

***HON'BLE SRI JUSTICE BATTU DEVANAND**

+ WRIT PETITION NO.17616 OF 2020

% 30.12.2020

Alokam Sudhakar Babu, S/o AlokamKRishnaiah,
Aged 45 years, Agriculturist & Social Worker,
R/o H.No.2-161, Vaikuntapuram Village,
Guntur District, A.P.522 020.

... Petitioner.

Vs.

\$ The State of Andhra Pradesh, rep. by its
Chief Secretary to Government, Secretariat,
Amaravati/Velagapudi, Guntur District and
others.

... Respondents.

! Counsel for the petitioner: Sri P.V. Krishnaiah.

! Counsel for the Respondents: Advocate General for the State.

< Gist:

> Head Note:

? Cases referred:

¹ (1965) 1 SCR 849 : AIR 1965 SC 1179

² 1969 AIR 101 : 1969 SCR (1) 257

³ AIR 1966 SC 1119

⁴ AIR 1991 Ker 25

⁵ AIR 1988 SC 2181

⁶ AIR 1984 SC 600

⁷ AIR 2000 AP 142

DATE OF ORDER PRONOUNCED: 30.12.2020

THE HON'BLE SRI JUSTICE BATTU DEVANAND

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be Marked to Law Reporters/Journals. Yes/No
3. Whether Their Lordship/Lordship wish to see the fair copy of the Judgment? Yes/No

JUSTICE BATTU DEVANAND

THE HON'BLE SRI JUSTICE BATTU DEVANAND**WRIT PETITION No.17616 of 2020****ORDER:**

This Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ, Order or direction more in the nature of Quo-Warranto against Respondent Nos. 5 to 9, requiring them to show under what authority they are holding their respective posts and consequently, restraining them from holding/continuing in their respective posts, which they are holding now, with a further direction to the competent and appropriate authority to take appropriate further action to appoint other competent and eligible person under the constitution, who uphold the law and constitutional provisions and pass such other orders as the Hon'ble Court deems fit and proper in the circumstances of the case.

2) As no relief was sought against Respondent No.1, this Court took a view that impleading "His Excellency the Governor of State of Andhra Pradesh" as respondent No.1 in this Writ Petition is unwarranted and in view of the same, by invoking Rule 16 (a) of the Andhra Pradesh High Court Writ Proceeding Rules, 1997, this Court by *suo motto* deleted "His Excellency the Governor of State of Andhra Pradesh" from the array of the respondents in this Writ Petition vide Order Dt.19.10.2020.

3) As per the averments of the affidavit filed along with the writ petition, the following points are noted:

(i) The petitioner is resident of Vaikuntapuram Village, Amaravati Mandal, where Lord Sri Venkateswara Swamy Temple exists from so many centuries back and the petitioner got so much faith in Lord Sri Venkateswara Swamy from his childhood, being born as Hindu.

(ii) Lord Sri Venkateswara Swamy, who was born at 7 Hills Temples, which is now called Tirumala Temples.

(iii) There are so many enactments were made with regard to maintenance of the Tirumala Tirupathi Devasthanams, which is one of the great temples not only in the country but also in the Asia region.

(iv) The State of Andhra Pradesh made enactment called "the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter will be referred to as "Act, 1987") in exercise of its legislative power conferred under the constitution.

(v) Rule 136 of Rules made in exercise of the powers conferred by Section 97 R/w 153 of the Act, 1987 with regard to admission of non-Hindus into Tirumala Tirupathi Devasthanams temples.

(vi) The 5th respondent, who belongs to Christian religion, without furnishing declaration as required under Rule 136, entered into temples by violating the relevant Rules and law and as such, he is not entitled to continue in the present post as he is holding.

(vii) The respondent Nos.6 and 7, who are the Cabinet Ministers of the State and 8th respondent, who is the Chairman of Tirumala Tirupathi Devasthanams Board by making statements that there is no need to give such an undertaking by the 5th respondent and the 9th respondent, who is the Executive Officer of the Tirumala Tirupathi Devasthanams, who failed to strictly implement the Rules made under the Act, and as such, they are not entitled to continue to hold such posts which they are holding by virtue of constitutional provisions.

4) This Writ Petition came up for admission on 19-10-2020. On that day, learned Advocate General representing the State submitted that this Writ Petition itself is not maintainable and requested the Court to decide the issue of maintainability at the first instance before going into the merits of the case. This Court is of the opinion that there is some force in the contention of the learned Advocate General after perusing the averments of the affidavit and the material placed on record. Accordingly, this Writ Petition was posted to 22-10-2020 to hear the learned counsel for the petitioner and the learned

Advocate General representing the State on the issue of maintainability basing on the substantial evidence in proof, if any, to be submitted by the petitioner.

5) Heard Sri P. V. Krishnaiah, learned counsel for the petitioner and the learned Advocate General for the State.

6) Sri P.V. Krishnaiah, learned counsel for the petitioner, submits that the State of Andhra Pradesh made an enactment called "the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter will be referred to as "Act, 1987") in exercise of its legislative power conferred under the constitution.

7) He submits that Section 97 of the said Act, 1987 postulates the powers and functions of the Tirumala Tirupathi Devasthanams Trust Board. Section 153 of the Act, 1987 provides power to the State Government to make rules. While exercising the aforesaid powers conferred under Section 97 r/w 153 of the Act, 1987, the Government of Andhra Pradesh made the rules relating to powers and functions of Tirumala Tirupathi Devasthanams Board, which are published in the official gazette as required under Sub Section (1) of Section 153 of the said Act. Learned counsel would submit that in the said rules, Chapter XVIII deals with regard to admission of non Hindus into Tirumala Tirupathi Devasthanams Temple i.e., Rule 136 of the Rules.

8) The learned counsel contends that any Hindu can enter into the temple without any restrictions, but whereas the people who belong to a different religion other than the Hindu religion are also allowed to Darshan into the temple and pray the god, but they have to submit the declaration in the format prescribed under Rule 136 and on grant of permission, they can be admitted into the temple. Learned counsel submits that such condition was imposed on other than the Hindus is a reasonable restriction, and to maintain sanctity among the people who visits the century old temple. Learned counsel contends that once the State framed the Rules while exercising the power vested under the enactment, those rules are having legal force and the said rules are scrupulously to be followed by all the people and it is the responsibility of the authorities concerned who are maintaining the temple including the State Government to see that all the provisions, more particularly, the aforesaid provision shall be implemented without deviation, without giving any scope for violation or for any scope for discriminating anybody either by way of doing favour or doing unfavour, more particularly, the authorities, who are the authorities of Lord Sri Venkateswara Swamy Temple at Tirupathi, have to discharge their functions under the provisions of the said Act.

9) Learned counsel submits that respondent No.5, who is holding the post of the Chief Minister of Andhra Pradesh, who

belongs to Christian religion and who is not belonging to Hindu religion, whenever he visits the Tirumala Tirupathi Devasthanams after he become Chief Minister, it has become controversy and effect the feelings and sentiments of people who belongs to Hindu religion and creating fear on them, as respondent No.5 not only violating the law, who is supposed to be the first man to comply the law, but also compelling his Cabinet Ministers and other subordinate authorities to violate the laws.

10) Learned counsel complains that on 23.09.2020, respondent No.5, who is a Christian visited the temple and got the blessings from the temple Purohits as per practice and procedure along with his cabinet colleagues, who are respondent Nos. 6 and 7 in the presence of Respondent Nos.8 and 9 without presenting declaration as required under Rule 136. This gave an impression that respondent No.5 is not respecting the feelings of Hindu religion and hurting the sentiments of the Hindus and creating different feelings. Learned counsel would contend that whoever he may be and whatever higher post he is holding, cannot continue in that post, if he either violated the provisions of the law and constitution or he is allowing anybody to violate the provisions of law and constitutional provisions. In the present case, respondent No.5 has violated Rule 136 of the Rules made in exercise of the powers conferred by Section 97 r/w Section 153

of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987), and as such, he is not entitled to continue in the present post in which he is holding.

11) The learned counsel also contends that respondent Nos. 6 and 7, who are the Cabinet Ministers of the State, who have taken oath as per the constitutional provisions, and respondent No.8, who is the Chairman of the Tirumala Tirupathi Devasthanams Board made statements that there is no need to give such an undertaking by respondent No.5. Respondent No.9, who is the Executive Officer of the Temple, cannot allow such illegality, affecting the sentiments of the Hindu people and he has to strictly implement the rules made under the Act, but he failed to do so. Learned counsel finally submits that as respondent Nos. 5 to 9 violated the provisions of the Act and the Constitution, they are not entitled to continue to hold such posts which they are holding by virtue of constitutional provisions.

12) Learned counsel for the petitioner further submits that respondent Nos. 6 to 9 wilfully encouraged respondent No.5 to violate the law. But, as per the posts which they are holding, they have to protect the law and institutions as it is their responsibility and they are not supposed to act against the posts which they are holding and they have to obey the law. As

such, all these respondents are not entitled to hold the posts which they are holding. Therefore, learned counsel sought to issue a Writ of Quo-Warranto against respondent Nos. 5 to 9 as they are all not competent and entitle to hold their respective posts which they are holding now to uphold the Law and Constitution and as such, a Writ of Quo Warranto is maintainable against them. He further submits that the disqualifications listed in Article 191 of the Constitution of India are not applicable to the present case.

13) Learned Advocate General for the State submits that the pleadings of the Writ Petition do not demonstrate any disqualification incurred by respondent No.5 as public servant. The Writ of Quo-Warranto is to call upon the incumbent of the Office to demonstrate the Hon'ble Court as to what authority he has holding the post. The pleadings do not demonstrate any disqualification incurred under Article 191 of the Constitution of India. Respondent No.5 is holding Public Office as the Chief Minister of the State. He further submits that the reason of the conduct alleged against respondent No.5 is also not demonstrated as to how it could fall within the scope of a prayer for Quo-Warranto. Learned Advocate General further submits that as he was appearing for the State i.e., Respondent No.2 herein, he is making submissions only on the question of law taking the pleadings as alleged in the Writ Petition. The petitioner does not contend that respondent No.5 has incurred

disqualification subsequently. Therefore, the primary ingredient with respect to the primary component to maintain a Writ of Quo-Warranto is not comprehended in the pleadings filed in support of the Writ Petition. He further submits that the action of respondent No.5 will not constitute as disqualifications listed under Article 191 of the Constitution of India.

14) Therefore, to deal with the contentions raised by the learned counsel for the petitioner and the learned Advocate General, it is appropriate to extract the following relevant Constitutional and Legal Provisions as under for better appreciation:

I) RIGHT TO FREEDOM OF RELIGION

Article 25- Freedom of conscience and free profession, practice and propagation of religion:

- (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, practice 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.

15) The individual right contained in Article 25 of the Constitution guarantees to every person the freedom of conscience and the right freely to profess, practice and propagate religion subject to public order, health and morality. Therefore, it is clear that subject to the restrictions imposed in the Article 25, every person has a fundamental right under the constitution not merely to entertain such religious belief but to exhibit its belief and ideas as are enjoyed or sanctioned by this religion and further to propagate his religious views for the edification of the others.

II) Article 191- Disqualifications for membership.

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation.—For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

16) The above provision in the constitution deals with disqualification of members of houses of a Legislature of the State. Article 191 provides that a person shall be disqualified for being chosen as and for being a Member of the Legislative Assembly or Legislative Council of a State. As rightly pointed out by learned counsel for the petitioner, admittedly, the present case does not fall under the disqualifications provided under Article 191 of the Constitution of India.

III) Chapter-XVIII:: Admission of Non-Hindus into the Tirumala Tirupathi Devasthanams Temples

Rule 136. The Tirumala Tirupathi Devasthanams Temples are Hindu public temples. They are generally used as of right only by the Hindu community. However there can be no objection for admission of Non-Hindu into the Tirumala Tirupathi Devasthanams temples provided he furnishes a declaration in the following form

DECLARATION

I,.....(name).....(address) belong to,.....
 (Religion). However, I have faith in Lord (Name of the
 presiding deity) and reverence to Him/Her and to His/Her worship. I
 may be permitted to enter the temple and have darshan of the Lord.

Witnesses:

Signature

137. The declaration should be presented to the Peishkar, Tirumala Tirupathi Devasthanams or other officer incharge of the Temple other than Sri Tirumala Temple) who may after making such enquiries as he deems fit, accord the permission sought for. On grant of such permission he can be admitted into the temple in the same manner as any other pilgrim is admitted.

17) In the above rules, it is categorically mentioned that the Tirumala Tirupathi Devasthanams temples are Hindu public temples and they are generally used as of right only by the Hindu community. But, if any non Hindu intends for admission into the Tirumala Tirupathi Devasthanams, there can be no objection for admission if the non Hindu presents a declaration as required under Rules 136 and 137 by disclosing his/her original religion and declaring his/her faith in Lord Sri Venkateswara Swamy.

18) The main contention of the petitioner is that the 5th respondent is “professing Christian religion” and as such, he has to submit the declaration provided in Rule 136 of Rules and has to obtain permission required under Rule 137 for entering into Tirumala Tirupathi Devasthanams temples. The 5th respondent being holding the post of public office i.e., Chief

Minister of Andhra Pradesh has to strictly follow the rules and statutory provisions and constitutional obligations. But, he entered into Tirumala Tirupathi Devasthanams temples without submitting declaration and without obtaining permission required under Rules 136 and 137 and as such, he intentionally and deliberately violated the law and as such he is not entitled to continue in the post of Chief Minister of Andhra Pradesh, which he is holding now.

19) In this context, this Court has to examine what is “professing a religion” and who is a “Hindu”.

20) A way back in the year 1965 in the case of **Punjabrao vs. Dr. D.P.Meshram and others**¹ the Hon’ble Apex Court had discussed about “professes a religion”. The relevant portion is extracted as hereunder:

“The meanings of the word "profess" have been given thus in *Webster's New World Dictionary*: "to avow publicly; to make an open declaration of.....to declare one's belief in : as, to profess Christ. To accept into a religious order." The meanings given in the *Shorter Oxford Dictionary* are more or less the same. It seems to us that the meaning "to declare one's belief in : as to profess Christ" is one which we have to bear in mind while construing the aforesaid order because it is this which bears upon religious belief and consequently also upon a change in religious belief. It would thus follow that a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore, if a public declaration is made by a person that he has ceased to belong to his old

¹ (1965) 1 SCR 849 : AIR 1965 SC 1179

religion and has accepted another religion he will be taken as professing the other religion.”

21) The same view was considered by the Hon'ble Apex Court in the case of **S. Rajagopal vs. C.M. Armugam and others**² while considering the issue of “professing a religion”.

22) In **Sastri Yagnapurushadji and others v. Muldas Bhudardas Vaishya and others**³ Gajendragadkar, C.J. examined the broad features of Hindu religion, after tracing the historical and etymological genesis of the word 'Hindu' to river Sindhu otherwise known Indus, his Lordship observed at para Nos.29 and 39 as extracted hereunder:

29. "When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional feature of any religion or creed. It may broadly be described as a way of life and nothing more.”

39. “There are some remarkable features of the teachings of these saints and religious reformers. All of them revolted against the dominance of rituals and the power of the priestly class with which it came to be associated; and all of them proclaimed their teachings not in Sanskrit which was the monopoly of the priestly class, but in the languages spoken by the ordinary mass of people in their respective regions.”

² 1969 AIR 101 : 1969 SCR (1) 257

³ AIR 1966 SC 1119

23) In the case of **M. Muraleedharan Nair vs. State of Kerala and others**⁴ the Hon'ble Kerala High Court while considering the issue, 'who is a Hindu' very interesting discussion, was made, as extracted hereunder:

17. Much of the arguments turned on the question as to who is a Hindu. The question whether temple worship is part of the Hindu philosophy was also canvassed and various texts were referred to. Rival arguments were placed before us to show that religion of Vedas knows of no idol and the worship of idols in India is a late/ secondary formation. We are not concerned nor competent to pronounce on the correctness or otherwise of the rival schools of thought. Especially, in the matter of faith, there are bound to be different approaches and schools of thought. But, we cannot shut our eyes to the realities of life and what has been and is going on, around us. In the normal, practical and meaningful sense, idol worship forms the core of prevalent Hindu religion and philosophy and it appears to be so, ever since human memory and such faith is embedded on its own, and if is too late in the day to be questioned or doubted.

24) On careful consideration of the above judgments, it is clear that the Hon'ble Supreme Court described "Hindu religion" as a way of life based on certain basic concepts. The word "professes" described as "to make an open declaration of" and "to declare one's belief in"

25) Now we will consider who is a "Christian" and how to consider one that he is "professing Christian religion".

⁴ AIR 1991 Ker 25

It will be noticed that definition of the expressions “Christians” and “Native Christians” as given in Section 3 of the Indian Christian Marriage Act, 1872, reproduced below:

“Christians” means, persons professing the Christian religion.

“Native Christians” includes the Christian descendants of Natives of India converted to Christianity, as well as such converts”.

In Halsbury Second Edition, Vol.11 p.80G, para 14G9 and note (b) described as under:

“Baptism is the sacrament by which a person is admitted into the Church of Christ. It is not only a sign and distinguishing mark of the Christian profession, but also a sign of regeneration of new birth”.

26) From the above, it is clear that any person professing the Christian religion is a Christian for the purpose of the said Act and Christian residence of Natives of India converted to Christianity as well as such converts are classified as Native Christians. Baptism is the sacrament by which a person is admitted into the Church of Christ and it is not only a sign and distinguished mark of the Christian profession.

27) In the light of the above discussion, this Court noticed the following issues:

(1) Whether the petitioner demonstrated before this Court by placing appropriate and relevant material to substantiate his contention that the 5th respondent is professing Christian religion or not?

(2) Whether there is any substantial material placed before this Court by the petitioner to issue a writ of Quo-Warranto against the respondent Nos.5 to 9 ?

(3) Whether this Court has jurisdiction to issue a writ of Quo Warranto and to remove a person from the office of Chief Minister/Minister in exercise of its power under Article 226 of the Constitution of India?

28) Basing on the pleadings and material placed before this Court and having consideration of the same, as per Rule 136 of the Rules made under the Act, 1987, the Tirumala Tirupathi Devasthanams Temples are Hindu public temples and they are generally used as of right only by the Hindu community. In the said Rules it was prescribed that there can be no objection for admission of non Hindus into the Temples on submission of a declaration in the format provided under the said Rules. In the said declaration it has to be declared by the declarant that he is having faith in Lord Sri Venkateswara Swamy and after submission of the said declaration to the concerned authorities of the temple, accord the permission sought for after making such enquiries. On grant of such permission only, the declarant can be admitted into the temples. If a Hindu intends

to enter into the temple such declaration is not required and as of right he can enter into the temple. But, when non Hindu intends to enter into the temple, he has to furnish the said declaration. The objection of the petitioner in the present case is that the 5th respondent is not a Hindu and he is a Christian and as such, he has to furnish a declaration in the prescribed form provided under Rule 136 and to obtain permission under Rule 137 to enter into the temple. As the 5th respondent did not furnishes such declaration and obtain permission to enter into the temple, he is not entitled to enter into the temple. But, by virtue of his official position the 5th respondent entered into the temple without following the procedure prescribed under Rules 136 and 137 and as such, the 5th respondent violated the law.

29) On careful perusal of the affidavit and material placed by the petitioner before this Court, it appears except making statement/allegation that the 5th respondent is not a “Hindu” and he is a “Christian”, and contending that he has to furnish declaration as provided under Rule 136, there is no material placed before this Court to prove/establish that the 5th respondent is professing “Christian religion”. No evidence has been adduced to show that the 5th respondent belongs to “Christian religion”. There is not a scrap of acceptable evidence to show that he ever professed “Christianity”. So, the

allegations raised by the petitioner before us are not entertainable.

30) It must not be forgotten that a writ petition filed under Article 226 of the Constitution of India is itself not merely a pleading, but also evidence in the form of affidavits that are sworn as held by the Hon'ble Apex Court in **Bharat Singh and others v. State of Haryana and others**⁵ at para No.12:

12. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC.

In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the

⁵ AIR 1988 SC 2181

counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.

31) The learned counsel for the petitioner submits that the 5th respondent is attending Christian Gospel conventions and he is offering prayers in Churches and as such, he has to be considered as “Christian”.

32) In this context, in the opinion of this Court, merely attending the Christian Gospel conventions and attending the prayers in Churches, one cannot be considered as a Christian. Recently, the 5th respondent has participated in the prayers in Gurudwara at Vijayawada. Can he be treated as professing the “Sikh” religion? Does one become a “Christian” just by having a biblical name or just by attending a Church sermon? Can one be called as a ‘Christian’ just because they read the Bible or have the Crucifix in their house? Admittedly, the answer will be negative.

33) This is not out of place to mention that this Court has been noticing in several instances where some officers, who are vested with the powers, to issue community certificates to the persons belonging to Scheduled Castes and Scheduled Tribes

are posing trouble for them in that process under the guise of the above mentioned reasons.

34) The view of this court on this aspect gets support from the observation of the Hon'ble Apex Court in **Kailash Sonkar v. Mayadevi**⁶ which is very crucial for the present purpose. The relevant observation is extracted as hereunder:

“Moreover, it is a common feature of many converts to a new religion to believe or has faith in the Saints belonging to other religions. For instance, a number of Hindus have faith in the Muslims Saints, Dargahs, Imambadis which becomes a part of their lives and some Hindus even adopt Muslim names after the Saints but this does not mean that they have discarded the old order and got themselves converted to Islam.”

35) The issue involved in the present case can be looked at from another angle. In the affidavit, itself the petitioner submitted that the practice existing in the Tirumala Tirupathi Devasthanams is that the Hon'ble Chief Minister used to offer “Dharmanaralu” and “Pattu Vastralu” during important occasions like Brahmotsavam. It is an admitted fact that, as per the customs and traditions being followed in Tirumala Tirupathi Devasthanams for {time immemorial} immemorial period, as per the procedure prescribed in “**Kainkarya Patti**”, on behalf of the “Sarkar” (Government), Pattu Vastralu have to be presented during Brahmotsavam. The same custom and tradition continued to be in practice for all these years. It is the

⁶ AIR 1984 SC 600

custom and practice existing in Tirumala Tirupathi Devasthanams temples that - the Trust Board of Tirumala Tirupathi Devasthanams temples will invite the Chief Minister of the State to offer presentation of "*Pattu Vastralu*" during the celebrations of "Brahmotsavam". It is the tradition prevailing all these years that whoever may be the Chief Minister, he ought to follow that practice. If a person holding the post of Chief Minister enters into the Tirumala Tirupathi Devasthanams temples on invitation of the Trust Board to present "*Pattu Vastralu*" during Brahmotsavam, if he is a non-Hindu, whether he has to submit declaration or not ?

36) The learned counsel for the petitioner argued that Smt. Indira Gandhi, when she was holding the post of Prime Minister of India and Sri Dr.A.P.J. Abdul Kalam, when he was holding the post of President of India, submitted declarations required under Rule 136, while entering into the Tirumala Tirupathi Devasthanams temples to honour the sentiments of Hindu devotees. This Court can view this issue in different angle. It has to be considered that Smt. Indira Gandhi and Sri Dr. A.P.J. Abdul Kalam, though they were holding the posts of Prime Minister of India and President of India respectively, at that time, they may have entered into the Tirumala Tirupathi Devasthanams temples to offer prayers to Lord Sri Venkateswara Swamy and for Darshan. But, they may not have entered into temples to follow particular rituals as per the

traditions and customs in the capacity of Prime Minister of India and President of India respectively.

37) As such, when the person holding the post of Chief Minister of the State entered into the Tirumala Tirupathi Devasthanam's temples to present "Pattu Vastralu" during Brahmotsavam as per the procedure provided under "Kainkarya Patti", on the invitation of the Trust Board, in the opinion of this Court, he entered into the Tirumala Tirupathi Devasthanam's temples, in the capacity of the Chief Minister of the State, as a representative of the people of the state, and as such, he need not submit a declaration as provided under Rule 136 of the Rules. It is also made clear that, whenever the 5th respondent in his personal capacity intends to enter the Tirumala Tirupathi Devasthanams temples for Darshan or to offer prayers to Lord Sri Venkateswara Swamy, he shall submit declaration as provided under Rule 136 of the Rules, if he is a non-Hindu.

38) On careful consideration of the affidavit filed along with the writ petition and the material placed before the Court by the petitioner in the present case, it clearly establishes that the petitioner failed to place any evidence in proof of such allegations he made against the 5th respondent. We, therefore, declined to go into the allegations made by the petitioner, which

are not supported by any evidence/proof and cannot draw such relief sought by the petitioner.

39) Thus, for the above mentioned reasons, we are of the considered view that no writ of Quo Warranto is maintainable against the 5th respondent in the absence of any substantial evidence/material to establish/prove that the 5th respondent is a “Christian” and he is professing “Christian religion” and as such, petitioner is not entitled for the relief sought in the present writ petition and consequently the relief sought against the respondent Nos.6 to 9 is also not entertainable.

40) Therefore, this Writ Petition is not maintainable and accordingly, dismissed.

41) There is no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

42) Before parting with this order, we feel it appropriate to reproduce the view expressed by a Division Bench of this Court in the case of **Dr. Y.S. Rajasekhar Reddy and others vs. Sri Nara Chandra Babu Naidu and others**⁷ while agreeing with the contention of the learned counsel for the petitioner therein that the Rule of law is the basic structure of the constitution and for maintenance of Rule of law vesting judicial review in higher

⁷ AIR 2000 AP 142

constitutional authority inherently is against the basic structure of the constitution, speaking on behalf of the Bench M.S. Liberhan, C.J., observed as hereunder:

“We have earlier observed that violation of constitutional provision can always be set at right by issuing an appropriate writ when sought. Judicial restraint is the best arm in the armory of the judiciary. Though, every action of the Legislature, Executive or any of the authority is judicially reviewable depending on the facts and circumstances of each case.”

JUSTICE BATTU DEVANAND

Dt. 30.12.2020

Note: Issue CC today.

B/o
PGR

Note: LR copy be marked.