

**IN THE SUPREME COURT OF INDIA**

CIVIL ORIGINAL JURISDICTION

**I A. NO. \_\_\_\_ OF 2018**

IN

W.P. (C) No.649 OF 2018

**IN THE MATTER OF:**

MRINALINI PADHI & ORS. .... PETITIONER

VERSUS

UNION OF INDIA & ORS. .... RESPONDENTS

**AND IN THE MATTER OF:**

INDIC COLLECTIVE ... APPLICANT/

IMPLEADER

WITH

I.A.No. of 2018

**AN APPLICATION FOR IMPLEADMENT AS PARTY  
RESPONDENT**

[FOR INDEX PLEASE SEE INSIDE]

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ADVOCATE FOR THE APPLICANT: **SUVIDUTT M.S.**  
FILED ON: **04.07.2018**

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**IN THE SUPREME COURT OF INDIA**

CIVIL ORIGINAL JURISDICTION

**I.A. NO. \_\_\_\_ OF 2018**

IN

W.P. (C) No. 649 OF 2018

**IN THE MATTER OF:**

MRINALINI PADHI & ORS. .... PETITIONER

VERSUS

UNION OF INDIA & ORS. .... RESPONDENTS

**AND IN THE MATTER OF:**

INDIC COLLECTIVE,

REGISTERED OFFICE AT

5E, BHARAT GANGA APARTMENTS,

MAHALAKSHMI NAGAR,

4<sup>TH</sup> CROSS STREET, ADAMBAKKAM,

CHENNAI- 600088 ..... APPLICANT/ IMPLER

**AN APPLICATION FOR IMPLEADMENT OF THE**

**APPLICANT AS PARTY RESPONDENT**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF THE

SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF

THE APPLICANT ABOVE NAMED

**MOST RESPECTFULLY SHOWETH:**

1. The present Application seeks impleadment of the Applicant, namely the Indic Collective Trust, in the present Writ Petition. The Applicant herein is a registered trust under the

Indian Trusts Act, 1882 with its registered office at 5E, Bharat Ganga Apartments, Mahalakshmi Nagar, 4<sup>th</sup> Cross Street, Adambakkam, Chennai – 600 088. The Applicant is a collective of activists, intellectuals and civil liberties campaigners who are committed to the advocacy of Indic civil liberties through Constitutional and democratic means.

2. The Applicant, as an organization, and its Trustees have been campaigning for better management of Indic (including Hindu) religious institutions through community empowerment in the management of the said institutions in accordance with Articles 25 and 26 of the Constitution. To this end, the Applicant has filed Writ Petitions before various High Courts and Intervention Petitions before this Hon'ble Court in matters relating to administration and maintenance of Hindu religious institutions. Further, the Trustees of the Applicant include followers of Indic faith systems including Hinduism and its diverse traditions. Therefore, any orders which may be passed by this Hon'ble Court pursuant to the directions issued *vide* Order dated 08.06.2018 are bound to have a bearing on the rights of the Trustees as well as the Hindu community at large. Consequently, the Applicant has the necessary *locus* to seek impleadment in the Writ Petition. The true copy of the said order dated 08.06.2018 of this Hon'ble Court in W.P. (C) No.649 of 2018 is produced herewith and marked as **ANNEXURE – I 1 (Pages 10 – 14)**
3. The Applicant understands from the Order dated June 8, 2018 that the directions passed by this Hon'ble Court in Paragraphs 10 and 11 of the said Order have far-reaching

implications on the management of Hindu religious institutions and consequently on their fundamental rights under Article 26 and the rights of Indic communities such as Hindus under Article 25, although it is evident from a clear reading of the Order that the directions passed are not limited to Hindu religious institutions since this Hon'ble Court has referred to "various other important shrines" in the Order without limiting the scope of the said phrase to Shrines of any particular faith. In light of this, the Applicant humbly seeks to assist this Hon'ble Court on the said issue in respect of management of Hindu religious institutions based on the work it has undertaken in this regard thus far and the material it has collected on the issue of management of Hindu religious institutions.

4. The Applicant also wishes to bring to this Hon'ble Court's attention the pendency of W.P. (C) No. 476/2012 wherein the constitutionality of the Hindu Religious and Charitable Endowment (HRCE) Acts of the States of Tamil Nadu, Andhra Pradesh and Puducherry have been challenged. The pendency of the said Petition is relevant to W.P. (C) No. 649/2018 since both Petitions relate to the fundamental rights of religious denominations to manage their religious institutions under Article 26 and the limits on the power of any arm of the State to interfere, regulate or restrict such rights in any manner. In fact, given the nature of the directions passed by this Hon'ble Court in the present Petition, the issues raised in W.P. (C) No. 476/2012 assume greater importance and therefore the said issues merit

comprehensive adjudication. Further, given the nature of the issues, it is imperative for the Respondent No. 1 to undertake a consultative process with the religious denominations of the Hindu community so that the community, as a legitimate stakeholder whose rights are bound to be affected by the outcome of the Petition, can weigh in on the issues. Simply stated, the process must be democratic, participatory and consultative instead of following a top-down approach. To this end, the Respondent No. 1 will be better informed and this Hon'ble Court is bound to receive greater assistance if the Law Commission of India were to be directed to prepare a report, based on consultation with the community, on the amendments required to the HRCE legislations in force in several States so as (a) to empower community management structures as envisaged by Article 26, (b) to further the ends of transparency, accountability and social justice in the management of the religious institutions, and (c) to deter the growing and disturbing trend of arrogation of control of religious institutions by State Governments under the garb of better management or tackling mischief and mismanagement, thereby violating all canons of secularism. The proposal of the State Government of Maharashtra to introduce a law to govern Hindu religious institutions is an example of Point (c).

5. With respect to the rights of religious denominations under Article 26 and the limitations on the State's power to interfere with them, the Applicant places reliance on the following landmark judgments of this Hon'ble Court:

A. *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha swamiar of Sri Shirur Mutt.*, 1954 SCR 1005

B. *Sri Venkataramana Devaru & Ors. v. The State of Mysore & Ors.*, 1958 AIR 255

C. *S.P. Mittal v. Union of India & Ors.*, 1983 (1) SCC 51

D. *Ratilal Panachand Gandhi v. The State of Bombay & Ors.*, 1954 AIR 388, 1954 SCR 1035

E. *Pannalal Bansilal Pitti & Ors. v. State of A.P. & Anr.*, (1996) 2 SCC 498

F. *State of Rajasthan & Ors. v. Sajjanlal Panjawat & Ors.*, 1974 (1) SCC 500

G. *Riju Prasad Sarma & Ors. v. State of Assam & Ors.*, (2015) 9 SCC 461

H. *Dr. Subramanian Swamy v. State of Tamil Nadu and Ors.*, AIR 2015 SC 460

I. *Sri La Sri Subramania Desiga Gnanasambanda Pandara Sannadhi v. State of Madras*, 1965 AIR 1683.

The sum and substance of the *ratio* of the said judgements is summarized as follows:

- i. The rights of religious institutions recognized under Article 26 are indeed fundamental in nature. The scope of the said rights extends to secular and religious aspects of the administration of religious institutions of religious denominations;
- ii. The fundamental rights under Article 26 may be interfered with by the State through legislation only to the extent envisaged under Article 25(2). In particular,

the scope of Statist intervention under Article 25(2)(a) is limited only to regulation or restriction of secular activities which may be associated with religious practice. "Regulation" or "restriction" cannot translate to supersession or takeover of the secular aspects of administration by the State and such intervention must be time-bound and for the sole object of addressing mischief/mismanagement;

- iii. Such "regulation/restriction" cannot extend to the religious aspects of the administration or affect the secular aspects in a way that it interferes with religious aspects of administration;
- iv. The denominational nature of a religious institution is not undermined or diluted by the fact that the institution is open to being visited by members of other denominations;
- v. The denominational nature of the institution's administration cannot be undermined under the garb of regulation/restriction of secular activities.

Given these clear positions laid down by this Hon'ble Court, it is imperative that the Respondent No. 1 is directed to engage the Law Commission of India to undertake a country-wide State-by-State consultative process, which can ultimately lead to the promulgation of a model Central legislation for States to adopt and emulate. This is permissible in view of the fact that charities, charitable institutions, charitable and religious endowments and religious institutions fall under Entry 28 of the Concurrent List. Promulgation of such a



model legislation based on stakeholder inputs will go a long way in reducing the volume of Temple-based litigation which ring disrepute to such religious institutions and pit the State and religious institutions against each other.

6. It is humbly submitted that in addition to rights under Articles 25 and 26, the manner in which a religious institution of a religious denomination is managed also has a bearing on cultural rights under Article 29. The said Article recognizes and guarantees the right of any section of citizens residing in the territory of India or any part thereof to conserve their distinct language, script or culture. Every religious denomination has its own traditions, rites, rituals and festivities which have traditionally received the patronage of the religious denomination through the religious institution. Therefore, any attempt, directly or indirectly, by any arm of the State to take over the secular aspects of the administration of a religious institution is bound to have a bearing on non-secular/religious aspects as well since the performance of non-secular functions or discharge of non-secular duties is inextricably intertwined with access to and control over the secular aspects of administration such as administration and maintenance of the assets and properties of the religious institution. Therefore, it is evident that striking a distinction between secular and non-secular aspects of administration is not only academic but also facilitates the creation of a façade which allows the State to control religious aspects of administration by claiming to control merely the secular aspects of the administration.

Simply stated, when it comes to religious institutions, the line that separates the secular aspects from the non-secular is blurred and therefore, the State must necessarily observe extreme caution in interfering with the administration of religious institutions lest it entrenches itself in the religious institution inadvertently or by design.

7. It is humbly reiterated that since the Applicant and its Trustees have been working on these issues for a significant period, the Applicant humbly prays that this Hon'ble Court may allow the Applicant herein to make oral and written submissions for proper adjudication of the issues which arise for consideration in the Writ Petition.
8. This Application has been made *bona fide* and in the interests of justice.

**PRAYER**

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to:

- a. Implead the Applicant as a party Respondent in the Writ Petition;
- b. Pass any other order (s) as may be deemed fit in the facts and circumstances of this case.

AND YOUR APPLICANT, AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY  
**LAW CHAMBERS OF  
J. SAI DEEPAK**

FILED BY  
**SUVIDUTT M.S.**  
ADVOCATE FOR THE APPLICANT

Drawn on: 02.07.2018

Filed on: 04.07.2018

New Delhi

**IN THE SUPREME COURT OF INDIA**

CIVIL ORIGINAL JURISDICTION

**I A. NO. \_\_\_\_ OF 2018**

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MRINALINI PADHI & ORS. .... PETITIONER

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UNION OF INDIA & ORS. .... RESPONDENTS

**AFFIDAVIT**

I, Ashish Dhar, S/O Lakshmi Nath Dhar, aged 37 years, resident of M-20, Lajpat Nagar – II, New Delhi – 1100024, is the Authorised Signatory of the registered trust named Indic Collective Trust, presently at New Delhi, do hereby solemnly affirm and declare as under:-

1. That I am the Applicant in the present Application and being well conversant with the facts and circumstances of the present case am competent to swear this affidavit on behalf of the Trust.
2. That I have read over the accompanying Application from Paras 1 to 8 (pages 1 to 8), and I have understood the contents therein which are true to my knowledge.
3. That the Annexure – I 1 is the true copy of its original.

**DEPONENT**

**VERIFICATION**

Verified this on this 3<sup>rd</sup> day of July, 2018, at New Delhi that the contents of the above Affidavit from para 1 to 3 are true and correct to the best of my knowledge, no part of it is false and nothing material has been concealed there from.

**DEPONENT**