

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.05.2019

CORAM

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**  
**and**  
**THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

W.P.No.14417 of 2019

and

W.M.P.Nos.14435 & 14436 of 2019

V.Anbazhagan

.. Petitioner

..vs..

The Comissioner,  
Hindu Religious and Charitable Endowments Department,  
No.119, Uthamar Gandhi Salai, Nungambakkam,  
Chennai-600 034.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the Circular vide Na.Ka.No.23606/19/K4 dated 26.04.2019 on the file of the respondent and quash the same and direct the respondent to develop the scientific temper, humanism and spirit of inquiry and reform as per Article 51(a)(h) of the Constitution of India.

For Petitioner : Mr.S.Kumara Devan

For Respondents : Mr.M.Maharaja,Spl.G.P.  
HR & CE

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**ORDER**

*[Order of the Court was made by C.V.KARTHIKEYAN, J]*

This Writ Petition has been filed by V.Anbazhagan, who claims to be an Editor of a Web Magazine, called “Makkal Seithi Maiyyam” and also claims to be a social worker and RTI activist. He also claims to be a writer and claims to have written various books and articles on various political subjects and claims to have rendered service to the society and further claims he has acquired various other qualifications by which, he claims he has qualified himself to file the present writ petition.

2. In this Writ Petition, the petitioner seeks to challenge the impugned Circular issued by the respondent vide Na.Ka.No.23606/19/K4 dated 26.04.2019 and seeks a direction against the respondent to develop scientific temper, humanism and spirit of inquiry and reform as per Article 51(a)(h) of the Constitution of India.

3. The impugned Circular, dated 26.04.2019 over which, the petitioner is aggrieved, was issued by the respondent, namely, the

Commissioner of HR & CE Department. The petitioner claims the circular is in the nature of a direction issued to all the Joint Commissioners/Executive Officers, Deputy Commissioners/Executive Officers, Assistant Commissioners/Executive Officers to perform “yagnas” propagating rain, in all important temples under the control of the HR & CE Department. According to the petitioner, the impugned Circular is against the tenets of the Constitution of India and also against the concept of secularism followed by our country and violates the very objects and scope of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short, 'the Act').

4. Heard Mr.S.Kumara Devan, learned counsel for the petitioner and Mr.M.Maharaja, learned Special Government Pleader (HR & CE) appearing for the respondent.

5. The preamble to the Constitution of India among other declarations, has declared the State as a Secular State. The citizens of this country are encouraged to have tolerance and to accept all religious beliefs and practices. There is also encouragement to respect various

religious practices followed by various religious communities. Even at the outset, it is to be stated that every religion propagates various practices to be followed and such practices are for the welfare not only of the people who have faith on such religion and religious practices but also to bring about peace and harmony in society.

6. Among various aspects, the State also has certain policies with respect to administration of religious institutions particularly in the instant case, with respect to temples. The HR & CE Board has administrative control over several temples and other endowments which provide performance of poojas and rituals, which may be simple or elaborate, and would be performed either inside the sanctum sanctorum of the temples by the Archakas or also by individuals with participation of a large number of general public.

7. India is a country in which a vast population believe that participating in such poojas will give them mental peace and bring harmony among the community. It is also very common in this State that the people of all religions visit not only temples but also visit churches

and mosques and other religious institutions establishments and participate and offer prayers without any discrimination of caste and creed.

8. In the circular which is impugned, translation of which had been provided, the Principal Secretary / the Chief Commissioner, HR & CE, had addressed all Joint Commissioners / Deputy Commissioners / Assistant Commissioners / Executive Officers as follows:

*"It has been decided to conduct Yagna in all important temples under the control of Hindu Religious and Charitable Endowments department so that the state may enjoy bountiful rain and attain prosperity. It is hereby instructed that the following programs be conducted in all the important temples with due respect to local customs by the officers concerned.*

1. *Parjanya Shanti Varuna Jana Velvi with Special Abishekam.*
2. *Construction of water tank for Nandi statue filling up the tank with water to neck level and conduct of prayers.*
3. *Chanting bu odivars of Sundaramurty Nayanars seventh Thirunavukarasu.*
4. *Singing of Thirugnansambandars thevara rain pathigam in 12 the Thirunavukarasu in Megara kurinchi*

style.

5. Asking musicians to pay amirthavarshini, megavarshini, kedari and Anantha Bairagi ragas in nagaswaran flute and violin.

6. Performing seethal kumbam for Shiva in Shiva temples.

7. Performing Rudrabhisekam in Shiva temples.

8. Special Thirugnansambandars for Mahavishnu.

9. Special pathigam for rain.

10. Abishekam for Sri Mariamman with milk, curd and tender coconut water.

11. Specially mahaabishekam for mahanandhi in Thirunavukarasu Shiva temple in Mayavaram Taluk in Nagapattinam District.

12. Varuna Sudha cedaantra parayanama.

13. Varuna Gayathri mantra parayanama.

The staff concerned are directed to select suitable persons for performing the above ceremonies and start the performance of directed activities at the earliest.

The Joint Commissioners, Deputy Commissioners and Executive Officers of the concerned temples are directed to personally supervise the performance of the above activities and ensure that they are performed according to the given instructions.

The zonal Joint Commissioners are directed to inform this office before 02.05.2019 of the detailed

*schedule of the above activities planned.*

*Further after the completion of the above activities they are required to send a separate report on the method of conduct of the directed activities.”*

9. The learned counsel for the petitioner stated that the circular has directed, expenditure of public money for the performance of the Yagnas as stipulated above and has taken objection to such expenditure of public money. It was also pointed out that Article 25 of the Constitution of India provides only individual rights to practice religion and not practicing in the manner as provided in the circular.

10. We disagree with the said contention.

11. Article 25 of the Constitution of India is as follows:

*“25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.*

*(2) Nothing in this article shall affect the operation*

*of any existing law or prevent the State from making any law—*

*(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;*

*(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.*

*Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.*

*Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”*

12. In the majority judgment rendered by the Hon'ble Supreme Court in *Indian Young Lawyers Association v State of Kerala*, reported in (2018) 7 MLJ 889, The Chief Justice, Hon'ble Mr. Justice

Dipak Misra, speaking for himself and for Hon'ble Mr. Justice A.M. Khanwilkar, observed thus:

*“98. Now adverting to the rights guaranteed Under Article 25(1) of the Constitution, be it clarified that Article 25(1), by employing the expression 'all persons', demonstrates that the freedom of conscience and the right to freely profess, practise and propagate religion is available, though subject to the restrictions delineated in Article 25(1) itself, to every person including women.*

*99. It needs to be understood that the kernel of Article 26 is 'establishment of a religious institution' so as to acclaim the status of religious denomination. Whereas, Article 25(1) guarantees the right to practise religion to every individual and the act of practice is concerned, primarily, with religious worship, rituals and observations as held in *Rev. Stainislaus v. State of Madhya Pradesh and Ors.* MANU/SC/0056/1977 : (1977) 1 SCC 677. Further, it has been held in *The Commissioner Hindu Religious Endowments, Madras v. Shri Lakshmindra Thritha Swaminar of Sri Shirur Mutt*, [1954] SCR 1005, that the logic underlying the constitutional guarantee regarding 'practice' of religion is that religious practices are as such a part of*

*religion as religious faith or doctrines.*

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103. Another authoritative pronouncement in regard to the freedom to practise a religion freely without with any fictitious and vague constraint is the case of **Commissioner of Police v. Acharya Jagadishwarananda Avadhuta**, (2004) 12 SCC 770, wherein the Court observed thus:

*The full concept and scope of religious freedom is that there are no restraints upon the free exercise of religion according to the dictates of one's conscience or upon the right freely to profess, practice and propagate religion save those imposed under the police power of the State and the other provisions of Part II of the Constitution. This means the right to worship God according to the dictates of one's conscience. Man's relation to his God is made no concern for the State. Freedom of conscience and religious belief cannot, however, be, set up to avoid those duties which every citizen owes to the nation; e.g. to receive military training, to take an oath expressing willingness to perform military service and so on."*

[Emphasis supplied]

13. In the dissenting judgment rendered by the Hon'ble Ms. Justice Indu Malhotra in *Indian Young Lawyers Association*, supra, the scope of judicial interference in religious faith and practices and more particularly in the light of Article 25 had been discussed as hereunder:-

*“7.1. Article 25 of the Constitution guarantees to all persons the freedom of conscience, and the right freely to profess, practise and propagate religion. This is however subject to public order, morality and health, and to the other provisions of Part III of the Constitution.*

.....  
.....

*7.5. Article 25(1) confers on every individual the right to freely profess, practise and propagate his or her religion. [H.M. Seervai, *Constitutional Law of India : A Critical Commentary*, Vol. II (4th Ed., Reprint 1999), at Pg. 1274, para 12.35]. The right of an individual to worship a specific manifestation of the deity, in accordance with the tenets of that faith or shrine, is protected by Article 25(1) of the Constitution. If a person claims to have faith in a certain deity, the same has to be articulated in*

accordance with the tenets of that faith. ....

7.6. *The right to practise one's religion is a Fundamental Right guaranteed by Part III of the Constitution, without reference to whether religion or the religious practises are rational or not. Religious practises are Constitutionally protected under Articles 25 and 26(b). Courts normally do not delve into issues of religious practises, especially in the absence of an aggrieved person from that particular religious faith, or sect. ...."*

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.....

10.8. *The Constitution lays emphasis on social justice and equality. It has specifically provided for social welfare and reform, and throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus through the process of legislation in Article 25(2)(b) of the Constitution. Article 25(2)(b) is an enabling provision which permits the State to redress social inequalities and injustices by framing legislation. It is therefore difficult to accept the contention that Article 25(2)(b) is capable of application without reference to an actual legislation. What is permitted by Article 25(2) is State*

*made law on the grounds specified therein, and not judicial intervention.*

.....

.....

*10.13. Judicial review of religious practises ought not to be undertaken, as the Court cannot impose its morality or rationality with respect to the form of worship of a deity. Doing so would negate the freedom to practise one's religion according to one's faith and beliefs. It would amount to rationalising religion, faith and beliefs, which is outside the ken of Courts.*

.....

.....

*11.2. India is a country comprising of diverse religions, creeds, sects each of which have their faiths, beliefs, and distinctive practises. Constitutional Morality in a secular polity would comprehend the freedom of every individual, group, sect, or denomination to practise their religion in accordance with their beliefs, and practises.*

*11.3. The Preamble to the Constitution secures to all citizens of this country liberty of thought,*

*expression, belief, faith and worship. Article 25 in Part III of the Constitution make freedom of conscience a Fundamental Right guaranteed to all persons who are equally entitled to the right to freely profess, practise and propagate their respective religion. This freedom is subject to public order, morality and health, and to the other provisions of Part III of the Constitution. Article 26 guarantees the freedom to every religious denomination, or any sect thereof, the right to establish and maintain institutions for religious purposes, manage its own affairs in matters of religion, own and acquire movable and immovable property, and to administer such property in accordance with law. This right is subject to public order, morality and health. The right under Article 26 is not subject to Part III of the Constitution.*

*11.4. The framers of the Constitution were aware of the rich history and heritage of this country being a secular polity, with diverse religions and faiths, which were protected within the fold of Articles 25 and 26. State interference was not permissible, except as provided by Article 25(2)(b) of the Constitution, where the State may make law providing for social welfare and reform.*

11.5. *The concept of Constitutional Morality refers to the moral values underpinning the text of the Constitution, which are instructive in ascertaining the true meaning of the Constitution, and achieve the objects contemplated therein.*

11.6. *Constitutional Morality in a pluralistic society and secular polity would reflect that the followers of various sects have the freedom to practise their faith in accordance with the tenets of their religion. It is irrelevant whether the practise is rational or logical. Notions of rationality cannot be invoked in matters of religion by courts.”*

[Emphasis supplied]

14. What emerges from the ratio laid down is that the freedom of conscience and the right to freely profess, practise and propagate religion is available and that there are no restraints upon the free exercise of religion and the Court cannot impose its morality or rationality with respect to the form of worship and it is irrelevant whether the practise is rational or logical. Notions of rationality cannot be invoked in matters of religion by Courts.

15. In the present case, the policy of the Government cannot be interfered with by the judiciary. Every individual has to have mutual respect for the decisions taken as policy decisions by the Legislature and by the Executive. Judiciary being the guardian of legal rights, has to ensure that such policy conforms to the norms laid down by the Constitution of India. The present writ petition appears to be clearly an attempt to disturb the faith in the religious beliefs among the people. There is a clear attempt to bring about disruption in peace and harmony.

16. It is not for this Court to interfere with or criticize upon any method be it religious or scientific adopted with hope to bring about bountiful rainfall in the State by issuing the Circular. Whether such method of performing poojas or yagnas to bring about rain is a success or failure is not within the scope of examination by this Court in the writ petition. It is performed with hope and belief and though they may be successful or not, this Court cannot destroy such belief or hopes of the multitude of people.

17. As an illustrative case, a farmer with a small piece of agricultural land, would not be able to grow any crop owing to lack of rainfall. He would hope and believe that rain would come some day to save him from the unfortunate situation in which he and his family have been forced to. Faith would lead to, in his limited knowledge, to perform poojas and invoke the benevolence of God to bring about rain. When such poojas are done by him, it would again lead to economic depravity. When however such poojas are performed in a temple close to his place, he would very willingly join with the belief and hope that the prayers would be answered. That faith which the farmer has, cannot be destroyed by this Court. That faith which the farmer has is strengthened by performing the poojas, which the State has encouraged through the impugned circular.

18. It is also to be mentioned that normally and consistently the Courts have kept away from interfering with religious practices and beliefs. Rarely has any Court interfered with any religious practice and religious belief. The circular has been issued only with respect to the temples that are under the control and administration of the Government.

19. We do not find any irregularity or infirmity in the issuance of such circular necessitating interference with the same. We offer no opinion as to whether the practice is scientific in nature or purely religious in nature.

20. In view of the above reasons, we are not prepared to admit the writ petition.

21. Accordingly, the Writ Petition is dismissed at the admission stage itself. No costs. Consequently, connected writ miscellaneous petitions are also closed.

[C.V.K., J] [K.R., J]  
15.05.2019

Index : Yes/No  
Internet : Yes  
Speaking Order : Yes/No  
dn/rst

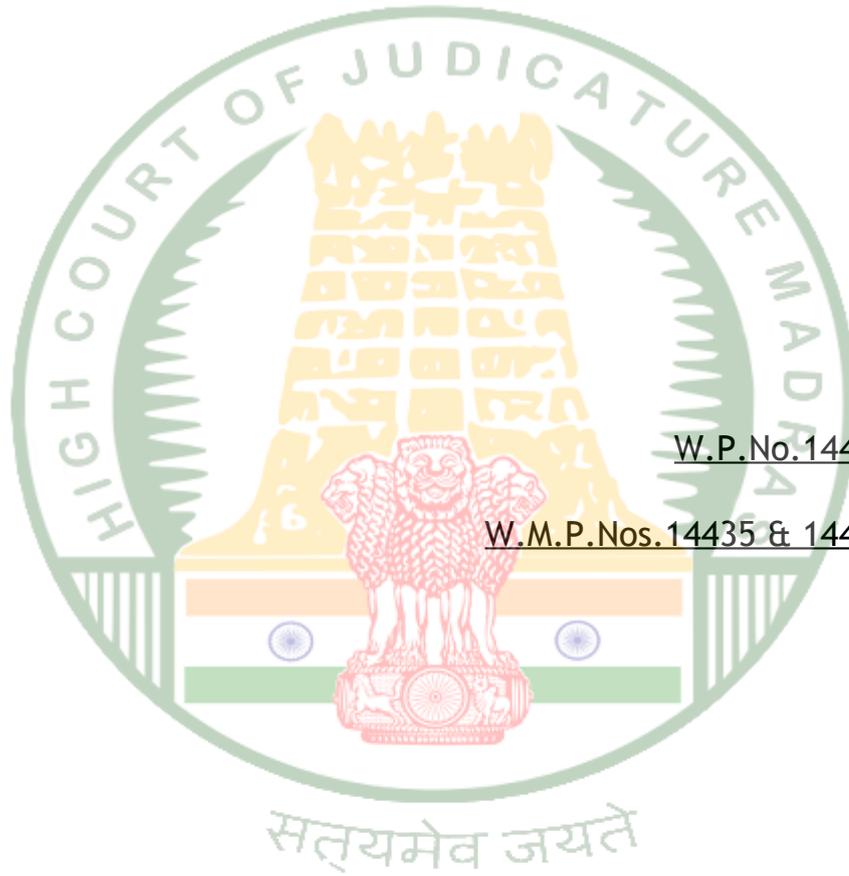
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To

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The Commissioner,  
Hindu Religious and Charitable Endowments Department,  
No.119, Uthamar Gandhi Salai, Nungambakkam,  
Chennai-600 034.

C.V.KARTHIKEYAN, J  
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