

Madras High Court

Indic Collective Trust vs The Commissioner on 13 November, 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

W.P. No.28882 of 2017

and W.M.P.No.31094 of 2017

Indic Collective Trust,
Through its Managing Trustee,
Mr.G.Aravindalochanan.

.. Petitioner

-vs-

1.The Commissioner,
Hindu Religious & Charitable Endowment
Dept., 119, Uthamar Gandhi Salai,
Chennai 600 034.

2.The State of Tamil Nadu,
Rep. By its Secretary,
Religious Endowments,
Tamil Development and Information
Dept., Chennai 600 005.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus

For Petitioner : Mr.S.Sridharan

For Respondents : Mr.Maharaja,
Spl.G.P.

* * * * *

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice) This writ petition has been filed seeking orders on the first respondent to stop the practice of charging money for the advantage of easier and/or quicker entry for 'Darshan' of the Deity from a shorter distance in comparison to the others and other related reliefs.

2.The petitioner claims to be the Managing Trustee of Indic Collective Trust, registered in June, 2017. The objects of the Trust and/or the purpose of its constitution have not been indicated in the affidavit in support of the writ petition. A copy of the Trust Deed is, however, attached to the typed set of documents filed by the petitioner.

3.It appears that the objects of the Trust are, inter alia, to promote complete spiritual, physical, mental, economic and intellectual empowerment of the people with a proper understanding of the underpinnings and beauty of Indian spirituality; to foster and encourage activities to safeguard the traditional art, craft and knowledge systems; to conduct seminars to make people aware of the priorities in order to protect the great Indic civilization from adverse effects; to disseminate knowledge and awareness about the unique customs and traditions, etc.

4.The petitioner claims to be aggrieved by reason of the alleged discriminatory practice followed by the respondent authorities in allowing special privileges and opportunities to devotees paying a fee and/or buying a ticket to visit temples, particularly, Sri Andal Temple at Srivilliputtur, Arulmighu Ekambaranathar Temple at Kanchipuram and Arulmigu Oppiliappan Temple at Thirunageswaram.

5.According to the petitioner, the petitioner through his counsel, visited the three temples mentioned above and opted for the 'free darshan queue', being under the impression that all the devotees irrespective of whether they were in the 'free darshan queue' or in the 'paid darshan queue', would ultimately be allowed to have the same 'darshan' for relatively equal duration and from the same distance from the Deity. However, he found that the practice followed was to allow worship to devotees paying special fees from a shorter distance in comparison to others who opted for 'free darshan'.

6.The petitioner also claims to have made an application under the Right to Information Act, 2005, ('RTI' in short) to the Executive Officer at Srivilliputtur, raising certain queries. The questions and answers, as set forth in the affidavit in support of the writ petition, are extracted hereinbelow:

a)Do you have paid darshan in addition to free darshan in your temple ? What are the different tickets/fees you are charging ? Who approved such tickets/fees for darshan ?

The response by the Executive Office to this question was: "In addition to the Common darshan, paid darshan is also there. Special entry darshan for Rs.10/- and Sitting Darshan for Rs.100/-.

b)Is it true that in paid darshan in your temple, devotees are allowed to go much nearer to the deities than the devotees coming in free darshan queue? Have this practice got prior approval from the appropriate authority ? Who (which authority) approved the practice ?

The response by the Executive Office to this question was: "Next to the Arthamandapam entrance, place for sitting darshan is allowed then a raised wooden structure is there for special darshan devotees. Then there is stone step which is higher than the above said wooden structure meant for Common darshan. The amounts have been fixed after obtaining approval of the commissioner of the HR & CE Department."

7.Learned Special Government Pleader appearing on behalf of the respondent authorities submits that place for sitting darshan and then, raised wooden structure for special darshan and thereafter, a stone step higher than the wooden structure for common darshan are all for special occasions. This is disputed by the learned counsel appearing for the petitioner.

8.Be it noted that the reply to the queries under the RTI Act is only in respect of Sri Andal Temple at Srivilliputtur and the practice followed in that temple is not followed in all other temples. It is submitted that there are about 36,000 temples in the State of Tamil Nadu, which are under the control of the first respondent.

9.Section 57 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, provides as follows:

"57.Power to fix fees for services, etc., and to determine their apportionment - Notwithstanding anything contained in any scheme settled or deemed to have been settled under this Act or any decree or usage to the contrary, the trustee of a religious institution shall have power, subject to such conditions as the Commissioner may, by general or special order, direct, to fix fees for the performance of any service, ritual or ceremony in such religious institution and to determine what portion, if any, or such fees shall be paid to the archakas or other office-holders or servants of such religious institution."

10.The said Section enables the authorities, subject to conditions as the Commissioner might, by general or special order, direct, to determine and impose fees for the performance of any service, ritual or ceremony in such religious institution and determine what portion, if any, of such fees should be paid to the archakas or other office holders or servants of such religious institution. Performance of any services would, in our view, include quick access and special darshans, as also performance of special 'archanas', etc. The power under Section 57 is not restricted only to performance of special 'poojas' and/or archanas but also to special 'darshans'.

11.We have been informed by learned Special Government Pleader appearing for the respondents that a fee is charged on certain occasions to regulate the crowds. 'Free darshan' is also permitted for which queues are longer and the duration of the 'darshan' is shorter.

12.Learned counsel appearing on behalf of the petitioner has cited a Single Bench judgment of this Court in Siva Thanu Chettiar and Ors. vs. Government of Tamil Nadu, Through its District Collector, Kanyakumari, at Nagercoil and Ors., dated 25.03.2010 in S.A. (MD) No.318 of 2004 and Review Application No.4 of 2005 arising out of a suit for declaration that the Executive Officer/Deputy Commissioner, Incorporated and Unincorporated Devaswam, Suchindrum Nagarcoil District and others were not entitled to collect any fee for special darshan of Devi Bhagavathi Amman Temple at Kanyakumari and other similar reliefs.

13.The learned Single Bench held as follows:

"28.The Constitutional scheme of things, in my opinion does not permit any citizens to believe that economic affordability could be a tool to divide the citizenry for a darshan in a public temple. I emphasize that the temple is a public temple and in the first place, the Devaswam is not doing any service. At the best it maintains and administers the temple built for public benefit, for which they receive or raise revenue by other means. The Economic consideration, some of the citizen are given the privilege of proximate or speedy Dharshan and those can't afford shall have distant dharsan, itself is an affront to the equality before law as enshrined under article 14 of the constitution of india.

29.Even assuming that the scheme is to assist the aged, ill and handicapped and women and children, to jump the queue and have dharsan at the same distance as that of the regular queue, still the under privileged is charged a fee for dharsan which again amounts to discrimination. The administration can always make some provision for those under privileged without charging the fee. If the department is so concerned about the women, weak and elderly, they can very well provide facilities without any collection of fees or charge."

14.Learned Special Government Pleader submits that in the aforesaid case, there was no free darshan at all and all darshans were for a fee. A judgment is to be construed in the context of the facts in which the judgment is rendered. Reference may be made to the Constitution Bench judgment of the Supreme Court in Padma Sundara Rao vs. State of Tamil Nadu and Ors., reported in (2002) 3 SCC 533.

15.Moreover, a Single Bench judgment is not binding on the Division Bench. The learned Special Government Pleader has drawn our attention to a judgment dated 27.09.2016 of this Court of a Bench of co-ordinate strength in W.P. (MD) No.12834 of 2013 (between C.Arun @ Arunachalam vs. The Chief Secretary, Tamil Nadu Government and Others), for a direction to abolish the paid dharshans except special dharshans for senior citizens. The Division Bench held that "But, in the case on hand, it is not as though no dharshan is provided to the devotees, if only fee is paid. As pointed out by the learned Special Government Pleader for HR & CE, special dharshan fee is collected only from the devotees, who want quick dharshan. The other devotees are not at all prevented from having dharshan. Thus, there is no discrimination at all. In view of the said factual position, we find no merit in the writ petition." The writ petition was dismissed.

16.In view of the judgment of the Division Bench referred to above, the reliefs prayed for in this writ petition cannot be granted by us, since judicial propriety demands that we follow the dictum of a Bench of co-ordinate strength. In temples which attract huge crowds, which are sometimes unmanageable, particularly on festive occasions, some regulation of darshan may be necessary. It may be open to impose charges and/or a fee for quicker entry, shorter queues and special darshan of longer duration and also to have special enclosures for such devotees. We, however, make it clear that the respondent authorities shall provide for darshan of the Deity from the entry point of 'Artha Mandapam' for all devotees, irrespective of whether they pay or opt for free darshan, as per their turn in the ordinary queue for free entry.

17. With the aforesaid observation, the writ petition is disposed of. No costs. Consequently, W.M.P.No.31094 of 2017 is closed.

(I.B., CJ.) (M.S., J.)

13.11.2017

Index : Yes/No

Website : Yes/No

Speaking/Non-speaking order

sra

To

1. The Commissioner,
Hindu Religious & Charitable Endowment
Dept., 119, Uthamar Gandhi Salai,
Chennai 600 034.

2. The Secretary, to Govt. of Tamil Nadu,
Religious Endowments,
Tamil Development and Information
Dept., Chennai 600 005.

The Hon'ble Chief Justice
and
M.Sundar, J.

(sra)

W.P.No.28882 of 2017

13.11.2017