

Sri Divi Kodandarama Saram

Vs

State of Andhra Pradesh

(K. Ramaswamy, D. P. Wadhwa JJ)

09.05.1997

JUDGMENT

K.RAMASWAMY, J.

1. These applications are sequential to the Judgment rendered by this Court in A.S. Narayana Deekshitulu vs. State of A.P. & Ors. [(1996) 9 SCC 548]. Therein, while upholding the constitutionality of various provisions, in particular, Sections 34 and 144 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (30 of 1987) (for short, the 'Act'), in paragraph 132 of the judgment, this Court mentioned about total number of temples and of the temples which are assessable institutions and the income being derived by them. It observed that the said information was furnished for the first time in the written arguments after the arguments had concluded and judgment was reserved; accordingly, it directed the State Government to look into the same and take a decision in that behalf by constituting a Committee of officers enumerated therein. In paragraph 133, this Court mentioned that hereditary right to appointment as an Archaka or other officers was abolished and that holders thereof were required to be rehabilitated and given regular scales of pay and comforts. Accordingly, the Committee was directed to go into the question of rationalisation of their scales of pay and the modality for payment of salary to them and to send its recommendations to the Government for necessary approval. The Government was directed to consider them, have decision taken and to submit its report to this Court for further approval/directions, if necessary. Similarly, in paragraph 135, a permanent Fund was directed to be constituted and the income derived from it by way of interest was directed to be distributed among the Archakas and servants of the temple by way of welfare measures. For that purpose, a scheme was required to be framed. The composition of the Committee was also indicated therein. Similar direction was given to work out the amounts paid pursuant to the interim directions and to adjudge the final liabilities as indicated in paragraph 136. In para 138, it was held that "it would be open to the Executive Officer of TTD etc. to work out the payments made to the archakas, mirasidars and gamekars etc. and also the rights consistent with the law and would take action accordingly".

2. In furtherance thereof, respective Committees came to be constituted which went into the questions and have submitted the reports to the Government for approval. The Government have accepted the recommendations, some in toto and some of them subject to riders/suggestions/modifications. A welfare scheme has also been formulated details of which will be dealt with at an appropriate stage. Suffice it to state that practically the Government have also agreed to the major part of the recommendations as suggested by this Court in the judgment. After hearing the learned counsel on both sides, we now proceed to dispose of the IAs and the Transfer Petitions/Cases.

3. Section 6 of the Act classifies the charitable or religious institutions and endowments and other Maths on the basis of the income and its calculation under Section 65. Section 6(a) institutions are those whose income exceeds Rs.5 lacs and above per annum; Section 6(b) institutions are those whose income exceeds Rs. 50,000/- but is less than Rs.5 lacs; and Section 6(c) institutions are other than those covered under clauses (a) and (b). The Committee has gone into this aspect, in the light of the directions issued and has recommended that the temples whose annual income is less than Rs.5 lacs may be allowed to be managed by the respective management of the temples etc. but be supervised by the Department as is being now done so that the management of such temples may be allowed to pay such remuneration to the Archakas. In lieu of salary, the properties given to them may be retained with the Archakas for enjoyment subject to rendering service depending upon the income of the respective temples as per the prevailing circumstances. We are informed that a sizeable part of the temples would come within that category and, therefore, the Government has accepted the classification with the rider: "Temple with such abnormally low income may be left to spend for themselves". The recommendation of the Committee has thus been accepted by the Government. Under Section 154 of the Act, the Government by a notification may exempt from the purview of any of the provisions of the Act or any of the rules made thereunder (a) any charitable institutions of endowments administration of which was or is for the time being vested in the Government either directly or through the Committee or a Treasurer endowment appointed for the purpose or the Official Trustees or the Administrator General etc. Any institution or endowment be exempted and may likewise vary or cancel such exemption. In view of the above provision, it would be open to the State Government to issue a notification published in the official Gazette exempting such institutions subject to the above recommendation and such orders as may be mentioned therein or deemed appropriate.

4. The Committee considered the payment of remuneration to the Archakas in all the temples to be made on a priority basis as the first charge and, therefore, the recommendation came to be made accordingly. It has also suggested that in all such temples where the income is considerably low, especially in the case of temples classified under Section 6(c), the payment to secular staff should be gradually minimised so as to ensure that the expenditure on the establishment should be limited to 30% as provided under Section 57 of the Act. Section 57 of the Act falls in Chapter VII titled "Budget, Account and Audit". Sub-section(1) thereof enjoins the preparation of annual budget of every charitable or religious institution or endowment. It has to be prepared within the time frame of 90 days before the close of every financial year. The same has to be submitted in the prescribed form to the competent authority specified in classes (i) to (iii) of sub-section (1) and approval thereof by the competent authority. But proviso to Section 6(1) envisages as under:

"Provided that in the case of an institution or endowment whose annual income is no less than Rs.1 lakh, the provision made under this item shall not be less than 30 per centum of the balance of the income for the financial year remaining after making provisions for items (i) to (iv) mentioned therein."

5. Thus, the recommendation as to gradual reduction of the secular staff employed in the aforesaid institutions is a welcome suggestion. The Government equally has accepted the suggestion as under:

"The suggestion to reduce the secular staff gradually is accepted. For this purpose, the future vacancies that arise due to retirement etc. should not be filled up till the level of the establishment is brought within acceptable limit."

6. Accordingly, the suggestion for gradual reduction of secular staff is quite reasonable so that the

management and upkeep of the religious institutions, temples or endowments would remain within the budgetary provisions and that they could properly, effectively and efficiently be managed and maintained. All possible steps should be taken to exempt such temples from the purview of Section 144 of the Act. The Government has, therefore, considered this suggestion as feasible and accordingly accepted the same. As seen, constitutionality of Section 144 has already been upheld but as mentioned in the judgment, in respect of certain class of temples, the necessary material was placed before this Court in the written submissions after conclusion of the arguments and not during the course of the arguments. Consequently, direction was given to the Government to look into the matter. Under these circumstances, the Committee had made the above recommendation and the Government had accepted the same. In the light of the power, the Government have to exempt under Section 152 of the Act, the Government is given liberty to issue a notification and exempt such classified temples, as suggested by the Committee, from the purview of Section 144 of the Act.

7. The Committee has deliberated upon the modality and the extent of the pay-scales to be granted to the Archakas, their cadre strength in each temple. For this purpose, they have divided the temples into three groups and in respect of temples whose income is more than Rs.50,000/- but does not exceed Rs.5 lacs, the recommendation made is indicated in the report. The response of the Government is that "regarding fixation of the cadre strength for each temple solely on the basis of the income as recommended by the Committee is to be qualified by suggestion with reference to other factors such as the types of rituals, festivals to be performed in each temple; the number of the pilgrims who visit the institutions and other local considerations have to be taken into consideration in fixing the cadre strength. The division of the cadre strength in these groups as indicated in the report, has been accepted but with the suggestion by the Government as under:

"The cadre strength suggested based on the income, if to be treated as a ceiling and as an enabling provision for limiting the secular staff within the level suggested, if any reduction in employment is contemplated, it should apply both to the secular and religious staff, it is desirable to have a provision to retrench the staff in the event of income falling drastically."

8. It is contended for the Archakas that the suggestion made by the Committee for grouping is not correct and they cannot be treated as Government servants since this Court has already found that the rendering service by the Archakas is integral part of religious service, though the Archakas are not part of the religious service. Therefore, they cannot be tagged with the status of Government servant. There appears to be a misconception on the part of the counsel for the Archakas. It is already held that the Archakas owes their appointment to the institution, though, earlier, it was hereditary. On abolition of hereditary rights, he remains to be an employee like other secular staff of the temple. As a result, his rendering duties of performing rituals, ceremonies as an Archakas is different from his status as an Archakas. Therefore, though he is not treated like a Government servant, he is now treated on par with the secular establishment of the temple. As suggested, in case of fall in the income necessarily the retrenchment is required to be resorted to even in respect of the religious staff. Accordingly, we direct the Government with the consultation of the Commission of Endowment Department to carefully look into the matter and evaluate from time to time and take appropriate decision as regards the increase or reduction in the cadre strength of the religious staff.

9. The Committee has suggested rationalisation of the pay-scales and also fixation of the cadre strength in respect of Section 6(a) and Section 6 (b) temples/institutions subject to the principles indicated as under:

"(a) The pay scale of the Archakas should be on par with the scales applicable to the Government employees of the similar cadre;

(b) The procedure of giving of 8 years and 16 years benefit of pay scales should be made applicable to the Archakas who are on regular time scales as is being extended to the Government employees;

(c) In cases where the existing cadre strength is less than the cadre strength now fixed by the Committee, the existing cadre strength should be continued and it should not be enhanced;

(d) In cases where the existing cadre strength is more than the cadre strength now fixed by the Committee, the Executive Authorities of the concerned temples should continue the remaining Archakas with the existing emoluments till they are accommodated in the vacancies caused due to retirement or otherwise and thereafter all such posts should be abolished.

(e) As and when the income of a temple decreases, the cadre strength also should be correspondingly decreased in the respective income groups.

(f) The pay scales, D.A., H.R.A., C.A. and other allowances which are made applicable to the corresponding posts in Government services should be made applicable to the posts in the cadre strength of the Archakas recommended by the Committee."

9. The Government after considering this proposal has stated as under:

"Parity between the pay scales and allowances of the staff of the Endowment Institutions and the Govt. need not be established. Any such parity will not be rational as the scales of pay and allowances of the staff of Endowment Institutions are determined by their income and there cannot be any automaticity in the increase of their pay and allowances, as and when Govt. revises pay structure to their employees. It is desirable to delink and design separate service rules and packages of emoluments to suit the Endowments to suit the Endowment Institutions."

10. Accordingly, the Committee devised pay scales and other allowances with the changed nomenclatures of five categories of Archakas. The pay scales and allowances as approved by the State Government are as under:

SALARIES AND OTHER EMOLUMENTS OF THE ARCHAKAS OF THE TEMPLE EXCEPTING THE ARCHAKAS OF TTDS APPROVED BY THE GOVERNMENT. [FOR TEMPLES AND MUTTS ABOVE RS.50,000/- INCOME]

Sl. No. Designation of Archakas Pay scale or Honorarium

1. Archaka Rs.1400-30-1640-40-1960-50-2310-60-2730

2. Upa Mukhya Archaka Rs.1600-40-1920-50-2320-60-2800-70-3220

3. Mukhya Archaka Rs.200-50-2400-60-2880-70-3440-80-

4. Upa Pradhan Archaka Rs.2500-60-2980-70-3440-80-4080-90-4620

5. Pradhan Archaka Rs.3000-70-3560-80-4200-90-4920-100-5520

The following rates of DA, HRA & CCA are approved subject to revision from time to time. D.A. 35.75% HRA 20% in Hyderabad, Secunderabad, Visakhapatnam, Kakinada, Rajahmundry, Eluru, Vijawada, Guntur, Nellore, Tirupathi, Kurnool, Warrangal and Nizamabad, 12.5% in the towns where population crossed 50,000/-. 10% in all other places. C.C.A Pay Range (Basic Pay) Huderabad & Visakhapatnam & Secunderabad Vijawada Below Rs.1745/-5030 Rs.1745 and above but below Rs.2750 7530 Rs. 2750 and above 12030 but below Rs.3750 Above Rs.37501-50-30

11. It is further contended for the Archakas that consequent upon abolition of the hereditary rights and in view of the anxiety shown by this Court in its judgment for ensuring that the Archakas or other office holders and their families are comfortably kept with adequate alternative arrangements, linking of the pay-scales with that of the Government servants is fair and reasonable as suggested by the Committee. The Government, therefore, was not right in delinking them from the Government. We find no force in the contention. The payment of the salary to the Government servants depends upon diverse factors like cost of index etc. Article 27 of the Constitution prohibits spending of any expenses for promotion or maintenance of any particular religious or religious denomination from out of the funds flowing from the public exchequer. Resultantly, Constitutional prohibition stands in the way of extending to the Archakas and other office holders such benefits as are granted to the Government servants. Secondly, the salary has a linkage with the income derive by the charitable or religious institutions or endowments. As agreed earlier, the salary and other allowances, subject to cadre strength, are required to be maintained and cadre strength is required to be retionalised based upon the income. In a case where employees of religious staff had to be retrenched conversely on increase of income in any subsequent year or years, the retrenched staff should be reemployed in the order of their seniority i.e., following the principle of "first go, first come", and continued within the budgetary provisions accordingly.

12. The Committee has further recommended that in respect of the institutions falling under Section 6 (c), whose annual income is below Rs.15,000/-, the lands in the possession of Archakas may be retained in lieu of remuneration as a condition for rendering services, after making necessary amendments to Section 144 of the Act. The Government has accepted the above recommendation. In our view, the stand taken by the Government in this behalf is quite reasonable. As seen, if the pay-scales are determined to Archakas but the income derived from the institution is far less, the requirement of payment of the salary within 30% ceiling would cause great hardship to the Archakas for surrendering the lands and to receive only paltry sum within the ceiling of 30 percentum. Accordingly, the acceptance of the recommendation to allow the retention of the lands given to the Archakas as a condition to render service, is reasonable. Therefore, permission is granted to the Government to bring about a suitable amendment to Section 144, though its constitutionality had already been upheld by this Court.

13. The Committee has further suggested that the case of Maths should also be taken into consideration for the purposes of fixation of the cadre strength, rationalisation of pay-scales of the Archakas by taking them within the range of income groups as in the case of temples. The Government has accepted the said recommendation with the following rider:

"The cadre strength for mutts is to be determined on a case to case basis as in the case of other religious institutions, taking all the parameters like income, activity

level, the actual needs of the mutt etc., into account."

14. We find that the acceptance of the Government, subject to the above rider is quite reasonable. The cadre strength for each mutt is required to be determined on a case to case basis like other religious institutions in determining the cadre strength; all relevant circumstances like income, activity level, actual needs of the mutt and other attending circumstances should necessarily be taken into consideration before taking a decision on case to case basis in respect of each mutt.

15. The Committee has further suggested employment of additional staff at the time of conduct of Brahmotsavams or special festivals in the temples. The Government has accepted the said recommendation with the rider that "such casual employment shall not confer any right for future employment on the Archakas who are engaged for a specific festival". Each religious institution, endowment, temple or mutt is directed to maintain a list of casual Archakas employed for a specific purpose on special occasions like Brahmotsavams or special festivals conducted in the respective temples. They would be entitled to remuneration for the days on which they render service on these special occasions. As and when the existing religious staff retires from service, in the order of seniority on age basis, the casual Archakas whose names appears in the list maintained by the institution/temple, may be appointed on regular basis subject to their fulfilling the qualifications prescribed for the respective posts etc. Necessary sanction for the payment of daily wages for the period of service not exceeding two weeks, should be obtained from the competent authority before engaging the casual or daily-wage staff.

16. The Committee has further recommended that wherever the pay scales are not fixed in the temples to the Archakas, it may be arranged to pay the additional remuneration to the Archakas for the extra services rendered by them during Brahmotsavams and special festivals duly obtaining orders of the competent authority. In this regard, the Government has suggested that "(A)ny extra remuneration for extra services rendered is to be decided depending upon the circumstances of each case. If any additional remuneration is paid to the secular staff it has also to be extended to the Archakas and other religious staff". We find that the acceptance of the Government is quite reasonable and accordingly it is upheld.

17. As regards the payment of remuneration, the Committee has recommended that the modality for payment of remuneration to the Archakas should be strictly on the same system as in the case of payment of salary to the secular staff as is being done now. The Government has accepted the above suggestion in toto. It being a reasonable recommendation, we approve of the same.

18. The Committee has further recommended that wherever there is no source of income, a scheme to receive donations (uphayams) from the donors to conduct Archakas throughout the years may be devised and such amounts may be invested in the interest-yielding fixed deposit schemes on permanent basis in the name of deity. It is further recommended that certain percentage of such accrued interest may be utilised for payment of remuneration to the Archakas for the services rendered by them. It has been accepted by the Government in toto. We also approve of the same and direct the Commissioner, Endowments Department to work out the modalities and modules donations floated, as and when donations are received, the amount may be invested in interest earning fixed deposit schemes, preferably in nationalised banks, and whenever the payment of remuneration is to be made, they should rationalise the same in such a way that the same does never exceed at any stage 50 per cent of the interest amount; the rest of the 50 per cent should be earmarked for other welfare purposes.

19. The Committee has further recommendation, as held by the this Court, for conduct of annual examinations for appointment as Archakas in the respective Agamas so that the Archakas would get acquainted themselves with, and improve their excellence in, recitation of the Shlokas etc. The Government has accepted the said recommendation. The Government has directed, as has been held in the judgment, to establish schools in three different regions to give training to the Archakas and conduct examination on annual basis as per the orders of the Government.

20. It is further recommended that the Agama Patashalas are also to be set up and refresher courses should be conducted. That recommendation has been accepted by the Government in toto and we approve of the same.

21. TTD, it is recommended, should be treated as a separate entity by itself and it has to be considered separately. The Government has accepted the same. In fact, the Act itself refers to TTD as a separate institution under Chapter XIV of the Act. Therefore, the TTD institution by itself is a separate entity and whatever considerations have been referred to hereinbefore would be different from those to be dealt with hereinafter.

22. It is further recommended that if, in giving effect to these recommendations, the Government finds any difficult, they may make such provisions not inconsistent with the provisions of the Act, as may appear to them to be necessary or expedient for removal of the difficulty.

23. Orders are accordingly passed.