

W.P.No.6704 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2025

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.No.6704 of 2025

C.GANESAN

... Petitioner

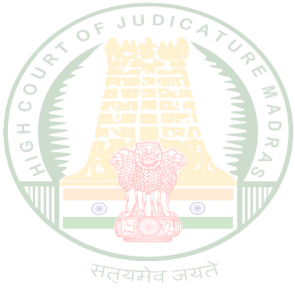
Vs

1. THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE
ENDOWMENTS ADMINISTRATION DEPARTMENT,
CHENNAI - 34.

2. THE ASSISTANT COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE
ENDOWMENTS ADMINISTRATION DEPARTMENT,
COLLECTORATE ADDITIONAL BUILDING,
NAMAKKAL.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the first respondent to consider and approve the recommendation of the second respondent made in Na.Ka.No. 2568/2020/A6 dated 04.02.2021 for separation of Arulmighu Ponkalamman Temple from the group of Temples consisting of " Arulmighu Mariamman, Angalamman and Perumal Temples and Arulmighu Ponkalamman Temple" within a strict time frame fixed by this Court by considering the petitioner's representations dated 05.01.2024 and 31.01.2025.



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For Petitioner : Mr.T.S.Vijaya Raghavan
For R1 & R2 : Mr.S.Ravi Chandran
Additional Government Pleader

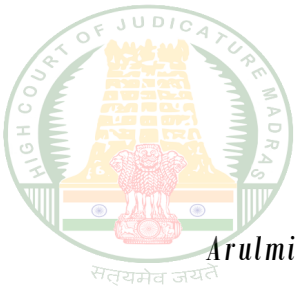
ORDER

“சாதிகள் இல்லையடி பாப்பா - குலத் தாழ்ச்சி உயர்ச்சி சொல்லல் பாவம்”

—— *Bharathiyar*”

This writ petition is filed with a prayer directing the first respondent to consider and approve the recommendation of the second respondent made in Na.Ka.No. 2568/2020/A6 dated 04.02.2021 for separation of Arulmighu Ponkalamman Temple from the group of Temples consisting of "Arulmighu Mariamman, Angalamman and Perumal Temples and Arulmighu Ponkalamman Temple" within a time limit fixed by this Court by considering the petitioner's representations dated 05.01.2024 and 31.01.2025.

2. The petitioner's representation and the affidavit filed in support of the writ petition state that all three temples have been combined for administrative purposes. The petitioner asserts that one of the temples,

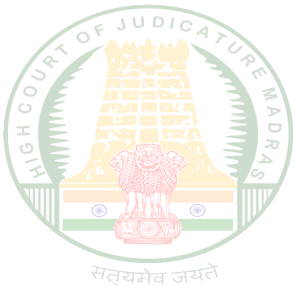


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Arulmighu Ponkalamman Temple , is solely worshipped, maintained, and administered by members of the petitioner's caste, whereas other caste people are also involved in the other temples. Therefore, he requests that this temple be separated and not grouped with the others.

3. Thus, the request oozes with caste perpetuation and hatred for other fellow human beings as if they are different creatures. Even if there is a recommendation from the second respondent, the same cannot be countenanced by this Court under the jurisdiction of Article 226 of the Constitution of India. This Court has already decided in W.P.No.3838 of 225 that a casteless society is the constitutional goal and that anything related to the perpetuation of caste cannot be considered by this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India. The relevant portion is extracted hereunder for ready reference :

“4. Caste is a social evil. Casteless society is our constitutional goal. Anything towards perpetuation of caste can never be considered by any Court of law. The reason is very simple. Firstly, it is not decided by what one learns or does in life. It is by birth. Thus, it hits at the very basic ethos of the society that all men are born equal. (பிறப்பொக்கும் எல்லா உயிர்க்கும்) . Further, it divides society, leads to discrimination and violence

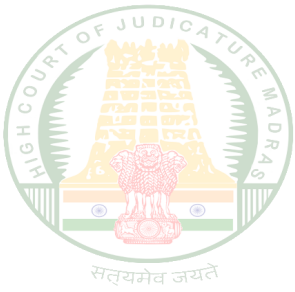


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*and is against growth. The same has been emphatically laid down by the Hon'ble Supreme Court of India, in **Ashoka Kumar Thakur -Vs- Union Of India (2008 6 SCC 1)**. After noting down the contention that the Constitution does not think of a casteless society, in paragraph No.238, it was held that "the ultimate object is to see that no person gets discriminated against because of his caste. If that be so, it would not be right to say that the ultimate objective is not the casteless society." In paragraph No.298, it is held that "ultimate aim is a casteless and classless society in line with the dream of the Constitution-framers that has to be chewed out." In paragraph No.310, it is held that "It needs no emphasis that if ultimately and indisputably the constitutional goal is the casteless and classless society..." In paragraph No.328, it is stated that "when the object is elimination of castes and not perpetuation to achieve the goal of casteless society and a society free from discrimination of caste, judicial review within the permissible limits is not ruled out." In paragraph No.363, it is mentioned that "our leaders have always and unanimously proclaimed with one voice that our constitutional goal is to establish a casteless and classless society." In paragraph No.605, it has been held "...caste matters and will continue to matter as long as we divide society along caste lines. Caste-based discrimination remains. Violence between castes occurs. Caste politics rages on. Where casteism is present, the goal of achieving a casteless society must never be forgotten. Any legislation to the contrary should be discarded." In paragraph No.666, it is mentioned that "caste has divided this country for ages. It has hampered its growth. To have a casteless society will be the resolution of a noble dream." Thus, if at all it can only be taken into account, it can only be to provide reservation and positive discrimination to uplift*



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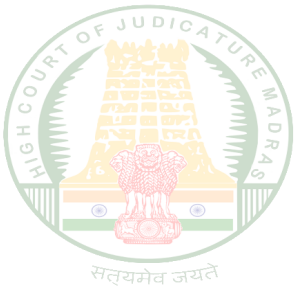
the downtrodden/backward classes.

5. *Despite seventy- five years of our Constitution, sections of the society are yet to shed this unwanted baggage. The very operation of the Constitutional scheme is frustrated, and the caste system leads to the perversion of the goals and values of the society. Thus, any prayer made which is in the nature of or which has the effect of perpetuation of caste will not only be unconstitutional but would be opposed to public policy. The time has come for this Court to emphatically declare so.*

6. ***Dr. B.R. Ambedkar***, in his famous speech on 25th November, 1949, on conclusion of deliberations of the Constituent Assembly, stated;

“In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are anti- national also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint”.

Thus, it would be violence to the Constitution to entertain prayers on caste basis and exercise the jurisdiction under Article 226 of the Constitution of India.



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*7. In this case, we are in the realm of prayer relating to the temple practice. In this context, nobody can understand our religions better than **Swamy Vivekananda**. If religion and worship are for the benefit of the soul, he said,
“The soul has neither sex nor caste nor imperfection”*

4. The temple is a public temple and, as such, can be worshipped, managed, and administered by all devotees. Even a social group identifying itself by the name of the caste may have a particular way of worship and will be entitled to their customary rights regarding that manner of worship. Caste, in itself, is not a ‘religious denomination.’ Believers in caste discrimination try to disguise their hatred and inequality under the guise of ‘religious denomination,’ viewing temples as fertile ground for nurturing these divisive instincts and creating social unrest. Many public temples are being labeled as belonging to a particular ‘caste.’ Articles 25 and 26 of the Constitution of India protect only essential religious practices and the rights of religious denominations. No caste can claim ownership of a temple. The administration of the temple based on caste identity is not a religious practice. This matter is no longer res integra. The Hon’ble Supreme Court of India, in **Sri Adi**



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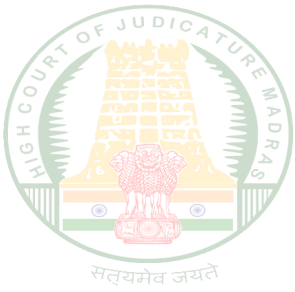
Visheshwara of Kashi Vishwanath Temple v. State of U.P.,¹ examined the

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issues about religious denomination and religious practice in detail. It has laid down that ‘denomination’ pertains to ‘religion.’ ‘Caste’ is not ‘Religion’. It is essential to extract the following passages for ready reference:

“23. The question is whether Sri Kashi Vishwanath Temple is a denominational Temple and whether the Act interferes with freedom of conscience and the right to profess, practise and to propagate religion of one's choice and whether the devotees of Lord Vishwanath are members of religious denomination and shall have the fundamental right to manage its affairs in the matter of religion guaranteed under Articles 25 and 26 of the Constitution or to administer the properties of the Temple in accordance with law. In the Law Lexicon by P. Ramanatha Iyer (1987, Reprint Edn.) at p. 315, the author says that “denomination” means a class or collection of individuals called by the same name; a sect; a class of units; a distinctively named church or sect as clergy of all denominations. The maxim Denominatio est a digniore means “Denomination is from the more worthy” (Burrill). “Denominatio fieri debet a dignioribus”, another maxim means “denomination should be deduced from the more worthy” (Wharton's Law Lexicon). “Denomine proprio non est curandum cum in substantia non erretur quia nomina mutabilia sunt res autem immobiles meaning” means “as to the proper name, it is not to be regarded when one errs not in substance; because names are changeable, but things are immutable”. (Bouvier Law Dictionary; American Encyclopaedia) In Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005 : AIR 1954 SC 282] , the precise meaning of the word “denomination” had come up for consideration before the Constitution Bench. It was held, following the meaning given in Oxford Dictionary, that the word “denomination” means a

¹ (1997) 4 SCC 606

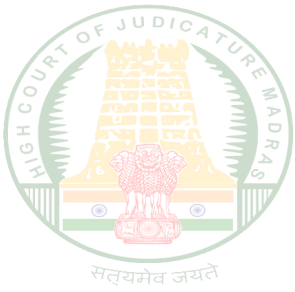


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collection of individuals or class together under the same name, **a religious group or body having a common faith and organisation and designated by a distinctive name.** On the practices of the Math, the meaning of the connotation “denomination” in that behalf, it was held that each such sect or special sects which are founded by their organiser generally by name be called a religious denomination as it is designated by distinctive name in many cases. It is the name of the founder and has common faith and common spiritual organisation. Article 26 contemplates not merely a religious denomination but also a section thereof. Therefore, it was held that Shirur Mutt [1954 SCR 1005 : AIR 1954 SC 282] was a religious denomination entitled to the protection of Article 26. In Durgah Committee v. Syed Hussain Ali [(1962) 1 SCR 383 : AIR 1961 SC 1402] another Constitution Bench considering the ratio laid in Shirur Mutt case [1954 SCR 1005 : AIR 1954 SC 282] explained Sri Venkataramana Devaru case [Sri Venkataramana Devaru v. State of Mysore, 1958 SCR 895 : AIR 1958 SC 255] and had laid down that the words “religious denomination” under Article 26 of the Constitution must take their colour from the word religion and if this be so the expression religious denomination must also specify three conditions, namely, it must be **(1) a collection of religious faith, a system of belief which is conducive to the spiritual well-being, i.e., a common faith; (2) common organisation; (3) a designation by a distinctive name.** Therein, the endowment to the tomb of Hazrat Khwaja Moin-ud-din Chishti of Ajmer, under the Khadims Durgah Khwaja Saheb Act, 1955 was challenged by the respondents as violative of their fundamental rights under Articles 25, 26, 19(1)(f) and (g) of the Constitution. This Court had held that Hazrat Khwaja Moin-ud-din Chishti tomb was not confined to Muslims alone but belonged to all communities, i.e., Hindus, Khwajas and Parsis who visit the tomb out of devotion for the memory of the departed soul and it is a large circle of pilgrims who must be held to be the beneficiary of the endowment made to the tomb. Considered from that perspective, it was held that the right to receive offerings was not affected or prejudiced by the Act, though they had a right



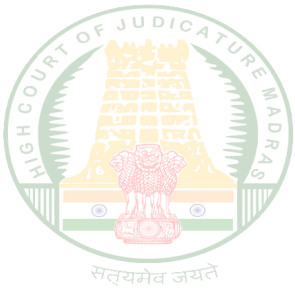
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*to worship in accordance with their faith. Article 26 requires to be carefully scrutinised to extend protection and it must be confined to such religious practices as are an essential and integral part of it and no other. The management of the properties was in the hands of the officers. Article 26 does not create rights in any denomination or a section which it never had. It merely safeguards and guarantees the continuance of a right which such denomination or the section had. If the denomination never had the right to manage property in favour of a denominational institution as per reasonable terms on which the endowment was created, it cannot be had (sic said) to have it. It had not acquired the said right as a result of Article 26 and that the practice and the custom prevailing in that behalf which obviously is consistent with the terms of the endowment should not be ignored. The Act cannot be treated as illegal and the administration and management should be given to the denomination. Such a claim is inconsistent with Article 26. In *Bramchari Sidheswar Shai v. State of W.B.* [(1995) 4 SCC 646] the relevant facts were that the Ramakrishna Mission had established educational institutions to which approval and affiliation were granted by the Government and the University. The dispute arose as regards the composition of the Governing Body, viz., whether the Government's nominee would be associated on a standard pattern? Ramakrishna Mission claimed “minority” status being a denomination. In that perspective, this Court while rejecting the claim of the Mission as a minority institution under Article 30(1), upheld its denominational character within the meaning of Article 26(a) of the Constitution. It was held that it being a denomination was entitled to administer the educational institutions. Therein, the vires of the statute did not come up for consideration in the context of the followers of Shri Ramakrishna who are professing the line of teachings and doctrines of Shri Ramakrishna. The followers were considered to be a denominational section of the citizens. The ratio therein, therefore, does not apply to the facts of the present case.*

26. *It would appear from the judgment of the High*

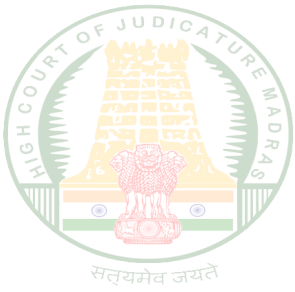


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*Court that the Advocate General contended that the protection of Articles 25 and 26 was not available to the Hindus as a community but as a denominational sect or section thereof and that Hindus are not denominational section. One of the learned Judges in that background considered the scope of denomination and held that **Shaivites among Hindus are a denominational section** and that, therefore, they are entitled to the protection of freedom of conscience and to establish and manage the religious institution or properties attached to it. It is a well-settled law that secularism is the basic feature of the Constitution. The Constitution seeks to establish an egalitarian social order in which any discrimination on grounds of religion, race, caste, sect or sex alone is violative of equality enshrined in Articles 14, 15 and 16 etc. of the Constitution. India is a land of multi-religious faiths and the majority are Hindus; **Hinduism is their way of life, belief and faith. Unfortunately, they are disintegrated on grounds of caste, sub-caste, sect and sub-sect. Unity among them is the clarion call of the Constitution. Unity in diversity is the Indian culture and ethos.** The tolerance of all religious faiths, respect for each other's religion are our ethos. These pave the way and foundation for integration and national unity and foster respect for each others' religion; religious faith and belief. Integration of Bharat is, thus, its arch. Article 15(2), therefore, lays emphasis in that behalf that no citizen shall, on grounds only of religion, race, caste, sect, place of birth or any of them be subjected to any disability, liability, restriction or conditions with respect to access to shops, public restaurants, hotels, places of public entertainment or the use of wells, tanks, baths and places of public resorts maintained wholly or partly out of State fund or dedicated to the use of general public. **Congregation and assimilation of all sections of the society, in particular in place of worship generates feeling of amity assured in the Preamble and fosters fraternity for social cohesion, harmony and integration. Thus, the Constitution lays seedbed to integrate the people transcending various religious, regional, linguistic, sectional diversities, castes, sects and/or divisive actions or acts. Integration of all sections belonging to different castes, sub-***



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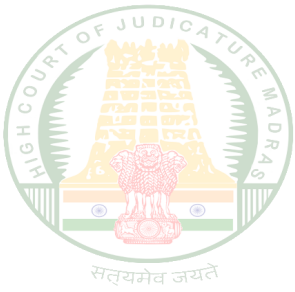
castes, sects and sub-sects or people professing different religious faiths transcending the diversity of religious beliefs. Apart from communion of the individual with his perceived cosmos or divinity, the primary aim of all religious faiths is to inculcate the feeling of oneness among all people, to imbibe the good of that religion or that faith teaches; to get rid of unfounded or superstitious beliefs and to make a person self-disciplined. Every right carries with it the co-relative duty. Article 51-A of the Constitution enjoins every citizen to abjure violence, to cultivate the spirit of tolerance, reform and enquiry, in other words, rational thinking and to distinguish between good and bad; to discard bad and viciousness and to imbibe good and to improve the faculty of constructive thinking. So, all religions are equally entitled to constitutional protection under Articles 25 and 26.

27. The right to establish and maintain institutions for religious and charitable purposes or to administer property of such institutions in accordance with law was protected only in respect of such religious denomination or any section thereof which appears to extend help equally to all and religious practice peculiar to such small or specified group or section thereof as part of the main religion from which they got separated. The denominational sect is also bound by the constitutional goals and they too are required to abide by law; they are not above law. Law aims at removal of the social ills and evils for social peace, order, stability and progress in an egalitarian society. In *A.S. Narayana Deekshitulu v. State of A.P.* [(1996) 9 SCC 548] a Bench of this Court (to which one of us, K. Ramaswamy, J., was a member) considered in extenso the entire case-law in the context of abolition of the hereditary rights of archakas and mathadipatis (trustees) and of the attached right to share in the offerings, plate collections etc. and appointment of Executive Officer to religious institution and endowment under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short “the A.P. Act”). There is a difference between secularism and secularisation. Secularisation essentially is a process of decline in religious activity, belief, ways of thinking



and in restructuring the institution. Though secularism is a political ideology and strictly may not accept any religion as the basis of State action or as the criterion of dealing with citizens, the Constitution of India seeks to synthesise religion, religious practice or matters of religion and secularism. In secularising the matters of religion which are not essentially and integrally parts of religion, secularism, therefore, consciously denounces all forms of supernaturalism or superstitious beliefs or actions and acts which are not essentially or integrally matters of religion or religious belief or faith or religious practices. In other words, non-religious or anti-religious practices are antithesis to secularism which seeks to contribute in some degree to the process of secularisation of the matters of religion or religious practices. For instance, untouchability was believed to be a part of Hindu religious belief. But human rights denounce it and Article 17 of the Constitution of India abolished it and its practice in any form is a constitutional crime punishable under Civil Rights Protection Act. Article 15(2) and other allied provisions achieve the purpose of Article 17.

28. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos/Creator and realise his spiritual self. Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another

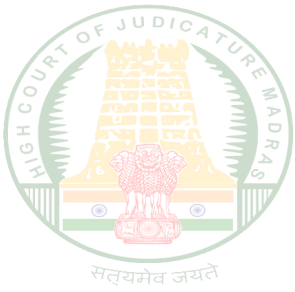


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diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his Judicial Process, life is not logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination all be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the



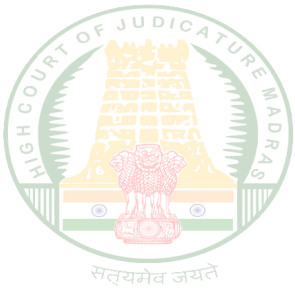
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religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. And whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question.

31. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. In Seshammal case [Seshammal v. State of T.N., (1972) 2 SCC 11] on which great reliance was placed and stress was laid by the counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and customs obtained in the temple. Shri P.P. Rao, learned Senior Counsel also does not dispute it. It was held that Articles 25 and 26 deal with and protect religious freedom. Religion as used in those articles requires restricted interpretation in etymological sense. Religion undoubtedly has its basis in a system of beliefs which are regarded by those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with



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pragmatism. By the very nature of things it would be extremely difficult, if not impossible, to define the expression “religion” or “matters of religion” or “religious beliefs or practice”. Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practise rituals and right to manage in matters of religion are protected under these articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are an integral part of religion are protected. It is a well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation. This Court upheld the A.P. Act which regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections attached to the duty.”

5. Thus, a careful reading of the Judgment, it would be clear that ‘caste’ by itself can never be a religious denomination. Only if they follow a particular philosophy or are guided by a guru or have a distinct way of carrying on their faith, etc., can any sect or sub-sect be a ‘denomination’. It can be further seen that the protection of Articles 25 and 26 do extend only to essential religious practices. When no religious denomination or essential practice of religion is involved, the protection does not extend. Thus, the



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claim that only particular caste owns a temple or the caste members alone can be Trustees of the temple in general does not come within the exceptions carved out and under the Fundamental Rights guaranteed under Article 25 and 26 and as such, should be tested within the secular fabric and thus, cannot stand scrutiny of the Constitutional goal, and public policy, that is against perpetuation of caste.

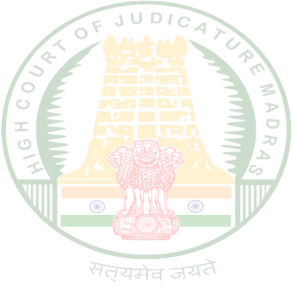
6. In this case, the petitioner's request for a separate administration is based solely on the grounds that in other temples, individuals of different castes are involved, whereas in the present temple, only members of his caste alone are present. The petitioner's request cannot be accepted, and therefore, the writ petition is dismissed. No costs.

25.02.2025

Neutral Citation: Yes
nsl

To
1. THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE
ENDOWMENTS ADMINISTRATION DEPARTMENT,

16/18



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CHENNAI - 34.

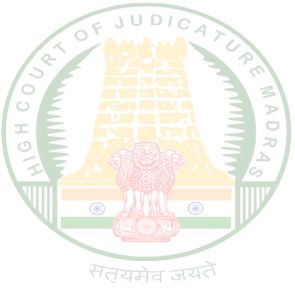
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