
STATE INTERVENTION IN APPOINTMENT OF ARCHAKAS: A CRITICAL ANALYSIS

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ABSTRACT

Secularism and religion often are at crossroads due to several factors. Secularism in India does not only separate religion from the State, but also inculcates the ideal that the integrity and autonomy of the religion and religious institutions should not be disturbed unless it is hit by the constitutionally mandated restrictions. When religious rights are granted fundamental importance in a secular State, there should be harmony between the religious rights and secular rights. The author identifies appointment of archakas as one of the factors influencing such harmony and addresses the issue by reflecting upon the conundrum revolving around their appointment in the State of Tamil Nadu. This article tries to explore the possible alternative interpretation by understanding coherently the effect and purpose of their appointment.

Introduction

Article 26(b) provides that the religious denomination or any sect thereof shall have the right to manage its own affairs in '*matters of religion*'. One of the most disputed areas under Article 26 is with respect to the ambit of the term '*matters of religion*'. It becomes very significant because, if any activity comes under the purview of the same, it is not subject to regulation by the State unlike Article 26(c) and (d). The religious denomination has the right to manage such matters subject to public order, health and morality. It is because of this reason, in almost all the cases, the religious denomination would argue that a particular matter is a matter of religion and the State would argue that it is not, so as to regulate the same.

Due to the advent of the essential religious practices test, the ambit of protection given to matters of religion is getting diminished. The ambit of the secular functions are getting increased and even religious activities are considered as secular if they are not essential and integral to the religion. One of such areas where there has been conflict between religious and secular functions is the appointment of archakas as they perform religious functions, but are appointed by secular authorities, especially in the state of Tamil Nadu. This article tries to unravel the knotty questions around appointment of Archakas in Tamil Nadu.

Abolition of Hereditary succession to the post of Archakas

The conundrum revolving around the appointment of Archakas started with the 1970 Amendment to the Tamil Nadu Religious and Charitable Endowments Act, 1959, wherein the hereditary appointments of Archakas were abolished. The Amendment was challenged before the Hon'ble Supreme Court in *Seshammal v. State of Tamilnadu*¹. The Constitution Bench of the Apex Court came up with two significant findings which are relevant here.

Firstly, the court referred to Agamas and scriptures, and opined that the appointment of Archakas in the temple are not essentially religious practices, rather they are secular in nature. Hence, the government is a competent authority to regulate the appointment under

¹ Seshammal v. State Of Tamil Nadu, AIR 1972 SC 1586.

Article 25(2)(a). In holding so, the court observed;

“An Archaka has never been regarded as a spiritual head however accomplished and well-versed in the agamas and rituals he may be. He is a servant of the temple subject to the discipline and control of the trustee. That being his position, the act of his appointment by the trustee is essentially secular, though after appointment he performs some religious functions. That after his appointment he performs worship is no ground for holding that his appointment is either a religious practice or a matter of religion. He owes his appointment to a secular authority. Managers of temples exercise an essentially secular function in choosing and appointing the Archaka. The fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular.”²

The court then had to decide whether it is necessary for a trustee to be bound by the Agamas of the religious denomination for the appointment of Archakas. The court held that if the appointment is made outside that denomination, it would necessarily defile the image of God. The court observed;

“...on the consecration of the image in the temple, the Hindu worshippers believe that the divine spirit has descended into the image and from then on, the image of the deity is fit to be worshipped and the rules with regard to daily and periodical worship have been laid down for securing the continuance of the divine spirit and as per the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship.”³

By holding so, the abolition of hereditary succession to the post of Archakas was upheld by the court. It is pertinent here to note that the court did not disregard the importance of Agamas as they are essential and integral part of the religion. The resultant effect of this judgment is that the Archakas were to be appointed by the trustees within the denomination itself, as prescribed by the Agamas, though not by heredity.

On similar lines, the legislation regulating the service conditions pertaining to the abolition of the hereditary right of succession in the office of Archakas was challenged before the Division Bench

² *Id.*

³ *Id.*

of the Hon'ble Supreme Court in the case of *A.S. Narayana Deekshitulu v. State of Andhra Pradesh*⁴. The court upheld the validity of the same and observed that;

*“Though performance of the ritual ceremonies is an integral part of the religion, the person who performs it or associates himself with performance of ritual ceremonies, is not. Therefore, when the hereditary right to perform service in the temple can be terminated or abolished by sovereign legislature, it can equally regulate the service conditions sequel to the abolition of the hereditary right of succession in the office of an Archaka.”*⁵

Therefore, the court held that the legislature has the power to regulate the appointment of Archakas, as well as the emoluments and abolition of customary shares from the offerings of the Deity, and the same is not violative of Article 25(1) and 26(b) of the Constitution.

Similarly, in *N Adithyan v. Travancore Devaswom Board*⁶, the Division Bench of the Supreme Court held that even non-Brahmins could be appointed as the head priest. The court also observed;

*“...to insist that the person concerned should be a member of a particular caste born of particular parents of his caste can neither be said to be an insistence upon an essential religious practice, rite, ritual, observance or mode of worship nor any proper or sufficient basis for asserting such a claim has been made out either on facts or in law.”*⁷

On a careful perusal of these two division bench judgments, we can infer that they did not go against the Constitutional Bench decision in *Seshammal*. It can also be noted that the courts did not intend to allow the appointment of Archakas outside the particular religious denomination. Moreover, the hereditary succession to the post of Archakas were abolished, so were the caste based appointments. All of the three cases strongly opined that the Agamas are the essential and integral aspects of the religion and if there are any deviations from them, it would defile the image of God and the same could not be allowed.

⁴ A .S. Narayana Deekshitulu v. State of Andhra Pradesh, Supreme Court of India, AIR 1996 SC 1765.

⁵ *Id.*

⁶ N Adithyan v. Travancore Devaswom Board, (2002) 8 SCC 106.

⁷ *Id.*

The Conundrum around *Adi Saiva Sivachariyargal*

As far as the position of Tamilnadu is concerned, the object of the 1970 amendment that was challenged in *Seshammal* case was to remove caste discrimination in the field of appointment of Archakas. However, the abolition of hereditary succession still could not achieve the object that they wanted to achieve, as the notification seeking for the post of Archakas still had caste as a specific criteria.

In order to curb the same, a Government Order (G.O) was issued to the effect in 2006 and it provided that, “*Any person who is a Hindu and possessing the requisite qualification and training can be appointed as an Archaka in Hindu temples.*”⁸ Going by this G. O., ‘*any Hindu*’ can be appointed as an Archaka in any Hindu temple maintained by any religious denomination, unlike the 1970 Amendment which was restricted to hereditary succession. As a result, there can be appointments of the Archakas from one religious denomination to the Hindu temple maintained by another religious denomination. As a result, the Government Order was challenged before the Division Bench of the Hon’ble Supreme Court in the case of *Adi Saiva Sivachariyargal Nala Sangam v. Government of Tamil Nadu*⁹.

The central issue before the Court was whether allowing all the Hindus to be eligible for the post of Archaka regardless of not only the caste and hereditary, but also regardless of the religious denomination that he belongs is against the essential religious practices of Hindus that are prescribed in the Agamas, thereby violating Article 25 and 26(b) of the Constitution. The Appellants argued that the issue squarely fell within *Seshammal* case, which held that any deviation from Agamas would violate religious freedom under Article 25 and 26(b).

The court however rejected the contention of the Appellants stating that *Seshammal* case was relevant only to a certain extent where it stated that;

“*Seshammal is not an authority for any proposition as to what an Agama or a set of Agamas governing a particular or group of temples lay down with regard to the question that confronts the court, namely, whether any particular denomination of worshippers or believers have an exclusive*

⁸ Tamil Nadu G.O. No. 118 dated 23.05.2006.

⁹ *Adi Saiva Sivachariyargal Naia Sangam v. Government of Tamil Nadu*, (2016) 2 SCC 725.

right to be appointed as Archakas to perform the poojas. Much less, the judgment has taken note of the particular class or caste to which the Archakas of a temple must belong as prescribed by the Agamas.”¹⁰

The court felt that the religious beliefs should give way to constitutional legitimacy and the rights under Article 25 and 26 are “*to be enjoyed within constitutionally permissible parameters*”¹¹. Article 16 provides for equality of opportunities in matters concerning public employment. Article 16(5) states that, “*Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.*”¹² This Article specifically allows discrimination based on denomination by providing that denomination is a valid criterion in order to be eligible for any office in regard to a religious denomination. Hence, the appointment of Archakas of their own religious denomination would not affect the basic tenets of the religion, and more so, would not violate the Constitutional mandate. Particularly, Article 14 would not be violated so long as the appointment is based on caste, birth or any other parameter that is constitutionally unacceptable.

Even though the court stated that the Government order “has the potential of falling foul of the dictum laid down in *Seshammal*,” the court opined that the validity of the Government order would circumstantially depend on the facts of each case of appointments. Quoting the specific excerpt;

“A determination of the contours of a claimed custom or usage would be imperative and it is in that light that the validity of the impugned G.O. will have to be decided in each case of appointment of Archakas whenever and wherever the issue is raised. The necessity of seeking specific judicial verdicts in the future is inevitable and unavoidable; the contours of the present case and the issues arising being what has been discussed.”¹³

¹⁰ *Id.* at 44.

¹¹ *Id.*

¹² INDIA CONST. art. 16 cl. 5.

¹³ *supra* note 9.

Since the Apex Court observed that the validity of the Government order will depend on the facts and circumstances of each case, it resulted in seeking specific judicial verdicts for specific issues without any precedent as such that would be applied for all such cases. A writ petition was filed before the Madras High Court in 2018 challenging an advertisement for filling up the post of Archakas at Sri Sugavaneswarar Swamy Temple. Justice N Anand Venkatesh issued directions to the respondents for the release of a fresh advertisement. While issuing such directions, he observed;

“...the pedigree based on caste will have no role to play in the appointment of Archaka if the person so selected otherwise satisfies the requirements... That apart, while issuing an advertisement and calling for applications, no reference shall be made to Rules 7 and 9 of the 2020 Rules and the appointment will be governed by the requirements under the Agama. Such requirements shall also be specifically stated in the advertisement.”¹⁴

The High Court placed reliance on *Seshammal* and *Adi Saiva* to come to such conclusion. At the outset, the court dismissed the hereditary right to assume the post of an Archaka. Also, the Court was of the opinion that the appointments should be made as per the Agamas and not as per Rules 7 and 9 of the 2020 Rules, which provide for short certificate courses for such appointments.

Again in 2021, a writ petition was filed before the Division Bench of Madras High Court regarding the application of the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020 to the Petitioner temple. The Court, while upholding the constitutionality of Rules 7 and 9 of the Rules of 2020, read down these provisions in regard to the appointment of Archakas in the temple or group of temples, which were constructed as per Agamas and observed that;

“...if Rules 7 and 9 of the Rules of 2020 are struck down, it will create a situation where the appointment to other posts than of Archakas would remain unguided (...). However, the appointment of Archakas in the temples constructed as per Agamas would be governed by the Agamas and for that the Rule under challenge would not apply. It would otherwise offend Articles

¹⁴ Muthu Subramania Gurukkal v. Commissioner, WP No. 3997 of 2018.

25 and 26 of the Constitution of India.”¹⁵

Further, the Court, by not holding Rule 17 to be unconstitutional, held that “*Necessary protection given under Article 26 of the Constitution of India would be maintained and thereby the transfer of the Archakas would not be permissible unless it is a case of transfer of Archaka of the temple governed by a particular Agama to a temple governed by same Agama*”.

This decision was challenged before the Supreme Court wherein the court ordered that *status quo* be maintained till further orders. “*In the meantime, the status quo relating to the Archakaship in the Agamic temples in question shall be continued in the same manner until further orders are made,*”¹⁶ the order stated. The Supreme Court on November 8 refused to vacate the above order made on September 25. While the government argued that the appointment of Archakas is a secular function and thus the State can appoint them, the Court noted that the argument is the State is not following the procedures prescribed under Agamas in appointing archakas in temples of a particular denomination.

Therefore, it is evident from this series of cases dealing with appointment of Archakas that there is an inherent ambiguity with respect to the relationship between secular appointment of Archakas on one hand and the performance of religious rituals by them on the basis of Agamas on the other hand.

Drawing a Conclusive Interpretation

It has been laid down clearly that the appointment of Archakas is a secular aspect and not a religious one. As a result, Article 25(2)(a) permits the regulation of appointment of Archakas by the State. As far as secular matters are concerned, it would be justified in arguing that the State has the competency to act in that domain without any fetters by any religious claim. It has been settled by the judgments discussed in the previous chapters, specifically *Seshammal* and *Adi Saiva* that the appointment of Archakas is a secular function, as the post drew the authority from the trustee, who is an agent of the secular State. However in both the cases, the courts opined that even though

¹⁵ All India Adi Saiva Sivacharyargal Seva Sangam v. State of Tamil Nadu, Writ Petition No. 17802 of 2021 decided on 22-08-2022.

¹⁶ Srirangam Koil v. State of Tamil Nadu, SLP no. 985 of 2023.

the appointment was a secular matter, the same has to be in accordance with the Agamas or religious scriptures. The States are obliged to concur to the same during the appointment of Archakas.

It is interesting to note that the Apex Court in *Seshammal* case arrived at the conclusion that the act of appointment of Archakas is a secular matter, since the Archaka ‘*owes his appointment to an essentially secular authority*,’ i.e., the trustee. They also went on further and clarified that, merely because the Archakas are performing worship, it could not be said that they hold a religious post. A significant question for discussion arises here as to the nature of the post of Archakas. With all due respect to the judgments given by the Hon’ble Apex court in the cases discussed above, it is humbly submitted that the nature of the post of Archakas has to be seen as a coherent one.

Firstly, just because the Archakas are appointed by the secular authority, would it be sufficient to conclude that they perform a secular function. They may be appointed by the secular authority, but what should be determined is the nature and substance of the activities that they perform. Even the courts have agreed to the fact that the essentially religious Agamas and religious scriptures hold sway over the performance of duties by Archakas. In this scenario, whether the reason that they owe appointment to the trustee would make them hold a secular position? While finding answers for these questions, resort has to be made to the Five Judge Bench decision of the Hon’ble Apex Court in the case of *Tilkayat Shri Govindlalji v. State of Rajasthan*, where Justice Gajendragadkar observed;

*“It is true that the decision of the question as to whether a certain practice is a religious practice or not, as well as the question as to whether an affair in question is an affair in matters of religion or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because as is well known, under the provisions of ancient Smritis, all human actions from birth to death and most of the individual actions from day to day are regarded as religious in character.”*¹⁷

As it can be seen, the nature of activities performed by Archakas and the fact that they owe their appointment to the secular authority makes them a person who performs religious functions, at the

¹⁷ *Tilkayat Shri Govindlalji v. State of Rajasthan*, AIR 1963 SC 1638.

same time, the nature of appointment being secular. Here, both religious character and secular character are inextricably mixed up within one individual. He cannot simply discharge one function and let go of the other. In such a scenario, regard has to be made to Justice Gajendragadkar's observation in the same case;

“If an obviously secular matter is claimed to be matter of religion, or if an obviously secular practice is alleged to be a religious practice, the Court would be justified in rejecting the claim because the protection guaranteed by Art. 25(1) and Art. 26(b) cannot be extended to secular practices and affairs in regard to denominational matters which are not matters of religion, and so, a claim made by a citizen that a purely secular matter amounts to a religious practice, or a similar claim made on behalf of the denomination that a purely secular matter is an affair in matters of religion, may have to be rejected on the ground that it is based on irrational considerations and cannot attract the provisions of Art. 25(1) or Art. 26(b).”

On a careful perusal of the excerpt, the term used is ‘**obviously secular**’ and not just ‘secular’. It can be inferred that, if a religious denomination makes a claim that a ‘purely secular’ matter amounts to a religious practice, then that claim can be rejected. It is humbly submitted that the term ‘purely secular’ or ‘obviously secular’ intends that only if a matter is an obviously secular one, the denomination cannot claim the same. Hence, to its natural corollary, it can be said that the State can take away matters that are only ‘purely/obviously’ secular, and not matters that are (inextricably) mixed up with religious matters. When it comes to the matter of Archakas, their function is definitely not a purely secular one as they perform poojas etc. according to the religious scriptures and Agamas. The same not being an obviously secular practice, its appointment need not be regulated by the State. Moreover, it is relevant here to quote *Shiroor Mutt* case where the court observed;

“If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or ablutions to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic

*character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b)."*¹⁸

On combined reading of both the observations made by the Apex Court, it can be perceived that if the tenets of a particular religion prescribes something, those are to be regarded as religious matters even if they involve certain secular aspects. It does not mean that, just because a religious practice is involving a secular practice, it ceases to be a religious practice. Moreover, religious practices are to be distinguished from 'obviously' secular matters and the State ought to be allowed to regulate only the latter. 'Obviously' or 'purely' secular in the sense, the matter should be secular without any religious colour to the same. In determining whether it is purely secular or not, the practice or the matter should be looked as a coherent whole and not in parts, especially when they are overlapping or intertwined with each other.

Conclusion

When a particular matter is taken into question, broadly speaking, it has atleast three aspects: - *Origin, Substance and Effect*. Just because the appointment of Archakas is by a secular authority and they owe their appointment to a secular authority, they ought not to be termed 'secular'. The effect and purpose of appointment does not end there. The significant purpose of the appointment is to make them perform religious functions. In this scenario, it can be argued that if a particular activity is to be termed as 'obviously' secular, or even just 'secular' for that matter, such activity or matter should be secular, both in '*substance and in effect*', and not only by origin/appointment. Here, the main substance and effect of appointment of Archakas is to perform religious functions, thereby they can be treated as 'matters of religion' within the meaning of Article 26(b), rather than a secular matter.

¹⁸ The Commissioner, Hindu Religious Endowment, Madras v. Sri Lakshmindra Thirtha Swamiar, AIR 1954 SC 282.