

CASE NO.:
Appeal (civil) 486 of 2003

PETITIONER:
Swamy Prakasananda & Anr.

RESPONDENT:
State of Kerala & Ors.

DATE OF JUDGMENT: 20//06

BENCH:
Dr. AR. Lakshmanan & R. V. Raveendran

JUDGMENT:
J U D G M E N T

RAVEENDRAN, J.

This appeal by special leave is filed against the judgment dated 10.8.2001 passed by the High Court of Kerala in O.P. No.19079/1997, wherein the appellants had challenged the constitutional validity of the Sivagiri Mutt Emergency Provisions (Ordinance), 1997 and the Sivagiri Mutt (Emergency Provisions) Act, 1997, (Kerala Act No.17 of 1997) replacing the said Ordinance.

2. Sree Narayana Guru, a great social reformer and saint, founded Sree Narayana Dharma Sanghom at Sivagiri Mutt, Varkala. The said Sanghom consisted of members who followed and believed in the teachings of Sree Narayana Guru. The members of the Sanghom were the monastic order of Sanyasi disciples nominated under the Will executed by Sree Narayana Guru. Certain disputes having arisen in respect of the affairs of the Sanghom, the Kerala High Court formed a scheme for the said Sanghom as per its judgment dated 26.3.1959 in Appeal Suit No.14 of 1956, arising from O.S. No. 127 of 1954 on the file of the Sub-ordinate Judge, Attingal.

3. As per the scheme, all Sanyasins, who were the members of Sree Narayana Dharma Sanghom on the date of coming into force of the scheme, became the members of the Sree Narayana Dharma Sanghom Trust ('Trust' or 'Sanghom' for short). The scheme requires constitution of a Board from among the members/trustees for the management and administration of the Trust, such Board consisting of not less than 7 and not more than 11 members, all to be elected by and at a special meeting of the General Body. The Board is to hold office for a term of five years. Provision is made for the Board to fill up any vacancies arising in it. The scheme contemplated selection of future members of the Trust from persons having the following qualifications (clause 7) :

(a) who have undergone a course of training in the Matha-mahapadhasala under this Sanghom;

(b) who are free, in thought, word and deed from casteism and religious fanaticism;

(c) who dedicate themselves to the service of the Sanghom for life;

- (d) who are Thyagis free from marital and family attachments;
- (e) who are not below the age of 25;
- (f) who follow and observe the principles and code of conduct laid down by the Guru for Sanyasins; and
- (g) who are prepared to abide by the rules and regulations of the Sanghom as also the decisions of the Board that may be taken from time to time.

Clause 7 of the Scheme further provides that it shall be competent for the Board to accept the service of any Sanyasins having qualifications sufficient in the opinion of the Board and enrol such Sanyasins as members of the Sanghom at a special meeting of the Board if they apply for membership, the subjective opinion of the Special Board in matters relating to such qualifications and fitness being final and binding. Clause 15 of the Scheme provides for suspension or removal of a member from the Sanghom.

4. It is stated that elections to the Board of the Trust were held on 26.7.1994 and 11 members were elected to the Board. But six of them resigned. There is a controversy as to whether two out of those six who resigned, withdrew their resignations. On the ground that the resignations of members reduced the number below the quorum, on 14.10.1994, the outgoing Trust Board convened a meeting of the general body and fixed the date for fresh elections as 22.11.1994. The first appellant herein filed O.S. No.247/1994 on the file of the Sub-Judge, Attingal, for a declaration that the decision taken in the general body meeting on 14.10.1994 to convene a special meeting of the Sanghom on 22.11.1994 to conduct an election for the Trust Board was illegal, and for a permanent injunction restraining the defendants (outgoing Board members) from conducting such elections. A temporary injunction was granted on 21.11.1994. An appeal filed on 23.11.1994 by the defendants in that suit, against the said temporary injunction was allowed and the order of temporary injunction granted by the Sub-Judge was set aside by the appellate court on 2.12.1994. The first appellant challenged the order of the appellate court in a revision before the Kerala High Court, on 16.12.1994. During the pendency of the revision petition, the elections were held on 25.12.1994 and a new Board were elected.

5. The Kerala High Court by order dated 19.6.1995, allowed the revision petition. It held that prima facie, the Trust Board elected on 26.7.1994 had the requisite quorum and therefore the fresh election held on 25.12.1994 was invalid. Consequently, it directed the Board elected on 25.12.1994 to hand-over the management of the Sanghom to the Board elected on 26.7.1994, with a further direction to the Board elected on 26.7.1994 to take steps to fill up the vacancies to the Board as per the provisions of the scheme. The review petition filed by the Respondents in the Revision was rejected on 16.1.1996. There were also other suits (O.S. No. 192/1995 and O.S. No. 801/1996) and several ancillary proceedings between the two factions, one led by Swamy Prakasananda and the other led by Swamy Swaroopananda.

6. On a complaint dated 24.6.1997 by one of the factions, proceedings under section 145 Cr.P.C. were initiated by the District Magistrate, Thiruvananthapuram, who passed an order

dated 25.6.1997 placing the properties of the Trust under the receivership of the Deputy Collector pending ascertainment as to who was in actual control of the properties/affairs of the Trust. Subsequently, on 9.10.1997, he directed the Receiver to release the properties of the Trust to the Trust Board as there was no likelihood of breach of peace.

7. On the same day (9.10.1997), Sivagiri Mutt Emergency Provisions (Ordinance) Act, 1997 was promulgated by the Governor of Kerala for taking over the management of the Trust for a limited period. In view of it, the District Magistrate cancelled the further proceedings under section 145 Cr.P.C. on 13.10.1997. On 19.2.1998, the Ordinance was replaced by the Sivogiri Mutt (Emergency Provisions) Act, 1997 ('Act' for short). The Preamble to the Act (relevant portion) read thus :

AND WHEREAS, of late, serious disputes have arisen between those concerned with the administration of the said Trust and of its properties inter se, the beneficiaries, followers and the devotees forming themselves into fighting groups and taking sides leading to a situation where there is an atmosphere of violence, unrest and tension in Sivagiri Mutt and all other institutions governed by the Trust, seriously affecting their administration;

AND WHEREAS proceedings under section 145 of the Code of Criminal Procedure, 1973, in regard to the possession of the Trust including Sivagiri Mutt at Varkala are in force and the Trust and its properties have passed into the possession of the Receiver appointed by the District Magistrate, Thiruvananthapuram;

AND WHEREAS the rival factions of the 'Sanyasins' are asserting possession and control in the administration of the Trust properties even after the taking over of the possession and management of the properties of the Trust by the Receiver appointed by the District Magistrate, Thiruvananthapuram and thereby causing breach of peace in the respective institutions;

AND WHEREAS in view of the situation which has so arisen with regard to the management of the Trust along with all institutions owned, possessed or run by the Trust, it is necessary to take over, in the public interest, for a limited period, the management thereof and any delay in taking over the management of the Trust would be highly detrimental to the interest and objectives of the Trust;"

Section 3 of the Act provided for the vesting of the management of the Trust in the Government for a period of two years, with effect from 9.10.1997. The proviso thereto enabled the State Government to continue the vesting from time to time, after the expiry of the initial period of two years, the total period of vesting however, not exceeding in all 5 years from 9.10.1997. Section 4 set out the general effect of vesting. Section 5 provided for the administration of the Trust. Section 6 provided for constitution of an Advisory Council by the State Government to advise the Administrator in the management of the Trust. Section 8 enabled relinquishment of management before the specified period. Section 9 provided for resolution of any dispute relatable to the Trust by a tribunal constituted under the Act. In terms of the Ordinance/Act, an Administrator was

appointed who took over the management of the Trust. An Advisory Council was constituted by the State Government, to advise the Administrator in the management of the Trust.

8. On 24.10.1997, the appellants filed W.P. No.19079/1997 challenging the validity of the Ordinance. When it was replaced by the Act, it was also challenged by suitable amendment to the writ petition. By impugned judgment dated 10.8.2001, a Division Bench of the Kerala High Court upheld the validity of the Act and disposed of the writ petitions with the following directions :

"We therefore direct the Administrator and Advisory Council to take all steps as per the Act to complete the election process. The Council has to take all steps under Section 6(5). We may indicate that the list they have finally prepared be treated as preliminary list. They will call for the objections and comply with all other formalities and finalise the list within a period of six weeks from today. Government on the basis of the said final list will take further steps in the matter and complete the election process within a period of one month thereafter. Steps should be taken to conduct election in a smooth and orderly manner and put the elected Trust Board in office immediately.

We hope that members of the warring groups will take earnest efforts to uphold the teachings and messages of Sree Narayana Guru. We hope it would be their endeavour to spread Guru's message for the goodness of the mankind. Teachings of Sree Narayana Guru is the very soul of our society which is to pass from one generation to another. Let us preserve it for posterity. Charles Caleb Colton, a British Clergyman and writer in the 18th century said that men would wrangle for religion, write for it, fight for it, anything but live for it. Disciples of Sree Narayana Guru shall not wrangle for power but propagate his teachings, fight for it and live for it. Let the, try to uphold Guru's unique philosophy, i.e. One Caste, One Religion, One God for Man."

9. The appellants filed SLP [C] No.15689/2001 on 6.9.2001 challenging the order of the Kerala High Court and notice was ordered on 21.9.2001. Elections to the Trust Board was conducted by the State Government on 11.10.2001 as per the directions of the Kerala High Court and 11 trustees were elected for a term of 5 years. On 13.11.2001, the State Government relinquished the management of the Trust, and the Trust Board elected on 11.10.2001 is in charge of the affairs of the Trust. The next election is due in October/November of this year.

10. When the appeal was taken up for hearing, Sri P.P. Rao, learned senior counsel appearing for the State of Kerala, submitted that the management of the Trust having been delivered back to the elected Board and the period of vesting of management in the Government having expired during the pendency of this appeal, the Act has exhausted itself and this appeal relating to the challenge to the Act has become infructuous.

11. The appellants, however, contended that certain acts done in pursuance of the provisions of the Act were illegal; that they were aggrieved not only by the Act, but also by the advice

given by the Advisory Council constituted under the Act and action taken by the State Government on the basis of such advice; that in particular, they were aggrieved by the advice tendered by the Advisory Council by report dated 7.9.2001 and acceptance thereof by the Government, for the removal of the 18 Sanyasins who had been duly enrolled as members of the Trust in 1988, 1993 and on 22.12.1995 and 8.3.1996, as also the removal/exclusion of six of the original members; that the election held in 2001, excluding the said 24 legitimate members of the Trust from participating in the said election was invalid; and that, therefore, the present Board is an illegal body. It was submitted that if this Court, were to hold the Act to be invalid, necessarily the constitution of the Advisory Council and the advice of the Advisory Council and action taken thereon by the State Government would also be invalid, and therefore, it is necessary to go into the question of validity of the Act, even though the Act has exhausted itself.

12. After the matter was argued for some time, Mr. Soli J. Sorabjee, learned senior counsel appearing for the appellants, submitted on instructions, that in view of the events that took place during the pendency of this appeal, in particular, the term of the Board elected in 2001 now nearing its end, and the Act being no longer in force, the appellants will not press their challenge to the validity of the Act, if the following remedial/corrective measures are taken through an independent agency :

- (i) to consider the validity of the admission of the 18 Sanyasins as members of the Trust (who have been subsequently excluded/removed from membership as not validly admitted to membership);
- (ii) to consider the legality, correctness and validity of the removal/exclusion of the said eighteen members, as also six of the original members.
- (iii) to finalize the voters list/Electoral Roll for the elections to the Board to be held this year, taking note of the decision relating to the validity of removal of the said 24 members;
- (iv) to conduct the elections for electing the new Board within six months, and supervise the handing over of the charge to the newly elected Board.

He also suggested that one of the members of the Trust (to be nominated by the contesting private Respondents), may be appointed to render any assistance to the Authority appointed by this Court for the aforesaid purposes.

13. Sri Rakesh Dwivedi, learned senior counsel appearing for the contesting private respondents submitted that the Act was valid and the action taken on the advice of the Advisory Council in excluding 24 members from the Trust was also valid. He, however, further submitted, on instructions, that to put an end to the litigation and in the interests of the Trust, his clients have no objection for appointment of an independent authority to examine the correctness of the exclusion of 24 members and to finalize the voters list. He, however, submitted that the independent authority should be a retired Judge of this Court. He also suggested the name of Swamy Sukananda to assist such authority.

14. In view of the aforesaid submissions on behalf of the parties, we find it unnecessary to examine the constitutional

validity of the Act. On the facts and circumstances, we find the request by appellants for appointment of an independent authority for finalizing the voters list by examining the correctness of exclusion/removal of 24 members, and to supervise the elections, is just and proper. This appeal can, therefore, be disposed of by appointing a retired Judge of this Court, as the Authority to perform the following functions : (i) to scrutinize and decide the validity of the admission of 18 members to the Trust; (ii) to examine and decide whether the removal/exclusion of the said 18 members as also six of the original members from the Trust is valid; (iii) to finalize the list of voters for holding elections to elect the Trust Board; and (iv) to draw up the calendar, and supervise the conduct of the elections for the Board, the declaration of the results, and the handing over of the charge from the existing Board to the newly elected Trust Board. Both sides consented to Shri Justice K. S. Paripoornan, a retired Judge of this Court being appointed as such Authority.

15. It is unfortunate that an institution founded by a great social reformer is entangled in faction politics, coups and counter coups, and litigations, that too between groups of Sanyasin disciples of the Guru who swear allegiance and commitment to his great ideals. We hope and trust that at least from now onwards, all the members of the Sanghom will work in unity, with a constructive attitude, understanding and tolerance, to propagate the ideals and philosophies of Sree Narayana Guru for upholding the moral values, for inspiring social reforms, and for eradication of caste, untouchability, religious fanaticism and to usher in universal brotherhood.

16. Accordingly, we dispose of this appeal with the following directions :

(i) Mr. Justice K.S. Paripoornan, a retired Judge of this Court, is appointed as the appropriate Authority to perform the functions mentioned in para (14) above.

(ii) The said Authority may grant an opportunity of hearing to all affected parties and may call for the relevant records, take affidavits and adopt suitable/appropriate procedure for deciding upon the validity of admission/exclusion of members and finalizing the list of voters for this purpose. His decision thereon shall be final and binding on the parties.

(iii) The said Authority shall finalize the list of voters within four months and conduct the Elections under his supervision within six month. The Trust Board and parties shall extend their fullest cooperation to enable the said Authority to discharge his functions.

(iv) The parties and/or their counsel shall appear before the Authority on 15.5.2006 at 11.00 AM, produce the relevant material and take further orders from him.

(v) The remuneration of the said Authority and expenses relating to all secretarial assistance, travel and other incidentals as indicated by the Independent Authority shall be borne and paid by

the Trust to the said Authority. The expenses part shall be paid in advance, as indented.

(vi) Sri Swami Sugananda, one of the members of the Trust, is appointed to render such assistance as may be required by the said Authority. He shall, however, have no say in the decision making, which shall be exclusively within the domain of the said Authority.

(vii) Parties to bear their respective costs.

Registry to communicate this decision to Shri Justice K. S. Paripoornan. Liberty is reserved to the parties and the Authority to seek clarification from this Court, if necessary, in regard to any matter connected with or arising from the above directions.

16. We also dispose of the pending interlocutory applications as under :-

(i) I.A. No. 5/2001 (filed by 18 excluded members for intervention) and I.A. No. 8/2001 (filed by the appellants for impleading the 11 members of the Trust Board who were elected on 11.10.2001) are allowed and they are impleaded as respondents 5 to 22 and 23 to 33 respectively.

(ii) I.A. No. 4/2001 (filed by the appellants seeking a direction to the State of Kerala to stop election process as per the letter dated 27.9.1991 and to withdraw the approval granted to the voters' list submitted by the Advisory Council), I.A. No. 6 of 2001 (for setting aside the election to the Trust Board held on 11.10.2001 and the proceedings pursuant thereto) and I.A. No. 9/2003 (for declaration that the election held on 11.10.2001 is invalid and to restrain handing over the management of the Trust by the State Government to the Trust Board elected on 11.10.2001) are dismissed as having become infructuous and no longer surviving for consideration.