

**DR.A.K.JAYASANKARAN NAMBIAR & GOPINATH P., JJ.**

-----  
I.A.Nos.41 & 42 of 2024  
in  
W.P.(C)No.31520 of 2024  
-----

Dated this the 28<sup>th</sup> day of November, 2024

**ORDER**

**Gopinath, J.**

I.A No 41 of 2024 is an application filed by the Cochin Devaswom Board, the additional 30<sup>th</sup> respondent in the Writ Petition praying that the additional 30<sup>th</sup> respondent be exempted from complying with the directions contained in paragraph 14 of the order dated 13.11.2024 in the above Writ Petition regarding the parading and exhibition of captive elephants. I.A.No.42/2024 is an application filed by the Cochin Devaswom Board seeking the acceptance of the documents produced along with the affidavit in support of the I.A. The application for accepting documents is only to be allowed. However, for reasons indicated below, we are not inclined to grant the relief of exempting the Cochin Devaswom Board from complying with the directions issued by this Court in the order dated 13.11.2024 referred to above.

2. The applicant in I.A 41/2024 states that the annual festival (പൃഥ്വീകോത്സവം) of the Sree Poornathrayeesha Temple, Thripunithura which is a temple under the ownership and management of the Cochin Devaswom Board is scheduled to be held from 29.11.2024 to 6.12.2024. It is stated

that the festival is being conducted directly by the Cochin Devaswom Board through its officials. It is stated that all arrangements for the smooth conduct of the festival have been made by the Devaswom Officer, Thripunithura Devaswom. It is submitted that the applications which are on record as Exts.R30(b) to R30(e) were submitted by the Devaswom Officer before the statutory authorities concerned for permission to parade 15 captive elephants. It is stated that in a meeting of the District Level Monitoring Committee convened at the office of the District Collector, Ernakulam on 25.11.2024, the Devaswom Officer was informed that all the directions issued by this Court on 13.11.2024 have to be complied with by the Devaswom for conducting the festival. It is stated that the additional 30<sup>th</sup> respondent was impleaded only on 13.11.2024. It is stated that since Ext.R30(f) permission of the Chief Veterinary Officer was issued only on 21.11.2024, the Devaswom Board is not in a position to comply with all the directions contained in the order dated 13.11.2024. It is stated that the '*pathivu*' register [Ext.R30(h)] maintained by the Devaswom from 1957 onwards would show that 15 elephants have always been paraded in the festival. It is in the above circumstances that the prayer for exempting the Board from complying with the directions issued by this Court in the order dated 13.11.2024 has been sought.

3. When this application came up for consideration another Interlocutory Applications namely, I.A.No.40/2024 filed by a person claiming to be a worshipper at the Sree Poornathrayeesha Temple, Thripunithura and claiming to be the owner of an elephant- '*Kuravattoor Ganesh*' was also listed for consideration. That I.A. is an application for impleading. However, we have not allowed the application for impleading and have directed that the deponent of the affidavit shall place on record the document showing that he is the owner of the elephant by name '*Kuravattoor Ganesh*'.

4. Sri. K.P. Sudheer, the learned standing counsel appearing for the applicant in I.A.Nos.41/2024 and 42/2024 would submit that the annual festival at the Sree Poornathrayeesha Temple, Thripunithura has almost always been held by parading a minimum number of 15 elephants. He referred to the extract from the '*pathivu*' Register to show that this was the practice at least from 1952 onwards. It is submitted that the traditions and rituals of Sree Poornathrayeesha Temple are still under the control of the Ruler of Cochin (now represented by the Palace Administration Board) and it is not open to the Devaswom Board to tinker with the rituals without the permission and directions of the Palace Administration Board. It is stated that if such distance is maintained, it will not be possible to parade 15 elephants inside the temple. It is stated that the orders issued by this Court, to the extent they tend to interfere with rituals that are in

the nature of essential religious practice would fall foul of the rights guaranteed by Articles 25 and 26 of the Constitution of India, and cannot be sustained. It is submitted that even if any of the other directions are not modified, the direction to maintain the three-metre distance between elephants while they are being paraded may be removed as the said direction is impractical and will interfere with the conduct of the festival. Taking note of this submission, we directed that an affidavit be filed by the Secretary, Cochin Devaswom Board regarding the compliance with the directions in the order dated 13.11.2024 (except the three-metre distance Rule).

5. When this matter is taken up today, an affidavit filed by the Secretary of the Cochin Devaswom Board/applicant in I.A.No.41/2024 stating that all other directions contained in the order dated 13.11.2024 have been complied with has been placed on record. We have perused the affidavit dated 28.11.2024 of the Secretary of the Cochin Devaswom Board where it is stated that each of the directions issued by this Court including the direction to provide adequate food and fodder in terms of the Circular of the Chief Conservator of Forests referred to in the order dated 13.11.2024, the direction to maintain eight metre distance between the elephants that are being paraded and the public, the elephants and the flambeaus, the elephants and the percussion display, the direction to provide sufficient shade, the direction to provide necessary facilities at the

temporary tethering site etc. have been complied with by the additional 30<sup>th</sup> respondent. We deem it appropriate to record the contents of the affidavit dated 28.11.2024 and direct that all the conditions upon which the parading of elephants was permitted under the order dated 13.11.2024 shall be strictly implemented by the additional 30<sup>th</sup> respondent.

6. We have considered the contentions raised. Since it was suggested during the course of the hearing of this Interlocutory Application that the issue must also be examined from the angle of '*Essential Religious Practice*' we will, briefly though, initially consider that issue. What is an '*Essential Religious Practice*' in the background of Articles 25 and 26 of the Constitution of India? Can every tradition or ritual attain the status of an '*Essential Religious Practice*' and thus be beyond statutory control or regulation? We need not look far for the answers. In ***Commr. of Police v. Acharya Jagadishwarananda Avadhuta; (2004) 12 SCC 770*** the Supreme Court has given a clear meaning to the term '*Essential Religious Practice*'. It was held:-

*“9. The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, **contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion.** What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background, etc. of the given religion.*

(See generally the Constitution Bench decisions in *Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [AIR 1954 SC 282 : 1954 SCR 1005], *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay* [AIR 1962 SC 853 : 1962 Supp (2) SCR 496] and *Seshammal v. State of T.N.* [(1972) 2 SCC 11 : AIR 1972 SC 1586] regarding those aspects that are to be looked into so as to determine whether a part or practice is essential or not.) What is meant by “an essential part or practices of a religion” is now the matter for elucidation. **Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices that the superstructure of a religion is built, without which a religion will be no religion. Test to determine whether a part or practice is essential to a religion is to find out whether the nature of the religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts which are protected by the Constitution.** Nobody can say that an essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the “core” of religion whereupon the belief is based and religion is founded upon. They could only be treated as mere embellishments to the non-essential (sic essential) part or practices.”

A five-judge bench of the Supreme Court was called upon to consider this issue in ***Indian Young Lawyers Assn. (Sabarimala Temple-5J.) v. State of Kerala; (2019) 11 SCC 1***. It was held:-

*“.....Merely establishing a usage will not afford it constitutional protection as an essential religious practice. It must be proved that the practice is “essential” to religion and inextricably connected with its fundamental character.....”<sup>1</sup>*

We have no doubt in our minds that if the above tests are applied, by no stretch of imagination can it be held that the conduct of festivities by parading elephants is a part of the essential religious practice of any religion.

7. In light of the averments in the affidavit dated 28.11.2024 filed by the Secretary of the Cochin Devaswom Board, the only other issue to be considered is whether the prayer for dilution of the direction requiring the maintenance of a minimum distance of three metres between the elephants being paraded merits consideration. Having considered the submissions on this point, we are of the view that the said direction cannot be diluted in any manner. **The requirement of maintaining distance between the elephants that are being paraded is a requirement of safety.** The availability of space for parading elephants inside the Poornathrayeesa temple is stated to be 22 metres and a little

<sup>1</sup> Concurring judgment of Dr.Justice D.Y.Chandrachud (Paragraph 296)

more. It is not disputed before us that the festival results in a very large number of people including women and small children convening at the temple and its premises. We are afraid that in the interest of safety, we cannot reduce the distance of three metre which we have directed to be maintained in the order dated 13.11.2024. Since it was suggested during the course of the hearing that the fixation of a three metre distance is arbitrary, unscientific and without the assistance of any expert opinion, we thought it fit to request Dr. P.S. Easa, a renowned expert on captive elephants and a member of the Committee of Experts appointed by us to advise this Court in matters of Human-Elephant conflict situation arising in the State of Kerala, to be present online. Dr. P.S. Easa holds a Ph.D on the Ecology and Behaviour of elephants in Parambikulam and has experience of about 45 years in wildlife research, conservation and management. He was trained in Wildlife conservation and management at the Smithsonian Institution, Washington DC, and has served in the Kerala Forest Research Institute working on diverse wildlife management topics and animal species. Dr. Easa has served on several expert committees of the Ministry of Environment, Forest and Climate Change including the Project Elephant Steering Committee and Elephant Task Force. He has authored the Report 'Gajah'. He has also served on several committees constituted by the States of Kerala, Chhattisgarh and Odisha. He, along with two others were also responsible for drafting the Captive Elephant



Management Rules. He is currently a member of the IUCN/SSC Asian Elephant Specialist Group and also serves on the Research Advisory Committee of Zoological Survey of India. Dr Easa has opined that there are various scientific studies that *inter-alia* suggest that presently, on account of various issues, captive elephants are animals facing extreme stress. It is stated that parading of captive elephants in close proximity is extremely dangerous. He has referred to various instances and has pointed out that several untoward incidents have occurred in various festivals on account of unscientific and improper parading and exhibition of captive elephants. It is his firm opinion that the three-metre distance between two elephants must not be diluted and it must be clarified that this distance must be maintained on all four sides of the animal. The applicant has not placed any material before us to indicate that the three-metre rule fixed by us in the order dated 13.11.2024 is in any way arbitrary or unscientific. Therefore, we have no option but to accept the opinion of Dr P.S.Easa and hold that no case has been made out for relaxing the three-metre rule. We also clarify that the minimum distance of three-metre shall be maintained on all four sides of the animal when it is being paraded.

In light of the above findings, the prayers in I.A. No.41/2024 seeking relaxation/waiver of the directions contained in the order dated

13.11.2024 for the conduct of the annual festival (വൃശ്ചികോത്സവം) of the Sree Poornathrayeesha Temple, Thripunithura are only to be rejected. Accordingly, I.A. No.41/2024 will stand dismissed. I.A. No.42/2024 for acceptance of documents will stand allowed.

sd/-

**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

sd/-

**GOPINATH P.**  
**JUDGE**

acd