

Commissioner, Madras Hindu Religious and Charitable Endowments

Vs

Narayana Ayyangar and Others

Civil Appeal No. 844 of 1963

(J. C. Shah, K. Subha Rao, R. S. Bachawat JJ)

24.02.1965

JUDGMENT

SHAH, J.

Venkatarama Iyengar, Kasthuri Iyengar and Ranga Iyengar, residents of the village Kariamanikam in Tiruchirappalli District, with the aid of contributions, subscriptions and donations set up a Samaradhanai Fund for feeding Brahmin pilgrims attending Sri Venkatachalapathiswami shrine at village Gunaseelam on the occasion of Rathotsavam festival. Between the years 1936 and 1940 seven acres of land were purchased for Rs. 10,500 to provide a permanent income for the Fund. It was found that the expenses incurred for the Rathotsavam festival did not exhaust the entire income and the balance was utilised for Vanabhajanam in Kariamanikam village in the month of Kartigai and on the Dwadesi following Vaikunta Egadesi day.

The President, Hindu Religious and Charitable Endowments Board, sought to levy for the years 1351 to 1354 Falsi contributions under s. 69 of Madras Act 2 of 1927 in respect of the Fund. But in Suit No. 297 of 1947 of the file of the District Court at Tiruchirappalli that claim was disallowed. The District Court held that the charity was not a "specific endowment" within the meaning of Act 2 of 1927. After the Madras Hindu Religious and Charitable Endowments Act 19 of 1951 was enacted, the Deputy Commissioner of Hindu Religious and Charitable Endowments initiated a fresh proceeding under s. 57(d) of that Act and held that the Samardhanai Fund was a "religious charity" within the meaning of s. 6(13) of the Act. Against that order an appeal was carried by the trustees of the Fund to the Commissioner of Hindu Religious and Charitable Endowments. The Commissioner held that feeding Brahmins in connection with the religious festival of Hindus was a public charity and also a religious charity within the meaning of s. 6(13) of Madras Act 19 of 1951.

The trustees of the Fund then instituted Suit No. 181 of 1954 in the Court of the Subordinate Judge, Tiruchirappalli to set aside the order of the Commissioner on the plea that the Samardhanai Fund was a private charity not associated with any Hindu festival or service in a temple and was not religious charity or a specific endowment or a public charity, and that it could in no manner become subject to control of the Commissioner, Madras Hindu Religious and Charity Endowments. The suit was resisted by the Commissioner contending that the Fund was held and administered for a religious charity viz. feeding Brahmin pilgrims on the occasion of a Hindu festival. The Subordinate Judge held that the Fund was a public charity and that it was also "a religious charity" within the meaning of s. 6(13) of the Act, the charity being associated with the Hindu festival of Rathotsavam at the Gunaseelam temple. In appeal against the order of the Subordinate Judge dismissing the suit filed by the trustees, the High Court of Madras held that the Samardhanai Fund was a public charity within the meaning of s. 6(13) of the Act, but not being associated with any Hindu festival or

observance of a religious character it was not a "religious charity" and the Commissioner had no jurisdiction to bring it under his control. The High Court accordingly allowed the appeal and decreed the suit filed by the trustees. With special leave, the Commissioner has appealed to this Court.

The only question which falls to be determined in this appeal is whether on the facts found by the Court of First Instance and confirmed by the High Court, the Samardhanai Fund is a "religious charity" within the meaning of s. 6(13) of Madras Act 19 of 1951. Clause (13) of s. 6 defines "religious charity" as meaning "a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or not". The definition prescribes two conditions which go to constitute a religious charity : there must be a public charity and that charity must be associated with a Hindu festival or observance of a religious character. If these be fulfilled, a public charity will be a religious charity, even if it is not connected with a math or temple. The Subordinate Judge held on the evidence that the "charity in question is a feeding charity conducted during the ten days of the Rathotsavam in the Prasanna Venkatachallapathiswami temple in Gunaseelam in the month of Purattasi. Only Brahmins are fed and not other community people. There are similar feeding charities for the different communities conducted by the respective community people. The charity in question has no connection with the Gunaseelam temple in the sense that the food "prepared is not offered to the deity, and feeding is done not in the temple premises but at a separate place originally in a specially erected pandal and now in Seshagiri Iyer's choultry (Dharamshalla). The other communities are not fed at this charity. . . The temple authorities have no voice in the conduct of the feeding", and the High Court agreed with that view. The Subordinate Judge held on those findings that the Samardhanai Fund was a public charity within the meaning of s. 6(13) and with that view also the High Court agreed. The Subordinate Judge also held that the charity was associated with the Hindu festival of Rathotsavam in Sri Prasanna Venkatachallapathiswami temple in Gunaseelam - Rathotsavam being an observance of a religious character when the deity is taken out in procession in a chariot - and therefore the charity in question was clearly one associated with a Hindu festival and also with observance of a religious character. In disagreeing with that view, the High Court observed that the expression "associated with a Hindu festival or observance of a religious character" imported some unity of purpose or common object or common endeavour between the festival and the charity and in the absence of such unity, common object or common endeavour, the charity could not be regarded as a religious charity within the meaning of s. 6(13) of the Act. In the view of the High Court that feeding Brahmin pilgrims during the Rathotsavam festival of Sri Venkatachallapathiswami shrine at Gunaseelam did not constitute an association between the Fund and the Rathotsavam festival itself, for the trustees of the shrine conducting the festival "had no manner of check, control or supervision over the feeding charity or Samardhanai Fund", they could not insist upon the feeding being done during the festival, and "cessation or discontinuance of the feeding by the trustees of the feeding charity may constitute a breach of trust on their part but cannot in the least affect the due performance of the Rathotsavam festival itself". They further observed that belief of the founders of the charity that feeding Brahmins on the occasion of an important festival was meritorious, will not establish "any link or connection" between the festival and the charity.

We are unable to agree with the view so expressed by the High Court. The expression "associated" in s. 6(13) of Act 19 of 1951 is used having regard to the history of the legislation, the scheme and objects of the Act, and the context in which the expression occurs, as meaning "being connected with" or "in relation to". The expression does not import any control by the authorities who manage or administer the festival. A Hindu religious festival or observance may have a local significance, in that it is celebrated or observed in a particular locality in connection with a shrine, temple or math,

or it may be a festival or observance celebrated generally without any connection with any temple or math. In the case of such general festivals or observances there is no one who can be so said to control the celebrations, and the definition of "religious charity" includes such general festivals and observances. It cannot be assumed that there must always be a set of persons who control the celebration of a festival or an observance. The test suggested by the High Court that in order that there should be, between the charity and the festival or observance such a relation that the administration of the charity must be controlled by those who celebrate the festival or observance in a temple or math, besides being inapt in the case of general festivals and observances can only be evolved if words which are not found in the definition of "religious charity" are added thereto.

Mr. Vishwanatha Sastri appearing on behalf of the respondent-trustees contended that the expression "associated with a Hindu festival or observance of a religious character" in the definition of "religious charity" implies that the public charity must be an integral part of the Hindu religious festival or observance. But there is nothing in the Act which indicates any such intention on the part of the Legislature. Mr. Sastri sought to give diverse illustrations in support of his contention that mere feeding of Brahmins on the occasion of a Hindu festival or observance will not amount to association within the meaning of s. 6(13). It is unnecessary to deal with these illustrations, for the definition contemplates a public charity which alone can be a religious charity if the other conditions are fulfilled. A voluntary celebration of an event of religious significance by feeding Brahmins does not make it a public charity. There must be an institution which may in law be regarded as a public charity, before it may by its association with a religious festival or observance be regarded as a religious charity. The association undoubtedly must be real and not imaginary, but to constitute association it is not predicated that the administration of public charity must be controlled by the persons responsible for celebrating the religious festival in a temple or math or be an integral part of the festival or observance.

On the facts found, it is clear that on the occasion of the Rathotsavam festival of Sri Prasanna Venkatachalapathiswami shrine, pilgrims from many places attend the festival and the object of the charity is to feed Brahmins attending the shrine on the occasion of this festival. It is not disputed that setting up a Fund for feeding Brahmins is a public charity. The primary purpose of the charity is to feed Brahmin pilgrims attending the Rathotsavam. This public charity has therefore a real connection with the Rathotsavam which is a Hindu festival of a religious character, and therefore it is a religious charity within the meaning of s. 6(13) of Madras Act 19 of 1951. Surplus income of the Fund is used in Vanabhojanam in the month of Kartigai, and on the day following the Vaikunta Ekadeshi. It is not suggested that on that account the Fund is not a "religious charity".

We therefore set aside the order passed by the High Court and restore the order passed by the Trial Court. There will be no order as to costs throughout.

Appeal allowed.

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