

WP(MD)No.10496 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 30.04.2024

Pronounced on : 17.05.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.10496 of 2024

P.Naveen Kumar

... Petitioner

v.

1.The District Collector,
District Collector Office,
Karur District.

2.The Revenue Divisional Officer,
Revenue Divisional Office,
Karur District.

3.The Tahsildar,
Taluk Office, Manmangalam Taluk,
Karur District.

4.Nerur Sathguru Sathasiva
Brammediral Sabha,
Rep.by its President,
S.Ramesh S/o.D.Sundaresan,
Agraharam, Nerur, Manmangalam Taluk,
Karur District – 639 004.

5.The Superintendent of Police,
Karur District.

6.The Inspector of Police,
Vangal Police Station,
Karur District.

... Respondents

(R5 and R6 suo motu impleaded vide order dated 30.04.2024)



WP(MD)No.10496 of 2024

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to direct the respondents 1 to 3 to consider the petitioner's representation dated 22.04.2024 and grant permission to conduct "Annathanam" and "Angapradakshinam" ie., rolling over the plantain leaves left by the devotees after the "Annathanam" on 18.05.2024 ie., on the eve of Jeeva Samathi Day of Sri Sadasiva Brahmendral situated at Nerur Village, Manmangalam Taluk, Karur District.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.T.Vilavankothai,
Additional Government Pleader
for R1 to R3

Mr.C.Christopher for R4

Mr.A.Albert James,
Government Advocate (crl.side)
for R5 and R6

ORDER

Heard both sides.

2.The writ petitioner is a resident of Karur District. He is a devotee of Sri Sadasiva Brahmendral, one of the most well known saints of Tamil Nadu. His final resting place is at Nerur Village. His Jeeva Samadhi Day is marked by performance of "Annadhanam"



WP(MD)No.10496 of 2024

(Sacred offering of food) and other religious rituals. One of the main events used to be the rolling over (Angapradakshinam) the banana leaves in which other devotees had partaken their food. The petitioner has taken vow to perform the said religious service this year. The Jeeva Samadhi Day falls on 18th of May. The petitioner formally wrote to the authorities seeking permission since the performance of the ritual which is 120 years old was stopped in the year 2015. The representation dated 22.04.2024 did not elicit any response. Hence, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner contended that the issue involves the petitioner's fundamental rights guaranteed under the Constitution of India. He called upon this Court to grant relief as prayed for. The petitioner's stand was fully endorsed by the learned counsel appearing for the fourth respondent which organises the function.

4.The learned Additional Government Pleader appearing for the District Administration and the learned Government Advocate (crl.side) appearing for the police authorities submitted that their

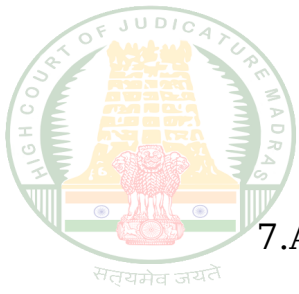


WP(MD)No.10496 of 2024

hands are tied in view of the order dated 28.04.2015 made in
WP(MD)No.7068 of 2015.

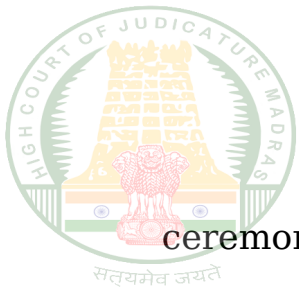
5.I carefully considered the rival contentions and went through the materials on record. Two issues arise for consideration. One is the scope and ambit of the petitioner's right. The other is whether the order cited as an impediment by the respondents is nullity in law.

6.Part III of the Constitution of India enumerates the fundamental rights. Article 25(1) of the Constitution declares that all persons are equally entitled to freedom of conscience and the right to freely profess and practise religion. However, this right is not absolute. It is subject to public order, morality and health and the other provisions of Part III. Clause 2 of Article 25 clarifies that nothing in that article shall affect the operation of any existing law or prevent the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.



WP(MD)No.10496 of 2024

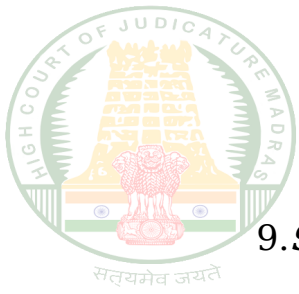
7. Article 25 has been considered in a number of cases. The foremost among them is the decision by a 7 Judges Bench of the Hon'ble Supreme Court in ***The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*** , AIR 1954 SC 282. It was held that what has been guaranteed was freedom not only to entertain such religious belief as may be approved of by one's judgment and conscience but also to exhibit his belief in such outward acts as he thinks proper. Religion is a matter of faith with individuals or communities. It has its basis in a system of beliefs or doctrines which are regarded by those who profess their religion as conducive to their spiritual well being but it would not be correct to say that religion is nothing else but a doctrine or belief. It may not only lay down a code of ethical rules for its followers to accept, but also prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion. These forms and observances might extend even to matters of food and dress. What constitutes the essential part of religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, or that periodical



WP(MD)No.10496 of 2024

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. The constitutional guarantee also protects acts done in pursuance of religion and this is made clear by the use of the expression “practice of religion” in Article 25. Restrictions by the State upon free exercise of religion are permitted on grounds of public order, morality and health. In ***Ratilal Panachand Gandhi v. State of Bombay (AIR 1954 SC 388)*** (Five Judges Bench), it was reiterated that every person has the fundamental right to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion.

8. Subsequently, a Five Judges Bench in ***Durgah Committee, Ajmer v. Syed Hussain Ali (AIR 1961 SC 1402)*** struck a note of caution and observed that the constitutional protection must be confined to such religious practices as are an essential and an integral part of a religion and no other. This is because practices though religious may have sprung from merely superstitious beliefs and be extraneous and unessential accretions to religion itself.



WP(MD)No.10496 of 2024

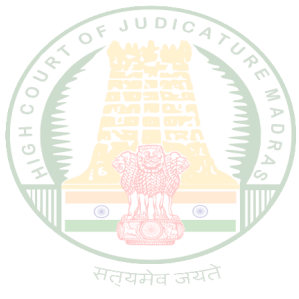
9. **Sardar Syedna Taher Saifuddin Saheb v. State of**

Bombay (AIR 1962 SC 853) is also a Five Judges Bench decision.

The majority reiterated the Shirur Mutt view and held that what 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 and include practices which are regarded by the community as a part of its religion. This was followed by another Five Judges Bench of the Hon'ble Supreme Court in the decision reported in **AIR 1972 SC 1586 (E.R.J Swami v. State of Tamil Nadu)**.

10. Justice P.B.Gajendragadkar who authored the judgment in **Durgah Committee, Ajmer v. Syed Hussain Ali (AIR 1961 SC 1402)** held in **Tilkayat Sri Govindalalji Maharaj v. State of Rajasthan (AIR 1963 SC 1638)** as follows :

“58. In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. This formula may in some cases present difficulties in its operation. Take the case of a practice in relation to food or dress. If in a given proceeding, one section of the community claims that while performing certain rites



WEB COPY



WP(MD)No.10496 of 2024

while dress is an integral part of the religion itself, whereas another section contends that yellow dress and not the white dress is the essential part of the religion, how is the Court going to decide the question ? Similar disputes may arise in regard to food. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the Court may not be able to resolve the dispute by a blind application of the formula that the community decides which practice is an integral part of its religion, because the community may speak with more than one voice and the formula would, therefore, break down. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion.....”

In this decision, there is no reference to the earlier decision rendered in ***Sardar Syedna Taher Saifuddin Saheb v. State of Bombay (AIR 1962 SC 853)***. Though the observation of Latham, C.J in ***Adelaide Company of Jehovah's Witnesses Inc v. Commonwealth (1943-67 Com-WLR 116)*** that “what is religion



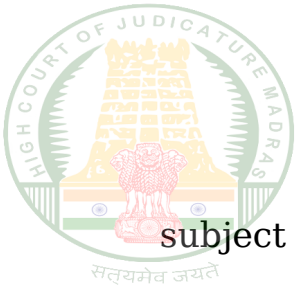
WP(MD)No.10496 of 2024

to one is superstition to another” was brushed aside of no relevance to the case on hand, it was clarified that if the practice was claimed as religious and protection was sought on that basis, the scope of enquiry will have to be whether the practice was actually religious or secular. If it was secular, protection will not be available. If the practice is a religious practice, the right guaranteed by Article 25(1) cannot be contravened.

11.In ***Shastri Yagnapurushdasji and Ors. v. Muldas Bhundardas Vaishya and Anr [AIR 1966 SC 1119]***, it was observed as follows :

“(29) When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more.”

12.In ***Rev.Stainislaus v. State of M.P (AIR 1977 SC 908)***, while holding that the right under Article 25 is not absolute and is



WP(MD)No.10496 of 2024

subject to public order, it was clarified that public order signifies state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the government. If a thing disturbs the current of the life of the community and does not merely affect an individual, it would amount to disturbance of the public order.

13. In ***S.P Mittal v. UOI (AIR 1983 SC 1)***, the term “religion” was dealt with as follows :

“76. In order to appreciate the contentions of the parties, it is necessary to know the implication of the words 'religion' and 'religious denomination'. The word 'religion' has not been define' in the Constitution and indeed it is a term which is hardly susceptible of any rigid definition. In reply to a question on Dharma by Yaksha, Dharmaraja Yudhisthira said thus:

**तर्कोऽप्रतिष्ठः श्रुतयो विभिन्नाः
नैको ऋषियस्य मतं प्रमाणम् ।
धर्मस्य तत्त्वं विहितं षड्हाया
ब्रह्मजनो येन गतः स पन्थाः ॥**

Mahabharat – Aranyakaparvan 313.117.

(Formal logic is vacillating. Srutis are contradictory, There is no single rishi whose opinion is final. The



WEB COPY



WP(MD)No.10496 of 2024

principle of Dharma is hidden in a cave. The path of the virtuous persons is the only proper course,)

The expression 'Religion' has, however, been sought to be defined in the 'Words and Phrases', Permanent Edn. 36A, p. 461 onwards, as given below:

Religion is morality, with a sanction drawn from a future state of rewards and punishments.

"The term 'religion' and 'religious' in ordinary usage are not rigid concepts.

'Religion' has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character and of obedience to his will.

"The word 'religion' in its primary sense (from 'religare,' to rebind-bind back), imports, as applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he without religion.

"'Religion' is bond uniting man to God, and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things.



WEB COPY



WP(MD)No.10496 of 2024

"Religion' has reference to man's relation to divinity; to the moral obligation of reverence and worship. Obedience, and submission. It is the recognition of God as an object of worship, love and obedience; right feeling towards God. as highly apprehended.

"Religion' means the service and adoration of God or a God as expressed in forms of worship; an apprehension, awareness, or conviction of the existence of a Supreme Being; any system of faith, doctrine and worship, as the Christian religion, the religions of the Orient; a particular system of faith or worship.

"The term 'religion' as used in tax exemption law, simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets or belief, the content of such belief being of no moment.

"While 'religion' in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and associations, and



WEB COPY

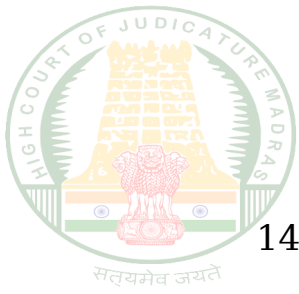


WP(MD)No.10496 of 2024

the term, 'a religious purpose', as used in the constitutional provision exempting from taxation property used for religious purposes, means the use of property by a religious society or body of persons as a place for public worship.

"'Religion' is squaring human life with superhuman life. Belief in a superhuman power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all 'religions'. The term 'religion' has reference to one's views on his relations to his Creator, and to the obligations they impose of reverence for His being and character and obedience to his will.

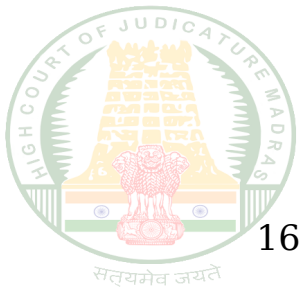
"The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."



WP(MD)No.10496 of 2024

14. In ***Jagdishwaranand v. Police Commissioner, Calcutta (AIR 1984 SC 51)***, it was held that courts have the power to determine whether a particular right or observance is regarded as essential by the tenets of a particular religion. In that case, it was held that performance of Thandava dance in a procession or at public places was not an essential religious right to be performed by every Ananda Margi. The learned Judges arrived at such a conclusion because the Ananda Marga order itself was established in 1955 and Thandava dance was introduced only in 1966.

15. In ***Gedela Satchidananda Murthy v. Dy. Commr. Endowments Deptt, A.P (2007) 5 SCC 677***, it was acknowledged that religious practices vary from State to State, region to region, place to place and sect to sect. When questions arise for enquiry, they must be decided with reference to the view of the class of people who take part in the worship. If they believe in its religious efficacy, in the sense that by such worship, they are making themselves the object of the bounty of some superhuman power, it must be regarded “as religious worship”.



WP(MD)No.10496 of 2024

16.Of course, in **Sabarimala** case (2019) 11 SCC 1, it was held that Article 25(1) is subject to constitutional morality. Exclusionary practices were denied the status of essential practices. Considerable emphasis was placed on Article 17 of the Constitution which outlaws untouchability to hold that exclusion of women between the age group of ten and fifty, based on their menstrual status, from entering the temple in Sabarimala can have no place in a constitutional order founded on liberty and dignity.

17.Review Petitions were filed in the wake of the aforesaid judgment. While Justice R.F.Nariman took the view that there is no merit in the Review Petitions, the majority view was otherwise. The order reported in (2020) 2 SCC 1 (Kantaru Rajeevaru Vs. Indian Young Lawyers Association and Ors) is as follows :

“5. It is our considered view that the issues arising in the pending cases regarding entry of Muslim women in durgah/mosque [being Writ Petition (Civil) No. 472 of 2019] [Ed. : See the latest order in this case dated 5-11-2019 : *Yasmeen Zuber Ahmad Peerzade v. Union of India*, (2020) 2 SCC 50 (1)] ; of Parsi women married to a non-Parsi in the Agyari [being Special Leave Petition (Civil) No. 18889 of 2012] [Ed. : Reference may be made to two of the orders in these proceedings, the first order below referring the matter to a Constitution Bench : *Goolrokh M. Gupta v. Burjor Pardiwala*, (2020) 2 SCC 50 (2); and *Goolrokh M. Gupta v. Burjor Pardiwala*, (2020) 2 SCC 705] and including the practice of female genital mutilation in Dawoodi Bohra community [being Writ Petition (Civil) No. 286 of 2017] [Ed. : Reference may be made to the order referring the matter to a



WEB COPY



WP(MD)No.10496 of 2024

Constitution Bench in these proceedings : *Sunita Tiwari v. Union of India*, (2019) 18 SCC 719 : 2018 SCC OnLine SC 2667] may be overlapping and covered by the judgment [*Indian Young Lawyers Assn. (Sabarimala Temple-5 J.) v. State of Kerala*, (2019) 11 SCC 1] under review. The prospect of the issues arising in those cases being referred to the larger Bench cannot be ruled out. The said issues could be:

5.1.(i) Regarding the interplay between the freedom of religion under Articles 25 and 26 of the Constitution and other provisions in Part III, particularly Article 14.

5.2.(ii) What is the sweep of expression “public order, morality and health” occurring in Article 25(1) of the Constitution.

5.3.(iii) The expression “morality” or “constitutional morality” has not been defined in the Constitution. Is it overarching morality in reference to Preamble or limited to religious beliefs or faith. There is need to delineate the contours of that expression, lest it becomes subjective.

5.4.(iv) The extent to which the court can enquire into the issue of a particular practice is an integral part of the religion or religious practice of a particular religious denomination or should that be left exclusively to be determined by the head of the section of the religious group.

5.5.(v) What is the meaning of the expression “sections of Hindus” appearing in Article 25(2)(b) of the Constitution.

5.6.(vi) Whether the “essential religious practices” of a religious denomination, or even a section thereof are afforded constitutional protection under Article 26.



WEB COPY

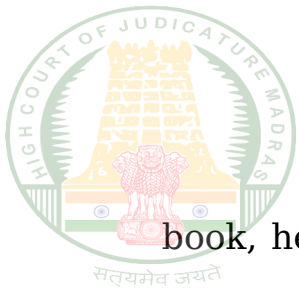


WP(MD)No.10496 of 2024

5.7.(vii) What would be the permissible extent of judicial recognition to PILs in matters calling into question religious practices of a denomination or a section thereof at the instance of persons who do not belong to such religious denomination?

7. In this context, the decision of the seven-Judge Bench of this Court in *Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (Shirur Mutt)* [*Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (Shirur Mutt)*, 1954 SCR 1005 : AIR 1954 SC 282] holding that what are essential religious practices of a particular religious denomination should be left to be determined by the denomination itself and the subsequent view of a five-Judge Bench in *Durgah Committee, Ajmer v. Syed Hussain Ali* [*Durgah Committee, Ajmer v. Syed Hussain Ali*, (1962) 1 SCR 383 : AIR 1961 SC 1402] carving out a role for the court in this regard to exclude what the courts determine to be secular practices or superstitious beliefs seem to be in apparent conflict requiring consideration by a larger Bench.”

18. Applying the principles laid down above, I do not have an iota of doubt that the petitioner has a guaranteed fundamental right under Article 25(1) of the Constitution of India to carry out the religious vow undertaken by him. The petitioner is a Hindu. The Samadhi of Sri Sadasiva Brahmendral at Nerur is thronged by devotees throughout the year. It is an object of veneration. Sri Sadavisa Brahmendral was a Siddha purusha. He is believed to be a realised soul. He was an avadhoota ie., one who did not wear clothes (if I may borrow from the title of Arundhathi Subramaniam's



WP(MD)No.10496 of 2024

book, he wore only himself). On the Jeeva Samadhi Day, there was the customary practice of doing Angapradakshanam on the banana leaves on which the devotees had partaken food. It is the genuine belief of the devotees that such an act would confer on them spiritual benefit.

19. In my considered view, such a right is traceable not only to Article 25(1) but also to the other fundamental rights catalogued in Part III. Right to privacy has been recognised as a fundamental right by a Bench of Nine Judges of the Hon'ble Supreme Court in ***Justice K.S. Puttaswamy (Retd) v. UOI (AIR 2017 SC 4161)***. It has been held to include preservation of personal intimacies, sanctity of family life, marriage, procreation, home and sexual orientation. It connotes the right to be left alone. It safeguards individual autonomy and recognises the ability of individual to control vital aspects of his or her life. Personal choices governing way of life are intrinsic to privacy. It protects heterogeneity and recognizes plurality and diversity of our culture. **Privacy is not lost or surrendered merely because individual is in public place.** Privacy attaches to person since it is an essential facet of dignity of human being.

20. In ***NLSA v. UOI (2014) 5 SCC 438***, it was held that



WP(MD)No.10496 of 2024

Article 19(1)(a) of the Constitution which deals with the right to freedom of speech and expression includes one's right to expression of his self-identified gender. The self-identified gender can be expressed through dress, words, ***action or behavior or any other form***. No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution.

21.If the right to privacy includes sexual and gender orientation, it certainly includes one's spiritual orientation also. It is open to a person to express this orientation in the manner he deems fit. Of course, it should not affect the rights and freedoms belonging to others. So long as this rubicon is not crossed, it is not open to the State or the Courts to impinge on one's action. I take judicial notice of the fact that many a devotee of Lord Muruga exhibits his piety by piercing small hooks on his tongue, lip or on the skin of one's back in fulfilment of vow. Likewise, devotees of Amman undertake fire-walk, carrying of pot of burning coal etc., These are inseparable features of Tamil religious culture.

22.Article 19(1)(d) states that all citizens shall have the right



WP(MD)No.10496 of 2024

to move freely throughout the territory of India. This right is subject only to the reasonable restrictions envisaged under Article 19(5). Right to move cannot be confined to walking or vehicular transportation. It would include Angapradakshinam also.

23.I take judicial notice of the fact that angapradakshinam (rolling on ground) is an established religious practice resorted to by the devotees. Appar one of the Nayanmars (a collective noun referring to the 63 saiva saints) completed the last leg of his journey to Kailash by rolling on ground. The question that arises in this case is whether a devotee can do angapradakshinam on leftovers on banana leaves after the devotees had eaten. It is a fact that such angapradakshinam is done by Ayyappa devotees. If it is done on the banks of river Pamba, it is called as Pamba Sadhi. Therefore, preventing the devotees of Sri Sadasiva Brahmendral from engaging in similar act of devotion would be a gross violation of the right to equality guaranteed under Article 14 of the Constitution of India.

24.It is not open to the court to challenge the belief entertained by the petitioner as regards the spiritual efficacy of the practice. One is familiar with the anecdote of golden mongoose in



WP(MD)No.10496 of 2024

Mahabharata. After the great war was over, the pandavas performed Ashwamedha Yagna. King Yudhistira was being feted by everyone that he had done a great charity. A mongoose with a half-golden body arrived and announced that the yagna was nothing compared to what it had once witnessed. It narrated the story of a very poor brahmin's family. It was a time of terrible famine. Once a guest who was very hungry entered their hut when they were about to have their meal. The brahmin gave away his 1/4th share. The guest was not satisfied. The wife parted with her share. The guest was still hungry. The son then gave his 1/4th share. Still, the guest wanted more. The young daughter-in-law also willingly relinquished her portion. Even though they were emaciated and starving and had nothing else to eat, they willingly gave away their everything to their guest. The guest was none other than Dharma who had come there to test the Brahmin. He then blessed the family and sent them to heaven in a golden chariot. The mongoose that witnessed all this rolled on the ground where there were leftover granules of flour. The grains represented great sacrifice and hence half of the mongoose's body turned golden. Since then, the mongoose would visit every yagna and roll on the ground to turn its other half into gold. The mongoose's body did not turn golden anywhere, and it



WP(MD)No.10496 of 2024

declared that the sacrifice by Yudhishtira was not equivalent to that of the Brahmin. From this, I am tempted to infer that even during the days of Mahabharata, the practice of rolling over the leftover food was considered as conferring spiritual benefit.

25. Annadhanam has been eulogized as a noble act in Taittiriya Upanishad of Krishna Yajur Veda, Bhavishyapurana and in the Ashwamedha Parva of Sri Mahabharata. It is nothing but yagna or sacrifice. Performing angapradakshinam on banana leaves after the guests have eaten is an act of high religious worship by Sri Sadasiva Brahmendra's devotees. This right is protected by Part III of the Constitution of India [Articles 14, 19(1)(a), 19(1)(d), 21 and Article 25(1)].

26. The next question that requires consideration is whether the earlier order rendered in WP(MD)No.7068 of 2015 on 28.04.2015 would come in the way. The order in its entirety is extracted below :



WP(MD)No.10496 of 2024

“ORDER

WEB COPY

(Order of this Court was made by S.MANIKUMAR, J.)

Probono litigant seeks for issuance of a Writ of Mandamus, directing the respondents to protect “right to dignified life”, by stopping the inhuman practise of rolling over on used plantain leaves left by Brahmins, after their meals.

2.In the supporting affidavit, it is submitted that Nerur Sathasiva Brammendiral Temple, managed by Nerur Sathguru Sathasiva Brammediral Seva Trust, is celebrating its 101st Annual Function. According to the petitioner, one of the events in the Temple festival is that after the Brahmins take their meal, on the left over plantain leaves, members belonging to Dalit community and non Brahmins should roll over. It is also the case of the petitioner that the said event amounts to race and caste discrimination, which is opposed to the Constitution of India.

3.Attention of this Court was invited to a decision of the Hon'ble Apex Court in **State of Karnataka and others Vs. Adivasi Budakattu Hitarakshana Vedike Karnataka and others in Special Leave Petition (C) No.33137 of 2014, dated 12.12.2014**, wherein the Hon'ble Apex Court has stayed a 500 years old ritual of “urulu seve” and “made snana”, being performed at Kukke Subramanaya Temple in Sullia Taluk of Dakshina Kannada District.

4.According to the petitioner, though representations have been sent to the respondents to stop such an inhuman



WEB COPY



WP(MD)No.10496 of 2024

practice of rolling over on plantain leaves left by upper caste people, no action has been taken.

5. Inviting the attention of this Court to the News Item published in Dhinamalar, Trichy Edition, dated 19.04.2015, and, on instructions from the District Collector, Karur, the learned Special Government Pleader appearing for the respondents submitted that in the event “free meals” (Annathanam), members belonging to all communities participate and that there is no discrimination. He further submitted that after the meal taken, on the left over plantain leaves, devotees, on their own, roll over. He rebutted the contention of the learned counsel for the petitioner that it is only the members belonging to Dalit community and other non Brahmins participate in the said event. It is also submitted by the learned Special Government Pleader that even Brahmins also participate in the said event, is rolling over on plantain leaves.

6. Learned counsel for the petitioner disputed the contention that the Brahmins also roll over on the left over plantain leaves.

7. From the submissions of the learned counsel for the parties and the News Items published, and also the averments made in the supporting affidavit, it comes to light that Nerur Sathasiva Brammendirai temple festival is being conducted for nearly many years. One such event is “free meals” (Annathanam). From the submission of both the learned counsel, it could be deduced that rolling over, on the left over



WEB COPY



WP(MD)No.10496 of 2024

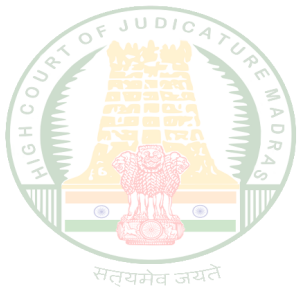
plantain leaves, either by the devotees belonging to all the sections of the society or selected communities, is admitted.

8.The Hon'ble Apex Court in **State of Karnataka and others Vs. Adivasi Budakattu Hitarakshana Vedike Karnataka and others in Special Leave Petition (C)No. 33137 of 2014** has taken note of that “urulu seve” and “made snana” being performed at Kukke Subramanaya Temple in Sullia Taluk of Dakshina Kannada District, have been performed for five centuries. From the news item, it could be deduced that in the abovesaid ritual performance, people roll over on plantain leaves, left by Brahmins, after the meal, during the annual jatra of the Temple.

9.According to the learned Special Government Pleader, there is a difference between a case of untouchability being practised as noticed by the Hon'ble Supreme Court in the above said case and the own volition of sections of the society.

10.We are conscious of the fact that in so far as religious practices and custom, Court has got its own limitations. But, such religious practice and custom should affect the dignity of life, which is guaranteed under Article 21 of the Constitution of India. It is the heart and soul of the Constitution. No human being can be allowed to be degraded, by following any practice or custom in the name of religion, which may infringe Articles 14 and 21 of the Constitution of India. Right to live, with dignity, is the paramount object of the Constitution.

11.Looking from that angle, though it is contended by the learned Special Government Pleader that irrespective of



WEB COPY



WP(MD)No.10496 of 2024

community, caste, etc, devotees, for fulfilment of their prayers, decide on their own volition, to roll over on the left over plantain leaves. Such religious practice or custom should be inconsonance with Articles 14 and 21 of the Constitution of India. Even if there is any slightest infringement to the said rights, Court owes a duty to enforce the constitutional values and the same should not be allowed to continue. Event of rolling over, as per the instruction of the Collector in Na.Ka.E2/101/2015, dated 28.04.2015 is as follows:

“இக்கோயிலில் சுமார் 100 வருடங்களுக்கு மேலாக நடைபெற்று வரும் திருவிழாவின் இறுதி நிகழ்ச்சியாக பக்தர்கள் தங்கள் வேண்டுதலுக்காக கோயிலுக்கு தரிசனத்திற்கு வந்துள்ள பக்தர்கள் அனைவரும் உணவு உண்ட பின்பு சாப்பிட்ட எச்சில் இலையில் உருண்டு அங்கபிரதட்சணம் செய்து தங்கள் வேண்டுதலை நிறைவேற்றுவது வழக்கம். இந்நிகழ்ச்சியில் எவ்விதமான சாதி சமய மற்றும் வகுப்பு வேறுபாடுகளும் கடைபிடிக்கப்படுவதில்லை. விழா முடிந்த பின்னர் விழாவிற்கு ஏற்பாடு செய்த அக்ரஹாரத்தைச் சேர்ந்த பெண்கள் தாங்களாகவே முன்வந்து இலையினை அகற்றி அருகிலுள்ள வாய்க்காலில் போட்டுவிடுகின்றனர்.

இந்நிகழ்ச்சியில் உணவு சமைப்பது மற்றும் சாப்பிட்ட இலையினை அகற்றுவது மட்டுமே பிராமண வகுப்பினர் ஆவர். எந்த வகுப்பினர் வேண்டுமானாலும் வேண்டுதல் செய்து கொண்டு தங்கள் வேண்டுதலை நிறைவேற்ற இவ்வாறு சாப்பிட்ட இலையில் உருளும் வழக்கம் உள்ளது.”



WEB COPY



WP(MD)No.10496 of 2024

12. In the light of the above discussion and having regard to the decision of the Hon'ble Apex Court in **State of Karnataka and others Vs. Adivasi Budakattu Hitarakshana Vedike Karnataka and others in Special Leave Petition (C)No.33137 of 2014**, we hereby direct the respondents not to allow anyone to roll over on the plantain leaves left, after the meal is taken.

13. Since, the above said event is stated to be conducted today (27.04.2015), learned Special Government Pleader is directed to communicate the order passed by this Court in this Writ petition, through e-mail or phone, to the respondents.

14. The Writ petition is disposed of.”

27. The writ petition was filed by one Dalit Pandian. Who were the respondents in the writ petition?. The officials and police. Nerur Adhishtanam represented by its trustees was not arrayed as one of the respondents. The devotees were not impleaded in a representative capacity. When the fundamental right of the devotees of Sri Sadasiva Brahmendral was involved, it did not occur to the petitioner to implead them. The writ petition suffered from the fatal vice of non-joinder of necessary parties. Direction to the authorities not to allow anyone to roll over on the plantain leaves left after the partaking of the meals was issued behind the back of the devotees and the trustees. They were not put on notice. They were not



WP(MD)No.10496 of 2024

heard. No opportunity was afforded to them to place their case before the Court. In short, there was an egregious breach of the principles of natural justice.

28.The Constitution Bench of the Supreme Court in the decision reported in ***Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, AIR 1963 SC 786*** held that any person whose interest is affected will be a necessary party and that any order made without hearing the affected parties would be void. In *State of Orissa v. Binapani Dei* AIR 1967 SC 1269, it was held that a decision which contravenes the rules of natural justice is a nullity. Following the said decisions, a Full Bench of the Madras High Court in ***R.S.Kalyanasundaram v. The Commissioner, HR&CE, Chennai [2022 (5) CTC 145*** etc., held that a judicial order passed in violation of the principles of natural justice is nullity. A Division Bench of the Madurai Bench of the Madras High Court had passed an order adverse to the interests of a class of people known as Thirisuthanthirars working in Arulmighu Subramaniya Swamy Temple, Thiruchendur. The directions were set aside by the Full Bench on the ground mentioned above. An order passed in a public interest litigation operates in rem and therefore,



WP(MD)No.10496 of 2024

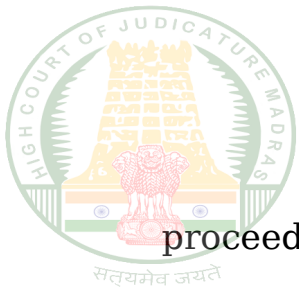
it is imperative that without hearing the stakeholders, orders prejudicial to their interest should not be passed. The affected parties should be impleaded at least in a representative capacity and failure to do so would go to the root of the matter.

29. In the decision reported in **(2009) 4 SCC 299 (Rajasthan SRTC v. Bal Mukund Bairwa)**, it was held as follows :

“35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity. In A.R. Antulay (1988) 2 SCC 602, this Court held:

'55.....No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity.'”

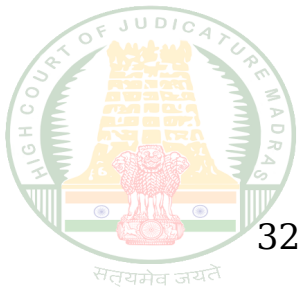
30. The ratio that can be culled out from the aforesaid decisions is that even a judicial order can be held as nullity if the principles of natural justice have not been complied with. If an order is nullity, it has no legal consequence. It cannot be enforced. The defense of nullity can be set up whenever such decree sought to be enforced. Since the defect is incurable, waiver or laches cannot be put against the party raising the plea of nullity. It can be challenged at any stage, even at the stage of execution or collateral



WP(MD)No.10496 of 2024

proceedings (2004) 8 SCC 706. The order dated 28.04.2015 made in WP(MD)No.7068 of 2015 would fall under such a category.

31.The order dated 28.04.2015 made in WP(MD)No.7068 of 2015 proceeds on the premise that the order dated 12.12.2014 in SLP (C) No.33137 of 2014 would apply to the subject religious practice. I must make one remark at this stage. No order of the Hon'ble Supreme Court was produced. The bench went by a news item. This is evident from paragraph 8 of the said order. The facts are also not comparable. In the case before the Supreme Court, the practice was that after the Brahmins had taken their meals, on the left over plantain leaves, persons belonging to other communities would roll over. The prayer in WP(MD)No.7068 of 2015 was for directing the respondents to protect the right to dignified life by stopping the inhuman practice of rolling over on used plantain leaves left by brahmins after their meal, all over the State of Tamil Nadu. In this case, even according to the District Administration, the devotees irrespective of their community background partake the meals and devotees of all communities including the brahmins would perform Angapradakshinam. This was a case where Article 17 of the Constitution was not at all applicable. In fact, the custom on hand points to communal amity and social integration.



WP(MD)No.10496 of 2024

32.The petitioner wants to perform Angapradakshinam on 18.05.2024. The learned counsel for the petitioner states that there are may other devotees like the petitioner wanting to perform the service. The event is going to be held in a remote village and that too in a specified street.

33.The petitioner was justified in filing this writ petition before me. He seeks enforcement of his fundamental right. Article 226 of the Constitution of India empowers the High Court to issue appropriate writs for the enforcement of one's fundamental rights. He could not have gone before the Division Bench because of the non-allocation of roster. The petitioner cannot also be denied relief merely on the ground of laches. The petitioner had taken the religious vow for fulfilment only this year. The Hon'ble Supreme Court in ***Basheshar Nath v. CIT (AIR 1959 SC 149)*** held that fundamental right cannot be waived. The same principle will apply in the case of laches also. The petitioner of course had the remedy of filing a review petition. It was a choice which he has not exercised. He was not obliged to do so. There is a distinction between an erroneous order and an order which is nullity. An erroneous order has to be challenged before a higher forum or by



WP(MD)No.10496 of 2024

filing a review. If the order itself is nullity, it can be ignored and the defense can be set up at the stage of execution.

34. There is merit in the contention of the learned Additional Government Pleader that individuals and officials cannot on their own assume that a judicial order is nullity and can be ignored. It is true that the Hon'ble Supreme Court in the decision reported in **(2022) 1 SCC 209 (Amazon.com NV Investment v. Future Retail Limited)** reiterated the well known proposition that no order bears the stamp of invalidity on its forehead and that it has to be set aside in regular court proceedings as being illegal. In this case, the petitioner has filed petition under Article 226 of the Constitution of India and it is in these proceedings the order dated 28.04.2015 made in WP(MD)No.7068 of 2015 has been declared as nullity. Just an executing court can declare the decree sought to be executed as nullity, I also have the jurisdiction to declare the order dated 28.04.2015 made in WP(MD)No.7068 of 2015 as nullity.

35. It is pertinent to note that a Single Bench is not a court subordinate to Division Bench. His Lordship Mr. Justice M. Nagaprasanna of the High Court of Karnataka vide order dated



WP(MD)No.10496 of 2024

20.12.2023 in WP No.47144 of 2018 took exception to the remand

order made by the Hon'ble Division Bench. The learned Judge cited the observation of the Hon'ble Supreme Court made in ***Roma Sonker v. M.P.S.P.S.C (2018) 17 SCC 106*** which was to the effect that both the learned Single Judge as well as the Division Bench exercise the same jurisdiction under Article 226 of the Constitution of India. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that a single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench is called upon in the intra-court appeal primarily and mostly to consider the correctness or otherwise of the view taken by the single Judge. The Division Bench must consider the appeal on merits by deciding on the correctness of the judgment of the single Judge instead of remitting the matter to the single Judge. Justice M.Nagaprasanna also quotes at length the judgment of the Full Bench of the Karnataka High Court rendered in *Town House Building Co-operative Society Limited v. Special Deputy Commissioner, 1988 (2) KLJ 510*. The Hon'ble Full Bench in turn relied on an earlier Full Bench decision in ***State of Karnataka v. H.Krishnappa (ILR 1975 (Kar) 1015)***. It was held that the writ



WP(MD)No.10496 of 2024

appeal jurisdiction cannot be compared and is not akin to an appellate jurisdiction as ordinarily understood which presupposes the existence of a superior court and an inferior court. No such relationship exists between a single judge and a Division Bench as both exercise the jurisdiction vested in the High Court. There is no difference between a writ petition referred to a Division Bench or a writ petition which comes up before a Division Bench through a Writ Appeal in the matter of exercise of the jurisdiction and powers of the Court under Article 226 of the Constitution. I am therefore convinced that I am not guilty of judicial indiscipline. This is more so because I have only examined the character of an earlier judicial order passed in exercise of the jurisdiction under Article 226.

36.The importance of adhering to the principles of natural justice hardly requires to be stressed. It is now a settled principle of law that in matters involving rights, the administrative and judicial authorities have to follow the principles of natural justice. The leading cases are A.K.Kraipak and ors. Vs. Union of India (UOI) and Ors (AIR 1970 SC 150) and Maneka Gandhi Vs. Union of India (UOI) and Ors (AIR 1978 SC 597). The underlying reason justifying the extension of principles of natural justice was that the authorities



WP(MD)No.10496 of 2024

were acting judicially in such cases. In other words, what was sine quo non for judicial proceedings was extended to administrative law in U.K and India during the last century. If an administrative order or a quasi judicial order can be ignored as nullity on the ground of violation of principles of natural justice, the sequitur is that judicial order will also meet the same fate.

37.The next question is whether the practice has any implication on public order, health or morality and if it contravenes any provision of Part III of the Constitution. It is relevant to note that the State never thought it necessary to intervene on the grounds mentioned above. It was judicial intervention that led to the stoppage of practice. The judiciary could have intervened only if there was violation of constitutional morality or an aggrieved individual was before it. The Hon'ble Supreme Court in **(2020) 2 SCC 1 (Kantaru Rajeevaru Vs. Indian Young Lawyers Association and Ors)** (per majority) while passing orders in the review petitions observed as follows :

“6.In a legal framework where the courts do not have any epistolary jurisdiction and issues pertaining to religion including religious practices are decided in exercise of jurisdiction under Section 9 of the Civil



WEB COPY



WP(MD)No.10496 of 2024

Procedure Code or Articles 226/32 of the Constitution the courts should tread cautiously. This is time honoured principle and practice.”

38. There was simply no evidence before the Bench which decided WP(MD)No.7068 of 2015 that there was violation of Article 17 of the Constitution or the right to human dignity. On the other hand, the materials placed before the court clearly indicated that there was absolutely no caste discrimination. Article 17 was clearly out of picture. As regards the question of human dignity, I can only remark that in religious matters it is not open to third parties except in exceptional circumstances to make peremptory declaration as to what is dignified and what is not. There can be no ***a priori assumption***. The standards set for determining whether a given ritual / practice is in consonance with the principles of constitutional morality are more rigorous than the standard set for determining whether such practice violates any of the individual provisions of Part III of the Constitution. The person making the assertion that the religious practice violates constitutional morality must discharge the burden. Without undertaking any exercise as contemplated above, WP(MD)No.7068 of 2015 was allowed and that is why, I characterise the said order as null and void. I have already



WP(MD)No.10496 of 2024

held that the right claimed by the petitioner is a part of his privacy right. If sexual orientation is a private matter, so is one's spiritual orientation.

39.The prayer made by the petitioner is unnecessary. For conducting the customary religious events in villages, one does not require permission from the authorities. Only if the festival organisers want to install sound amplifiers, permission will have to be sought. Therefore, the question of the respondents granting permission does not arise at all. This issue has already been settled vide order dated 16.08.2022 in WP(MD)No.18554 of 2022. The organisers (R4) are at liberty to organise the events as traditionally done. The petitioner can very well exercise his fundamental right of performing Angapradakshinam on the banana leaves after the guests have partaken the meals. No authority let alone the respondents can interfere with the same. The Hon'ble Supreme Court in ***Kaushal Kishore v. State of U.P (2023) 4 SCC 1*** had held that certain fundamental rights can be invoked even against private individuals. Thus, no private individual can prevent the petitioner or any devotee from exercising his fundamental right. If there is any such obstruction, it is the duty of the police to aid the



WP(MD)No.10496 of 2024

petitioner to exercise his fundamental right and remove the
obstructors from the scene.

40.This writ petition is allowed by restraining the respondents
1 to 3 and 5 & 6 (official respondents) from interfering with the
conduct of the petition-mentioned event. No costs.

17.05.2024

skm

To

- 1.The District Collector,
District Collector Office,
Karur District.
- 2.The Revenue Divisional Officer,
Revenue Divisional Office,
Karur District.
- 3.The Tahsildar,
Taluk Office, Manmangalam Taluk,
Karur District.
- 4.The Superintendent of Police,
Karur District.
- 5.The Inspector of Police,
Vangal Police Station,
Karur District.



WEB COPY



WP(MD)No.10496 of 2024

G.R.SWAMINATHAN, J.

skm

WP(MD)No.10496 of 2024

17.05.2024