Privy Council Appeal No. 78 of 1937

Bengal Appeals Nos. 29 of 1934 and 2 of 1935

Satish Chandra Giri - - - - - - *Appellant*

v.

Dharanidhar Singha Roy and others - - - *Respondents*

Dharanidhar Singha Roy and others - - - *Appellants*

v.

Satish Chandra Giri and others - - - - *Respondents*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 3rd NOVEMBER, 1939

Present at the Hearing:
LORD MACMILLAN
SIR GEORGE RANKIN
MR. M. R. JAYAKAR
[*Delivered by* MR .M. R. JAYAKAR]

These two appeals are against a decree dated 6th July and 24th August 1934, of the High Court of Judicature at Calcutta, modifying a preliminary decree dated 6th November 1929, of the Court of the District Judge of Hoogly. The suit in which the decrees were passed was instituted under section 92 of the Code of Civil Procedure 1908, by certain persons claiming to be interested in the administration of the shrine of Sri Taraknath near Calcutta, against one Satish Chandra Giri, the appellant in the main appeal (No. 29 of 1934) (hereinafter called the appellant), who was described as the shebait or mahant of the said shrine.

The shrine of Taraknath, though sometimes referred to in the present proceedings as a math, is in reality a temple containing an idol called Sri Taraknathji. Its origin is lost in antiquity. The High Court of Calcutta has in its judgment traced its history back to 1747 A.D., and there is no doubt that it is a very ancient public, religious and charitable endowment, of which the appellant had been for many years the mahant. It is unnecessary for the purposes of this appeal to enter into the details of its antiquity. It is sufficient to say that the succession to the mahantship descended from one Mohan Giri, the mahant in 1799, who acquired properties while he held that office. These properties along with the

mahantship came to be vested, through successive holders, in one Madhab Giri in or about the year 1864. On 17th November, 1873, he executed a document in favour of his senior chela Shamchand Giri. By that document, Madhab Giri, who was at that time about to face a trial for sexual misbehaviour, appointed Shamchand Giri to manage, in the event of his incarceration, the properties of the temple during his absence. The properties were stated to be of twofold character: debottar (properties belonging to the temple) and nij (private properties of the mahant), of which a list was appended to the document. The document also provided that, on the return of Madhab Giri, Shamchand Giri was to hand over to him possession of both classes of property and render an account in respect of each, but if Madhab Giri died before his return, Shamchand Giri was to succeed him.

Madhab Giri was convicted and sentenced on 25th November 1873. After his release in December 1876, he obtained possession of all the properties from Shamchand Giri, but the latter instituted a summary suit for possession against Madhab Giri and obtained a decree on 28th August 1877.

On 29th December 1877, Madhab Giri instituted a suit against Shamchand Giri, on the strength of the document mentioned above, for the recovery of the properties in Shamchand Giri's possession. There were *inter alia* two schedules annexed to the plaint: schedule Ka, which was a list of debottar properties and schedule Kha, a list of the properties claimed as nij. Madhab Giri prayed, amongst other things, that, according to the document of 17th November 1873, Shamchand Giri was bound to deliver possession and was not entitled to deny Madhab Giri's title or set up an adverse one and that it might be declared that the properties mentioned in schedule Kha were Madhab Giri's personal or private properties. Shamchand Giri contested the suit, mainly on the ground that he had no knowledge of the said document, that Madhab Giri had forfeited his title to the office of mahant by reason of his sexual misbehaviour and that Shamchand Giri had been duly appointed mahant in his place.

On 5th December 1878, the District Judge delivered judgment, holding that Shamchand Giri was not a duly appointed mahant, that Madhab Giri had not forfeited the mahantship on account of his misbehaviour, that the document of 17th November 1873, was genuine and Madhab Giri was entitled to keep possession of the properties therein mentioned. The District Judge further held that the properties in schedule Kha were not the nij properties of the mahant. In the result, he held that Madhab Giri was entitled to recover possession of the office of mahant, with the properties in both the schedules Ka and Kha, which belonged to the endowment of the idol. Madhab Giri's claim to the properties in schedule Kha as his private properties was dismissed. A decree dated 5th November

1878, giving effect to the judgment, was drawn up. There was an appeal by Shamchand Giri and cross-objections by Madhab Giri. It is to be noted that in his cross-objections Madhab Giri raised no objection to the decision of the District Judge that the properties in schedule Kha were not the private properties of the mahant. Madhab Giri thereafter applied for possession in accordance with the decree, making no distinction between the two kinds of properties and eventually he recovered possession of both. These facts may not operate as an estoppel against the appellant, but their evidentiary value cannot be denied in connection with the appellant's contention in the present suit that the said properties and their accretions are his private properties.

Madhab Giri died on 11th March 1893. He left a will dated 5th March 1893, whereby he appointed the appellant his successor as mahant and also executor of the will. He devised the nij properties to the appellant absolutely. The appellant accordingly ascended the gadi and applied for probate of the will, which was granted by the High Court of Calcutta on 1st July 1895.

In September 1922, four persons, who are now respondents 1-4 in the first appeal and appellants 1-4 in the second appeal here, and three others, who have since died, instituted the present suit (No. 28 of 1922) in the Court of the District Judge of Hoogly, against the appellant. During the pendency of the suit, three other persons were added as plaintiffs and they are parties to these appeals. All these persons are hereinafter referred to as plaintiffs.

The suit was instituted under section 92 of the Code of Civil Procedure. There were 13 prayers, out of which the following are material at the stage of this appeal:—

> " 1. For a declaration that certain properties specified in the schedules annexed to the plaint were not the nij properties of the appellant, but belonged to the deity.
>
> " 2. For a declaration that the appellant was not a fit and proper person to continue as mahant or trustee of the said trust estate and that he might be removed from such office by the order of the Court.
>
> " 3. That in his place a fit and proper person be appointed as mahant and trustee of the temple and of its properties.
>
> " 4. That all the properties adjudged to be trust properties be vested in the new mahant and that the appellant be directed to make over their possession to him.
>
> " 5. For an account.
>
> " 6. For the settlement of a scheme for the proper management and control of the trust properties."

The appellant contested the suit and denied the material allegations contained in the plaint. He filed a lengthy written statement. Shortly stated, his defence was that the temple was not a public, religious or charitable endowment within the meaning of section 92; that the mahant managed the debottar properties as " malik " owner, that he took his predecessor's nij properties under an absolute bequest contained in his will, that he could and did acquire new properties, which were his nij properties, that he was not of

immoral character, as alleged in the plaint, nor was he guilty of a breach of trust, nor of mismanagement or misappropriation of any part of the trust properties, that he was a fit and proper person to act as mahant, having acted as such for over 30 years and that he was not liable to render an account of the trust properties.

On these pleadings, the District Judge framed appropriate issues and delivered judgment on 6th November 1929. He found all the issues in favour of the plaintiffs and also that the charges of immorality and misappropriation made against the appellant were proved. A decree was passed, of which the following are the material terms:—

> " 1. The Tarkeshwar endowment was a public, charitable and religious trust.
>
> " 2. The properties mentioned in certain schedules to the plaint were debottar properties of the temple.
>
> " 3. The appellant was not entitled to have any nij property of his own and the properties claimed by him as nij, whether acquired in his own name or in the names of other persons, belonged to the temple.
>
> " 4. The appellant was not a fit person to continue as mahant, that he was removed from that office and was to forthwith make over possession of all properties to the temple, to be vested in the receiver, pending further orders.
>
> " 5. The appellant was to render accounts of both sets of properties, from the day he ascended the gadi to the present time.
>
> " 6. A scheme for the proper administration and control of the trust estate was to be framed."

Against the said judgment and decree the appellant filed an appeal (1 of 1930). Plaintiffs also filed a cross-objection on the ground that, upon the findings arrived at, the Court below ought to have directed accounts to be taken from the appellant on the footing of wilful default. The appeal and cross-objection were eventually heard by a Bench of the High Court of Calcutta (Manmatha Nath Mukerji and Sarat Kumar Ghose JJ.) who affirmed the findings of the District Judge and his decree, with the following variations:—

> " 1. The order for accounts against the appellant was set aside.
>
> " 2. Certain properties claimed in the plaint and held by the District Judge to be debottar properties were excluded from the decree."

The appellant's appeal and the plaintiffs' cross-objection were dismissed.

On the question of misappropriation and breach of trust by the appellant, the learned Judges held that the appellant had diverted trust funds for the purpose of self-aggrandisement and for the benefit of others who were not entitled thereto and that gross breaches of trust on a most gigantic scale had been proved against the appellant. On the issue relating to the appellant's moral character and habits of life, the High Court went into the details of the charges made against him and held them substantially proved. About the appellant's fitness to continue as mahant and his liability to be removed from his office the learned Judges observed

that by reason of the continuous course of the misappropriation of trust properties in which the appellant had indulged on a most extensive scale, the breaches of trust which he had systematically committed in respect of such properties, the unfounded claim thereto which he had persistently put forward and in pursuance of which he had treated such properties as his own properties, and the life he had led which was repugnant to the intention of the trust, the appellant had rendered himself unfit to continue in such office. They further observed that infinitely more than what would justify the removal of a trustee of a public, religious and charitable endowment had been established, that, on the most charitable view of the appellant's conduct and his dealings with the endowment, it was impossible to resist the conclusion that the interest of the endowment peremptorily demanded the removal of the appellant from his office as mahant. In setting aside the District Judge's order for accounts against the appellant and in dismissing the plaintiffs' cross-objection on the same question, the learned Judges left it open to the deity or anybody, who would represent him in future, to recover such other properties as there might be belonging to the endowment and to sue the appellant for accounts.

The question of framing a suitable scheme was considered by the District Judge after the other issues had been decided. He delivered a separate judgment framing a scheme for the administration of the endowment. It was the subject of a separate appeal to the High Court and was disposed of by a separate judgment.

The appellant applied to the High Court for a certificate of fitness. It was granted to him in the main appeal (No. 29 of 1934) and refused in the appeal (No. 30 of 1935) relating to the framing of the scheme. A certificate (appeal No. 2 of 1935) was likewise granted to the plaintiffs respondents in respect of the liability of the appellant to account on the basis of wilful default.

Since the leave to appeal to His Majesty in Council was granted, the scheme has been given effect to and a new mahant and a committee of management have been appointed. They have taken over charge of the property from the Receiver. It is to be noted that the new mahant is not a party to the appeals before the Board and there is no question now before their Lordships relating to the scheme.

From the foregoing history of the proceedings it is clear that many of the questions arising in the appeal are concluded by concurrent findings of fact and there is strong reason in the present case why their Lordships should be slow to depart from the rule of practice, which, though not a rule of law nor a rigid rule, plays an important part in the exercise of the prerogative—that concurrent findings of facts will not be disturbed.

The question about the nij properties, which has been decided against the appellant, falls under this category.

These properties are admittedly accretions to the original nucleus of five putni taluks, having been acquired out of their income.

In the light of past events, their Lordships find no difficulty in understanding the contention of the appellant and his predecessors as regards the nij properties. They were throughout claimed as the private and absolute properties of the mahant. Before the Board, however, the appellant's counsel sought to make a distinction and endeavoured to place them in an intermediate category of properties which, though personal and private, the mahant could not dispose of, as he was under an obligation to use their income, in case of deficiency, for the purposes of the temple, but as regards the surplus, he could dispose of it in any way he liked and was not liable to render an account thereof. Their Lordships find in the facts of this case no justification for such distinction, which may in certain cases be justified as the creature of the immemorial customs of the institution. In his defence, the appellant claimed the nij properties as absolutely belonging to him under the provisions of his predecessor's will, and the question must be decided on that footing, and cannot admit of the refinements urged by his counsel. Their Lordships see no reason to differ from the concurrent findings of the lower Courts on this question.

With reference to this question, there are undoubtedly a few subsidiary points on which the High Court disagreed with the District Judge, but, in their Lordships' opinion, this difference of view in no way weakens the main finding of the High Court, which is clear. The learned Judges held that upon the views, circumstances and probabilities they had dealt with, they had come to the conclusion, about the correctness of which they entertained no doubt whatever, that the claim to the nij properties which the appellant had asserted was entirely unfounded. They added that the material documents properly read were unequivocal in their terms and left no vestige of doubt that Mohun Giri (the original acquirer) never treated the putni taluks as his personal property, nor intended that Raghuchandra Giri (his successor) should ever regard them as such. The learned Judges went on to observe that, in arriving at this conclusion, they were not unmindful of the fact that they had not been able to ascertain the exact sources from which Mohun Giri had acquired the five parent taluks; but notwithstanding it, they were firm in their conclusion that there was no foundation for the supposition that he acquired or left any properties as his personal properties, as distinguished from the properties of the deity.

It was argued that in arriving at this conclusion, the learned Judges contradicted their view, expressed in an earlier part of the judgment, that the onus was on the plaintiffs to prove that the said properties belonged to the temple. Their Lordships, however, on a proper appreciation

of the High Court's judgment, can detect no such contradiction. The entire evidence was before the learned Judges, which they considered with great care and scrutiny and their Lordships cannot allow the question to be reopened.

Likewise, on the question of the appellant's moral character and his consequent unfitness to occupy the office of mahant, there is a concurrent finding of fact which cannot be disturbed. It was argued that the appellant's moral character could not be considered in any suit under section 92 of the Code of Civil Procedure. Their Lordships are unable to agree with this contention. The question of his character was not considered *in vacuo*, but as directly relevant to some of the issues which arose under section 92, e.g., his fitness to remain in office and his liability to be removed therefrom.

It may be noted that the decree of the lower Courts directing the appellant's removal from office was not based entirely on his immorality, but partially upon the finding of a continuous course of misappropriation of trust properties on a most extensive scale, the breaches of trust which he had systematically committed in respect of such properties, the unfounded claim thereto which he persistently put forward and in pursuance of which he treated such properties as his personal properties.

The main point argued before their Lordships is the following:—

The mahant, it is said, acts in two distinct capacities: he is the spiritual head of the endowment, the shebait of the deity. He is also the trustee and manager of the properties and temporal affairs of the temple and the deity. It is, therefore, contended that a civil Court has jurisdiction under section 92 of the Civil Procedure Code over his latter capacity only; it has no power to pass any orders affecting his spiritual position or his control over the spiritual affairs of the deity or endowment, and that, under that section, the Court can deprive him only of the trusteeship and management of the temporal affairs of the endowment, but it cannot remove him from his spiritual duties. A contrary view, it is contended, will enable a civil Court to assume ecclesiastical jurisdiction over the religious affairs of the endowment.

Before their Lordships examine the soundness of this contention, it is material to note that during the long and protracted hearing of this case in the lower Courts, no distinction was made between the two sets of duties, and the question now urged before the Board was not raised in the appellant's written statement, is not dealt with in the exhaustive judgments of the Courts below, nor mentioned in the elaborate grounds of appeal to His Majesty in Council.

On the question whether the two capacities are distinct as alleged by the appellant or interrelated, it is useful to turn to the pleadings to ascertain what the common view of the parties was.

Para. 4 of the plaint is as follows:—

> " The management of that sheba (worship) and sadabrata at the said math or shrine, and also of the debottar properties thereto appertaining and belonging to the said thakur (deity), was and has always been, according to the ancient customs and usage of the math, entrusted to a mahant, who, as the trustee thereof, discharges all the duties of a shebait in connection therewith. Save as aforesaid, as such shebait and trustee, the mahant of Tarakeswar has no personal or any other right to the said math and the properties thereto appertaining and belonging to the said thakur (deity)."

This allegation was met by para. 20 of the appellant's written statement, which is as follows:—

> " According to the long established custom and usage of the math, the mahant for the time-being makes all arrangements for the sheba (worship) of the said thakur, etc., and manages the debottar properties as malik shebait of the said thakur and that whoever becomes the mahant of the math possesses the right to perform those acts by virtue of his office."

It is clear, therefore, that in the opinion of both the parties, the secular and the religious duties of the mahant, in the temple in question, are interdependent and inseparably blended; and such must be the case in any well-organised institution, if the obligations of the mahantship have to be effectively discharged.

The interconnection of the two aspects of the office was explained by Lord Shaw, who in delivering the judgment of the Board in *Ram Parkash Das* v. *Anand Das** observed:—

> " The mahant is the head of the institution. He sits upon the gaddi; he initiates candidates into the mysteries of the cult; he superintends the worship of the idol and the accustomed spiritual rites; he manages the property of the institution; he administers its affairs; and the whole assets are vested in him as the owner thereof in trust for the institution itself . . . the succession to him in such property follows with the succession to the office."

The two capacities are thus closely intermingled and a proper and efficient discharge of the one depends on the control of the other. The mahant must have authority over the funds and income of the institution to be able to discharge his religious duties efficiently, in conformity with the customary and traditional obligations of the office and to the satisfaction of those who claim the benefit of the worship. He necessarily enjoys large patronage in the discharge of his religious functions. He cannot, in consequence, depend, for the due performance of such duties, on the mercy or caprice of another functionary, with separate or co-ordinate authority over the funds of the institution. Any division of the two capacities would lower his prestige, as also impair the efficiency of his religious functions. On the other hand, the funds of the institution have to be administered with a proper regard to the religious traditions of the institution and the sentiments of its worshippers, of which the mahant, for the time being, is the custodian and interpreter. He furnishes a salutory check upon the

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* (1) 43 I. A. 73, 76.

tendency, which experience proves is not at all infrequent, to administer the funds of the endowment with sole regard to secular and utilitarian considerations. In other words, in all such religious endowments, where tradition and custom play a vital part in intermingling the two functions, their division is unthinkable.

As pointed out in the case of *Striman Sadagopa* v. *Kristna** such offices may have, in reality, a secular character, although religious duties are attached to them, because the occupants are called upon to exercise business functions, either as trustees or managers of the properties and funds of the temple, or as overseers in the regulations of its affairs generally and have necessarily civil rights and consequent liabilities, which may properly be made the subject of civil litigation.

There may, however, be cases where the duties of an office are purely spiritual and moral, entirely unconnected with any particular temple or place. The office may be such that no pecuniary benefit is attached to it or its emoluments are purely voluntary contributions, or the duties attendant to it are the exercise of spiritual and moral supervision over the voluntary actions of the worshippers. In such cases, it may be futile for a civil Court to interfere with the exercise of the duties of the office. No rights of property are connected with it and there is no machinery by which the Court can control the voluntary action of the worshipper or the mahant.

The office in this case is, however, of a different character. It is connected with an endowment which has valuable properties and is associated with the control of extensive funds. Even if the two capacities of the office can be separated, and the mahantship on its spiritual side regarded as purely an office or dignity, there is no doubt that the office is of such a nature that a suit relating to it must fall within the purview of the explanation to section 9 of the Civil Procedure Code, as being a suit of a civil nature lying within the competence of a civil Court, notwithstanding that the functions of such office are associated with religious rites or ceremonies.

There are to be found in the reported rulings, both of this Board and of the Indian High Courts, numerous cases where shebaits, mahants, and in Muslim endowments, mutuvallis and sajjadanashins have been removed by civil Courts from the performance of their temporal as well as religious duties, where the Courts have come to the conclusion, from the evidence adduced, that such removal was necessary in order to safeguard a faithful discharge of the obligations of the office. One such instance of removal is to be found in *Syed Shah Muhammad Kazim* v. *Syed Abi Saghir*.† Their Lordships agree with the observations of Khwaja Mohammad Noor J. that:—

> "Cases may be conceived in which a sajjadanashin or a spiritual head of a Hindu institution, say for instance, a mohunt

* (1863) 1 Mad. H.C.R. 301, 308.

† I.L.R. 11 Patna 288. See also *Sarabjit Bharti* v. *Gowri Nath Kakaji* (1923) 27 Oudh Cases 149.

> of a sangat, may so behave himself that his very connection with the institution may be repulsive to the general public and may amount to desecration of the sacred places; I see no reason why the Courts cannot interfere in such cases." *

Their Lordships are aware that no general rule can be laid down befitting the different kinds of religious heads of varying sanctity and eminence. It must depend upon the facts of each case. It may be that mere mismanagement or incapacity is, in the case of certain high dignitaries, not ordinarily sufficient for their removal from the performance of their religious duties, as distinct from their duties as managers of the properties of the institution. It may also be that a Court, in certain cases, exercises a wise discretion in not directing their total exclusion from their religious office, where, e.g., the lapses are due to causes like a misconception of their position or obligations. The Court may sometimes not order their total removal, but may associate with them a committee of management. But these are all matters for the consideration of the civil Court, which must necessarily enjoy a wide discretion to decide what form of punitive or ameliorative order will suit the requirements of the case. But the jurisdiction of the civil Courts to decide such questions can no longer be doubted.

The true rule in such matters can be stated to be that if it be found by the Court that the functionary, in the exercise of his duties, has put himself in a position in which the Court thinks that the obligations of his office in connection with the endowment can no longer be faithfully discharged without danger to the endowment, that is a sufficient ground for his removal, if need be, from both his offices.

Their Lordships' attention was invited to certain rulings, both of this Board and the High Courts in India, which enumerate and distinguish between the two sets of functions —secular and religious—performed by such religious heads. These rulings, in their Lordships' opinion, merely enumerate and classify such functions. None of them has proceeded so far as to lay down that in cases like the one before their Lordships, where both the functions are intermingled and interdependent and have always been held and performed throughout the long history of the endowment by the same individual, the Court in a fit case will not have the power to remove the individual from the performance of both the functions.

The appellant's counsel conceded, at an early stage of his argument, that the temple in this suit was a trust for public purposes of a charitable or religious nature within the purview of section 92 of the Code of Civil Procedure. If so, it cannot be doubted that the entire office of mahant, which according to the admission of the parties and the evidence in the case is and has always been indivisible and held by the same individual, falls within the operation of that section. No words are to be found either in section 92

* I.L.R. 11 Patna 288 at 346.

or elsewhere excluding the religious part of the mahant's duties from the operation of that section. The only limit to the Court's jurisdiction to entertain suits under that section is to be found in the provisions of section 9 of the Civil Procedure Code, but, for reasons already explained, the spiritual portion of the office in this case—assuming that it could be separated from the secular—is so intimately connected with the exercise of rights to property that a suit relating to it cannot be said to be outside the purview of section 9.

Perhaps the most vital consideration which their Lordships are unable to ignore is the fact that section 92 has been construed, by a long course of Indian decisions, as conferring, in fit cases, jurisdiction on civil Courts to deal with the religious side of such offices. This interpretation has a sound basis; no reason has been shown against it and their Lordships are unwilling to take a narrower view of the section, which may make it inadequate to meet Indian conditions.

A grievance was made by the appellant's counsel that the Courts in India were in error in not giving directions in the decree that the appointment of a successor to the appellant in the office of mahant was to be in conformity with the customs and usages of the endowment. The record of the appeal which is before the Board supplies no reason for imagining that the new mahant was appointed in violation of such usages. He is not a party to the appeal nor is the scheme, which embodies the rules regulating such appointment, before the Board. It is not, therefore, possible to deal with this question.

It now remains to deal with the plaintiffs respondents' cross-appeal. It relates to the accountability of the appellant for his dealings with the trust properties. It is contended that, on the concurrent findings of the Courts in India that the appellant has been systematically misappropriating the property of the endowment, an order for accounts on the basis of wilful default ought to have been passed by the High Court. Their Lordships are clearly of the view that the evidence leaves no doubt that the appellant has rendered himself accountable for the various acts of malversation and breaches of trust committed in the course of his management. But, as the learned Judges of the High Court have pointed out, there are difficulties in passing at this stage a decree for accounts against the appellant. A scheme for the management of the endowment has been framed which is not before their Lordships. A new mahant has been appointed and has taken over charge of the endowment. He is not represented here. Intricate questions of law requiring careful consideration will arise in the course of the determination of this issue and, in their Lordships' opinion, having regard to all these considerations, it is desirable to leave this question to be determined by the new mahant, who will have liberty to apply to the District Judge for the trial of this issue. In doing so, he may consult, if he so desires, those who are

associated with him in the management of the institution, but it will be his exclusive responsibility to proceed with the matter or not. Instead of being driven to a separate suit, the new mahant will be permitted to have this question determined by an application in this suit, after he has had sufficient time to consider the question in the light of the Board's decision of this appeal. The respondents' counsel has agreed to this course.

Their Lordships will, therefore, humbly advise His Majesty that the decree of the High Court be affirmed and the appeal dismissed. The appellant will pay the costs of the respondents who appeared of this appeal. The respondents' cross appeal will be dismissed, and they will bear a twenty-fifth share of the costs of the main appeal payable by the appellant.

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DELIVERED BY MR. M. R. JAYAKAR

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