

SUPREME COURT OF INDIA

Commr. of Police

Vs.

Acharya Jagadishwarananda Avadhuta

C.A.No.6230 of 1990

(S. Rajendra Babu, Dr. A. R. Lakshmanan and G. P. Mathur, JJ.)

11.03.2004

JUDGEMENT

RAJENDRA BABU, J.:-

(For himself and on behalf of **G. P. MATHUR, J.**)

1. This is second round of litigation. In the first round of litigation question raised before this Court was whether performance of Tandava dance in public is an essential practice of Ananda Margi order or not. This Court in Acharya Jagdishwarananda Avadhuta and others v. The Commissioner of Police, Calcutta and another, (1983) 4 SCC 522, (First Ananda Margi case), held that Tandava dance in public is not an essential rite of Ananda Margi faith. Subsequent to the first case, it appears that Ananda Murti Ji - founder of that order prescribed to perform Tandava dance in public as an essential religious practice in Carya Carya, a book containing the relevant doctrines. Based on this, Ananda Margis sought permission of the Commissioner of Police to perform Tandava dance in public. The Commissioner accorded permission to take out Tandava dance without knife, live snake, trident or skull. This was challenged by the respondents herein before this Court by filing Writ Petition (Civil) Nos. 1317-18 of 1987. This Court with the following observation disposed it of :
AIR 1984 SC 51 : 1983 Cri LJ 1872

"We are of the view that these cases should appropriately be examined by the High Court keeping in view that has been said by this Court in the judgment in Acharya Jagdishwarananda Avadhuta and others v. The Commissioner of Police, Calcutta and another reported in (1984) 1 SCR 447. Petitioners are at liberty to go before High Court." AIR 1984 SC 51 : 1983 Cri LJ 1872

2. Firstly a single Judge and subsequently a Division Bench of the Calcutta High Court arrived at the conclusion that taking out Tandava dance in public carrying skull, trident etc is an essential part of Ananda Margi faith and Commissioner of Police could not impose conditions to it. This decision is now under challenge.

3. When this matter came up for consideration before this Court, a Bench of two learned Judges made an order on 13-11-1992 as follows :-

"After hearing the parties for sometime and having considered the decision of the three learned Judges of this Court in Acharya Jagdishwarananda Avadhuta etc. v. Commissioner of Police, Calcutta and another (1984 (1) SCR 447). We are of the view that this is a matter which requires consideration by a Constitution Bench of this Court. Hence, we request the learned Chief Justice to constitute the Bench as early as possible for hearing of the matter". AIR 1984 SC 51 : 1983 Cri LJ 1872

4. On 4-12-2001 a Constitution Bench of this Court considered this matter and noticed that (i) that the bench does not express any difficulty in following the earlier judgment, (ii) that they do not set out any substantial question of law which requires the decision of a Constitution Bench since that order merely stated that the matter should be heard and decided by a Constitution Bench. The Constitution Bench felt that in those circumstances there was no justification for hearing the appeal by the Constitution Bench and therefore placed the matter back before the two learned Judges for final disposal who in their turn made a reference to a Bench of three Judges.

5. The relevant question herein for consideration is whether the High Court is correct in its finding that Tandava dance is an essential and integral part of Ananda Margi faith based on the revised edition of Carya Carya. A bench consisting of three judges of this Court in first Ananda Margi case arrived at a unanimous conclusion on facts that Tandava dance in public is not an essential and integral part of Ananda Margi faith. In order to arrive at this conclusion this Court inter alia took the following four aspects into account.

1. Shri. Prabhat Ranjan Sarkar otherwise known as Shri Ananda Murti, founded a socio-spiritual

organization claimed to have been dedicated to the service of humanity in different spheres of life such as physical, mental and spiritual, irrespective of caste, creed or colour, in the year 1955.

2. Ananda Marga contains no dogmatic beliefs and teaches the yogic and spiritual science to every aspirant.

3. Tandava dance was not accepted as an essential religious rite of Ananda Margis in 1955 when that order was first established. It was introduced for the first time as a religious rite in or around 1966.

4. Ananda Marga is a religious denomination of the Shiviate order, which is a well-known segment of Hindu religion.

6. After taking into account of all the relevant facts, including the above, this Court held :

".. . . . Ananda Marga as a religious order is of recent origin and Tandava dance as a part of religious rites of that order is still more recent. It is doubtful as to whether in such circumstances Tandava dance can be taken as an essential religious rite of the Ananda Margis. Even conceding that is so, it is difficult to accept Mr. Tarkunde's argument that taking out religious procession with Tandava dance is an essential religious rite of Ananda Margis. . . . On the basis of the literature of the Ananda Marga denomination it has been contended that there is prescription of performance of Tandava dance by very follower of Ananda Marga. Even conceding that Tandava dance has been prescribed as a religious rite for every follower of the Ananda Marga it does not follow as a necessary corollary that Tandava dance to be performed in the public is a matter of religious rite..."

7. By the above finding this Court was categorical in it's judgment that Tandava dance in public is not an essential part of religious rites of Ananda Margi faith. The conclusion arrived at by this Court regarding the non essential nature of Tandava dance to Ananda Margi faith was principally based on the fact that the order itself is of recent origin and the practice of dance is still more recent. Court even went to the extent of assuming that Tandava dance was prescribed as a rite and then arrived at the conclusion that taking out Tandava dance in public is not essential to Ananda Margi faith. After arriving at the above ratio, the Court further added that -

". In fact, there is no justification in any of the writings of Shri Ananda Murti that Tandava dance must be performed in public. At least none could be shown to us by Mr. Tarkunde despite an enquiry by us in that behalf."

8. This observation cannot be considered as a clue to reopen the whole finding. By making that observation the Court was only buttressing the finding that was already arrived at. The learned judges of the High Court wrongly proceeded on the assumption that the finding of this Court regarding the non-essential nature of Tandava dance to the Ananda Margi faith is due to the non-availability of any literature or prescriptions by the founder. The High Court is under the wrong impression that an essential part of religion could be altered at any subsequent point of time.

9. The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, AIR 1954 SC 282, AIR 1962 SC 853, AIR 1972 SC 1586 practices, tenets, historical background etc. of the given religion. (See generally the Constitution bench decisions in *The Commissioner v. L. T. Swamiar of Srirur Mutt* 1954 SCR 1005, *SSTS Saheb v. State of Bombay* 1962 (Supp) 2 SCR 496, and *Seshammal v. State of Tamil Nadu*, (1972) 2 SCC 11, regarding those aspects that are to be looked into so as to determine whether a part or practice is essential or not). What is meant by 'an essential part or practices of a religion' is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion. Test to determine whether a part or practice is essential to the religion is - to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part. Because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts is what is protected by the Constitution. No body can say that essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the 'core' of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non-essential part or practices.

10. Here in this case Ananda Margi order was founded in 1955. Admittedly, Tandava dance was introduced as a practice in 1966. Even without the practice of Tandava dance (between 1955 to 1966) Ananda Margi order was in existence. Therefore, Tandava dance is not the 'core' upon which Ananda Margi order is founded. Had Tandava dance been the core of Ananda Margi faith, then without which Ananda Margi faith could not have existed.

11. There is yet another difficulty in accepting the reasoning of the High Court that a subsequent addition in Carya Carya could constitute Tandava dance as essential part of Ananda Margi faith. In a given case it is for the Court to decide whether a part or practice is an essential part or practice of a given religion. As a matter of fact if in the earlier litigations the Court arrives at a conclusion of fact

regarding the essential part or practice of a religion - it will create problematic situations if the religion is allowed to circumvent the decision of Court by making alteration in its doctrine. For example, in *N. Adithayan v. Travancore Devaswom Board*, (2002) 8 SCC 106, this Court found that a non-Brahmin could be appointed as a poojari (priest) in a particular temple and it is not essential to that temple practice to appoint only a brahmin as poojari. Is it open for that temple authorities to subsequently decide only brahmins could be appointed as poojaris by way of some alterations in the relevant doctrines? We are clear that no party could even revisit such a finding of fact. Such an attempt will result in anomalous situations and could only be treated as a circuitous way to overcome the finding of a Court. If subsequent alterations in doctrine could be allowed to create new essentials, the judicial process will then be reduced into a useless formality and futile exercise. Once there is a finding of fact by the competent Court, then all other bodies are estopped from revisiting that conclusion. On this count also the decision of High Court is liable to be set aside.
AIR 2002 SC 3538 : 2002 AIR SCW 4146

12. In the result, we respectfully adopt the finding of this Court in the first Ananda Margi case and allow the instant appeal. Since we find that practice of Tandava dance in public is not an essential part of Ananda Margi faith, there is no need to look into any other arguments advanced before us. The order in the writ petition as affirmed by the Division Bench is set aside and the writ petition is dismissed.

13. Before parting with this matter, it is necessary for us to refer to the observations made by this Court in *Bijoe Emmanuel and others v. State of Kerala and others*, 1986 (3) SCC 615, because reference to three Judges' Bench has arisen on account of these AIR 1987 SC 748, AIR 1984 SC 51 : 1983 Cri LJ 1872 observations. In *Bijoe Emmanuel's case* (supra) this Court adverted to the decision of this Court in the earlier round of litigation in *First Ananda Margi case* (supra) and observed as follows :-

"The question in that case was whether the Ananda Margis had a fundamental right within the meaning of Article 25 or Article 26 to perform Tandava dance in public streets and public places. The Court found that Ananda Marga was a Hindu religious denomination and not a separate religion. The Court examined the question whether the Tandava dance was a religious rite or practice essential to the tenets of the Ananda Marga and found that it was not. On that finding the Court concluded that the Ananda Marga had no fundamental right to perform Tandava dance in public streets and public places. In the course of the discussion, at one place, there is found the following sentence :

'Mr. Tarkunde for the petitioner had claimed protection of Article 25 of the Constitution but in view of our finding that Ananda Marga was not a separate religion, application of Article 25 is not attracted.'

The sentence appears to have crept into the judgment by some slip. It is not a sequiter to the reasoning of the Court on any of the issues. In fact, in the subsequent paragraphs, the Court has expressly proceeded to consider the claim of the Ananda Marga to perform Tandava dance in public streets pursuant to the right claimed by them under Article 25 (1)."

14. We respectfully agree with what has been stated above in Bijoe Emmanuel's case (supra) insofar as the First Ananda Margi case is concerned. As noticed therein, these observations are not the basis of the reasoning of the Court on any of the issues. Therefore, it would not affect the final outcome of the case. AIR 1987 SC 748

15. The appeal is allowed accordingly.

16. Dr. AR. LAKSHMANAN, J.:-

This appeal stems from the judgment and order dated 8-11-1990 passed by the Division Bench of the Calcutta High Court in F.M.A.T. No. 1451 of 1990 dismissing the appeal filed by the Commissioner of Police with a directive to the effect that "The Police Authorities should permit the Ananda Margis to perform the Tandava dance in public processions on the occasion of their principal religious functions listed in prayer (b) of the writ petition on their undertaking to maintain peace and discipline on such occasions ." The Division Bench affirmed the judgment and order dated 7-5-1990 passed by the learned single Judge of the said Court allowing the writ petition of the respondents herein with a declaration that "Tandava dance as prescribed for the followers of Ananda Margis is an essential and integral part of the religion of the said religious denomination and that they have a right to perform such a dance in public on the occasions prescribed in this behalf subject to the restrictions under Articles 25 and 26 of the Constitution of India and the Police Authorities have no jurisdiction to impose ban on such a dance."

17. This case has a long and chequered carrier. The facts are stated as under :-

Ananda Murtiji introduced Tandava dance requiring it to be performed daily by an Ananda Margi as one of his religious rites.

What is Tandava Dance :

18. According to the Ananda Margis, Lord Shiva was the originator of Tandava dance and introduced it about six thousand five hundred years back for physical, mental and spiritual

upliftment of every human being. Tandava dance is to be performed with a skull, knife and Trishul. It is also customary to hold a lathi and a damru and sword. Dancer may also use live snake in place of skull in day time and fire masha's or damru during night time. Tandava dance lasts for a few minutes where two or three persons dance by lifting one leg to the level of chest and then bringing it down and lifting the other. Ananda Murtiji by incorporating Tandava dance in the system of beliefs of Ananda Marga wanted to bring it to its original glory. Tandava dance symbolises 'life' and 'death'. The skull represents death and the knife represents life. The Ananda Margis are followers of Shaivite order within Hindu religion and Ananda Murtiji directed performance of Tandava dance as one of the prescriptions of religious rite to be followed by an Ananda Margi in private life and public places.

19. The respondents took out a procession with human skulls, daggers, trident etc. on 10-8-1979. According to the police, the procession was to take out violating prohibitory ban in regard to carrying of those articles in processions in public streets. In that circumstances, the Police Authorities declared the assembly unlawful and the police force was compelled to intervene. The Commissioner of Police, Calcutta made repetitive orders under Section 144 of the Code of Criminal Procedure, 1973 since August, 1979, directing that no member of a procession or assembly of five or more persons should carry any fire arms, explosive, swords, spears, knives, trident, lathis or any article which may be used as weapon of offence or any article likely to cause annoyance to the public. This order of the Police Commissioner was challenged by the General Secretary of the Ananda Marga in a writ petition No. 903 of 1980 before the High Court of Calcutta. The Calcutta High Court, by order dated 23-9-1980, rejected the said writ petition for the reasons recorded therein. Again the Commissioner of Police, Calcutta made a fresh order under Section 144 of the Code of Criminal Procedure, 1973 on 29-3-1982 wherein the same restraints as mentioned in the earlier order were imposed and an application for permission to take out a procession on the prohibited streets accompanied with Tandava dance was rejected by him. The said order refusing permission by the Police Commissioner was challenged by filing a writ petition under Article 32 of the Constitution of India in this Court being registered as writ petition Nos. 6890 and 7204 of 1982.

20. This Court passed an order in the said writ petition rejecting the same on the finding that performance of Tandava dance in procession in the public streets or in gatherings in public places was not an essential religious rite of the followers of the Ananda Marga. This Court also held as under :

"The claim of Ananda Marga as a separate religion was not acceptable in view of the clear assertion that it was not an institutionalised religion but a religious denomination. Ananda Margis belong to the Shaivite order and as such they belong to the Hindu religion. Accordingly, they were not entitled to get the protection of Article 25 of the Constitution of India.

The Courts have the power to determine whether a particular rite or observance is regarded as essential by the tenets of a particular religion.

Ananda Margi as a religious order is of recent origin and Tandava dance as a part of religious rite of that order is still more recent. It is doubtful as to whether in such circumstances Tandava dance can be taken as an essential religious right of Ananda Margis. Even conceding it is so it is difficult to accept Mr. Tarkunde's argument that taking out religious processions with Tandava dance is an essential religious rite of Ananda Margis.

Even conceding that Tandava dance has been prescribed as a religious rite for every follower of Ananda Margis it does not follow as a necessary corollary that Tandava dance to be performed in the public is a matter of religious rite. In fact, there is no justification in any of the writings of Shri Ananda Murti that Tandava dance must be performed in public..... We are, therefore, not in a position to accept the contention of Mr. Tarkunde that performance of Tandava dance in a procession or at public place is an essential religious rite to be performed by every Ananda Margi."

The petitioners have no fundamental right within the meaning of Article 25 or 26 to perform Tandava dance in public streets and public places."

21. According to the appellants, no permission was granted to the respondents organisation for taking out a similar procession. The respondents performed Tandava dance with human skulls, knives etc. violating the conditions of permission. On 7-5-1987, the respondents made an application to the Commissioner of Police, Calcutta seeking for permission for taking out procession. By order dated 25-5-1987, the permission was refused by the Commissioner of Police, Calcutta. Under Article 32 of the Constitution of India, Writ Petition (Civil) Nos. 1317-18 of 1987 was filed by the respondents in this Court challenging the said order of the Police Authorities refusing permission which was disposed of by this Court with the following observation :

"We are of the view that these cases should appropriately be examined by the High Court keeping in view that has been said by this Court in the judgment in Acharya Jagdishwarananda Avadhuta etc. v. Commissioner of Police, Calcutta and another reported in (1984) 1 SCR 447. Petitioners are at liberty to go before the High Court." AIR 1984 SC 51 : 1983 Cri LJ 1872

22. Pursuant to the aforesaid liberty granted by this Court, a writ application was moved by the respondents praying for quashing the orders dated 20-5-1987 and 27-5-1987 of appellant No. 1 - Commissioner of Police and also for a directive upon the appellants commanding them to allow the respondents to perform Tandava dance in public procession of Ananda Marga on the occasion of its principal religious function and festival such as

(i) Ananda Purnima;

(ii) Shravani Purnima;

(iii) Bijaya Dashami;

(iv) Dipavali;

(v) New Year Day;

(vi) Falguni Purnima (Vasanttotsava) and

(vii) Dharma Maha Chakra and Dharma Maha Sammelans.

23. The respondents based their right to perform Tandava dance in procession and in public gathering on the basis of the prescription of their Guru Shri Ananda Murtiji in the recent fourth Edition of Carya Carya Part I published in the year 1986. The writ application was heard by a learned single Judge who passed an order allowing the writ application upon holding, inter alia, that Tandava dance as prescribed for followers of Ananda Marga was an essential and integral part of the religion of the said religious denomination and that they have right to perform such a dance on the occasion prescribed in this behalf subject to the restrictions imposed under Articles 25 and 26 of the Constitution of India and the Court was powerless to examine as to whether such prescription of their Guru formed essential and integral part of the religious rite to be observed by the Ananda Margis. Against the said judgment and order, the appellants filed an appeal before the Division Bench and obtained stay of operation of the said order of the learned single Judge. The stay application and the appeal were heard by the Division Bench of the High Court of Calcutta on several dates. The impugned judgment and order of the Division Bench of the High Court of Calcutta was passed on 8-11-1990 dismissing the stay application and the appeal and affirming the order of the learned single Judge of the High Court of Calcutta. Aggrieved by the impugned judgment, the appellants have approached this Court by way of Special Leave Petition No. 16233 of 1990. On 21-12-1990, this Court granted leave in this matter and directed to continue the status quo until further orders. A direction was also issued to expedite the appeal and to post the appeal as early as possible. On 13-11-1992, this Court, after hearing the parties for sometime and having considered the decision of the three learned Judges of this Court in Acharya Jagdishwarananda Avadhuta etc.'s case (supra), was of the view that this is a matter which requires consideration by a Constitution Bench of this Court. The matter was placed before the Constitution Bench. The Constitution Bench, by an order dated 4-12-2001, observed that there is no justification for the hearing of this civil appeal by a Constitution Bench and it must be placed before a Bench of two

learned Judges for final disposal. When the matter came up before the Division Bench of this Court on 17-1-2002, the Bench expressed their opinion as follows : AIR 1984 SC 51 : 1983 Cri LJ 1872

"After hearing the counsel for the parties at length, we are of the opinion that seemingly there is a contradiction in the order passed by the Division Bench of the Calcutta High Court (impugned judgment); the three - Judge Bench judgment in Acharya Jagdishwarananda Avadhuta and others (supra) and the order passed by a two-judge Bench in Bijoe Emmanuel and others (supra). In the latter case, the two-Judge Bench has explained in judgment of this Court in Acharya Jagdishwarananda Avadhuta and others (supra) and held that Ananda Margi could claim the benefit of Article 25 (1) having open the question regarding applicability of Article 25 to the Ananda Margis. The High Court based its decision on the latter judgment and gave the impugned judgment holding that the order passed by the appellants was violative of Articles 25 and 26 of the Constitution of India. AIR 1984 SC 51 : 1983 Cri LJ 1872

AIR 1987 SC 748

We feel that the observation made by the two-Judge Bench in Bijoe Emmanuel and others (supra) that Article 25 did not apply to Ananda Margis had crept in the latter judgment by some slip does not appear to be correct. In our view, this Court in its judgment in Acharya Jagdishwarananda Avadhuta etc. (supra) had reached a definite conclusion that the claim of the respondents that the action of the appellant was violative of fundamental rights of the respondents within the meaning of Articles 25 and 26 of the Constitution of India had to be rejected. It is apparent from the observation made by the Court in para 15 of its order reproduced in the earlier part of this order.

Another aspect which is required to be considered is whether the High Court was right in holding that prescribing of Tandava Dance with damru, skull and trishul as a necessary religious rite by the Ananda Margis by their Guru after the rendering of the judgment by this Court would translate into a practice and the religious rites of the Ananda Margis or not. As the earlier judgment had been rendered by a three-Judge Bench, it would be appropriate that this aspect is also examined by a three-Judge Bench.

In order to avoid contradiction and inconsistency in the orders passed by this Court, we are of the view that this matter requires to be considered by a Bench of three learned Judges. Accordingly, we request the learned Chief Justice to place this matter before a Bench of three learned Judges."

24. As noticed earlier, the dispute started in the year 1979 between the Police Authorities - the appellants herein and the respondents' organisation and the matter was pending before one forum or the other for all these years and has now been placed before this Bench for final hearing and for resolution of the long standing dispute between the parties.

25. We heard the arguments of Mr. Tapas Ray, learned senior counsel for the appellants and Mr. T. R. Andhyarujina, learned senior counsel for the respondents.

26. Learned senior counsel appearing for the respective parties drew our attention to the pleadings, documents, exhibits marked, the judgments rendered by the High Court and of this Court on earlier occasions. Both sides have also cited number of judgments in support of their respective contentions.

27. Mr. Tapas Ray, learned senior counsel appearing for the appellants, submitted that-

a) Tandava dance is not a religious rite or practice essential to the tenets of religious faith of Ananda Margis and that taking out religious processions with Tandava dance is not an essential religious rite;

b) Ananda Margis have no fundamental right within the meaning of Articles 25 and 26 of the Constitution of India to perform Tandava dance in public streets or public places on their mere assertions that their Guru recently prescribed Tandava dance as part of their religious rite;

c) The findings of the Calcutta High Court to the effect that Tandava dance is a part of religious order of that particular community and that the Police Authorities should allow the Ananda Margis to perform the Tandava dance in public procession on the occasion of their principal religious functions mentioned in the writ petitions are hit by the principle of res judicata in view of the negative decision of this Court on identical issues in Acharya Jagdish-warananda Avadhuta etc.'s case (supra); AIR 1984 SC 51 : 1983 Cri LJ 1872

d) The subsequent order dated 1-12-1987 of this Court in writ petition (Civil) Nos. 1317-18 of 1987 to the effect that the case made out in the writ petition filed in this Court should be appropriately examined by the High Court keeping in view what had been said by this Court in Acharya Jagdishwarananda Avadhuta etc.'s case (supra) has not enabled the High Court to reopen the issues already conclusively decided by this Court in the above case;

e) In view of the fact that Ananda Margis is not an institutionalised religion by itself and that they are a religious denomination within the Hindu religion which is the religion they hold, the Ananda Margis have no fundamental right within the meaning of Article 25 or Article 26 to perform

Tandava dance in public streets and public places as per the mandate of their preceptor Ananda Murtiji in absence of any prescription to that effect in the "Shaivite" order within the Hindu religion;

f) Whether the 'Guru' of Ananda Margis, Ananda Murtiji enjoys complete autonomy under Article 26 (b) of the Constitution of India in the matter of deciding as to what rites and ceremonies are essential for his followers and whether Court is powerless to determine if such particular rite or observance is an essential tenet of the religion the followers of Ananda Margi hold.

g) The respondents also cannot be permitted to carry trident, daggers or knife and/or live snakes in public procession or otherwise in view of the fact that the same is bound to disturb public peace and tranquillity and also such permission cannot be given as because there would be possibility of breach of public order and it might affect public health and morality. Further carrying of human skulls and indulging in dance by lifting the leg to the chest level with weapons like tridents, daggers and/or knives and/or live snakes in crowded public roads of Calcutta and its suburbs or anywhere are repulsive to public taste and morality and the unusual dancing pose would also cause fear in the mind of people specially children thereby provoking public annoyance.

28. Mr. T. R. Andhyarujina, learned senior counsel, made elaborate submissions in support of the respondents' case and cited many decisions.

29. He submitted that the issue raised in the present appeal had been raised by way of an application under Article 32 of the Constitution of India before this Court and this Court having directed the High Court to dispose of the matter keeping in view the earlier judgments of this Court, the matter is at large.

30. The action of the appellants in refusing the Ananda Margis the right to perform the Tandava dance was violative of Articles 15, 19, 25 and 26 of the Constitution of India.

31. In the present case, what constitutes an essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself and the Court cannot say that a belief or practice is not part of religion. In support of this contention, he relied on the following judgments :-

1. The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt ((1954) SCR 1005 at 1028) AIR 1954 SC 282 at P. 291

2. Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay ((1962) (Supp 2) SCR 496 at 531-532) AIR 1962 SC 853 at P. 868

3. Seshammal and others, etc. etc. v. State of Tamil Nadu ((1972 (2) SCC 11) AIR 1972 SC 1586

4. Ratilal Pannachand Gandhi v. The State of Bombay and others ((1954) SCR 1055) AIR 1954 SC 388

5. N. Adithayan v. Travancore Devaswom Board and others (2002 (8) SCC 106) AIR 2002 SC 3538 : 2002 AIR SCW 4146

6. The Durga Committee, Ajmer and another v. Syed Hussain Ali and others (1962 (1) SCR 383 at 412). AIR 1961 SC 1402 at P. 1415

32. In the present case, Anand Murtiji had prescribed a procession on six days with Tandava dance in the Carya Carya in the fourth edition 1986. This precept is binding on the Ananda Margis which has not been disputed by the Commissioner of Police that these precepts are mandatory for the Ananda Margis. (As could be seen from Volume II, page 84, para 8 of the paper book).

33. It is significant that this Court in its order of 1-12-1987 did not dismiss the fresh writ petition filed after its decision in Acharya Jagdishwarananda Avadhuta etc.'s case (supra). When the precepts were recorded in the Carya Carya and made part of the new petition, this Court ordered that this should be investigated by a fresh writ petition in the High Court which was done by the Division Bench of the High Court now and held that the precept was established as part of Ananda Margis religious belief. AIR 1984 SC 51 : 1983 Cri LJ 1872

34. It is pertinent to mention that carrying a small knife not exceeding 3" or 4" in size and a skull as symbolic items for the purpose of performing religious rites is not prohibited by any law. Besides, it must be emphasised that a knife with a blade shorter than 10.16 cm. in length is not an "arm" under Section 2(c) of the Arms Act. Learned senior counsel cited (AIR 1990 Cal 336 at 352) and Acharya Jagdishwarananda Avadhuta etc.'s case (supra) which also notes that these are only 'symbolic' items.

35. There can be no question of any 'public order' being violated by the procession of Ananda

Margis involving in the Tandava dance. The concept of 'public order' which is a permissible restriction under Article 25(1) needs to be distinguished from the connotation 'law and order'. As stated by this AIR 1966 SC 740 at P. 758 : 1966 Cri LJ 608 Court in Dr. Ram Manohar Lohia v. State of Bihar and others (1966 (1) SCR 709 at 745) that every breach of peace does not lead to public disorder.

36. Learned senior counsel for the respondents relied on the decision of the Constitution Bench in Himat Lal K. Shah v. Commissioner of Police, Ahmedabad and another (1973 (2) SCR 266) for the proposition that the right to carry out religious procession in public streets. AIR 1973 SC 87 : 1973 Cri LJ 204

37. It has been stated by the Commissioner of Police that if Ananda Margis do not carry a knife, trident or skull but only perform the Tandava dance in public, there would be no objection. This is to ignore the fact that feature of the Tandava dance is the carrying of a knife, trident and skull since time immemorial. This has also been noted by the Division Bench of the Calcutta High Court in Commissioner of Police v. Acharya Jagdishwarananda (AIR 1991 Cal 263 at 270).

Concluding his argument, learned senior counsel submitted that the respondents are willing to abide by any reasonable regulation in the interest of public order imposed by the Commissioner of Police in the conduct of their procession provided that the essential practice of Tandava dance as aforesaid is permitted.

38. The first question which needs to be decided goes to the very root of the High Court's jurisdiction in deciding the issue after the permission was given to the respondents to approach the High Court. It is clear from the language used by this Court in disposing of the petition under Article 32 of the Constitution of India that this Court itself was persuaded with the earlier judgment did not finally conclude the matter. That is why, this Court directed the respondents herein to go before the High Court and directed the High Court to reconsider the matter. As rightly pointed out by learned senior counsel for the respondents, it is significant to note that this Court in its order dated 1-12-1987 did not dismiss the fresh writ petition filed after its decision in Acharya Jagdishwarananda Avadhuta etc.'s case (supra) when the precepts were recorded in the Caryya Caryya and made part of the new petition under Article 32 of the Constitution of India, this Court ordered that this should be investigated by the High Court in a fresh writ petition filed by the respondents, which was done by the High Court and which on reconsideration of the entire gamut of litigation and the records and of the arguments of the counsel appearing on either side held that the percept was established as part of Ananda Margis religious belief. Therefore, the submission made by learned senior counsel for the appellants that the earlier judgment of this Court is final and there was no scope for the same issue to be reargued or redetermined by the High Court has no force. Since the matter is at large, we are of the opinion the High Court is right in considering the entire matter afresh and determining the same. The High Court was competent to consider the question whether the Ananda Margis can claim the benefit of Article 25(1) of the Constitution of India. Since, in our

view, the said question is still open for reconsideration. This apart, this Court in arriving at its finding that the Tandava dance was not an essential part of Ananda Margis religion had taken into consideration the fact that there was no document to show that the Tandava dance was to be performed in public. As rightly pointed out by the High Court, there has been a factual change in the situation since the earlier judgment. The High Court, therefore, is right in holding that it has the jurisdiction to entertain the present writ proceedings.

39. This Court, in its earlier judgment, took note of the fact that the practice was a recent one. No finding, however, was arrived at by this Court that by reason of the recentness of the practice, the same could not form part of religion or be a matter of religion. This Court, finally rested its finding on the fact that the Ananda Margis had not been able to show from any of their religious literature that the Tandava dance was to be performed in public. In fact, this Court has also recorded that the counsel for the Ananda Margis had been asked by the Court to produce any literature in this regard but this could not be done.

40. As far as the recentness of the practice is concerned, it has been submitted by Mr. Andhyarujina that the Tandava dance has been closely associated with Hinduism from time immemorial and in support of this argument he relied upon several authorities and that the Hindus in general have always believed in dance as a form of worship vide "Nataraja in Art, Thought and Literature" by C. Sivaramamurti. He would further submit that Ananda Murtiji was considered by the Ananda Margis as their religious preceptor or guru and any direction given by him was a mandate which could not be disobeyed. Therefore, the rites and rituals which would be prescribed by Ananda Murtiji would form an integral part of their religion as Ananda Murtiji was alive till recently, necessarily such directives could continue to be given until his death.

41. I am of the opinion that there is merit and substance in the contention of learned senior counsel. Although the specific introduction of Tandava dance in public procession may have been recent, this does not detract from the fact that the Tandava dance is part of the religion of the Ananda Margis. In any religion, practice may be introduced according to the decisions of the spiritual Head. If these practices are accepted by the followers of such spiritual Head as a method of achieving their spiritual upliftment, the fact that such practice was recently introduced cannot make it anytheless a matter of religion.

42. Countering the argument, learned senior counsel for the appellants, submitted that the concept of Tandava dance was not a part of religion but a secular activity and relied upon the decision of this Court in the case of Durga Committee, Ajmer and another v. Syed Hussain Ali and others reported in (supra). The particular passage relied on by learned counsel for the appellant is as follows : AIR 1961 SC 1402

"In order that the practices in question should be treated as a part of religion they must be regarded

by the said religion as its essential and integral part; otherwise even surely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religions form and may make a claim for being treated as religions practices within the meaning of Art. 26. Similarly even practices though religions may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinised, in other words, the protection must be confined to such religious practices as are an essential and integral part of it and no other."

43. This observation of this Court, in our view, runs counter to the observation of Mukherjee, J. in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (supra). In this context, it is useful to reproduce a passage from the above judgment which explains the definition of religion in paragraphs 14 and 19 of the judgment which are-
AIR 1954 SC 282

"We now come to Art. 25 which, as its language indicates, secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others."

. If the tenets of any religious sect of the Hindus prescribe that offering of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire all these would be regarded as parts of religion"

44. In a subsequent decision, namely, *His Holiness Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami etc. v. The State of Tamil Nadu* (AIR 1972 SC 1586), this Court has held that-

"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."

45. Mr. Tapas Ray again submitted that the directives regarding the performance of Tandava dance was contained in *Carya Carya* under the heading "Social functions and festivals" and, therefore, the performance of Tandava dance was a secular activity. We are unable to accept this contention. We have already referred to the festivals at large. The Tandava dance has to be performed which are religious in nature. It is stated in Chapter 15 of the *Carya Carya* that our social-cum-spiritual functions will be considered part of our spiritual life. Admittedly, the original Tandava dance of

Siva forms part of the Hindu religious which is said to represent the threefold processes of creation, preservation and destruction. The rhythm, postures, ornaments and the weapons used in the dance are said to be symbols of religious significance vide chapter entitled "The significance of Sivas dance from "Nataraja in "Art., Thought and Literature" by S. Sivarama Murthi. It is to be noticed that since 1986 Ananda Murtiji has specifically directed the performance of the Tandava dance in public procession on special occasions. This directive is contained in the revised version of the Carya Carya. It was placed before us at the time of hearing. In fact, this writing was not produced before this Court during the hearing of the earlier writ proceedings and that this Court had no occasion to consider the same. In our view, the performance of Tandava dance in public procession form part of the Ananda Margis religion and is also a matter of religion within the meaning of those articles and that the Ananda Margis cannot be deprived of their right to practice their religion in the manner prescribed by their religious preceptor, except on the grounds of public order, morality and health. It is not the case of the appellants that the permission for the performance of Tandava dance in public procession has been forbidden on the ground of health. The permission has been refused on the ground of public order and morality. However, in the orders by which the permission had been refused, the Police Authorities have refused permission in terms of the order of this Court. This Court had never directed the said authorities not to accede to the performance of the Tandava dance in public procession. It was, therefore, wrong for the State Authorities to refuse permission purportedly in terms of this Court's orders. A close scrutiny of the order refusing permission do not contain any reference to public order or morality. However, the appellants, at the time of hearing of this appeal, tried to improve their case by affidavits which cannot at all be permitted. The reason justifying refusal of permission should have appeared in the order refusing permission itself. The only reason given was this Court's order. These reasons cannot now be modified or supplemented by way of an affidavit in the proceedings as held by this Court in Mohinder Singh Gill v. The Chief Election Commissioner (AIR 1978 SC 851).

46. Ananda Marga had already been declared as a religious denomination by this Court vide judgment dated 20-10-1983 as reported in Acharya Jagdishwaranand Avadhuta etc's case (supra) at para 9 wherein it has been observed as under : AIR 1984 SC 51 : 1983 Cri LJ 1872

"Ananda Marga appears to satisfy all the three conditions, viz., it is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well being, they have a common organisation and the collection of these individuals has a distinctive name, Ananda Marga, therefore, can be appropriately treated as a religious denomination within the Hindu religion.
."

47. This declaration was made by this Court after perusal of all rival contentions by both the parties. In that case also, the present appellants had made various averments about the alleged misbehaviour of Ananda Margis and this Court placed to reliance on the said allegations. The contention that the word 'religion' under Article 25(1) of the Constitution of India does not include sect of religion of Ananda Marga being declared as religious denomination does not qualify for the some protection as religion in our view is not tenable. The learned Judges of the Calcutta High Court in their judgment impugned in this appeal has categorically dealt with the question following the decision exactly on

the same point in the case of Shirur Mutt (supra) and the National Anthem case reported in (AIR 1987 SC 748) and Sri Venkataramana Devaru and others v. State of Mysore and others (AIR 1958 SC 255) held that a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rights and ceremonies are essential according to the tenets of the religion they hold and outside authority has no jurisdiction to interfere with their decision in such matters.

48. It was argued on behalf of the respondents that the Ananda Marga which has been declared as a religion by this Court has been discriminated and singled out by the West Bengal Government for its ideological differences as its philosophy is based on spirituality. Several instances were pointed out by the respondents. Particulars were also furnished by the respondents in their writ petition in this regard. According to the respondents, procession of various hues are taken out regularly in Calcutta and the celebration of Muslim festival of Muharram is taken out with various deadly weapons as well as Sikh celebrations with sword fighting display in public, the procession of workers of Bharat Sevasram Sangha (a Social and not even a religious organisation) are allowed to move on horseback and carrying swords through the streets. Besides these, the example of Bolana and Gajana festivals in Burdwan, Birbhum, Murshidabad, Nadia in West Bengal, wherein a public dance with severed heads from corpses is displayed and the procession of monks in Allahabad are examples of religious tolerance in our country which has a wide variety of traditions and beliefs. The display of Tandava dance which takes only a few minutes by a very limited number of persons to display the same compared to other religious festivals. The plea of congested streets is an eye-wash in that the appellants allows other groups of other hue to move in possession in Calcutta and deny the Ananda Margis due to prejudice towards Ananda Marga and its philosophy. This contention was denied by learned counsel for the appellants stating that if the respondents are allowed to perform the dance on public roads while in procession which is offensive order morality are bound to create external situation endangering public life and safety which goes or bound to go out of control of the administration. Such a procession with burning torches, human skulls etc. if allowed will only be at the cost of widespread public panic, disruption of traffic, both vehicular and pedestrian and smooth movement of passers by and will give rise to the chances of rioting and other criminal offences. In our view, this contention of the appellants has no merits. If one religious denomination is allowed to carry its religious practice but another religious denomination is restrained from carrying on religious practice and almost similar religious practices, the same makes out a clear case of discrimination in violation of the principles of Article 14 of the Constitution. It was submitted by learned senior counsel for the respondents that in the procession of the followers of Ananda Margis, each one of them will not carry the skull and trident or knives of the aforesaid size, but only 5 to 6 members in a procession of at least 1,000 members would carry the skull and the trident and/or knives to perform the Tandava Dance which will be of a very limited duration, may be of 1 or 2 minutes. Such performance is likely to be repeated at the interval of say one mile and the said performance is not a continuous one. Such performance cannot by any stretch of imagination cause public annoyance or disturbance of the public law and order situation and therefore, there is no reason for the respondents to deny permission to the members of Ananda Margis to perform such Tandava Dance in public inasmuch as the said dance is one of the most fundamental aspects of the religious practice which the Ananda Margis are bound to perform as per the directions of their Living Guru.

49. According to Mr. Andhyarujina, a wrong impression is created about the religious procession by

the Ananda Margis as if it consisted of a huge number of violent persons brandishing knives or tridents and displaying human skull or tridents terrifying the public and disturbing periodically public order in streets and that the facts are to the contrary. In regards to this submission, he invited or attention to the conditions under which the procession with Tandava dance is held by Ananda Margis as under :-

- "1. 6 times a year on days of festivals and social functions
2. Approximately 1000 members in procession
3. 5 or 6 members carry skulls and trident and/or knives to perform Tandava dance, which is of 1 or 2 minutes duration. This will be repeated at intervals of one mile and is not of continuous duration;
4. Knife/trident is only of 3" x 4"
5. The skull is held in the left hand and knife/trident (sometimes a torch) is held in the right
6. Each of the items, tandava dance, trident/knife and skull has a deep spiritual significance.
7. The organizers of the procession have given undertaking to the Commissioner of Police to maintain peace and discipline when conducting procession and the procession will be taken only on a specified route or roads"

50. According to him, Tandava dance in procession is the mandate of Ananda Margis. He invited our attention to para 14 of the judgment of this Court in Acharya Jagdishwaranand Avadhuta etc.'s case (surpa) in which this Court held that there is no justification in any writings of Shri Ananda Margis that Tandava dance must be performed in public. On this finding, this Court held that Tandava dance was not proved to be an essential religious rite to be performed by every Ananda Margi in procession. AIR 1984 SC 51 : 1983 Cri LJ 1872

51. The tenets of the Ananda Margi are both oral and written as in the case of many religions. The fact that there were no writings shown to the Court that Tandava dance is to be performed in public, did not negative the existence of such precepts by the Anand Murthiji. As in the case of many religious any of the Anand Murthiji precepts are a matter of oral prescriptions. However, in the 1986 edition of Carya Carya specific mention was made by Anand Murthiji of the requirement of

Tandava dance in procession on special functions and festivals.

52. These written mandatory directions of Anand Murtiji were specifically pleaded by the petitioner at pages 9-10 paras 9 and 10 of the writ petition. Their existence or genuineness were not denied in the reply. On the contrary, it was admitted that "the directive may be mandatory and binding on the followers of Ananda Margis but it does not bind the respondents.

53. The Court rightly observed that the fact the practice is recently prescribed by Ananda Murtiji is not a reason for saying does not part of the religious practices and beliefs of the denomination.

54. I shall now consider whether Ananda Margis have the fundamental right under Articles 25 and 26 of the Constitution of India.

55. The Anand Margi are a religious denomination and as such are entitled to the protection under Articles 25 and 26(b) of the Constitution for their beliefs and practices including their practice of Tandava dance in a procession or public place. This is because, as held by this Court in several cases.

"Religious practices or performance of acts in pursuance of religious beliefs are as much a part of religious as faith or belief in religious doctrine. No outside authority has any right to say that they are not essential part of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like" *Ratilal Pannachand Gandhi v. State of Bombay* (supra) citing with approval *Daver, J. in Jam-shedji Soonabai*, AIR 33 Bom 122; *Commr. HRE, Madras v. Lakshmandra*, 1954 SCR 1006 at 1021-1022, 1025; *Sardar Syendna v. State of Bombay*, 1962 Suppl (2) SCR 496 at 531-532. In *Venkatarama Devaru's case* (supra), this Court has held that the right under Article 26(b) of a denomination to manage its own affairs in matters of religion includes even practices which are regarded as part of religion. AIR 1954 SC 388, AIR 1933 Bom 122, AIR 1954 SC 282 at P. 289, AIR 1962 SC 853 at P. 868, AIR 1958 SC 255

56. The exercise of the freedom to act and practice in pursuance of religious beliefs is as such important as the freedom of believing in a religion. In fact to persons believing in religious faith, there are some forms of practising the religion by outward actions which are as much part of religion is the faith itself. The freedom to act and practice can be subject to regulations. In our Constitution subject to public order health and morality and to other provisions in Part III of the Constitution. However, in every case the power of regulation must be so exercised with the consciousness that the subject of regulation is a fundamental right of religion, and as not to unduly infringe the protection given by the Constitution. Further in the exercise of the power to regulate, the authorities cannot sit in judgment over the professed views of the adherents of the religion and

to determine whether the practice is warranted by the religion or not. That is not their function. (See *Jesse Cantwell v. State of Connecticut* (1939 (84) L Ed 1213-1218; *United States v. Ballard*, 1943 (88) L Ed 1148, 1153, 1154).

57. I shall consider the right of the Ananda Margis to religious procession. In *Parthasaradi Ayyangar and others v. Chinakrishna Ayyangar*, ILR 5 Madras 304 Turner C.J. said,

"In India, person of whatever sect are entitled to conduct religious procession through public streets so long as they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrates may lawfully give to prevent obstruction of thorough fare or breaches of public peace."

"The power to suspend is extraordinary and the Magistrate should resort to it only when he is satisfied that other powers are insufficient. This authority of the Magistrate should be exercised in defence of rights rather than in their suspension."

58. These observations were quoted with approval by this Court in *Ghulam Abbas v. State of U.P.*, 1982 (1) SCR 1077 at 1130-1133. It was observed that the authorities should not in face of such religion rights prohibit religious procession on the "facile ground of public peace and tranquillity" but adopt a positive approach to protect fundamental rights under Articles 25 and 26 of the Constitution. AIR 1981 SC 2198 at pp. 2227-28 : 1981 Cri LJ 1835

59. Moreover "public order" has a larger connotation than "law and order". Contravention of law to effect public order must affect the community or the public at large. A mere disturbance of law and order leading to disorder is not one which affects "public order". (See *R. M. Lohia v. State of Bihar*, (supra)). AIR 1966 SC 740 : 1966 Cri LJ 608

60. Similar procession by other communities even with use of swords e.g. Sikhs, Muslims and Bharat Sevashram Sanghs have been permitted by the Commissioner of Police.

61. The Police Commissioner answers the charge of discrimination by stating that "activities of Anand Margis cannot come within the scope of religious functions or practices as compared to well established practices festival of Muslims and Sikhs". It is not for the Police Commissioner to give his disapproval to practice of a particular sect which are in his opinion not well established. To allow any authority to judge the truth or falsity of a religious belief or practice is to destroy the guarantee of religious freedom in the Constitution (See *US v. Ballard*, 88 L Ed 1148).

62. At the time of hearing, a promise was made that the Ananda Margis are willing to abide with any regulatory condition imposed by the Police Authorities in their procession so long as their religious beliefs and practices of Tandava Dance in a procession are not abrogated.

63. Whilst our Constitution is neutral in religion, it at the same time, is benign and sympathetic of all religious creeds however unacceptable they may be in the eyes of the non-believers. Articles 25 and 26 embody a tolerance to all religions. This Court has rightly said-

"Our tradition teaches tolerance; Our philosophy preaches tolerance; Our Constitution practices tolerance; Let us not dilute it :

It is in that spirit of tolerance that creeds like the petitioner with their practices must be accepted in our society".

64. This Court has explained in a number of decisions that what constitutes an essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself and the Court cannot say that a belief or practice is not part of religion. This proposition was authoritatively laid down by the Constitution Bench of this Court (Seven Judges) in Shirur Mutt's case (supra) as extracted in paras (supra). This is the most essential part of the fundamental right of freedom of religion. This Court in subsequent cases have followed the proposition in Shirur Mutt's case (supra), Sardar Syedna Tahe Saifuddin Saheb v. State of Bombay (Five Judges), 1962 (Suppl) SCR 496 at 531-532 in Seshanmmal v. State of Tamil Nadu, 1972 (2) SCC 11 (Five Judges) at page 21. AIR 1954 SC 282

AIR 1962 SC 853 at P. 868, AIR 1972 SC 1586 at P. 1593

65. In the case of Ratilal Pannachand Gandhi v. State of Bombay (supra), this Court emphasized that "No outside authority has any right to say that these are not essential parts of religion and it is not open to a secular authority of the State to restrict and prohibit them in any manner they like under the guise of administering the trust estate." This Court quoted with approval Jamshedji v. Soonabai (supra) where the Bombay High Court held, "if this is the belief of the community a secular judge is bound to accept that belief - it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a AIR 1954 SC 388 gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind."

66. As late as 2002, this Court has reiterated this in N. Adithayan v. Travancore Devaswom Board ((2002) 8 SCC 106 at 123). This Court observed that "as to what really constitutes an essential part

of religion or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion or practices regarded as parts of religion." AIR 2002 SC 3538 : 2002 AIR SCW 4146, Para 16

67. The obiter of Gajendragadkar, J. in Durga Committee, Ajmer v. Syed Hussain Ali (supra) to the effect that the Court may have carefully scrutinized the practices to find out whether they constitute an essential or integral part of religion is not in line with the above decisions including that of seven Judges Bench in the case of Shirur Mutt (supra). AIR 1961 SC 1402, AIR 1954 SC 282

68. Seervai in Constitutional Law of India (4th Edition), Volume-II at page 1268 has criticized this as obiter as inconsistent with earlier decisions of this Court cited above.

69. Subject to consideration of public order, health and morality, it is not open for anybody to question the tenets and practices of religion, however, irrational they may appear to an outsider.

70. It is brought to our notice that the following observation in Acharya Jagdishwaranand Avadhuta etc.'s case (supra) is not correct in law :-

"Mr. Tarkunde has claimed protection of Article 25 of the Constitution but in view of our finding that Anandamarga is not a separate religion, application of Article 25 is not attracted".

As rightly stated by this Court in Bijoe Emmanuel's case (1986 (6) SCC 615 at 631. This sentence appears to have crept into the judgment by some slip. AIR 1987 SC 748

Article 25(1) states that all persons are entitled to freedom of religion. Hence every member of a religious denomination is entitled to the fundamental right of freedom of religion under Article 25. It necessarily follows that every sect or denomination is entitled to freedom of religion under Article 25. It is undisputed that under Article 26(b) a denomination is entitled to manage its own affairs in matters of religion.

The above observation in Jagdishwaranand's case is also contrary to the interpretation of Article 25(1) given by this Court in the Constitution Bench of 7 Judges in Shirur Mutt case where the Court observes that "institutions as such cannot practice or propagate religion; it can be done only by individual persons and whether these persons propagate their personal views or the tenets for which

the institution stands is really immaterial for the purpose of Article 25". AIR 1984 SC 51 : 1983 Cri LJ 1872

AIR 1954 SC 282

71. In this context, I can also usefully refer to the decision of this Court in *Ratilal Panachand Gandhi and others v. State of Bombay and others* (supra). AIR 1954 SC 388

72. I am, therefore, of the opinion that the observation of the learned Judges in the referring order dated 17-1-2002 are not correct.

73. I have given my thoughtful consideration to the important questions of law posed for our consideration.

74. Article 25(1) guarantees to every person freedom of conscience and the right freely to profess, practice and propagate any religion. It may be noted that this right is not confined to citizens alone, but covers all persons residing in India. But the right to freedom of religion guaranteed by this Article is subject to restrictions which may be imposed by the State on the grounds of :

1. Public order, morality and health;
2. Other provisions of Part III of the Constitution;
3. Regulating non-religious activity associated with religious practice;
4. Social welfare and reform and
5. Throwing open Hindu religious institutions of public character to all classes of Hindus.

75. The full concept and scope of religious freedom is that there are no restraints upon the free exercise of religion according to the dictates of one's conscience or upon the right freely to profess,

practice and propagate religion save those imposed under the police power of the State and the other provisions of Part II of the Constitution. This means the right to worship God according to the dictates of one's conscience. Man's relation to his God is made no concern for the State. Freedom of conscience and religious belief cannot, however, be, set up to avoid those duties which every citizen owes to the nation; e.g. to receive military training, to take an oath exercising willingness to perform military service and so on.

76. Though the freedom of conscience and religious belief are absolute, the right to act in exercise of a man's freedom of conscience and freedom of religion cannot override public interest and morals of the society and in that view it is competent for the State to suppress such religious activity which are prejudicial to public interest. That apart, any activity in furtherance of religious belief must be subordinate to the criminal laws of the country. It must be remembered crime will not become less odious because sanctioned by what a particular sect may designate as religious. Thus polygamy or bigamy may be prohibited or made a ground of disqualification for the exercise of political rights, notwithstanding the fact that is in accordance with the creed of a religious body.

77. The liberty of the individual to do as pleases, even in innocent matters, must yield to the common good. In other words, the police power of the State is founded on the theory that when there is conflict between the rights of individual and the interest of the society, the interest of the society prevail. In an organized society there cannot be any individual right which is injurious to the community as a whole. At the same time, the police power is not absolute and must not be arbitrary or oppressive. In other words, the police power must be exercised for preservation of the community from injury. What our Constitution attempts to do is to strike a balance between individual liberty and social control. There are two limbs to religious freedom contained in Article 25. While one limb guarantees the right the other limb incorporates restrictions on the exercise of the right so that they may not conflict with public welfare or morality.

Jahova Witnesses and Ananda Margis

78. The principle of secularism enshrined in the Constitution touched its high watermark in the Jehovah's witnesses case, wherein this Court held that children of the Jehovah's witnesses faith need not stand up to sing the National Anthem at school assemblies. According to the Court there is no provision of law which obliges anyone to sing the National Anthem, nor is it disrespectful to the National Anthem if a person who stands up respectfully when the National anthem is sung does not join the signing. It is true that the Constitution enjoins a duty on every children to respect the National Flag and National Anthem. However, according to the Court, proper respect is shown to the National Anthem by standing up when the National Anthem is sung and it will not be right to say that disrespect is shown by not joining in the singing. Therefore, the expulsion of the children from the school for the reason they did not join the singing of National Anthem, though they do stand up respectfully, when the Anthem is sung would be violative of Article 19(1) and Article 25(1), especially when it was sought to be done in pursuance of two circulars issued by the Director of Public Instruction having no statutory force. In the case of P.M.A. Metropolitan and others etc. etc. v. Moran Mar Marthoma and another etc. etc., AIR 1995 SC 2001 (ex-communication case), a

sharply divided Court upheld the right of the leaders of faith to ex-communicate 'fallen' believers for religious reasons-no doubt leaving it to the Courts to determine whether an ex-communicatory reason was religious or not. The principle of ex-communication is that the collective right will prevail over individual right. However, in 1995, this Court recognized the power of ex-communication as a measure of discipline. In the case of Mohd. Hanif Quareshi and others v. The State of Bihar (1959 SCR 629, Cow Slaughter case) this Court had struck a balance between the fundamental rights of butchers to occupation and slaughtering of cows an activity claimed to be part of the Islamic faith. While prohibiting indiscriminate slaughter of cows the Court did two things. 1995 AIR SCW 3133, AIR 1958 SC 731

1. Muslim sentiments were respected and butchers retained a large part of their trade.

2. By rejecting their claim that cow slaughter was an "essential practice of Islam" relying on its own interpretation of Koran, the Hindus were partially appeased.

79. Here, the Court has assumed the role of the theologian after making a roving enquiry. While the decision is criticized on the ground that, once this door is opened, there is no limit to which the Court cannot go, the answer is that the power of judicial review as a basic structure is vested with the Court and if some one has to be trusted, let it be the Courts even in matters of faith. This Court, as stated earlier, considered this question whether performance of Tandava dance is a religious rite or practice essential to the tenets of the religious faith of the Ananda Margis. The Court while upholding Ananda Marga satisfies all the three conditions envisaged by Article 26 of the Constitution of India and as such a religious denomination negated their claim to perform Tandava dance in public (1. it is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well-being; 2. they have a common organization, and 3 the collection of these individuals has distinctive name). The specific case of the petitioners is that Shri Ananda Murti introduced Tandava as a part of religious rites of Anand Margis in 1966. What is Tandava dance? It lasts for a few minutes, where two or three persons dance by lifting one leg to the level of the chest, bringing it down and lifting the other. When the Ananda Margis greet their spiritual preceptor, they perform a brief welcome dance of Tandava using skull and knife for 2/3 mts. According to them, Tandava is a custom among its sect members and it is a customary performance and its origin is over thousands of years old. Repelling the contention the Court even conceding that Tandava dance has been prescribed as a religious rite for the followers of Ananda Marga, it does not follow as a necessary corollary that Tandava dance to be performed in the public is a matter of religious rite. The Court went on to observe that there is nothing that Tandava dance must be performed in public. In the result, this Court rejected the claim of Ananda Margis to perform Tandava dance in public streets.

80. It would be pertinent to mention that the Sikh Community carry "Kirpans" as a symbol of their religious practice and the Gurkhas the "Kukris" or "Dagger". So also, the Hindus are permitted to carry the idol of "Ganesa" in procession before immersion in the sea during Vinayaka Chaturti

Celebrations. Persons professing Islamic Faith are allowed to take out procession during "Moharrum" Festival and persons participating in such processions beat their chest with hands and chains and inflict injuries on them and the same has been permitted as a religious practice of that community.

81. Each deity presides over a certain function, has a certain consort, uses a particular vehicle, giving them a concrete aspect that appeals to less spiritually sophisticated lay people. All these insignia have a deep philosophical symbolism. What might interest us presently is that all these vehicles are mostly drawn from the world of animals, birds, and even reptiles. For example, Brahma has a swan, Vishnu has a garuda, a type of eagle, Siva rides a bull, Ganesa a mouse, Subrahmanya a peacock, and so on. The idea is only to emphasize the kinship with animals. Trees have the divinity Vanadevata. War is presided over by the Goddess Chemundi riding a lion. Sound has a divinity, the Nadabrahmam. The Goddess Saraswathi presides over music and arts. Lakshmi sitting on a lotus deals with wealth. Parvathi, the consort of Siva, rules the entire Nature. All these divinities serve to consecrate every aspect of daily life. The whole pantheon serves to emphasize the one ultimate Reality.

82. Reading and reciting old scriptures, for instance, Ramayana or Quran or Bible or Gurur Granth Sahib is as much a part of religion as offering food to deity by a Hindu or bathing the idol or dressing him and going to a temple, mosque, church or gurudwara. . . .

83. The authorities concerned can step in and take preventive measures in the interest of maintenance of Law and Order if such religious processions disturb Law and Order. It has to be held that the right to carry Trishul, Conch or Skull is an integral and essential part of religious practice and the same is protected under Article 25 of the Constitution of India. However, the same is subject to the right of the State to interfere with the said practice of carrying Trishul, Conch or Skull if such procession creates Law and Order problems requiring intervention of concerned authorities who are entrusted with the duty of maintaining Law and Order.

What is Religion

84. Religion is a social system in the name of God laying down the Code of Conduct for the people in Society. Religion is a way of life in India and it is an unending discovery into unknown world. People living in Society have to follow some sort of religion. It is a social Institution and Society accepts religion in a form which it can easily practice. George Barnard Shaw stated, "There is nothing that people do not believe if only it be presented to them as Science and nothing they will not disbelieve if it is presented to them as Religion." Essentially, Religion is based on "Faith". Some critics say that Religion interfered with Science and Faith. They say that religion led to the growth of blind faith, magic, sorcery, human sacrifices etc. No doubt, history of religion shows some indications in this direction but both Science and Religion believe in faith. Faith in Religion influences the temperament and attitude of the thinker. Ancient civilization viz., the Indus Valley Civilization shows faith of people in Siva and Sakthi. The period of Indus Valley Civilization was

fundamental religion and was as old as at least Egyptian and Mesopotamian Culture. People worship Siva and the Trishul (Trident), the emblem of Siva which was engraved on several seals. People also worshipped stones, trees, animals and Fire. Besides, worship of stones, trees, animals etc. by the primitive religious tribes shows that animism viz., worship of trees, stones, animals was practiced on the strong belief that they were abodes of spirits, good or evil. Modern Hinduism is to some extent includes Indus Valley Civilization Culture and religious faith. Lord Siva is worshipped in the form of Linga. Many symbols have been used in Hindu Literature. Different kinds of symbols and images have different sanctity. Branding of chest, arms and other parts of body represent to the weapons of symbols of Siva. Modern Hinduism has adopted and assimilated various religious beliefs of primitive tribes and people. The process of worship has undergone various changes from time to time.

85. The expression of 'RELIGION' has not been defined in the Constitution and it is incapable of specific and precise definition. Article 25 of the Constitution of India guarantees to every person, freedom of conscience and right freely to profess, practice and propagate religion. No doubt, this right is subject to public order related to health and morality and other provisions relating to Fundamental Right. Religion includes worship, faith and extends to even rituals. Belief in religion is belief of practice a particular faith, to preach and to profess it. Mode of worship is integral part of religion. Forms and observances of religion may extend to matters of Food and Dress. An act done in furtherance to religion is protected. A person believing in a particular religion has to express his belief in such acts which he thinks proper and to propagate his religion. It is settled law that protection under Articles 25 and 26 of the Constitution of India extend guarantee for rituals and observances, ceremonies and modes of worship which form part and parcel of religion. Practice becomes part of religion only if such practice is found to be essential and integral part. It is only those practices which are integral part of religion that are protected. What would constitute an essential part of religion or religious practice is to be determined with reference to the Doctrine of a particular religion which includes practices which are regarded by the Community as part and parcel of that religion. Test has to be applied by Courts whether a particular religious practice is regarded by the community practising that particular practice is integral part of the religion or not. It is also necessary to decide whether the particular practice is religious in character or not and whether the same can be regarded as an integral or essential part of religion which has to be decided based on evidence.

86. It is not uncommon to find that those delve deep into scriptures to ascertain the character and status of a particular practice. It has been authoritatively laid down that Cow Sacrifice is not an obligatory over-act for a Muslim to exhibit his religious belief. No Fundamental Right can be claimed to insist on slaughter of a healthy cow on a Bakrid Day. Performance of "Shradha" and offering of "Pinda" to ancestors are held to be an integral part of Hindu Religion and religious practice. Carrying "Trishul" or "Trident" and "skull" by a few in procession to be taken out by a particular community following a particular religion is by itself an integral part of religion. When persons following a particular religion carry Trishul, Conch or Skull in a possession, they merely practice which is part of their religion which they wanted to propagate by carrying symbols of their religions such as Trishul, Conch etc. If the conscience of a particular community has treated a particular practice as an integral or essential part of religion, the same is protected by Articles 25 and 26 of the Constitution of India.

87. Therefore, Anand Margis have right to take a procession in public places after obtaining necessary permission from the concerned authorities and they are also entitled to carry Trishul or Trident, Conch or Skull so long as such procession is peaceful and does not offend the religious sentiments of other people who equally enjoy fundamental right to exercise their religious freedom. An Anand Margi is entitled to transmit or spread religion by taking out procession in public places and also carry Trishul, Conch or Skull. However, any religious right is subject to public order. The State has got ample powers to regulate the secular activities associated with religious practices. Religious activities are protected under Article 25 of the Constitution of India. No doubt, such religious freedom is subject to health and subject to laws made for social welfare. Every person has got right to follow, practice and propagate his religion.

88. The Commissioner has got power to regulate assemblies, meetings and processions in public places, etc. It specifically provides that he is entitled to prescribe the routes by which and the times at which such processions may pass, in order to keep the public places and prevent obstructions on the occasion of such assemblies, meetings and procession and in the neighbourhood of places of worship during the time of public worship.

89. Hence, to preserve public peace and to avoid damages to public properties and keeping this in mind the Anand Margis are permitted to go on procession and perform Tandva dance with symbolic skull, Trishul, knife, damroo, sword subject to the following terms and conditions :-

1. The Commissioner of police may prescribe the route;

2. REGULATION :

(i) The participants to the procession shall not carry wooden bars, weapons, metal rods, weapons capable of including violence.

(ii) Loud speakers shall not be used.

(iii) Traffic regulations should be observed.

(iv) Traffic should not be obstructed.

(v) Normal activities of common man should not be disturbed.

(vi) Objectionable slogans and illegal slogans or provocative slogans affecting others' sentiments shall not be expressed or voiced.

(vii) Processionists shall proceed in five persons row and shall keep one side of road by keeping other side for transport.

(viii) Crackers are prohibited.

(ix) They should not spray colour powders.

90. The instructions of police officers and other regulations as above should be followed."

91. For the foregoing reasons, I am of the opinion that the appeal filed by the appellants has no merits and is, therefore, dismissed.

92. In my opinion, it is a fit case for awarding of exemplary costs to the respondents. Since the respondents were prevented from practising their religion and perform the religious Tandava dance, they were compelled to come before this Court. In this appeal, since the appellant is a Government, by taking a lenient view, I order no costs.

Order accordingly.