

Arya Vyasa Sabha and Others

Vs

The Commissioner of Hindu Charitable and Religious Institutions and Endowments, Hyderabad and Others

Civil Appeals Nos. 1984-1986 and 2115 of 1970 and 106 of 1971

(M. H. Beg, R. S. Sarkaria, P. N. Shinghal JJ)

24.11.1975

JUDGMENT

SARKARIA, J. -

1. The appellants are societies and associations registered under the Registration of Societies Act (21 of 1860). The objects and purposes of these associations as set out in their memoranda of association included inter alia "to provide for and improve the religious and social association commerce, trade and educational need for the Arya Vyasa"; "to provide free food and education for Arya Vyasa boys and girls", etc. The appellants are maintaining various institutions pursuant to those objects. The Endowment Department of the State, included the various institutions of the appellants in the List Religious Institutions published under Section 6(c)(ii) of the Andhra Pradesh Act 17 of 1966 calling upon them to have the institutions or temples registered under Section 38 of the said Act. The appellants along with others filed writ petitions in the High Court of Andhra Pradesh challenging the validity of the notices issued by the Endowment Department, on the ground that Sections 15, 17, 27, 36 and 97 of the Andhra Act 17 of 1966 were violative of Articles 14, 19(1)(f), 25, 26 and 31 of the Constitution.

2. The questions for consideration, as formulated by the High Court in that batch of 102 writ petitions were as under :

1. Whether on the facts and in the circumstances, the office of hereditary trusteeship of the petitioners is, or is not property within the meaning of Articles 19(1)(f) and 31 of the Constitution ?
2. Whether all or any of the material provisions of the Act offend Articles 14, 19(1)(f), 25, 26 and 31 of the Constitution of India ?
3. Whether the Act is applicable to all or any of the petitioners who claim to be private institution or religious denominations or societies registered under the Societies Registration Act ?
4. Whether the institutions or endowments of the petitioner are private or public in character ?
5. Whether the Arya Vyasa community or Lingayat community and the institution in question founded by them are religious denominations within the meaning of Article

3. On the first question, the High Court was of the view that the office of the hereditary trusteeship was 'property' within the meaning of Article 19(1)(f). Regarding the second it held that none of the impugned provisions were violative of Articles 14, 19(1)(f), 25, 26 and 31 the Constitution. The High Court, however, did not decide the question as to whether the petitioner - Arya Vyasa - is or is not a religious denomination or any section thereof within the meaning of Article 26 of the Constitution. In regard to questions 3 and 5, it observed :

Likewise, whether a particular religious or charitable institution is or is not a religious denomination or any section thereof within the meaning of Article 26 of the Constitution, is also a question of fact or, in any event, a mixed question of fact and law which can be more satisfactorily and effectively adjudicated upon in a competent civil court. Whether the Vyasa and Lingayat communities and the institutions, religious or charitable, founded by the members of those communities are religious denominations or not, are questions which should be determined in a proper forum. Resort to the writ remedy in the first instance is inappropriate and misconceived. The petitioners who claim that their institutions are religious denominations are at liberty to establish the same in a competent civil court.

4. In the result, the High Court dismissed all the writ petitions. Some of the writ petitioners appealed to this Court on certificate. Their appeals were dismissed on December 2, 1970 by a Bench of five learned Judges. That decision is reported under the cause title, *Kakinada Annadana Samajam v. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad* ((1970) 3 SCC 359).

5. In the earlier batch of appeals, this Court also left question 3 and 5 undecided leaving the appellants at liberty to agitate the same in a proper forum.

6. Now in this second batch of appeals on certificate arising out of the same judgment, an attempt has been made to agitate questions 3 and 5 only. It is contended that the High Court had been made some observations indicating that the members of the appellants do not belong to a religious denomination. It is submitted that this finding is incorrect and would debar the appellants from reagitating these questions in any other forum.

7. The contention does not appear to be correct. These questions were left open and undetermined because the High Court felt, and we think rightly, that they were disputed questions of fact and could not be appropriately determined in proceedings under Article 226. The writ petitioners were left at liberty to establish their claim in regard to their institutions being religious denominations in a competent civil Court. This position taken by the High Court was endorsed by this Court. We therefore decline to go into these questions. We would only reiterate what was said then : [p. 367, para 13]

A faint attempt was made to sustain the attack under the Articles 14 and 26(d) of the Constitution but finally hardly any arguments were addressed worth noticing on these points .....

The High Court has rightly left open the question whether the Turnew's Choultry is a private or a public charitable institution. This the Municipal Council is entitled to agitate before the Deputy Commissioner under Section 77 of the Act ... Before the High Court some of the writ petitioners had claimed that their institutions were religious denominations within Article 26 and were therefore entitled to the protection guaranteed by that article.

The High Court has, quite rightly, observed that these matters should be agitated in a proper forum and they have been left open for determination if and when so desired. This indisputably was the correct course to follow.

8. No other point has been argued before us.

9. The appeals fail and are dismissed. The parties shall pay and bear their own costs.

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