

C. Suntharalingam - - - - - - - *Appellant*

v.

The Inspector of Police, Kankesanturai - - - *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 6TH OCTOBER 1971

Present at the Hearing:

LORD GUEST
LORD WILBERFORCE
LORD SIMON OF GLAISDALE
LORD CROSS OF CHELSEA
SIR GORDON WILLMER

[*Delivered by* LORD WILBERFORCE]

The appellant, by special leave, appeals against his conviction of an offence under section 2 (read with section 3(b)) of the Prevention of Social Disabilities Act 1957 in respect of which he was sentenced to a fine of Rs.50/-. His appeal from the Magistrate's Court of Mallakam to the Supreme Court was dismissed.

The facts are that the appellant, a Hindu by religion, on 1st July 1968 prevented one Murugesu Sinniah, also a Hindu by religion but socially of a lower caste, from entering the inner courtyard of the Maviddapuram Temple for the purpose of worshipping.

The appellant, who acted with the authority of the High Priest of the Temple, used no force: the Magistrate accepted his evidence that he excluded Sinniah in order to prevent bloodshed and held that his presence prevented an ugly situation erupting with violence. He found however that the appellant prevented Sinniah from entering the inner courtyard by reason of his caste: Sinniah belonged to the Palla caste which, as the Magistrate found, worshipped from outside, this being the religious usage and custom of the people of his caste.

The relevant portions of the Prevention of Social Disabilities Act 1957 are the following:

THE PREVENTION OF SOCIAL DISABILITIES ACT
No. 21 OF 1957

“An Act to prevent the imposition of Social disabilities on any persons by reason of their caste.

* * * * *

“2. Any person who imposes any social disability on any other person by reason of such other person’s caste shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding six months or to a fine not exceeding one hundred rupees.

“3. For the purpose of section 2, a person shall be deemed to impose a social disability on any other person—

“(a) if he prevents or obstructs such other person from or in—

“(i) being admitted as a student to, or being employed as a teacher in, any educational institution . . .

“(b) if he prevents or obstructs such person, being the follower of any religion, from or in entering, being present in, or worshipping at any place of worship to which followers of that religion have access . . .”

It is clear, on the Magistrate’s findings, that the action of the appellant fell directly within section 2 as read with section 3 (b): the appellant did not submit otherwise.

He contended however that the 1957 Act was invalid, or ineffective, for either, or both, of two reasons:

1. That it contravenes section 29 (2) (d) of the Ceylon (Constitution) Order in Council (C. 379).

2. That the governing provision in relation to customary rights and privileges of the castes to which the appellant and Sinniah belong is the Tesawalamai Regulation (C. 63) section 4, and that this was not displaced or overridden by the 1957 Act.

The appellant, in his printed case, referred also to section 29 (2) (a) of the Constitution which enacts that no law in Ceylon shall “prohibit or restrict the free exercise of any religion”. But the respondent objected that no reference had been made to this provision in the judgments of the Courts below. The appellant agreed that this point had not been taken by him in the Supreme Court. The respondent also argued that the evidential material which would be required if it were to be considered was not before either Court or before the Board. Their Lordships were of opinion that so fundamental a question as one which concerned the constitutional validity of the 1957 Act, under the “free exercise of religion” provision of the Constitution, could not be entertained in the absence of any consideration of it by the Courts of Ceylon, and without the necessary evidence as to what is comprised in Ceylon within the phrase “the free exercise of religion”. Accordingly they upheld the respondent’s objection and allowed argument only on the two points stated above.

Their Lordships deal first with the Constitutional objection. The relevant provisions of the Order in Council are the following:

“29. (1) Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order and good government of the Island.

(2) No such law shall—

* * * * *

(d) alter the constitution of any religious body except with the consent of the governing authority of that body, so, however, that in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing authority of that body: . . .”

These provisions are to be applied in the light of the well known principle that “unless . . . it becomes clear beyond reasonable doubt

that the legislation in question transgresses the limits laid down by the organic law of the Constitution, it must be allowed to stand as the true expression of the national will" (*Shell Company of Australia v. Federal Commissioner of Taxation* [1931] A.C. 275, 298, citing Isaacs J.).

The evidence as to the organisation of the Maviddapuram Temple consisted of certain orders of the Supreme Court and of the District Court of Jaffna in an Action No. 16608 made between 8th November 1949 and 20th November 1954. On the latter date the District Court made a final order approving a Scheme of Management for the Temple. This Order declared that the Temple and all its properties constituted a public charitable religious trust under section 99 of the Trust Ordinance, No. 9 of 1917 (C. 72): that one Subramaniakurukkal Duraisamy Kurukkal was the hereditary trustee and high priest of the Temple, and after him his heirs; that the Temple and its temporalities should vest in the hereditary trustee and his successors in title. So far as these provisions are concerned there is no basis for contending that anything in the Act of 1957 impinged upon them or prevented them from continuing to have effect. The appellant however relied upon a further provision (contained in the Order of the District Court of 20th November 1954) that he (s.c. the hereditary trustee and high priest) "shall be responsible for the proper conduct and performance of the poojahs".

The appellant's argument was that admission of persons of the depressed classes, of the Palla caste in particular, would result in a defilement which would make performance of the poojahs impossible. But their Lordships are in agreement with the Magistrate and with the Supreme Court both of whom held that this is not a matter which would affect the constitution of the Temple within the meaning of section 29(2)(d) of the Constitution. They should add that they are not, in any event, satisfied that the necessary factual premise was established by the evidence, and there was no finding to that effect by the learned Magistrate.

Thus the Act of 1957 cannot be said to be invalid by reason of section 29(2)(d) of the Constitution.

Their Lordships consider next the alternative submission of the appellant based upon the Tesawalamai, section 4 of which is in the following terms:

"4. All questions that relate to those rights and privileges which subsist in the said province between the higher castes, particularly the Vellales, on the one hand, and the lower castes, particularly the Covias, Nalluas, and Palluas, on the other, shall be decided according to the said customs and the ancient usages of the province."

Three questions are involved: first, were the relevant caste distinctions relating to entry to or exclusion from Hindu Temples, or portions of Hindu Temples, part of the rights and privileges referred to in section 4 of the Tesawalamai and which under that section were to be decided according to the customs and ancient usages of the Jaffna Province. Second: did the Act of 1957 have any effect upon pre-existing social disabilities, or did it only relate to, and make illegal, fresh disabilities imposed after it came into force. Third, does the Act of 1957 prevail over the customary rights and privileges referred to in section 4 of the Tesawalamai Regulation and, in particular, does it prohibit the making of caste distinctions relating to entry to or exclusion from Hindu Temples.

On the first point, it was submitted by Counsel for the respondent, in an interesting argument, that distinctions of caste in matters of religion, were not dealt with or preserved by the Tesawalamai at all. It was pointed out that section VIII of the Tesawalamai, in which mention is made of the four depressed castes, is a section dealing exclusively with

slavery. "The slaves of this country" it states "are divided into four castes, viz. Koviars, Chandars, Pallars and Nalavars". It describes the duties and obligations of these castes, and states that the latter two are slaves from their origin and remain so "till the present time". The status of slavery in Ceylon was abolished in 1844 (Ordinance No. 20, 20th December 1844) and all laws and ordinances tolerating slavery were repealed. From then on, and at the present time, so it was argued, the Tesawalamai ceased to contain any significant provision relating to caste: the present Regulation (1956 Revision) appears in fact only to contain one reference to caste at all, Part II, para. 7, dealing with adoption. Thus there is no warrant for supposing that such religious customs as may exist among Hindus, and which are based upon caste, are validated by the Tesawalamai Regulation. It is true that religious usages have been upheld by the Courts of Ceylon—see *Kurukkal v. Nuranny* C.L.R. of Ceylon 1910 Vol. II, p.182, where an injunction excluding persons of the barber caste from a Temple was granted. But this case supports the respondent rather than the appellant, for it was not based upon any regulation prevailing in Ceylon, but upon the rights of the managers. A proprietary or quasi-proprietary right is quite a different thing from a right validated by regulation, and is one which there would be no difficulty in holding to be abrogated by the Act of 1957.

The appellant, in answer to this argument, pointed out that section 4 of the Tesawalamai Regulation contains no express reference to caste as such. It referred to customs and ancient usages. The word "caste" is a foreign word in Ceylon: what is in issue in this case is a very ancient body of religious usage, unconnected with the status of slavery. It was these religious usages which were intended to be validated or given statutory recognition by the Tesawalamai Regulation.

Their Lordships do not think it necessary in this appeal to decide between these two contentions. Indeed they would be reluctant to do so without much deeper research into the history of the Tesawalamai on the one hand and of Hindu religious usage in Ceylon on the other. They will assume for the present purposes, as was the view of the learned Magistrate, that prior to the Act of 1957 the Tesawalamai Regulation applied to and gave legislative sanction to such Hindu customary religious usages as are involved in the present case. The real question is whether these survived the Act of 1957.

Their Lordships are clearly of opinion (this is the second point mentioned above) that the Act of 1957 did not merely prohibit, for the future, the imposition of fresh social disabilities but as from its date made illegal the imposition of any social disability by reason of caste upon any person. Even if the words of section 2 ("any person who imposes any social disability on any other person") were equivocal, so that "imposition" could refer to some new burden, section 3 (which is that applicable in the present case) puts the matter beyond any doubt. It brings within the definition of imposing a social disability acts of prevention or obstruction, which can only occur after the Act comes into force; and it is quite irrelevant that similar acts may have occurred before. Such acts are directly made illegal. To make them legal if based on some pre-existing authority, the addition of qualifying words would be needed: no such words are contained in the section. Their Lordships are therefore at one with the learned Chief Justice in disagreeing with the expression of opinion of T.S. Fernando J. in *Sevvanthinathan v. Nagalingam* (1960) 69 N.L.R.419, where he said that he was inclined to the view that the Act of 1957 only prevented the imposition of new disabilities.

Finally (the third question), can section 4 of the Tesawalamai Regulation survive the passing of the Act of 1957? In their Lordships' opinion it cannot. They do not consider it profitable to discuss whether either and which of these pieces of legislation was special or general. They find it sufficient to apply the well settled rule that if "the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together, the earlier is abrogated by the later;" (Maxwell on Interpretation of Statutes 12th edition (1969) pp. 193 ff and cases cited). The firm language of sections 2 and 3 of the Act of 1957, as its own wording shows, is inconsistent in the fullest sense with the survival of rights to prevent a person, by reason of caste, from entering in or worshipping at any place of worship to which followers of that religion have access, whether or not such rights are founded on custom or regulation or on a combination of both. It is the precise negative of whatever positive authority previously existed. If these rights were validated by section 4 of the Tesawalamai Regulation, section 4 is pro tanto repealed.

The appellant's attack on the validity of the 1957 Act must therefore fail and it follows that his conviction must stand. Their Lordships would only add, in order to avoid misunderstanding, that the exclusion which is made illegal by sections 2 and 3(b) of the Act of 1957 is exclusion by reason of the caste of the person excluded. Exclusions of followers or worshippers, from places of worship within a Temple on religious grounds unconnected with caste, for example exclusion of all except the High Priest from the Moolaistanam, are unaffected by the Act.

Their Lordships, for these reasons, will humbly advise Her Majesty that this appeal be dismissed.

In the Privy Council

C. SUNTHARALINGAM

v.

**THE INSPECTOR OF POLICE,
KANKE SANTURAI**

DELIVERED BY
LORD WILBERFORCE