



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

TUESDAY, THE 11TH DAY OF JUNE 2024 / 21ST JYAISHTA, 1946

WP(C)NO.39847 OF 2023

PETITIONER:-

*SNIGDHA SREENATH (MINOR)
AGED 10 YEARS
REPRESENTED BY HER FATHER AND LEGAL GUARDIAN
SREENATH S, NO 41/42, SUNDARA SHELTER, SREE
BALAJI LAYOUT, SINGAPURA, BANGALORE NORTH,
KARNATAKA - 560097

*(NAME OF THE PETITIONER IS CORRECTED AS 'SNIGDHA
SREENATH', INSTEAD OF 'SNIGDHA SREENIVAS' AS PER
ORDER DATED 04.12.2023 IN I.A.NO.1/2023 IN
WP(C)NO.39847/2023.)

BY ADVS.MANU GOVIND
A.JAYASANKAR

RESPONDENTS:-

- 1 TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY NANTHANCODE,
KOWDIAR, THIRUVANANTHAPURAM, PIN - 695003
- **ADDL.R2 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, REVENUE (DEVASWOM)
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM, PIN-
695003
- **ADDL.R3 THE COMMISSIONER, TRAVANCORE DEVASWOM BOARD,
NANTHANCODE, KOWDIAR, THIRUVANANTHAPURAM, PIN-
695003
- **ADDL.R4 THE EXECUTIVE OFFICER,
SABARIMALA, TRAVANCORE DEVASWOM BOARD,
PATHANAMTHITTA, PIN-689662



**** ADDL.RESPONDENTS 2 TO 4 IMPEADED AS PER THE
ORDER DATED 05.12.2023 IN I.A.NO.2/23 IN
WP(C)NO.39847/2023.**

BY ADVS.G.BIJU

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05.04.2024, THE COURT ON 11.06.2024 DELIVERED THE FOLLOWING:**

**JUDGMENT**

Anil K. Narendran, J.

The petitioner, a minor girl aged 10 years, represented by her father and legal guardian, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 1st respondent Travancore Devaswom Board to permit her to have a pilgrimage to Sabarimala Sree Dharma Sastha Temple during the Mandala Pooja/Makaravilakku season of 1199 ME(2023-24), without insisting upper age qualification; a declaration that the petitioner is entitled to have a pilgrimage to Sabarimala Sree Dharma Sastha Temple during Mandala Pooja/Makaravilakku season of 1199ME, without insisting upper age qualification, since she has not attained puberty; or in the alternative a writ of mandamus commanding the 1st respondent Travancore Devaswom Board to consider Ext.P2 representation dated 22.11.2023 made by the father of the petitioner sympathetically and pass orders thereon expeditiously, within a time frame to be fixed by this Court.

2. As per Ext.P1 Aadhar Card, the date of birth of the petitioner is 05.06.2013. In the writ petition, it is stated that the petitioner and her parents are settled in Karnataka and her father is a native of Malappuram district. The petitioner, who is a devotee



of Lord Dharma Sastha of Sree Dharma Sastha Temple, Sabarimala, is desirous of pilgrimage to Sabarimala for the past few years. Her pilgrimage was delayed on account of the Covid-19 pandemic, the resultant financial difficulties and also the poor health of her father. During the Mandala Pooja/Makaravilakku season of 1199 ME, the petitioner's father planned a pilgrimage to Sabarimala, and the petitioner started observing the rites for the same. Though her father had made an application for pilgrimage online, it was rejected for the reason that the petitioner had crossed the upper age limit of 10.

3. In the writ petition, it is stated that the petitioner has not attained puberty. Therefore, there is no bar for her to have a pilgrimage to Sabarimala as of now. Her father made Ext.P2 representation dated 22.11.2023 before the 1st respondent Travancore Devaswom Board seeking permission for pilgrimage. Since no decision has been taken on Ext.P2 representation, the petitioner has approached this Court in this writ petition seeking the aforesaid relief. The petitioner would contend that the law laid down by a Division Bench of this Court in **S. Mahendran v. Secretary, Travancore Devaswom Board and others [AIR 1993 Kerala 42]** and the custom prevailing in Sabarimala from time immemorial is that those girl children who have not attained



puberty are permitted to have pilgrimage to Sabarimala. The upper age limit of 10 is fixed only for the sake of convenience.

4. On 29.11.2023, when this writ petition came up for admission, the learned Standing Counsel for Travancore Devaswom Board sought time to get instructions and the matter was ordered to be listed on 04.12.2023. By the order dated 04.12.2023 in I.A.No.1 of 2023, the name of the petitioner shown in the cause title was corrected as 'Snigdha Sreenath', instead of 'Snigdha Sreenivas'. By the order dated 05.12.2023 in I.A.No.2 of 2023, the State of Kerala represented by the Secretary to Government, Revenue (Devaswom) Department; the Commissioner, Travancore Devaswom Board; and the Executive Officer, Sabarimala were impleaded as additional respondents 2 to 4 in the writ petition.

5. The 1st respondent has filed a counter affidavit dated 11.03.2024. Paragraphs 4 to 6 of that counter affidavit read thus;

"4. It is respectfully submitted that the reliefs sought for in this writ petition are exactly one of the main issues considered by the Hon'ble Apex Court in **Indian Young Lawyers Association v. State of Kerala [(2019) 11 SCC 1]**. In the review petitions arising out of the judgment of the Constitution Bench in **Indian Young Lawyers Association [(2019) 11 SCC 1]**, the question regarding the interplay between freedom of religion under Article 25



and 26 of the Constitution of India and the provisions in Part III, particularly Article 14 and connected issues have been referred to a Larger Bench of the Apex Court in **Kantararu Rajeevaru (Sabarimala Temple Review-5 J.) v. Indian Young Lawyers Association [(2020) 2 SCC 1]**. The Larger Bench reframed the issues in **Kantararu Rajeevaru (Right to Religion, In re-9 J.) v. Indian Young Lawyers Association [(2020) 3 SCC 52]**. In **Kantararu Rajeevaru (Right to Religion, In re-9 J.)(2) v. Indian Young Lawyers Association [(2020) 9 SCC 121]**, the Larger Bench gave reasons in support of the reference order.

5. It is submitted that since the crux of the matter in issue in this writ petition is pending consideration before the Hon'ble Apex Court and particularly when the Larger Bench of the Apex Court reframed the issues, it is not proper on the part of the Travancore Devaswom Board to have a say either way. It goes without saying that the petitioner has to wait till the Apex Court decides the issue finally.

6. It is submitted that the petitioner has stated in the writ petition that the online application for pilgrimage submitted by her father was rejected for the reason that she crossed the upper age limit of 10 years. Petitioner has not produced any material in support of the above fact, and hence, the writ petition fails on the ground of maintainability also. Moreover, the prayer in the writ petition is to permit the petitioner to have a pilgrimage to Sabarimala Sree Dharmasastha Temple during Mandalam-Makaravilakku festival season 1199ME, which is over now and the writ petition has become infructuous."



6. On 16.03.2024, the petitioner filed I.A.No.2 of 2024 seeking an order to amend the writ petition by incorporating the additional statement of facts contained in Para.4A, to substitute ground E and reliefs (i) and (ii) as stated in the application for amendment. The petitioner has stated that there may not be much rush or crowd in and around the temple since the Mandala-Makaravilakku festival season is over. Therefore, it would be more congenial and convenient for girl children like the petitioner to have pilgrimage during the Maasapooja. Therefore, the petitioner is seeking a writ of mandamus commanding the respondents to permit her to have a pilgrimage to Sabarimala Sree Dharmasastha Temple during the forthcoming Maasapooja without insisting on upper age qualification; and a declaration that the petitioner is entitled to have a pilgrimage to Sabarimala Sree Dharmasastha Temple during the forthcoming Maasapooja without insisting upper age qualification, since she has not attained puberty. I.A.No.2 of 2024 was allowed by the order dated 19.03.2024 and the petitioner has filed the amended writ petition on 25.03.2024.

7. Heard the learned counsel for the petitioner, the learned Standing Counsel for the Travancore Devaswom Board for the Board and its officials and also the learned Senior Government



Pleader for the 2nd respondent and the matter was reserved for judgment.

8. The learned counsel for the petitioner contended that the petitioner is entitled to have a pilgrimage to Sabarimala Sree Dharma Sastha Temple during the forthcoming Maasapooja without insisting on an upper age limit since she has not attained puberty. The law laid down in **S. Mahendran [AIR 1993 Kerala 42]** and the custom prevailing in Sabarimala from time immemorial is those girl children who have not attained puberty are permitted to have pilgrimage to Sabarimala. The upper age limit of 10 is fixed only for the sake of convenience.

9. The learned Standing Counsel for the Travancore Devaswom Board contended that the reliefs sought in this writ petition are exactly one of the main issues considered by the Hon'ble Apex Court in **Kantararu Rajeevaru (Right to Religion, In re-9 J.) v. Indian Young Lawyers Association [(2020) 3 SCC 52]**. Since the crux of the matter involved in this case is pending consideration of the Larger Bench of the Apex Court, which has reframed the issues, it is not proper on the part of the Board to have a say either way. The petitioner has to wait till the Apex Court decides the issue finally. The petitioner has not chosen to produce any materials in support of her contention that the



online application for pilgrimage made by her father was rejected for the reason that she had crossed the upper age limit of 10.

10. The Travancore-Cochin Hindu Religious Institutions Act was enacted to make provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and Funds. Sabarimala Devaswom is an incorporated Devaswom mentioned in Schedule I of the Act, under Chengannur Group, Pathanamthitta Taluk.

11. Sabarimala Sree Dharma Sastha Temple is situated inside Periyar Tiger Reserve, which is a prominent pilgrim centre in Kerala, where lakhs of pilgrims trek the rugged terrains of Western Ghats to have darshan of Lord Ayyappa. Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple come under the Travancore Devaswom Board. Pamba Ganapathy Temple also comes under the Travancore Devaswom Board, which is a holy spot on the way from Pamba to Sannidanam, dedicated to Lord Ganesha, where the pilgrims offer prayer for safe trekking to Sannidanam.

12. Section 15A of the Act, inserted by Act 5 of 2007, with effect from 12.04.2007, deals with the duties of the Board. As per Section 15A, it shall be the duty of the Board to perform the following functions, namely, (i) to see that the regular traditional



rites and ceremonies according to the practice prevalent in the religious institutions are performed promptly; (ii) to monitor whether the administrative officials and employees and also the employees connected with religious rites are functioning properly; (iii) to ensure proper maintenance and upliftment of the Hindu religious institutions; (iv) to establish and maintain proper facilities in the temples for the devotees.

13. As per Section 24 of the Act, which deals with the maintenance of Devaswoms, etc., out of the Devaswom Fund, the Board shall, out of the Devaswom Fund constituted under Section 25, maintain the Devaswoms mentioned in Schedule I [i.e. incorporated Devaswoms], keep in a state of good repair the temples, buildings, and other appurtenances thereto, administer the said Devaswoms in accordance with recognised usages, make contributions to other Devaswoms in or outside the State and meet the expenditure for the customary religious ceremonies and may provide for the educational upliftment, social and cultural advancement and economic betterment of the Hindu community. As per Section 31 of the Act, which deals with the management of Devaswoms, subject to the provisions of Part I and the rules made thereunder, the Board shall manage the properties and affairs of the Devaswoms, both incorporated and unincorporated as



heretofore, and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage.

14. The provisions under the Travancore-Cochin Hindu Religious Institutions Act referred to hereinbefore would make it explicitly clear that the role assigned to the Travancore Devaswom Board in the administration, supervision and control of incorporated and unincorporated Devaswoms is that of a trustee in the management of the properties vested in the deity. The Board is bound to administer, supervise and control incorporated and unincorporated Devaswoms in accordance with the provisions under the said Act. The Board and its officials are duty-bound to function within the framework of the statute by scrupulously following the stipulations contained therein and acting strictly in accordance with the settled legal principles relating to the administration of Hindu religious trust. The Board, being a trustee in the management of Devaswom properties, is legally bound to perform its duties with utmost care and caution.

15. In view of the provisions under the Travancore-Cochin Hindu Religious Institutions Act referred to hereinbefore, the Travancore Devaswom Board is duty-bound to see that the regular traditional rites and ceremonies, according to the practice



prevalent in Sabarimala Devaswom and Malikappuram Devaswom, are performed promptly and to establish and maintain proper facilities in Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple for the devotees. The Board is duty-bound to manage the properties and affairs of Sabarimala Devaswom and Malikappuram Devaswom and arrange for the conduct of the daily worship and ceremonies and of the festivals in Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple according to its usage. The Board, being a trustee in the management of Sabarimala Devaswom and Malikappuram Devaswom, is legally bound to perform its duties with utmost care and caution.

16. The contention of the petitioner is that the law laid down in **S. Mahendran [AIR 1993 Kerala 42]** and the custom prevailing in Sabarimala from time immemorial is those girl children who have not attained puberty are permitted to have pilgrimage to Sabarimala. The upper age limit of 10 is fixed only for the sake of convenience.

17. In **S. Mahendran [AIR 1993 Kerala 42]** the Division Bench of this Court held that the restriction imposed on women aged 10 years and below 50 from trekking the holly hills of Sabarimala and offering worship in Sabarimala shrine is in accordance with the usage prevalent from time immemorial. Such



restriction imposed by the Travancore Devaswom Board is not violative of Articles 15, 25 and 26 of the Constitution of India. Such restriction is also not violative of the provisions of the Hindu Place of Public Worship (Authorisation of Entry) Act, 1965, since there is no restriction between one section and another section or between one class and another class among the Hindus in the matter of entry to a temple, whereas the prohibition is only in respect of women of a particular age group and not women as a class. In the light of the aforesaid conclusions, the Division Bench directed the Travancore Devaswom Board not to permit women above the age of 10 and below the age of 50 to trek the holy hills of Sabarimala in connection with the pilgrimage to Sabarimala Temple and from offering worship at Sabarimala Shrine during any period of the year.

18. In **Indian Young Lawyers Association v. State of Kerala [(2019) 11 SCC 1]**, a Constitution Bench of the Apex Court considered the decision of the Division Bench of this Court in **S. Mahendran [AIR 1993 Kerala 42]**, on a reference made by a Three-Judge Bench in **Indian Young Lawyers Association v. State of Kerala [(2017) 10 SCC 689]**, wherein the Constitution Bench has interpreted Article 25(1) of the Constitution of India to mean that all persons are equally entitled



to practice the Hindu religion, which would include women between the age of 10 and 50.

19. The question regarding the interplay between freedom of religion under Articles 25 and 26 of the Constitution of India and the provisions in Part III, particularly Article 14, and connected issues have been referred to a Larger Bench of the Apex Court in **Kantaru Rajeevaru (Sabarimala Temple Review-5 J.) v. Indian Young Lawyers Association [(2020) 2 SCC 1]**, in the review petitions arising out of the judgment of the Constitution Bench in **Indian Young Lawyers Association v. State of Kerala [(2019) 11 SCC 1]**.

20. In **Kantaru Rajeevaru (Right to Religion, In re-9 J.) v. Indian Young Lawyers Association [(2020) 3 SCC 52]** the Larger Bench reframed the issues as follows;

“(1) What is the scope and ambit of right to freedom of religion under Article 25 of the Constitution of India?

(2) What is the interplay between the rights of persons under Article 25 of the Constitution of India and rights of religious denomination under Article 26 of the Constitution of India?

(3) Whether the rights of a religious denomination under Article 26 of the Constitution of India are subject to other provisions of Part III of the Constitution of India apart from public order, morality and health?



(4) What is the scope and extent of the word “morality” under Articles 25 and 26 of the Constitution of India and whether it is meant to include constitutional morality?

(5) What is the scope and extent of judicial review with regard to a religious practice as referred to in Article 25 of the Constitution of India?

(6) What is the meaning of the expression “sections of Hindus” occurring in Article 25(2)(b) of the Constitution of India?

(7) Whether a person not belonging to a religious denomination or religious group can question a practice of that religious denomination or religious group by filing a PIL?”

21. In **Kantaru Rajeevaru (Right to Religion, In re-9 J.) (2) v. Indian Young Lawyers Association [(2020) 9 SCC 121]** the Larger Bench gave reasons in support of the reference order in **Kantaru Rajeevaru (Right to Religion, In re-9 J.) [(2020) 3 SCC 52]**.

Since the question regarding the interplay between freedom of religion under Articles 25 and 26 of the Constitution of India and the provisions in Part III, particularly Article 14, and connected issues are pending before a Larger Bench of the Apex Court in **Kantaru Rajeevaru (Sabarimala Temple Review-5 J.) v. Indian Young Lawyers Association [(2020) 2 SCC 1]**, in the review petitions arising out of the judgment of the Constitution Bench in **Indian Young Lawyers Association v.**



State of Kerala [(2019) 11 SCC 1] the petitioner cannot invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking the aforesaid reliefs. In such circumstances, this writ petition fails on the above ground and the same is accordingly dismissed, leaving open the legal and factual contentions raised by the petitioner.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

HARISANKAR V. MENON, JUDGE

bkn/-



APPENDIX OF WP(C) 39847/2023

PETITIONER EXHIBITS

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| Exhibit P1 | COPY OF THE PETITIONERS AADHAR CARD
BEARING NO. 9828 3101 9149 |
| Exhibit P2 | COPY OF REPRESENTATION DATED 22.11.2023
BY THE PETITIONERS FATHER TO THE
RESPONDENT |