

# SUPREME COURT OF INDIA

Prafull Goradia

Vs.

Union of India

WP(civil) No.1 of 2007

(Markandey Katju and Gyan Sudha Misra, JJ.,)

28.01.2011

## ORDER

1. Heard learned counsel for the parties.

2. This Writ Petition under Article 32 of the Constitution had been initially filed challenging the constitutional validity of the Haj Committee Act 1959, but thereafter by an amendment application the Haj Committee Act of 2002 which replaced the 1959 Act, has been challenged.

3. The ground for challenge is that the said Act is violative of Articles 14, 15, and 27 of the Constitution. The grievance of the petitioner is that he is a Hindu but he has to pay direct and indirect taxes, part of whose proceeds go for the purpose of the Haj pilgrimage, which is only done by Muslims. For the Haj, the Indian Government inter alia grants a subsidy in the air fare of the pilgrims.

4. Particular emphasis has been given by the petitioner to Article 27 of the Constitution which states:-

"27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination."

5. The petitioner contends that his fundamental right under Article 27 of the Constitution is being violated. We have, therefore, to correctly understand and interpret Article 27.

6. There are not many decisions which have given an indepth interpretation of Article 27. The decision in *Commissioner, Hindu Religious Endowments vs. Sri Lakshmindra Thirtha Swamiar<sup>1</sup>*, held (vide page 1045) that since the object of the Madras Hindu Religious and Charitable Endowments Act, 1951 is not to foster or preserve the Hindu religion but to see

that religious trusts and institutions are properly administered, Article 27 is not attracted. The same view was taken in *Jagannath Ramanuj Das vs. State of Orissa and Anr*<sup>2</sup>. The decision in *T.M.A. Pae Foundation vs. State of Karnataka*<sup>3</sup>, (vide paragraph 85) does not really deal with Article 27 at any depth.

7. There can be two views about Article 27. One view can be that Article 27 is attracted only when the statute by which the tax is levied specifically states that the proceeds of the tax will be utilized for a particular religion. The other view can be that Article 27 will be attracted even when the statute is a general statute, like the Income Tax Act or the Central Excise Act or the State Sales Tax Acts (which do not specify for what purpose the proceeds will be utilized) provided that a substantial part of such proceeds are in fact utilized for a particular religion.

8. In our opinion Article 27 will be attracted in both these eventualities. This is because Article 27 is a provision in the Constitution, and not an ordinary statute. Principles of interpreting the Constitution are to some extent different from those of interpreting an ordinary statute vide judgment of Hon'ble Sikri, J. in *Kesavanand Bharati vs. State of Kerala*<sup>4</sup>, (vide para 15). The object of Article 27 is to maintain secularism, and hence we must construe it from that angle.

9. As Lord Wright observed in *James vs. Commonwealth of Australia*<sup>5</sup>, a Constitution is not to be interpreted in a narrow or pedantic manner (followed in re C.P. & Berar Act, AIR 1939 F.C.I.). This is because a Constitution is a constituent or organic statute, vide *British Coal Corporation vs. The King*<sup>6</sup>, and *Kesavanand Bharati vs. State of Kerala*<sup>7</sup>, (vide para 506). While a statute must ordinarily be construed as on the day it was enacted, a Constitution cannot be construed in that manner, for it is intended to endure for ages to come, as Chief Justice Marshal of the U.S. Supreme Court observed in *McCulloch vs. Maryland*<sup>8</sup>, and by Mr. Justice Holmes in *Missourie vs. Holland*<sup>9</sup>, Hence a strict construction cannot be given to it.

10. In our opinion Article 27 would be violated if a substantial part of the entire income tax collected in India, or a substantial part of the entire central excise or the customs duties or sales tax, or a substantial part of any other tax collected in India, were to be utilized for promotion or maintenance of any particular religion or religious denomination. In other words, suppose 25 per cent of the entire income tax collected in India was utilized for promoting or maintaining any particular religion or religious denomination, that, in our opinion, would be violative of Article 27 of the Constitution. However, the petitioner has not made any averment in his Writ Petition that a substantial part of any tax collected in India is utilized for the purpose of Haj. All that has been said in paragraph 5 (i) and (ii) of the Writ Petition is:-

"(i) That the respondent herein has been imposing and collecting various kinds of direct and indirect taxes from the petitioner and other citizens of the country.

(ii) That a part of the taxes so collected have been utilized for various purposes including promotion and maintenance of a particular religion and religious institutions."

11. Thus, it is nowhere mentioned in the Writ Petition as to what percentage of any particular tax has been utilized for the purpose of the Haj pilgrimage. The allegation in para 5(ii) of the Writ Petition is very vague. In our opinion, if only a relatively small part of any tax collected is utilized for providing some conveniences or facilities or concessions to any religious denomination, that would not be violative of Article 27 of the Constitution. It is only when a substantial part of the tax is utilized for any particular religion that Article 27 would be violated. As pointed out in para 8 (iv), (v) and (viii) of the counter affidavit filed on behalf of the Central Government, the State Government incurs some expenditure for the Kumbh Mela, the Central Government incurs expenditure for facilitating Indian citizens to go on pilgrimage to Mansarover, etc. Similarly in para 8 (vii) of the counter affidavit it is mentioned that some State Governments provide facilities to Hindu and Sikh pilgrims to visit Temples and Gurudwaras in Pakistan. These are very small expenditures in proportion to the entire tax collected. Moreover, in para 8(iii) of the counter affidavit the Central Government has stated that it is not averse to the idea of granting support to the pilgrimage conducted by any community.

12. In our opinion, we must not be too rigid in these matters, and must give some free play to the joints of the State machinery. A balanced view has to be taken here, and we cannot say that even if one paisa of Government money is spent for a particular religion there will be violation of Article 27.

13. As observed by Mr. Justice Holmes, the celebrated Judge of the *U.S. Supreme Court in Bain Peanut Co. vs. Pinson*<sup>10</sup>, "The interpretation of constitutional principles must not be too literal. We must remember that the machinery of the government would not work if it were not allowed a little play in its joints" (see also *Missourie, Kansas and Tennessee Railroad vs. May*<sup>11</sup>, Hence, in our opinion, there is no violation of Article 27 of the Constitution.

14. There is also no violation of Articles 14 and 15 because facilities are also given, and expenditures incurred, by the Central and State Governments in India for other religions. Thus there is no discrimination. In *Transport & Dock Workers Union vs. Mumbai Port Trust*<sup>12</sup>, this Court observed that Article 14 cannot be interpreted in a doctrinaire or dogmatic manner. It is not prudent or pragmatic for the Court to insist on absolute equality when there are diverse situations and contingencies, as in the present case (vide paragraphs 39 and 43).

15. Apart from the above, we have held in *Government of Andhra Pradesh vs. P. Laxmi Devi*<sup>13</sup>, that Court should exercise great restraint when deciding the constitutionality of a statute, and every effort should be made to uphold its validity.

16. Parliament has the legislative competence to enact the Haj Committee Act in view of entry 20 to List 1 of the Seventh Schedule to the Constitution which states :

"Pilgrimages to places outside India". Thus there is no force in this petition and it is dismissed. Before parting with this case we would like to mention that India is a country of tremendous diversity, which is due to the fact that it is broadly a country of immigrants (like North America) as explained in detail by us in *Kailas & Others vs. State of Maharashtra*,<sup>15</sup>. As observed in paragraph 32 of the said decision, since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and equal respect for all communities and sects (see also in this connection the decision in *Hinsa Virodhak Sangh vs. Mirzapur Moti Kuresh Jamaat*<sup>14</sup>, vide paragraphs 41 to 60). It is due to the wisdom of our founding fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country.”

17. It may be mentioned that when India became independent in 1947 there were partition riots in many parts of the sub-continent, and a large number of people were killed, injured and displaced. Religious passions were inflamed at that time, and when passions are inflamed it is difficult to keep a cool head. It is the greatness of our founding fathers that under the leadership of Pandit Jawaharlal Nehru they kept a cool head and decided to declare India a secular country instead of a Hindu country. This was a very difficult decision at that time because Pakistan had declared itself an Islamic State and hence there must have been tremendous pressure on Pandit Jawaharlal Nehru and our other leaders to declare a Hindu State. It is their greatness that they resisted this pressure and kept a cool head and rightly declared India to be a secular state.

18. This is why despite all its tremendous diversity India is still united. In this sub-continent, with all its tremendous diversity (because 92 per cent of the people living in the sub continent are descendants of immigrants) the only policy which can work and provide for stability and progress is secularism and giving equal respect to all communities, sects, denominations, etc.

Judgment Referred.

<sup>1</sup>(1954) 5 SCR 1005

<sup>2</sup>(1954) 5 SCR 1046

<sup>3</sup>AIR 2003 SC 0355

<sup>4</sup>(1973) 4 SCC 0225

<sup>5</sup>(1936) AC 0578

<sup>6</sup>AIR 1935 P.C. 0158

<sup>7</sup>(1973) (4) SCC 0225

<sup>8</sup>17 U.S. 316(1819)

<sup>9</sup>252 U.S. 416(1920)

<sup>10</sup>282 U.S. 499, 501 (1931)

<sup>11</sup>194 U.S. 267 (1904)

<sup>12</sup>(2010(12) Scale 0217

<sup>13</sup>AIR 2008 SC 1640

<sup>14</sup>AIR 2008 SC 1892

<sup>15</sup>JT 2011 (1) 19