with the terms of the trust or usage of the institution. Therefore, the appointment of the Archaka will have to be made from the specified denomination, sect or group in accordance with the directions of the Agamas governing the temple. In view of the amended s. 55(2), the choice of the trustee in the matter of appointment of an archaka is no longer limited by the operation of next-in-line of succession in temples where the usage was

A to appoint the Archaka on the hereditary principle. To that extent the trustee is released from the obligation imposed on him by s. 28 to administer the affairs in accordance with that part of the usage of a temple which enjoined hereditary appointments. But the legislation in this fact does not interfere with any religious practice. [832 H-833 C]

(4) The other changes effected in the other provisions of the Act B are merely consequential, and therefore, the Amendment Act as a whole must be regarded as valid. [833 F]

(5) The rule-making power is conferred by s. 116 on the Government with a view to carry out the purposes of the Act which are essentially secular. The Act nowhere gives the indication that one of its purposes is to effect a change in the rituals and ceremonies followed in the temples. Section 105 and 107, on the contrary, emphasize that there shall not be any contravention of the rights conferred on any religious de- C nominations of any section thereof, by Art. 26 of the Constitution. Rule 12 still holds the field and there is no reason to think that the State Government would frame rules to revolutionise temple worship by introducing methods of worship not current in the several temples. If any such rule is framed by Government which purports to interfere with the rituals and ceremonies of the temples, it will be liable to be challenged by those who are interested in the temple worship. [834 C-G]

D ORIGINAL JURISDICTION : Writ Petitions Nos. 13, 14, 70, 83, 437, 438, 439, 440, 441, 442, 443 and 444 of 1971.

Under Article 32 of the Constitution of India for the enforcement of the Fundamental Rights.

E *R. Gopalakrishnan*, for the petitioners (in W.Ps. Nos. 13 and 14 of 1971).

K. Parasaran and *K. Jayaram*, for the petitioners (in W.P. No. 70 of 1971).

M. Natesan and *K. Jayaram*, for the petitioners in (W.P. No. F 83 of 1971).

K. Parasaran and *M. S. Narasimhan*, for the petitioners (in W.P. No. 437 of 1971).

V. G. Ramchandran and *M. S. Narasimhan*, for the petitioners (in W.P. Nos. 438 and 444 of 1971).

G *M. Natesan* and *M. S. Narasimhan*, for the petitioners (in W.Ps. Nos. 439 and 443 of 1971).

S. Annadurai Ayyangar and *M. S. Narasimhan*, for the petitioners (in W.P. No. 441 of 1971).

N. A. Palkhiwala, A. J. Rana and *M. S. Narasimhan*, for the H petitioners (in W.P. No. 442 of 1971).

M. S. Narasimhan, for the petitioner (in W.P. No. 440 of 1971).

S. Govind Swaminadhan, Advocate-General for the State of Tamil Nadu, *S. Mohan, N. S. Sivan* and *A. V. Rangam*, for the respondent (in all the petitions). A

The Judgment of the Court was delivered by

Palekar, J. In these 12 petitions under Article 32 of the Constitution filed by the hereditary Archakas and Mathadhipatis of some ancient Hindu Public temples in Tamil Nadu the validity of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1970 (hereinafter referred to as the Admendment Act, 1970) is called in question, principally, on the ground that it violates their freedom of religion secured to them under Articles 25 and 26 of the Constitution. The validity of the Amendment Act had been also impugned on the ground that it interfered with certain other fundamental rights of the petitioners but that case was not pressed at the time of the hearing. B C

The temples with which we are concerned are Saivite and Vaishnavite temples in Tamil Nadu. Writ Petitions 70, 83, 437, 438, 439, 440, 441, 442, 443 and 444/71 are filed by the Archakas and Writ Petitions 13 and 14/1971 are filed by the Mathadhipatis to whose Math some temples are attached. As, common questions were involved in all these petitions, arguments were addressed principally in Writ Petitions 13/1971 and 442/1971, and we are assured by counsel for both sides that they cover the points involved in all the other petitions. D E

The State Legislature of Tamil Nadu enacted The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 being (Tamil Nadu Act XXII of 1959) hereinafter referred to as the Principal Act. It came into force on December 2, 1959. It was an Act to amend and consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu. It applied to all Hindu religious public institutions and endowments in the State of Tamil Nadu and repealed several Acts which had previously governed the administration of Hindu Public Religious Institutions. It is sufficient to say here that the provisions of the Principal Act applied to the temples in the present petitions and the petitioners have no complaint against any of its provisions. F G

Section 55 of that Act provided for the appointment of office-holders and servants in such temples and section 56 provided for the punishment of office-holders and servants. Section 55, broadly speaking, gave the trustee of the temple the power to appoint the office-holders or servants of the temple and also provided that where the office or service is hereditary the person next in the line of succession shall be entitled to succeed. In only H

A exceptional cases the trustee was entitled to depart from the principles of next-in-the-line of succession, but even so, the trustee was under an obligation to appoint a fit person to perform the functions of the office or perform the service after having due regard to the claims of the members of the family.

B Power to make rules was given to Government by section 116 (2) (xxiii) and it was open to the Government to make rules providing for the qualifications to be possessed by the Officers and servants for appointment to non-hereditary offices in religious institutions, the qualifications to be possessed by hereditary servants for succession to office and the conditions of service of all C such officers and servants. Under this rule making power the State Government made the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. Under these rules an Archak or Pujari of the deity came under the definition of 'Ulthurai servant'. 'Ulthurai servant' is defined as a servant whose duties relate mainly to the performance of rendering assistance in the performance of pujas, rituals and other services to D the deity, the recitation of mantras, vedas, prabandas, thevarams and similar invocations and the performance of duties connected with such performance of recitation. Rule 12 provided that every 'ulthurai servant', whether hereditary or non-hereditary whose duty it is to perform pujas and recite mantras, vedas, prabandams, thevarams and other invocations shall, before succeed- E ing, or appointment to an office, obtain a certificate of fitness for performing his office, from the head of an institution imparting instructions in Agamas and ritualistic matters and recognised by the Commissioner, by general or special order or from the head of a math recognised by the Commissioner, by general or special order, or such other person as may be designated by the Commis- F sioner, from time to time, for the purpose. By this rule the proper worship in the temple was secured whether the Archaka or Pujari was a hereditary Archaka or Pujari or not. Section 107 of the Act emphasized that nothing contained in the Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any G religious denomination or any section thereof by Article 26 of the Constitution. Section 106 deals with the removal of discrimination in the matter of distribution of prasadam or theertham to the Hindu worshippers. That was a reform in the right direction and there is no challenge to it. The Act as a whole, it is conceded, did not interfere with the religious usages and practices of the H temples.

The Principal Act of 1959 was amended in certain respects by the Amendment Act of 1970 which came into force on January

8, 1971. Amendments were made to sections 55, 56 and 116 of the Principal Act and some consequential provisions were made in view of those amendments. The Amendment Act was enacted as a step towards social reform on the recommendation of the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes. The Statement of Objects and Reasons which are reiterated in the counter-affidavit filed on behalf of the State of Tamil Nadu is as follows :

> "In the year 1969 the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes has suggested in its report that the hereditary priesthood in the Hindu Society should be abolished, that the system can be replaced by an ecclesiastical organisation of men possessing the requisite educational qualifications who may be trained in recognised institutions in priesthood and that the line should be open to all candidates irrespective of caste, creed or race. In Tamil Nadu Archakas, Gurukkals and Poojaries are all Ulthurai servants in Hindu temples. The duties of Ulthurai servants relate mainly to the performance of poojas, rituals and other services to the deity, the recitation of mantras, vedas, prabandas, thevarams and similar invocations and the performance of duties connected with such performance and recitations. Sections 55 and 56 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) provide for appointment of office holders and servants in the religious institutions by the trustees by applying the rule of hereditary succession also. As a step towards social reform Hindu temples have already been thrown open to all Hindus irrespective of caste....."

In the light of the recommendations of the Committee and in view of the decision of this Court in *Gazula Dasaratha Rama Rao* v. *State of Andhra Pradesh & Ors.*(1) and also as a further step towards social reform the Government considered that the hereditary principle of appointment of all office holders in the Hindu temples should be abolished and accordingly it proposed to amend sections 55, 56 and 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act XXII of 1959).

It is the complaint of the petitioners that by purporting to introduce social reform in the matter of appointment of Archakas and Pujaris, the State has really interfered with the religious

(1) [1961] 2 S.C.R. 931.

practices of Saivite and Vaishnavite temples, and instead of introducing social reform, taken measures which would inevitably lead to defilement and desecration of the temples.

To appreciate the effect of the Amendment Act, it would be more convenient to set out the original sections 55, 56 and 116 of the Principal Act and the same sections as they stand after the amendment.

Unamended Section	Amended Section
Sec. 55	*Sec.* 55
Appointment of office-holders and servants in religious institutions.	Appointment of office-holders and servants in religious institutions.
(1) Vacancies, whether permanent or temporary, among the office-holders or servants of a religious institution shall be filled up by the trustee in cases where the office or service is not hereditary.	(1) Vacancies, whether permanent or temporary among the office holders or servants of a religious institution shall be filled up by the trustee in all cases.
	Explanation : The expression 'Office-holders or servants shall include archakas and poojaris.'
(2) In cases where the office or service is hereditary, the person next in the line of succession shall be entitled to succeed.	(2) No person shall be entitled to appointment to any vacancy referred to in sub-section (1) merely on the ground that he is next in the line of succession to the last holder of office.
(3) Where, however, there is a dispute respecting the right of succession, or where such vacancy cannot be filled up immediately or where the person entitled to succeed is a minor without a guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or—	(3) Omitted.
where the hereditary office-holder or servant is on account of incapacity illness or otherwise unable to perform the functions of the office or perform the service, or is suspended from his office under sub-section (1) of section 56,	
the trustee may appoint a fit person to perform the functions of the office or perform the service, until the disability of the office-holder or servant ceases or another person succeeds to the office or service, as the case may be.	

Explanation : In making any appointment under this subsection, the trustee shall have due regard to the claims of members of the family, if any, entitled to the succession.

(4) Any person aggrieved by an order of the trustee under sub-section (3) may, within one month from the date of the receipt of the order by him, appeal against the order to the Deputy Commissioner.

(4) Any person aggrieved by an order of trustee under section (1) may within one month from the date of receipt of the order by him appeal against the order of the Deputy Commissioner.

Sec. 56

Punishment of office-holders and servants in religious institutions.

(1) All Office-holders and servants attached to a religious institution or in receipt of any emolument or prequisite therefrom shall,

whether the office or service is hereditary or not, be controlled by the trustee; and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for the breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.

Sec. 56

Punishment of office-holders and servants in religious institutions—

(1) All office holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall be controlled by the Trustee and the trustee may after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.

(2) Any office-holder or servant punished by a trustee under sub-section(1) may, within one month from the date of the receipt of the order by him, appeal against the order to the Deputy Commissioner.

(2) Any office holder or servant punished by a trustee under subsection (1) may within one month from the date of receipt of order by him appeal against the order to the Deputy Commissioner.

(3) A hereditary office-holder or servant may, within one month from the date of the receipt by him of the order of the Deputy Commissioner under subsection (2), prefer an appeal to the Commissioner against such order.

(3) Omitted.

Sec. 116 (*xxiii*)

(1) The Government may, by notification, make rules to carry out the purposes of this act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

Sec. 116 (*xxiii*)

(*xxiii*)

The qualifications to be possessed by the officers and servants for appointment to non-hereditary offices in religious institutions, the qualifications to be possessed by hereditary servants for succession to office and the conditions of service of all such officers and servants.

(*xxiii*)

The qualifications to be possessed by the officers and servants for appointment to offices in religious institution and the conditions of service of all such officers and servants.

A It is clear from a perusal of the above provisions that the Amendment Act does away with the hereditary right of succession to the Office of Archaka even if the Archaka was qualified under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. It is claimed on behalf of the petitioners that as a result of the Amendment Act, their B fundamental rights under Article 25(1) and Article 26(b) are violated since the effect of the amendment is as follows :

(a) The freedom of hereditary succession to the office of Archaka is abolished although succession to it is an essential and integral part of the faith of the Saivite and Vaishnavite worshippers.

C

(b) It is left to the Government in power to prescribe or not to prescribe such qualifications as they may choose to adopt for applicants to this religious office while the Act itself gives no indication whatever of the principles on which the qualifications should be based. The statement D of Objects and Reasons which is adopted in the counter-affidavit on behalf of the State makes it clear that not only the scope but the object of the Amendment Act is to over-ride the exclusive right of the denomination to manage their own affairs in the matter of religion by appoint- E ing Archakas belonging to a specific denomination for the purpose of worship.

(c) The Amendment Act gives the right of appointment for the first time to the trustee who is under the control of the Government under the provisions of the Principal Act and this is the very F negation of freedom of religion and the principle of non-interferance by the State as regards the practice of religion and the right of a denomination to manage its own affairs in the matter of religion.

G Before we turn to these questions, it will be necessary to refer to certain concepts of Hindu religious faith and practices to understand and appreciate the position in law. The temples with which we are concerned are public religious institutions estabilshed in olden times. Some of them are Saivite temples and the others are Vaishnavite temples, which means, that in these tem- H ples God Shiva and Vishnu in their several manifestations are worshipped. The image of Shiva is worshipped by his worshippers who are called Saivites and the image of Vishnu is worshipped by his worshippers who are known as Vaishnavites. The institu-

tion of temple worship has an ancient history and, according to Dr. Kane, temples of deities had existed even in the 4th or 5th century B.C. (See : History of Dharmasastra Vol. II Part-II page 710.) With the construction of temples the institution of Archakas also came into existence, the Archakas being professional men who made their livelihood by attending on the images. Just when the cult of worship of Siva and Vishnu started and developed into two distinct cults is very difficult to say, but there can be no doubt that in the times of the Mahabharata these cults were separately developed and there was keen rivalary between them to such an extent that the Mahabharata and some of the Puranas endeavoured to inculcate a spirit of synthesis by impressing that there was no difference between the two deities. (See page 725 supra.) With the establishment of temples and the institution of Archakas, treatises on rituals were compiled and they are known as 'Agamas'. The authority of these Agamas is recognised in several decided cases and by this Court in *Sri Venkataramana Devaru* v. *The State of Mysore*(1). Agamas are described in the last case as treatises of ceremonial law dealing with such matters as the construction of temples, installation of idols therein and conduct of the worship of the deity. There are 28 Agamas relating to the Saiva temples, the important of them being the Kamikagama, the Karanagama and the Suprabedagama. The Vaishnavas also had their own Agamas. Their principal Agamas were the Vikhanasa and the Pancharatra. The Agamas contain elaborate rules as to how the temple is to be constructed, where the principal deity is to be consecrated, and where the other Devatas are to be installed and where the several classes of worshippers are to stand and worship. Where the temple was constructed as per directions of the Agamas the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting of mantras and devotional songs appropriate to the deity. On the consecration of the image in the temple the Hindu worshippers believe that the Divine Spirit has descended into the image and from then on the image of deity is fit to be worshipped. Rules with regard to daily and periodical worship have been laid down for securing the continuance of the Divine Spirit. The rituals have a two-fold object. One is to attract the lay worshipper to participate in the worship carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in the worship a particular attitude of aspiration and devotion is developed and confers great spiritual benefit. The second object is to preserve the image from pollution, defilement or desecration. It is part of the religious belief of a Hindu worshipper that when the image is polluted or defiled the Divine Spirit in the image diminishes or even vanishes. That is a situation

(1) [1958] S.C.R. 895.

which every devotee or worshipper looks upon with horror. Pollution or defilement may take place in variety of ways. According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship. In fact, purificatory ceremonies have to be performed for restoring the sanctity of the shrine [1958 S.C.R. 895 (910)]. Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu Religious faith and cannot be dismissed as either irrational or superstitious. An illustration of the importance attached to minor details of ritual is found in the case of *His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu* v. *Prathivathi Bhayankaram Venkatacharlu and others*(1) which went up to the Privy Council. The contest was between two denominations of Vaishnava worshippers of South India, the Vadagalais and Tengalais. The temple was a Vaishnava temple and the controversy between them involved the question as to how the invocation was to begin at the time of worship and which should be the concluding benedictary verses. This gives the measure of the importance attached by the worshippers to certain modes of worship. The idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the image which must be avoided at all costs. That is also the rationale for preserving the sanctity of the *Garbhangriha* or the *sanctum sanctorum*. In all these temples in which the images are consecrated, the Agamas insist that only the qualified Archaka or Pujari step inside the *sanctum sanctorum* and that too after observing the daily disciplines which are imposed upon him by the Agamas. As an Archaka he has to touch the image in the course of the worship and it is his sole right and duty to touch it. The touch of anybody else would defile it. Thus under the ceremonial law pertaining to temples even the question as to who is to enter the *Garbhagriha* or the *sanctum sanctorum* and who is not entitled to enter it and who can worship and from which place in the temple are all matters of religion as shown in the above decision of this Court.

The Agamas have also rules with regard to the Archakas. In Saivite temples only a devotee of Siva, and there too, one belonging to a particular denomination or group or sub-group is entitled to be the Archaka. If he is a Saivite, he cannot possibly be an Archaka in a Vaishnavite Agama temple to whatever caste he may belong and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple. Indeed there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or *vice versa*. What the Agamas pro-

(1) 73 Indian Appeals 156.

hibit is his appointment as an Archaka in a temple of a different denomination. Dr. Kane has quoted the Brahmapurana on the topic of *Punah-pratistha* (Re-consecration of images in temples) at page 904 of his History of Dharmasastra referred to above. The Brahmapurana says that "when an image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, has ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other detities or is rendered impure by the touch of outcastes and the like—in these ten contingencies, God ceases to indwell therein." The Agamas appear to be more severe in this respect. Shri R. Parthasarthy Bhattacharya, whose authority on Agama literature is unquestioned, has filed his affidavit in Writ Petition No. 442 of 1971 and stated in his affidavit, with special reference to the Vaikhanasa Sutra to which he belongs, that according to the texts of the Vaikhansa Shastra (Agama), persons who are the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vishnavites. They only can touch the idols and perform the ceremonies and rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the Garbha Griha. Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. It is, therefore, manifest that the Archaka of such a temple besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any circumstances, the Archaka undoubtedly occupies an important place in the matter of temple worship. Any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorised by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be *prima facie* invalid under Article 25(1) of the Constitution.

This Court in *Sardar Syadna Taher Saifuddin Saheb* v. *The State of Bombay*(1) has summarised the position in law as follows (pages 531 and 532).

> "The content of Arts. 25 and 26 of the Constitution came up for consideration before this Court in the *Commissioner, Hindu Religious Endowments Madras*

(1) [1962] 2 Suppl. S.C.R. 496.

A v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Matt*(1); *Mahant Jagannath Ramanuj Das* v. *The State of Orissa*(2); *Sri Venkatamona Devaru* v. *The State of Mysore*(3); *Durgah Committee, Ajmer* v. *Syed Hussain Ali*(4) and several other cases and the main principles underlying these provisions have by these decisions
B been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. The second is
C that what constitutes an essential part of a religious or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."

Bearing these principles in mind, we have to approach the
D controversy in the present case.

Section 55 of the Principal Act as it originally stood and Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 ensured, so far as temples with hereditary Archakas were concerned, that there would be no defile-
E ment of the image. By providing in sub-section (2) of section 55 that "in cases, where the office or service is hereditary, the person next in the line of succession shall be entitled to succeed", it ensured the personal qualification of the Archaka that he should belong to a particular sect or denomination as laid down in the Agamas. By Rule 12 it also ensured that the Archaka would be proficient in the mantras, vedas, prabandams, thevarams etc. and
F thus be fit for the preformance of the puja, in other words, that he would be a person sufficiently qualified for performing the rituals and ceremonies. As already shown an image becomes defiled if there is any departure or violation of any of the rules relating to worship, and this risk is avoided by insisting that the Archaka should be an expert in the rituals and the ceremonies.
G By the Amendment Act the principle of next-in-the-line of succession is abolished. Indeed it was the claim made in the statement of Objects and Reasons that the hereditary principle of appointment of office-holders in the temples should be abolished and that the office of an Archaka should be thrown open to all candidates trained in recognised institutions in priesthood irrespective of
H caste, creed or race. The trustee, so far as the amended section 55 went, was authorized to appoint any body as an Archaka in

(1) [1954] S.C.R. 1005. (2) [1954] S.C.R. 1046.
(3) [1958] S.C.R. 895. (4) [1962] 1 S.C.R. 383.

any temple whether Saivite or Vaishnavite as long as he possessed a fitness certificate from one of the institutions referred to in rule 12. Rule 12 was a rule made by the Government under the Principal Act. That rule is always capable of being varied or changed. It was also open to the Government to make no rule at all or to prescribe a fitness certificate issued by an institution which did not teach the Agamas or traditional rituals. The result would, therefore, be that any person, whether he is a Saivite or Vaishnavite or not, or whether he is proficient in the rituals appropriate to the temple or not, would be eligible for appointment as an Archaka and the trustee's discretion in appointing the Archaka without reference to personal and other qualifications of the Archaka would be unbridled. The trustee is to function under the control of the State, because under section 87 of the Principal Act the trustee was bound to obey all lawful orders issued under the provisions of the Act by the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner. It was submitted that the innocent looking amendment brought the State right into the *sanctum sanctorum* through the agency of the trustee and the Archaka.

It has been recognised for a long time that where the ritual in a temple cannot be performed except by a person belonging to a denomination, the purpose of worship will be defeated: See *Mohan Lalji* v. *Gordhan Lalji Maharaj*(1). In that case the claimants to the temple and its worship were Brahmins and the daughter's sons of the founder and his nearest heirs under the Hindu law. But their claim was rejected on the ground that the temple was dedicated to the sect following the principles of Vallabh Acharya in whose temples only the Gossains of that sect could perform the rituals and ceremonies and, therefore, the claimants had no right either to the temple or to perform the worship. In view of the Amendment Act and its avowed object there was nothing, in the petitioners' submission, to prevent the Government from prescribing a standardized ritual in all temples ignoring the Agamic requirements, and Archakas being forced on temples from donominations unauthorised by the Agamas. Since such a departure, as already shown, would inevitably lead to the defilement of the image, the powers thus taken by the Government under the Amendment Act would lead to interference with religious freedom guaranteed under Articles 25 and 26 of the Constitution.

The force of the above submissions made on behalf of the petitioners was not lost on the learned Advocate General of Tamil Nadu who appeared on behalf of the State. He, however, side tracked the issue by submitting that if we were to consider in

(1) 35 Allahabad (P.C.) 283 at page 289.

A isolation only the changes introduced in section 55 by the Amendment Act the situation as described on behalf of the petitioners could conceivably arise. He did not also admit that he was bound by either the statement of Objects and Reasons or the reiteration of the same in the counter-affidavit filed on behalf of the State. His submission was that we have to take the Principal Act B as it now stands after the amendment and see what is the true effect of the same. He contended that the power given to the trustee under the amended section 55 was not an unqualified power because, in his submission, that power had to be read in the context of section 28 which controlled it. Section 28(1) provides as follows :

C

> "Subject to the provisions of the Tamil Nadu Temple Entry Authorization Act, 1947, the trustee of every religious institution is bound to administer its affairs and to apply its funds and properties in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may D issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties if they were his own."

The learned Advocate General argued that the trustee was bound under this provision to administer the affairs of the temple in E accordance with the terms of the trust and the usage of the institution. If the usage of the institution is that the Archaka or Pujari of the temple must be of a particular denomination then the usage would be binding upon him and he would be bound to make the appointment under section 55 in accordance with the usage of appointing one from the particular denomination. There F was nothing in section 55, in his submission, which released him from his liability to make the appointment in accordance with the said usage. It was true that the principle of the next-in-line of succession was not binding on him when making the appointment of a new Archaka, but in his submission, that principle is no part of the usage, the real usage being to appoint one from the denomination. Moreover the amended section, according to him, does G not require the trustee to exclude in every case the hereditary principle if a qualified successor is available and there was no reason why the trustee should not make the appointment of the next heir, if found competent. He, however, agreed, that there was no such legal obligation on the trustee under that section. He further contended that if the next in-line-of-succession princi- H ple is regarded as a usage of any particular temple it would be merely a secular usage on which legislation was competent under Article 25(2)(a) of the Constitution. Going further, he contended that if the hereditary principle was regarded as a religious

practice that would be also amenable to legislation under Article 25(2)(b) which permits legislation for the purpose of social welfare and reform. He invited attention to the report of the Hindu Religious Endowments Commission (1960-1962) headed by Dr. C. P. Ramaswami Aiyar and submitted that there was a crying need for reform in this direction since the hereditary principle of appointment of Archakas had led to grave malpractices practically destroying the sanctity of worship in various religious institutions.

We have found no difficulty in agreeing with the learned Advocate General that section 28(1) of the Principal Act which directs the trustee to administer the affairs of the temple in accordance with terms of the trust or the usage of the institution, would control the appointment of the Archaka to be made by him under the amended section 55 of the Act. In a Saivite or a Vaishnavite temple the appointment of the Archaka will have to be made from a specified denomination, sect or group in accordance with the directions of the Agamas governing those temples. Failure to do so would not only be contrary to section 28(1) but would also interfere with a religious practice the inevitable result of which would be to defile the image. The question, however, remains whether the trustee, while making appointment from the specified denomination, sect or group in accordance with the Agamas, will be bound to follow the hereditary principle as a usage peculiar to the temple. The learned Advocate-General contends that there is no such invariable usage. It may be that, as a matter of convenience, an Archaka's son being readily available to perform the worship may have been selected for appointment as an Archaka from times immemorial. But that, in his submission, was not a usage. The principle of next-in-line of succession has failed when the successor was a female or had refused to accept the appointment or was under some disability. In all such cases the Archaka was appointed from the particular denomination, sect or group and the worship was carried on with the help of such a substitute. It, however, appears to us that it is now too late in the day to contend that the hereditary principle in appointment was not a usage. For whatever reasons, whether of convenience or otherwise, this hereditary principle might have been adopted, there can be no doubt that the principle had been accepted from antiquity and had also been fully recognised in the unamended section 55 of the Principal Act. Sub-section (2) of section 55 provided that where the office or service is hereditary, the person next in the line of succession shall be entitled to succeed and only a limited right was given under sub-section (3) to the trustee to appoint a substitute. Even in such cases the explanation to sub-section (3) provided that in making the appointment of the substitute the trustee should have due regard to the claims of the members of the family, if any, entitled to the succession. Therefore, it cannot be denied as a

A fact that there are several temples in Tamil Nadu where the appointment of an Archaka is governed by the usage of hereditary succession. The real question, therefore, is whether such a usage should be regarded either as a secular usage or a religious usage. If it is a secular usage, it is obvious, legislation would be permissible under Article 25(1)(a) and if it is a religious usage it would B be permissible if it falls squarely under sub-section 25(1)(b).

Mr. Palkhivala on behalf of the petitioners insisted that the appointment of a person to a religious office in accordance with the hereditary principle is itself a religious usage and amounted to a vital religious practice and hence falls within Articles 25 and 26. In his submission, priests, who are to perform religious cere- C monies may be chosen by a temple on such basis as the temple chooses to adopt. It may be election, selection, competition, nomination or hereditary succession. He, therefore, contended that any law which interferes with the aforesaid basis of appointment would violate religious freedom guaranteed by Articles 25 and 26 of the Constitution. In his submission the right to select D a priest has an immediate bearing on religious practice and the right of a denomination to manage its own affairs in matters of religion. The priest is more important than the ritual and nothing could be more vital than chosing the priest. Under the pretext of social reform, he contended, the State cannot reform a religion out of existence and if any denomination has accepted the hereditary E principle for chosing its priest that would be a religious practice vital to the religious faith and cannot be changed on the ground that it leads to social reform. Mere substitution of one method of appointment of the priest by another was, in his submission, no social reform.

It is true that a priest or an Archaka when appointed has to F perform some religious functions but the question is whether the appointment of a priest is by itself a secular function or a religious practice. Mr. Palkhivala gave the illustration of the spiritual head of a math belonging to a denomination of a Hindu sect like the Shankaracharaya and expressed horror at the idea that such a spiritual head could be chosen by a method recommended G by the State though in conflict with the usage and the traditions of the particular institution. Where, for example, a successor of a Mathadhipati is chosen by the Mathadhipati by giving him mantra-deeksha or where the Mathadhipati is chosen by his immediate disciples, it would be, he contended, extra-ordinary for the State to interfere and direct that some other mode of appointment H should be followed on the ground of social reform. Indeed this may strike one as an instrusion in the matter of religion. But we are affraid such an illustration is inapt when we are considering the appointment of an Archaka of a temple. The Archaka has

never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. It has been held in *K. Seshadri Aiyangar* v. *Ranga Bhattar*(1) that even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the unamended section 56 of the Principal Act which provides "all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee, and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause." That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebaits and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office. See : *Kali Krishna Ray* v. *Makhan Lal Mookerjee*(2); *Nanabhai Narotamdas* v. *Trimbak Balwant Bhandare*(3) and *Maharanee Indurjeet Keoer* v. *Chundemun Misser*(4). Thus the appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion.

In view of sub-section (2) of section 55, as it now stands amended, the choice of the trustee in the matter of appointment of

(1) I.L.R. 35 Madras 631. (2) I.L.R. 50 Cal. 233.
(3) (1878-80) Vol. 4 Unreported Printed Judgments of the Bombay High Court page 169.
(4) XVI Weekly Reporter, 99.

A an Archaka is no longer limited by the operation of the rule of next-in-line of succession in temples where the usage was to appoint the Archaka on the hereditary principle. The trustee is not bound to make the appointment on the sole ground that the candidate is the next-in-line of succession to the last holder of Office. To that extent, and to that extent alone, the trustee is
B released from the obligation imposed on him by section 28 of the Principal Act to administer the affairs in accordance with that part of the usage of a temple which enjoined hereditary appointments. The legislation in this respect, as we have shown, does not interfere with any religious pratice or matter of religion and, therefore, is not invalid.

C We shall now take separately the several amendments which were challenged as invalid. Section 7 of the Amendment Act amended section 55 of the Principal Act and the important change which was impugned on behalf of the petitioners related to the abolition of the hereditary principle in the appointment of the Archaka. We have shown for reasons already mentioned that the
D change effected by the Amendment is not invalid. The other changes effected in the other provisions of the Principal Act appear to us to be merely consequential. Since the hereditary principle was done away with the words "whether the office or service is hereditary or not" found in section 56 of the Principal Act have been omitted by section 3 of the Amendment Act. By section 4 of the latter Act clause (xxiii) of sub-section (2) in section 116
E is suitably amended with a view to deleting the reference to the qualifications of hereditary and non-hereditary offices which was there in clause (xxiii) of the Principal Act. The change is only consequential on the amendment of section 55 of the Principal Act. Sections 5 and 6 of the Amendment Act are also consequential on the amendment of sections 55 and 56. These are all
F the sections in the Amendment Act and in our view the Amendment Act as a whole must be regarded as valid.

It was, however, submitted before us that the State had taken power under section 116(2) clause (xxiii) to prescribe qualifications to be possessed by the Archakas and, in view of the avowed
G object of the State Government to create a class of Archakas irrespective of caste, creed or race, it would be open to the Government to prescribe qualifications for the office of an Archaka which were in conflict with Agamas. Under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 proper provision has been made for qualifications of the Archakas and the petitioners have no objection to that rule.
H The rule still continues to be in force. But the petitioners apprehend that it is open to the Government to substitute any other rule for rule 12 and prescribe qualifications which were in conflict with

Agamic injunctions. For example at present the Ulthurai servant whose duty it is to perform pujas and recite vedic mantras etc. has to obtain the fitness certificate for his Office from the head of institutions which impart instructions in Agamas and ritualistic matters. The Government, however, it is submitted, may hereafter change its mind and prescribe qualifications which take no note of Agamas and Agamic rituals and direct that the Archaka candidate should produce a fitness certificate from an institution which does not specialize in teaching Agamas and rituals. It is submitted that the Act does not provide guidelines to the Government in the matter of prescribing qualifications with regard to the fitness of an Archaka for performing the rituals and ceremonies in these temples and it will be open to the Government to prescribe a simple standardized curriculum for pujas in the several temples ignoring the traditional pujas and rituals followed in those temples. In our opinion the apprehensions of the petitioners are unfounded. Rule 12 referred to above still holds the field and there is no good reason to think that the State Government wants to revolutionise temple worship by introducing methods of worship not current in the several temples. The rule making power conferred on the Government by section 116 is only intended with a view to carry out the purposes of the Act which are essentially secular. The Act no where gives the indication that one of the purposes of the Act is to effect a change in the rituals and ceremonies followed in the temples. On the other hand, section 107 of the Principal Act emphasizes that nothing contained in the Act would be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution. Similarly section 105 provides that nothing contained in the Act shall (a) save as otherwise expressly provided in the Act or the rules made thereunder, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any religious institution, or its established usage in regard to any other matter. Moreover, if any rule is framed by the Government which purports to interfere with the rituals and ceremonies of the temples the same will be liable to be challenged by those who are interested in the temple worship. In our opinion, therefore, the apprehensions now expressed by the petitioners are groundless and premature.

In the result these petitions fail but in the circumstances of the case there shall be no order as to costs.

V.P.S. *Petitions dismissed.*