

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) No.373 of 2006

In the Matter of:

Indian Young Lawyers' Association & Ors.,

... Petitioners

Versus

The State of Kerala & Ors.,

... Respondents

**Brief Propositions of Gopal Sankaranarayanan, Advocate
for
Usha Nandini, Intervenor**

- I. Article 25 has no application to the Sabarimala Temple
 - a. The Sabarimala Temple dedicated to Swami Ayyappa is open to all faiths, castes and groups, notwithstanding their religion. Any person who undertakes the 41 days *vratham* is entitled to enter the temple and worship.
 - b. Art.25(2) refers specifically to "Hindu religious institutions" into which bracket this temple will not strictly fall.
 - c. Art.25(2) applies to allow the State to make law throwing open the temple. There is no such law proposed. That measure is not available to the Court, which is not "State" for the purposes of Part III.
 - d. Art.25(2) is limited to "classes and sections of Hindus", which when read with Art.17 forms a composite scheme to rid the nation of caste. It cannot be countenanced that women of a certain age *or* infants prior to their rice ceremony *or* those who have a birth or death in the family are "classes/sections" for the purposes of this provision.
 - e. If Art.25(2) were to be made applicable to the Temple, then Explanation II to the Article would imply that persons who are not Hindus are excluded from worship, thereby creating a legitimately aggrieved class.
- II. Article 26 applies to the Sabarimala Temple
 - a. Ayyappa devotees form a clear religious denomination.
 - b. They have a set system of beliefs which they believe are conducive to their well-being [41 days *vratham*, wearing of the mala, carrying the irumudikettu on their heads, maintaining the eternal lamp, being referred during this period as Ayyappa/Swami themselves, showing the unique confluence between devotee and deity and the compulsory worship of the Muslim lieutenant of the deity at the Vavar mosque in Erumeli and again near the 18 steps]
 - c. This applies across genders, religions and ages, subject to the traditional restrictions that are placed (on women, on infants, and on those who have births/deaths in the family)
 - d. Article 26 is not subject to the other provisions of Part III (unlike Article 25) and so there is no question of applying Articles 14 and 15 to it.
 - e. In any event, where access was to be provided regardless of gender, that was specifically enunciated in Article 15(2) and does not include temples.

- III. The Kerala Hindu Places of Worship Act, 1965 (and hence the Rules) do not apply to the Sabarimala Temple, but it does apply to all other “Hindu” places of public worship in Kerala
 - a. Section 2 defines “Hindu” and “places of public worship” which suggest that a place of worship open to non-Hindus would not qualify.
 - b. This is further strengthened by Rule 3(a) which prohibits non-Hindus from entry into these places. If the Act and Rules were to apply, the entire character of the Sabarimala temple and its denomination would change.

- IV. *Arguendo*, even if the Kerala Act applies, the proviso to Section 3 ensures that the Rules are limited to those places of worship dealt with in the main part of Section 3
 - a. Section 3 is in two parts: the main is indicative of Article 25 and the proviso of Article 26(b).
 - b. The Rules are pursuant to Section 4 which deals with a “section or class”. As defined in Section 2(c), this would be limited to divisions or castes within the Hindus and not apply to women.
 - c. In any event, the proviso to Section 3 would exclude the Rules from applying to denomination.