CASE NO.:
Appeal (civil) 6230 of 1990

PETITIONER:
Commissioner of Police & Ors.

RESPONDENT:
Acharya J. Avadhuta And Anr.

DATE OF JUDGMENT: 11/03/2004

BENCH:
S. RAJENDRA BABU & G.P. MATHUR

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, J. :

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 Jagdishwaranda Avadhuta & Others v. The Commissioner of Police, Calcutta & 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 \026 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:

"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 Jagdishwaranda Avadhuta & Others v. The Commissioner of Police, Calcutta & Another reported in (1984) 1 SCR 447. Petitioners are at liberty to go before High Court."

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.

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 Jagdishwaranand Avadhuta etc. vs. Commissioner of Police, Calcutta & Anr. {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".

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.

The relevant question herein for consideration is whether the High Court is correct in it's 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.

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

"\005Ananda 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 processions with Tandava dance is an essential religious rite of Ananda Margis\005On the basis of the literature of the Ananda Marga denomination it has been contended that there is prescription of performance of Tandava dance by every 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\005"

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 \026

"\005In 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."

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. 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, 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 Tamilnadu (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 \026 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.

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.

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 \026 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 ever 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.

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.

Before parting with this matter, it is necessary for us to refer to the observations made by this Court in Bijoe Emmanuel & Ors. v. State of Kerala & Ors., 1986 (3) SCC 615, because reference to three Judges' Bench has arisen on account of these 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)."

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.

The appeal is allowed accordingly.