

CASE NO.:
Writ Petition (civil) 2350 of 1997

PETITIONER:
A. Ramaswamy Dikshitulu & Ors.

RESPONDENT:
Government of Andhra Pradesh & Ors.

DATE OF JUDGMENT: 05/05/2004

BENCH:
CJI & P. VENKATARAMA REDDI.

JUDGMENT:
JUDGMENT

[WITH Review Petition (C) 2375/1997
in T.C. (C) No. 170/1988 and Review
Petition (C) No. D18695/1997 in W.P.
(C) No. 696/1997]

IN

TRANSFER CASE (CIVIL) NO. 168 OF 1988

RAJENDRA BABU, CJI. :

The State of Andhra Pradesh enacted the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 [hereinafter referred to as 'the Act'] providing for abolition of all rights whether hereditary, contractual or otherwise of any person who is an Archaka or a Mirasidar or a Mathadhipati or any other office holder of office in any religious institution. The provisions of the Act were challenged in the writ petitions filed before the Andhra Pradesh High Court and under Article 32 of the Constitution before this Court on several grounds, including that the said provisions are violative of Articles 25 and 26 of the Constitution as interfering with the Right to Freedom of Religion. Some of the writ petitions filed before the High Court were transferred to this Court. On 19.3.1996 this Court disposed of these matters by upholding the validity of the Act. Apart from rejecting the challenge to the enactment, this Court gave certain directions to the State Government to frame a scheme pursuant to which further orders were passed by this Court.

The basic point raised in these review petitions is that this Court has in several decisions explained the scope of the said provisions and it has been held therein that religious practices or performances of acts in pursuance of the religious belief are as much a part of religion as faith or belief in a particular doctrine; that thus, if the tenets of a particular religion requires performance of certain rites and ceremonies to be performed at certain times and in a particular

manner, these cannot be treated as secular activities; that the protection under Articles 25 and 26 is not confined to matters of doctrine or belief but they extend to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are an integral part of religion; that what constitutes an essential part of a religion has to be decided by the court with reference to the doctrine of a particular religion and includes practices which are regarded by the community as a part of its religion; that a religious denomination enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters; that the protection is only permissible where the practices is a religious one or the affairs are affairs in matters of religion; that to determine whether a particular practice is a matter of religion may be a difficult task because religious and secular practices are intricately mixed up; that the task of disengaging the secular from the religious may not be easy but it must nevertheless be attempted in dealing with claims of protection under Articles 25 and 26 and the proper test to be applied to determine whether a particular practice is an integral part of the religion, is to ascertain whether it is regarded as such by the community following the religion or not; that this Court has been cautious to observe that certain practices will be treated as part of religion only if they are regarded by the said religion as its essential and integral part and otherwise, even purely secular practices which are not essential or integral to the religion will be clothed a religious form to claim protection under these provisions.

The contentions raised by the petitioners are based on the decisions of this Court in Commissioner, HRE v. L.T. Swamiar, AIR 1954 SC 282; Venkatramana Devaru v. State of Mysore, AIR 1958 SC 255, and Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan, AIR 1963 SC 1638; and the decision of the Privy Council in Thiruvengkata Ramanuja Pedda Jiyangarlu Valu vs. Prathivathi Bhayankaram Venkatacharlu & Ors., AIR 1947 Privy Council 53. The learned Senior counsel for the petitioners strenuously contended that the decision sought to be reviewed goes counter to the principles of religious freedom and practices expanded in the said cases. The ratio in Seshammal vs. Tamilnadu, ILR 35 Mad 631, case has been misunderstood by this Court, according to the learned counsel.

It is also urged that some of the observations in the judgment under review are self contradictory and that the whole approach is influenced by the basic assumption that religion should be equated to 'Dharma', while this Court enunciated the principles as to what is protected under Articles 25 and 26 of the Constitution.

We have given our anxious consideration to the various contentions put forth before us. Considering the nature of the contentions urged, the scope and extent of the same, we think, these are fit cases for consideration by a larger Bench and we refer accordingly.

JUDIS