1964

March 5

RAJA BIRAKISHORE

v.

THE STATE OF ORISSA

[P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI JJ.]

Fundamental rights—Interference with religious affairs of Temple—Constitution of India, Art. 31(2)*—Applicability—Shri Jagannath Temple Act,* 1954 (*No. II of* 1955), *ss.* 8, 11, 18, 21, 21*A and* 30*—Validity—Constitution of India, Arts.* 13, 19, 26(*d*), 27 *and* 28.

A writ petition was filed in the Orissa High Court by the father of the appellant challenging the validity of Shri Jagannath Temple Act, 1954. The petition was dismissed by High Court which held that the Act was valid and constitutional except s. 28(2)(f). The High Court struck down that provision and upheld the constitutionality of the rest of the Act. The appellant came to this Court after obtaining a certificate of fitness to appeal to Supreme Court.

The contentions raised before this Court were that the Act was discriminatory as the Jagannath Temple alone had been singled out for special treatment as compared to other temples in the State of Orissa. The Act took away the sole management of the Temple which had so far been vested in the appellant or his ancestors. S. 15(1) of the Act interfered with the religious affairs of the temple. The validity of ss. 11, 19, 21, 21A and 30 of the Act was also attacked. Dismissing the appeal,

Held: There is no violation of Art. 14 of the Constitution. The Jagannath Temple occupies a unique position in the State of Orissa and is a temple of national importance and no other temple in that State can compare with it. It stands in a class by itself and considering the fact that it attracts pilgrims from all over India in large numbers, it could be the subject of special consideration by the State Government. A law may be constitutional even though it related to a single individual if on account of special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself.

(ii) There was no violation of Art. 19(1)(f) or Art. 31(2) of the Constitution. All that the Act has done is that it has taken away the sole right of the appellant to manage the property of the Temple and another body has been set up in its place with the appellant as its Chairman. Such a process cannot be said to constitute the acquisition of the extinguished office or of the vesting of the rights in the person holding that office. The appellant occupied a dual position as Superintendent and Adya Sevak. His position as Superintendent has gone and in that place he has become the Chairman of the Committee set up under s. 6. The position of the applicant as Adya Sevak is safeguarded by s. 8 of the Act inasmuch as the rights and privileges in respect of Gajapati Maharaja Seva are protected even though he may cease to be Chairman on account of his minority or on account of some other reason.

(iii) S. 15(1) of the Act does not interfere with the religious affairs of the Temple. Sevapuja of the Temple has two aspects. One aspect is the provision of materials and that is a secular

function. The second aspect is the performance of the Sevapuja and other rights as required by religion. S. 15(1) has nothing to do with the second aspect which is the religious aspect of Sevapuja. While s. 15(1) imposes a duty on the committee to look after the secular aspect of the Sevapuja, it leave the religious part entirely untouched.

(iv) Ss. 11, 19 and 21 were valid provisions and could not be attacked as ss. 5 and 6 constituting the committee in place of the Raja, were valid. Ss. 21A and 30 were also valid.

Arts. 27 and 28 had nothing to do with the matter dealt with under Act. It was not open to the appellant to argue that the Act was bad as it was hit by Art. 26(d). No such contention was properly raised in the High Court.

Tilkayat, Shri Govindlal ji v. *State of Rajasthan*, A.I.R. (1963) S.C. 1638, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 135 of 1962.

Appeal from the judgment and order dated April 30, 1958, of the Orissa High Court in O.J.C. No. 321 of 1955.

M. C. Setalvad, Sarjoo Prasad and *A. D. Mathur*, for the appellant.

S. V. Gupte, Additional Solicitor-General, M. S. K. Sastri and *R. N. Sachthey, for the* respondent.

March 5, 1964. The Judgment of the Court was delivered by—

Wanchoo J.

WANCHOO, J.—This appeal on a certificate granted by the Orissa High Court raises the question of the constitutionality of the Shri Jagannath Temple Act, 1954, No. II of 1955, (hereinafter referred to as the Act). The challenge to the Act was made by the father of the present appellant by a writ petition filed in the High Court of Orissa. The appellant was substituted for his father on the death of the latter while the writ petition was pending in the High Court. The case put forward in the petition firstly was that the Shri Jagannath Temple (hereinafter referred to as the Temple) was the private property of the petitioner, Raja of Puri, and the Act, which deprived the appellant of his property was unconstitutional in view of Art. 19 of the Constitution. In the alternative it was submitted that the appellant had the sole right of superintendence and management of the Temple and that that right could not be taken away without payment of compensation, and the Act inasmuch as it took away that right without any compensation was hit by Art. 31 of the Constitution. It was further pleaded that the right of superintendence was property within the meaning of Art. 19 (1) (f) and inasmuch as the appellant had been deprived of that property by the Act, it was an unreasonable provision which was not

1964

Raja Birakishore
v.
The State of Orissa

Wanchoo, J.

saved under Art. 19(5). The Act was further attacked on the ground that it was discriminatory and was therefore hit by Art. 14 of the Constitution, as the Temple had been singled out for special legislation, though there was a general law in force with respect to Hindu religious endowments, namely, the Orissa Hindu Religious Endowments Act No. II of 1952. Reliance was placed on Arts. 26, 27 and 28 of the Constitution to invalidate the Act. though the appellant did not indicate in the petition how those Articles hit the Act. Lastly, it was urged that the utilisation of the Temple funds for purposes alien to the interest of the deity as proposed under the Act was illegal and *ultra vires.*

The petition was opposed on behalf of the State and it was urged that the Temple was not the private property of the appellant. The case of the State was that it was a public temple and the State always had the right to see that it was properly administered. Before the British conquered Orissa in 1803, the Temple had for a long time been managed by Muslim Rulers directly, though through Hindu employees. After 1803, the Temple began to be managed directly by the British Government, though by Regulation IV of 1809 the management was made over to the Raja of Khurda (who is now known as the Raja of Puri). who was appointed as hereditary superintendent in view of his family's connection in the past with the Temple. Even so, whenever there was mismanagement in the Temple during the course of the last century and a half, the Government always intervened and many a time administered the secular affairs of the Temple directly through one of its officers in whose favour the then Raja was made to execute a power of attorney divesting himself completely of all powers of management. The case of the State further was that in view of the reported mismanagement of the Temple, the State legislature passed the Puri Shri Jagannath Temple (Administration) Act, (No. XIV of 1952) for the appointment of a Special Officer for the preparation of a record pertaining to the rights and duties of different sevaks and pujaris and such other persons connected with the seva, puja or management of the Temple and its endowments in order to put the administration of the Temple on a suitable basis. A Special Officer was accordingly appointed who submitted his report on March 15, 1954, which disclosed serious mismanagement of the affairs of the Temple and in consequence the Act was passed in 1955. The State contended that the Act was perfectly valid and constitutional and did not offend any constitutional provision.

When the matter came to be argued before the High Court, the appellant gave up the plea that the Temple was his private property and it was conceded that it was a public temple. the properties of which were the properties of the deity

and not the private properties of the Raja of Puri. In view of this concession, the attack on the constitutionality of the Act was based mainly on the ground that it took away the Raja's perquisites which had been found to belong to him in the record of rights prepared under the Act of 1952. It may be mentioned that the Raja of Puri had two-fold connection with the Temple. In the first place, the Raja is the adya sevak, i.e., the chief servant of the Temple and in that capacity he has certain rights and privileges. In addition to that, he was the sole superintendent of the Temple and was incharge of the management of the secular affairs of the Temple. The main contention of the appellant before the High Court was that the Act not only took away the management of the secular affairs of the Temple from the appellant but also interfered with his rights as adya sevak and was therefore unconstitutional. The High Court repelled all the submissions on behalf of the appellant and held that the Act was valid and constitutional except for one provision contained in s. 28(2)(f) thereof. The High Court therefore struck down that provision and upheld the constitutionality of the rest of the Act. Thereupon the appellant applied for a certificate which was granted; and that is how the appeal has come up before us.

Before we consider the attack on the constitutionality of the Act we should like to indicate briefly what the scheme of the Act is and what it provides with respect to the management of the Temple. Section 1 provides for its commencement. Section 2 provides for certain repeals. Section 3 provides that the Orissa Act XIV of 1952 shall be deemed to be a part of the Act and delegates to the committee constituted under s. 6 of the Act all powers of the State Government under the 1952-Act from such date as the State Government may notify. Section 4 is the definition section. Section 5 vests the administration and the governance of the Temple and its endowments in a committee called the Shri Jagannath Temple Managing Committee. The Committee shall be a body corporate, having perpetual succession and a common seal and may by the said name sue and be sued. Section 6 provides for the constitution of the committee with the Raja of Puri as its chairman. No person who does not profess the Hindu religion shall be eligible for membership. Besides providing for some *ex officio* members, the other members of the committee are all nominated by the State Government, one from among the persons entitled to sit on the *mukti-mandap*, three from among the sevaks of the Temple recorded as such in the record of rights, and seven from among those who do not belong to the above two classes.

1964

Raja Birakishore v. The State of Orissa

Wanchoo. J.

The Collector of the district of Puri is an *ex officio* member and is designated as the vice-chairman of the committee. Section 7 provides for the appointment of a chairman during the minority of the Raja of Puri or during the time when the Raja is suffering from any of the disabilities mentioned in s. 10(1) clauses (a) to (e) and (g) thereof. Section 8 lays down that nothing in s. 7 shall be deemed to affect the rights and privileges of the Raja of Puri in respect of the Gajapati Maharaj Seva merely on the ground that the Raja has ceased to perform the duties of the chairman for the time being. Section 9 provides for the terms of office of members and s. 10 gives power to the State Government to remove any member of the committee other than the *ex officio* members on the grounds specified in cls. (a) to (g) thereof. No member can be removed from his membership unless he has been given a reasonable opportunity of showing cause against his removal. Section 11 provides for dissolution and supersession of the committee in certain contingencies, such as incompetence to perform the duties imposed upon it by the Act or making of default in performing such duties. The committee is given an opportunity to show cause against any such action before it is taken, and provision is made for continuing the management during the time the committee is superseded or has been dissolved. Section 12 provides for casual vacancies, s. 13 for the meetings of the committee and s. 14 for allowances to the members of the committee payable from the Temple fund, but no member of the committee other than the administrator is to be paid any salary or other remuneration from the Temple fund except such travelling and daily allowances as may be prescribed. Section 15 provides for the duties of the committee and it may be quoted in full as it is the main target of attack:—

"15. Subject to the provisions of this Act and the rules made thereunder, it shall be the duty of the Committee—

(1) to arrange for the proper performance of seva-pujah and of the daily and periodical Nitis of the Temple in accordance with the Record-of-Rights;

(2) to provide facilities for the proper performance of worship by the pilgrims;

(3) to ensure the safe custody of the funds, valuable securities and jewelleries and for the preservation and management of the properties vested in the Temple;

(4) to ensure maintenance of order and discipline and proper hygienic conditions in the Temple and of proper standard of cleanliness and purity in the offerings made therein;

(5) to ensure that funds of the specific and religious endowments are spent according to the wishes, so far as may be known, of the donors;

(6) to make provision for the payment of suitable emoluments to its salaried staff; and

(7) to do all such things as may be incidental and conducive to the efficient management of the affairs of the Temple and its endowments and the convenience of the pilgrims."

Section 16 provides a ban on the alienation of Temple properties subject to certain conditions. Section 17 lays down that the committee shall have no power to borrow money from any person except with the previous sanction of the State Government. Section 18 provides for an annual administration report to be submitted to the Government. Section 18-A gives power to the committee with the prior approval of the State Government to delegate its functions to the Collector of the district or, as the case may be, to the officer who happens to be a member of the committee in place of such Collector. Section 19 gives power to the State Government to appoint an administrator for the Temple. Section 20 provides for the qualifications and conditions of service of the administrator and s. 21 for the powers and duties of the administrator. As this section is specially attacked we quote it here in full.

"S.21. (1) The Administrator shall be Secretary of the Committee and its chief executive officer and shall subject to the control of the committee have powers to carry out its decision in accordance with the provisions of this act.

(2) Notwithstanding anything in sub-section (1) or in section 5, the Administrator shall be responsible for the custody of all records and properties of the Temple, and shall arrange for proper collections of offerings made in the Temple and shall have power—

(a) to appoint all officers and employees of the Temple;

(b) to lease out for a period not exceeding one year at a time the lands and buildings of the Temple which are ordinarily leased out;

(c) to call for tenders for works or supplies and accept such tenders when the amount or value thereof does not exceed two thousand rupees;

(d) to order for emergency repairs;

(e) to specify, by general or special orders, such conditions and safeguards as he deems fit, subject to which any sevak, office-holder or servant

1964

Raja Birakishore v. The State of Orissa

Wanchoo, J.

shall have the right to be in possession of jewels or other valuable belongings of the temple;

(f) to decide disputes relating to the collection, distribution or apportionment of offerings, fees and other recepits in cash or in kind received from the members of the public;

(g) to decide disputes relating to the rights, privileges, duties and obligations of sevaks, office-holders and servants in respect of sevapuja and nitis, whether ordinary or special in nature;

(h) to require various sevaks and other persons to do their legitimate duties in time in accordance with the Record-of-Rights; and

(i) in the absence of any sevak or his substitutes or on the failure on the part of any such person to perform his duties, to get the niti or seva performed in accordance with the record-of-rights by any other person.

(3) The administrator may subject to such conditions, if any, as the committee may, by general or special order impose, afford facilities on payment of fees for special darshan or for any special service, ritual or ceremony, such darshan, service, ritual or ceremony not being inconsistent with the custom and usage of the Temple and he shall have power to determine the portion, if any, of such fees which shall be paid to the sevaks, office-holders or servants of the Temple."

Section 21-A provides that all sevaks, office-holders and servants attached to the Temple or in receipt of any emoluments or perquisites therefrom shall, whether such service is hereditary or not, be subject to the control of the administrator who may, subject to the provisions of the Act and the regulations made by the committee in that behalf, after giving the person concerned a reasonable opportunity of being heard withhold the receipt of emoluments or perquisites, impose a fine, suspend or dismiss any of them for breach of trust, incapacity, disobedience of lawful orders, neglect of or wilful absence from duty, disorderly behaviour or conduct derogatory to the discipline or dignity of the temple or for any other sufficient cause: Section 22 provides for extraordinary powers of the administrator who is directed to take action in emergency and report forthwith to the committee the action taken and the reasons therefor. Section 23 provides for the establishment schedule and s. 24 provides for an appeal to the committee against an order of the administrator under s. 21 (2)(f) or (g) or s. 21-A. Sections 25 to 27 provide for the preparation of annual budget and audit. Section 28 provides for a Temple fund and how it is to be utilised. Section 29 bars suits against

the State Government or against the committee or the administrator for anything done or purported to be done by any of them under the provisions of the Act. Section 30 gives power of general superintendence of the Temple and its endowments to the State Government which may pass any orders for the proper maintenance or administration of the Temple or its endowments or in the interest of the general public worshipping in the Temple. It also gives power to the State Government to examine the records of the administrator or of the committee in respect of any proceedings with a view to satisfy itself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order made therein; and if in any case it appears to the State Government that any such decision or order should be modified, annulled, reversed or remitted, for reconsideration, it may pass orders accordingly. The State Government is also given the power to stay the execution of any such decision or order in the meantime. Section 30-A creates an offence which is punishable on conviction with fine which may extend to Rs. 500 whenever any person having duties to perform in respect of the nitis of the Temple or sevapuja of the deity raises any claim or dispute and fails or refuses to perform such duties, knowing or having reasons to believe that the non-performance of the said duties would cause delay in the performance of the niti or sevapuja or inconvenience or harassment to the public or any section thereof entitled to worship in the Temple and wilfully disobeys or fails to comply with the orders of the administrator directing him to perform his duties without prejudice to the results of a proper adjudication of such claim or dispute. Section 31 gives power to the committee to frame regulations as to the conditions of service of office bearers and employees of the Temple, procedure for transfer of sevapuja, chuli or panti in the Temple, observance of nitis and other usages in the Temple in the absence of specific mention in the record of rights; and any other matters for which regulations are required to be made for the purposes of the Act. Section 32 gives power to the State Government to frame rules. Section 33 lays down that "the committee shall be entitled to take and be in possession of all movable and immovable properties, including the Ratna Bhandar and funds and jewelleries, records, documents and other assets belonging to the Temple" and also lays down the procedure to be followed in case of resistance in obtaining such possession. Section 34 lays down that "all public officers having custody of any record, register, report or other documents relating to the Temple or any movable or immovable property thereof shall furnish such copies of or extracts from the same as may be required by the administrator". Section 35 lays down that "no act or proceeding of the committee or of any person acting as a member of the committee shall be deemed to be invalid by reason only

1964

Raja Birakishore v. The State of Orissa

Wanchoo, J.

of a defect in the establishment or constitution of the committee or on the ground that any member of the committee was not entitled to hold or continue in such office by reason of any disqualification or by reason of any irregularity or illegality in his appointment or by reason of such act having been done or proceeding taken during the period of any vacancy in the office of member of the committee." Similar protection is given to an act or proceeding of the administrator. Section 36 provides for the removal of difficulties by the State Government so long as the order passed in that behalf is not inconsistent with the Act or the rules made thereunder.

This review of the provisions of the Act shows that broadly speaking the Act provides for the management of the secular affairs of the Temple and does not interfere, with the religious affairs thereof, which have to be performed according to the record of rights prepared under the Act of 1952 and where there is no such record of rights in accordance with custom and usage obtaining in the Temple. It is in this background that we have to consider the attack on the constitutionality of the Act. We may first dispose of the attack based on Art. 14. It is urged that inasmuch as this special Act has been passed for this Temple and the general Act, namely, the Orissa Hindu Religious Endowments Act No. II of 1952 no longer applies to this Temple, there has been discrimination inasmuch as the Temple has been singled out for special treatment as compared to other temples in the State of Orissa. There is no doubt that the Act is in many respects different from Act II of 1952 and substitutes the committee for the Raja of Puri for the purpose of management of the Temple, and there would *prima facie* be discrimination unless it can be shown that the Temple stands in a class by itself and required special treatment. As to that the affidavit on behalf of the State Government is that the Temple is a unique institution in the State of Orissa and is in a class by itself and that there is no comparison between the Temple and other temples in the State. The averment on behalf of the State is that the Temple has been treated as a special object throughout the centuries because of its unique importance and that there is no other temple which occupies the unique place which this Temple occupies in the whole of India. Also there is no other temple in Orissa with such vast assets or which attracts such a large number of pilgrims which pour into it from the whole of India. It is also averred that it is absolutely incorrect that there are other temples in Orissa which are equal to it from the standpoint of assets or from the standpoint of their all-India character or from the standpoint of the complicated nature of nitis and sevapuja affecting the lives, religious susceptibilities and sentiments of millions of people spread all over India. There can be no doubt after this averment on behalf of the State that the Temple occupies a unique position in the State of Orissa and

is a temple of national importance and no other temple in that State can compare with it. It stands in a class by itself and considering the fact that it attracts pilgrims from all over India in large numbers it must be a subject of special consideration by the State Government. In reply to these averments on behalf of the State, all that the appellant stated in his rejoinder was that these averments were not admitted. There was no denial of the special importance of the Temple as averred on behalf of the State and we have no doubt therefore that this Temple stands in a class by itself in the State of Orissa and therefore requires special treatment. We may in this connection refer to the decision of the Court in *Tilkayat Shri Govindlalji* v. *State of Rajasthan*(1) where in relation to the temple at Nathdwara with respect to which a special Act had been passed by the State of Rajasthan, this Court observed that "a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself". The attack under Art. 14 on the constitutionality of the law with respect to the temple at Nathdwara was repelled on the ground that the temple had a unique position amongst the Hindu Shrines in the State of Rajasthan and no temple could be regarded as comparable with it. The same reasons in our opinion apply to the Temple in the present case and the Act cannot be struck down under Art. 14 because the Temple in the present case holds a unique position amongst the Hindu temples in the State of Orissa and no other temple can be regarded as comparable with it.

Next we come to the attack on the constitutionality of the Act on the ground that it has taken away the sole management of the temple which had so far been vested in the appellant or his ancestors. The reasons why the Act was passed are to be found in the preamble thereof. The preamble says that the ancient Temple of Lord Jagannath of Puri has eversince its inception been an institution of unique and national importance, in which millions of Hindu devotees from regions far and wide have reposed their faith and belief and have regarded it as the epitome of their tradition and culture. It further says that long prior to and after the British conquest the superintendence, control and management of the affairs of the Temple have been the direct concern of successive rulers, governments and their officers and of the public exchequer. It then says that by Regulation IV of 1809 and thereafter by other laws and regulations in pursuance of arrangements entered into with the Raja of Khurda, later designated as the Raja of Puri, the said Raja came to be entrusted hereditarily with the management of the affairs of the Temple and its properties as superintendent subject to the control and supervision of the ruling power. It then goes on to say that in view of grave

(1) [1964] 1 S.C.R. 561.

1964

Raja Birakishore
v.
The State of Orissa

Wanchoo,

and serious irregularities thereafter the Government had to intervene on various occasions in the past. Finally the preamble says that the administration under the superintendent has further deteriorated and a situation has arisen rendering it expedient to reorganise the scheme of management of the affairs of the Temple and its properties and provide better administration and governance therefor in supersession of all previous laws, regulations and arrangements, having regard to the ancient customs and usages and the unique and traditional nitis and rituals contained in the record of rights prepared under the 1952 Act. So for all these reasons the appellant was removed from the sole superintendence of the Temple and a committee was appointed by s. 6 of the Act for its management. These statements in the preamble are not seriously in dispute as will be clear from the reports by G. Grome dated June 10, 1905 and by the Special Officer appointed under the 1952 Act dated March 15, 1954 and the correspondence which passed from time to time between the officers of the Government and the predecessors of the appellant. In these circumstances if the secular management of the Temple was taken away from the sole control of the appellant and vested in a committee of which he still remains the chairman, it cannot be said that the provisions contained in the Act for that purpose are hit either by Art. 31(2) or by Art. 19(f). There is in our opinion a complete parallel between the provisions of the Act and the Act relating to the temple at Nathdwara in Rajasthan, which came up for consideration before this Court in *Tilkayat Govindlalji's* case(1). If anything, the case of the appellant is weaker than that of Shri Govindlalji, for the appellant in the present case was conferred with the power of superintendence by Regulation IV of 1809 after the British conquered Orissa. Whatever may have been his connection prior to 1809 with the Temple, the history of the Temple shows that the Muslim Rulers had removed him and were carrying on the management of the Temple directly through Hindu officers appointed by them. The right of management was conferred on the appellant's ancestor after the British conquest by virtue of the Regulation of 1809 and other laws passed thereafter. All that the Act has done is to replace his sole right of management by appointing a committee of which he is the chairman. Further there can be in the circumstances no question of the application of Art. 31(2) in the present case. In the first place the right of superintendence is not property in this case for it carried no beneficial enjoyment of any property with it, and in the second case, that right has not been acquired by the State which Art. 31(2) requires. As was pointed out in *Tilkayat Govindlalji's* case(1), all that has happened in the present case is that the sole right of the appellant to

(1) [1964] 1 S.C.R. 561.

manage the property has been extinguished and in its place another body for the purpose of the administration of the property of the Temple has been created. In other words the office of one functionary is brought to an end and another functionary has come into existence in its place. Such a process cannot be said to constitute the acquisition of the extinguished office or the vesting of the rights in the person holding that office: (see *Tilkayat Govindlalji's* case(1).

As we have already pointed out, the appellant and his predecessors always had two distinct rights with respect to this Temple. In the first place, they were the adya sevaks and as such had certain rights and privileges and perquisites. The rights as adya sevak as we shall show later have not been touched by the Act. The Act has only deprived him of the second right *i.e.*, the sole management of the Temple which carried no beneficial enjoyment of any property with it and has conferred that management on a committee of which he still remains the chairman. In view of this clear dichotomy in the rights of the appellant and his predecessors there is no question of Art. 31(2) applying in the present case at all, insofar as this right of superintendence of the appellant is concerned. The attack on the constitutionality of the Act on the ground that the sole right of superintendence has been taken away from the appellant and that is hit by Art. 19(1)(f) or Art. 31(2) must therefore fail.

This brings us to the other aspect of the rights of the appellant as adya sevak, and it is urged that those rights have been taken away by the Act, and insofar as the Act has done that it is unconstitutional in that the provisions with respect to those rights are unreasonable and cannot be protected under Art. 19(5). Now we have already referred to the provisions of the Act, and if one looks at those provisions one finds nothing in them which takes away the rights of the appellant as adya sevak. If anything, there are indications in the Act to show that his rights, other than those of superintendence remain intact. When we say this we are not to be understood as saying that any rights which the appellant might have had in the capacity of adya sevak but which were of the nature of secular management of the Temple would still remain in him. Because the appellant and his predecessors were holding a dual position of superintendent and adya sevak, there was in the past a mix-up of his rights flowing from being an adya sevak with his rights as a superintendent. But apart from the rights which vested in him as the sole manager of the Temple with respect to its management and which have only been taken away from him by the Act, we find nothing in the Act which takes away his rights as an adya sevak (i.e. the chief servant) of Lord Jagannath in the matter of sevapuja, nitis etc. These rights flow from his position as adya sevak, they

(1) [1964] 1 S.C.R. 561. ...

1964

Raja Birakishore v. The State of Orissa

Wanchoo, J.

are religious in character and are referable to his status and obligations as sevak. We may in this connection refer to s. 8 of the Act which lays down that nothing in s. 7 shall be deemed to affect the rights and privileges of the Raja in respect of Gajapati Maharaja Seva merely on the ground that the Raja has ceased to perform the duties of the chairman for the time being. This provision clearly shows that even though the appellant may not be able to act as chairman of the committee because of his minority or because of certain disqualifications mentioned in s. 7 read with s. 10(1), his rights and privileges in respect of the Gajapati Maharaja Seva (*i.e.*, the daily sevapuja of Lord Jagannath) remain unaffected, and these were the rights which he had as adya sevak. Therefore s. 8 preserves by the clearest implication the rights of the appellant as adya sevak in connection with the sevapuja of Lord Jagannath. In this connection our attention was drawn to s. 14 of the Act, which provides that it shall be within the power of the State Government by order to direct from time to time the payment from out of the Temple fund to the chairman of such allowances at times and in such manner as the State Government may consider reasonable and proper. It is said that in view of s. 14, the appellants rights and privileges as adya sevak have gone. We are of opinion that this is not so. As we have already said, the position of the superintendent and of adya sevak were two different positions, which the appellant and his predecessors held in this Temple. His position as a Superintendent has gone and in place of it he has become the chairman of the committee constituted under s. 6. When s. 14 speaks of allowances to him, it refers to his position as a chairman, which replaces his position as superintendent before the Act. It has nothing to do with his position as an adya sevak, which is safeguarded by s. 8 of the Act inasmuch as rights and privileges in respect of the Gajapati Maharaja Seva are protected, even though he may cease to be the chairman on account of his minority or on account of some other reason. Therefore, the provisions of s. 14 refer to allowances only as a chairman and have nothing to do with the rights, privileges and perquisites as an adya sevak, for he remains as adya sevak even though he may not for certain reasons remain a chairman. His rights, privileges and perquisites as adya sevak will remain protected under s. 8 even though he may not be entitled to anything under s. 14 if he ceases to be the chairman in view of s. 7. No provision in the Act has been pointed out to us, which expressly takes away his rights, privileges and perquisites as adya sevak; on the other hand there are other provisions which seem to indicate that even the rights and privileges of sevaks have not been affected by the Act. If so it is hardly likely in the absence of any specific provision, that the Act would affect the privileges of the appellant as adya sevak. For example, s. 21 (2) (g) gives power to the

administrator to decide disputes relating to the rights, privileges, duties and obligations of sevaks, office-holders and servants in respect of sevapuja and nitis, whether ordinary or special in nature. This clearly postulates that the rights and privileges of sevaks remain intact, and if there is any dispute about them, the administrator has to decide it. Again s. 21(2)(f) provides that the administrator shall have power to decide disputes relating to the collection, distribution or apportionment of offerings, fees and other receipts in cash or in kind received from the members of the public. This again postulates a right in some persons who could only be sevaks etc. to a share of the offerings, fees and other receipts, and if there is any dispute about its distribution or apportionment, the administrator has been given the power to decide it. Reading these two clauses together, there can be no manner of doubt that the Act does not affect even the rights, privileges and perquisites of sevakas. If so, in the absence of express provision, it cannot possibly be argued that the Act affects rights, privileges and perquisites of adya sevak. As we have already indicated, those rights, privileges and perquisities of adya sevak have also been safe guarded under s. 8 of the Act. Then we may refer to s. 21 (3) which provides that "the administrator may subject to such conditions, if any, as the committee may, by general or special order impose, afford facilities on payment of fees for special darshan or for any special service, ritual or ceremony such darshan, service, ritual or ceremony not being inconsistent with the custom and usage of the Temple and he shall have power to determine the portion, if any, of such fees which shall paid to the sevakas, office-holders or servants of the Temple." This again postulates that the rights, privileges and perquisites of the sevaks are not to be affected by the Act but have to be governed by the record of rights or, as the case may be, by the order of the committee. The argument that the Act is *ultra vires* because it takes away the rights, privileges and perquisites of the appellant as adya sevak, some of which may be property must therefore fail in view of the specific provision in s. 8 and indications in other provisions of the Act to which we have referred.

Clause (1) of s. 15 of the Act is however specially attacked as interfering with the religious affairs of the Temple. The rest of the provisions of that section deal so obviously with secular matters that they have not been challenged. This clause provides that it shall be the duty of the committee to arrange for the proper performance of sevapuja and of the daily and periodical nitis of the Temple in accordance with the record of rights. As we read this clause we see no invasion of the religious affairs of the Temple therein. All that it provides is that it shall be the duty of the committee to arrange for the proper performance of sevapuja etc. of the Temple in accordance with

1964

Raja Birakishore v. The State of Orissa

Wanchoo, J.

the record of rights. Sevapuja etc. have always two aspects. One aspect is the provision of materials and so on for the purpose of the sevapuja. This is a secular function. The other aspect is that after materials etc. have been provided, the sevaks or other persons who may be entitled to do so, perform the sevapuja and other rites as required by the dictates of religion. Clause (1) of s. 15 has nothing to do with the second aspect, which is the religious aspect of sevapuja; it deals with the secular aspect of the sevapuja and enjoins upon the committee the duty to provide for the proper performance of sevapuja and that is also in accordance with the record of rights. So that the committee cannot deny materials for sevapuja if the record of rights says that certain materials are necessary. We are clearly of the opinion that cl. (1) imposes a duty on the committee to look after the secular part of the sevapuja and leaves the religious part thereof entirely untouched. Further under this clause it will be the duty of the committee to see that those who are to carry out the religious part of the duty do their duties properly. But this again is a secular function to see that sevaks and other servants carry out their duties properly; it does not interfere with the performance of religious duties themselves. The attack on this provision that it interferes with the religious affairs of the Temple must therefore fail.

We may now briefly refer to some other sections of the Act which were attacked. Apart from the main sections 5 and 6 by which the appellant was divested of the sole management, the first section so attacked is s. 11 which deals with the dissolution and supersession of the committee. We have not been able to understand how this section can be attacked once it is held that ss. 5 and 6, constituting the committee in place of the Raja, are valid, as we have held that they are for they are the main provisions by which the management has been transferred from the sole control of the Raja to the control of the committee. The next section in this group is s. 19. That section provides for the appointment of an administrator to carry on the day to day administration of the secular part of the affairs of the Temple. We cannot see how this provision is liable to attack once ss. 5 and 6 are held good, for the committee must have some officer under it to carry on the day to day administration. The next provision that is attacked in this group is s. 21, which deals with powers and duties of the administrator. Again we cannot see how this provision can be attacked once it is held that the appointment of the administrator under s. 19 is good, for s. 21 only delimits the powers and duties of the administrator, and all powers and duties therein specified are with respect to the secular affairs of the Temple, and have no direct impact on the religious affairs thereof. The next section in this group is s. 21-A. That section is clearly concerned with the secular management of the Temple, for the disciplinary

powers conferred thereby on the administrator are necessary in order to carry on the administration of the secular affairs of the Temple. The next section which is attacked is s. 30, which gives over all supervisory power to the State Government. We cannot see how the control which the State Government is authorised to exercise by s. 30 over the committee can be attacked once the appointment of the committee is held to be good. The last section under this group is s. 30A, which creates a criminal offence and makes sevaks etc. liable to a fine on conviction. We think it unnecessary for present purposes to consider the validity of this section. The matter can be decided if and when a case of prosecution under that section ever arises.

This brings us to the contention relating to Arts. 26, 27 and 28 of the Constitution, which were referred to in the petition. Articles 27 and 28 in our opinion have nothing to do with the matters dealt with under the Act. The main reliance has however been placed on Art. 26(d) which lays down that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to administer its property in accordance with law. In the first place besides saying in the petition that the Act was hit by Art. 26 there was no indication anywhere therein as to which was the denomination which was concerned with the Temple and whose rights to administer the Temple have been taken away. As a matter of fact the petition was filed on the basis that the appellant was the owner of the Temple which was his private property. There was no claim put forward on behalf of any denomination in the petition. Under these circumstances we are of opinion that it is not open to the appellant to argue that the Act is bad as it is hit by Art. 26(d). The argument addressed before the High Court in this connection was that the worshippers of Lord Jagannath constitute a distinct religious denomination within the meaning of Art. 26 and that they had a right to administer the Temple and its endowments in accordance with law and that such administration should be only through the Raja of Puri as superintendent of the Temple assisted by the innumerable sevaks attached thereto. But inasmuch as the Act has taken away this right of management from the religious denomination, *i.e.*, the worshippers of Lord Jagannath, and entrusted it to the nominees of the State Government, there had been a contravention of the fundamental rights guaranteed under cl. (d) of Art 26. This argument was met on behalf of the State with the contention that the Temple did not pertain to any particular sect, cult or creed of Hindus but was a public temple above all sects, cults and, creeds, therefore, as the temple was not the temple of any particular domination no question arose of the breach of cl.(d) of Art. 26. The foundation for all this argument which was

1964

Raja Birakishore v. The State of Orissa

Wanchoo, J.

urged before the High Court was not laid in the writ petition. In these circumstances we think it was unnecessary for the High Court to enter into this question on a writ petition of this kind. The High Court however went into the matter and repelled the argument on the ground that the Temple in the present case was meant for all Hindus, even if all Hindus were treated as a denomination for purposes of Art. 26, the management still remains with Hindus, for the committee of management consists entirely of Hindus, even though a nominated committee. In view of the defective state of pleadings however we are not prepared to allow the argument under Art. 26(d) to be raised before us and must reject it on the sole ground that no such contention was properly raised in the High Court.

For these reasons we find there is no force in this appeal and it is hereby dismissed with costs.

Appeal dismissed.