

DATE: 26.07.2017

COURT NO. 01

ITEM NO. 501

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 373 OF 2006

IN THE MATTER OF:

Indian Young Lawyers Association & Ors.

....Petitioners

VERSUS

The State of Kerala & Ors.

....Respondents

**WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 19-
RAJA OF THE PANDALAM IN WRIT PETITION (CIVIL) NO. 373 OF
2006, SUBMITTED BY SHRI K. RADHAKRISHNAN, SENIOR
ADVOCATE**

It is most respectfully submitted as follows:-

1. The five questions framed in the Judgment of this Hon'ble Court reported in (2017) 10 SCC 689 rendered in Writ Petition (Civil) No. 373 of 2006 converge on the Shakesperean riddle ***"To Be Or Not To Be"***.

The Temple, Essential Non - Secular Religious Practice,

Purity and Faith:-

2. The Diety, LORD SREE AYYAPPA remains as Naishtika Brahmachari with the Sree Dharma Shastha Temple, at Sabarimala. The "Kshetresan" or "Ooraalan" (one who established the Temple) is the erstwhile King of Pandalam who was the foster father of LORD SREE AYYAPPA.

3. This unique Temple was established as ordained by the LORD to the King. All rituals and essential practices of the Temple are as per the prescriptions of the LORD. And the same are adhered to and followed from the inception of the Temple and are still in vogue including the impugned practice. Despite the objection of the Palace, certain dilutions like opening of the Temple for first five days of every Malyalam month etc. crept in at the instance of the Board and the Thanthri. The Princes of Travancore had Darshan in 1935 after undergoing Hysterectomy (Surgical removal of the uterus).
4. It is in obedience and reverence to the will of the Lord that the women of the child bearing age group restrained themselves, from the inception of the Temple, from having Darshan at the Temple. The self restraint is a form of Tapasya. And the said women folk with utmost devotion to the Lord extend all moral support to the men folk to successfully accomplish the 41 days *Vritham* and *Darshan* thereafter. They have the right and liberty to restrain themselves and it is their private and personal matter. They have no compliant.
5. The devotees after observing the austerity of body, austerity of speech and austerity of mind (dealt with in Sreemad Bhagwad Geeta, Chapter 17 - three types of Sraddha, versus 15, 16 and 17 respectively) through intense meditation reach the

Temple after the climbing the 18 sacred steps to be greeted with “Tat Tvam Asi” (Thou art that).

6. The first five steps signify the five “Indriyas” namely; (1) eyes (2) ears (3) nose (4) tongue and (5) skin. The next eight steps represent eight “Ragas” namely (1) Tatwa (truth) (2) Kama (3) Krodha (4) Moha (5) Lobha (6) Madhyamatsarya (7) Dambha and (8) Ahankara. The next three steps denote three “Gunas” namely (1) Satwa (2) Rajas (3) Thamas. The last two steps denote (1) Vidya and (2) Avidya.
7. While the five Indriyas, eight Ragas, the three Gunas, Vidya and Avidya are common to all men, the nature of “Prarabdha Karma” and “desires” differ with each individual according as he has lived or lives. This is clearly signified by the contents of the “Irumudi” (a cotton bag in two compartments) which is carried by the pilgrim on his head. The front part in all cases is the same namely a ghee-filled coconut and offerings, whereas the rear part differ with each individual which are his personal requirements, food & other essentials. On his way he consumes all that he has brought in the rear part so that by the time he reaches the Temple what remains is only the contents of the front part. Symbolically the *Prarabdha* karma & desires are extinguished on the way. What remains is the body, that is the coconut, and the ghee which is the

soul. The pilgrim while crossing the symbolic 18 sacred steps overcomes the 18 elements in him and stands face to face with the Supreme, of which he is a part, casts off the body (the coconut is opened) and merges with the Supreme (the ghee is poured on the idol of the Lord). The body dies and is consumed (the two parts of the coconuts are thrown into the fire). In other words, on transcending these eighteen elements, the soul become self - effulgent, feels the eternal bliss, comes face to face with the Supreme, and merges in it.

8. In 'Srimad Bhagwat Geeta', in Chapter six – Dhyana Yogah (Topic of Meditation) Lord Krishna in verse 19 tells Arjuna:-

“yatha dipo nivatastho nengate sopama smruta
yogino yatachithasya yunjato yogamatmanah”

The flame of the lamp protected from the wind does not tremble. The illustration is cited to demonstrate the composed mind of the Meditator who practices contemplation of the self.

9. Two fold are the sensible reasons for the self restraint (Tapasya) of the women folk of the child bearing age group from having Darshan at this Temple:

- (a) The five Indriyas namely, eyes, ears, nose, tongue and skin and certain Ragas like Kama and Moha have to be conquered by the pilgrim.

- (b) The 41 days ‘*Vritham*’ cannot at all be undertaken by the subject age group due to the Pre menstrual syndrome (Pre menstrual Tension) characterized by irritability, anxiety, emotional liability, depression edema, breast pain, and headaches, occurring during the 7 to 10 days before and usually ending a few hours after onset of menses.
10. On purity it may be noted that on actual menstruation days, ladies will not go to any Temple. Likewise, after death and birth for certain number of days there is pollution for men and women in the family during which period they keep away from Temples.
11. These are various manifestations of Hindu faith which is *Sanaathanam and Anantham* secured and protected by the Constitutional philosophy enshrined in the Preamble. These are conducive to the spiritual well being of the family and the society.

A CONSTITUTIONAL ASSESSMENT:

12. The Preamble secures the liberty of belief, faith and worship. It further secures the dignity of the individual. Article 25 and Article 26 are the protective covenants in respect of right to freedom of religion and freedom to manage to religious affairs.

The right conferred under Article 25 is subject to public order, morality and health and to other provisions of Part III. The word 'public' will cover the words morality and health. Thus, it is subject to **public order, public morality and public health**. Morality, Private Morality and Public morality are defined in Blacks Law Dictionary , 9th Edition page 1100-

Morality :

- 1) Conformity with recognized rules of correct conduct.
- 2) The character of being virtuous, esp.in sexual matters.

Private Morality :

A person's ideals, character and private conduct, which are not valid governmental concerns _____ .

Public Morality :

- 1) The ideals or general moral beliefs of a society.
- 2) The ideals or actions of an individual to the extent that they affect others.

13. Morality is the medicine of the soul. It regulates the actions of women and men through the medium of prudence, probity and beneficence for the production of the greatest possible sum of good.

14. All women of the child bearing age group are entitled to freedom of conscience. The word conscience means a person's moral sense of right or wrong, viewed as acting as a guide to

one's behavior (Oxford dictionary of English 3rd Edition page 370). The self restraint referred *supra* fits within the freedom of conscience under Article 25.

15. The subject age group of women have the right to worship Lord Ayyappa without going to the Temple. Temple darshan is one of the modes of worship.
16. The impugned Rules have been framed only in the year 1965. The impugned practice is in existence since the inception of the Temple. The impugned practice is a non-secular essential religious practice. The essential religious practice is executed with self-restraint by the subject age group in obedience to the will of the Lord and in accordance with the Institutional morality. The impugned practice gets constitutional protection through the freedom of conscience. They cannot be constitutionally persuaded to go to the temple against the freedom of their conscience. That is against the concept of constitutional justness. The subject age group have got a clear perception of worship of Lord Ayyappa.
17. This Hon'ble Court in *Ratilal Panachand Gandhi-Vs-The State of Bombay and Others reported in 1954 SCR 1055 @ page 1062 held:*

“.....Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others.....”

18. This Hon’ble Court in A.S. Narayana Deekshitulu vs State Of Andhra Pradesh & Ors reported in 1996 (9) SCC 548 in para 87 @ page 594 held:

“What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence - factual or legislative or historic - presented in that context is required to be considered and a decision reached.....”

19. Public Morality, Institutional Morality and Private Morality get constitutional recognition in Articles 25 & 26. Constitutional morality cannot be applied

in such a manner to make Public Morality, Institutional Morality and Private Morality otiose. The faith, personal liberty to select the manner of worship, the freedom of conscience and the right to privacy of the subject age group may not be interfered with without hearing them.

20. Greatest caution is necessary when one seeks to produce equality since a single error can overturn the social order. Adhering conscientiously to the essential and legitimate religious practice, the subject age group forms themselves as a separate and distinct class. Such classification is reasonable. The practice is done with the object of showing obedience to the will of the Lord. Women offering darshan at the subject temple and women restraining themselves from having darshan are not on level playing field. Hence, Article 14 is not infringed. There is no infringement of Article 15 in the absence of discrimination of sex. The subject temple is not a place of public entertainment. Article 17 has no application on the question being debated.

THE WRIT PETITION :

21. This is a dangerous Writ Petition. The Writ Petitioners have no faith or belief in Lord Ayyapa. They are not devotees of Lord Ayyapa. They are not legally entitled to represent the subject age group. The subject age group has no disability whatsoever to ventilate their grievance, if any. The irresistible inference, in view of the averments contained in paragraph 3 and especially in paragraph 5 of the Writ Petition, is that this Writ Petition is preferred without any bonafides and with the ulterior motive to decimate one of facet of the faith of Hindu Religion. This is a publicity oriented Writ Petition filed with the motive to see that the unique temple is losing its glory and the Diety is losing its Thejus.

22. The division of the opinion/views of the amicus, the shift in the stand by the successive State Governments are all factors which may weigh with this Hon'ble Court in declining the declaration sought for in the Writ Petition. There is no absolute necessity to grant the declaration sought for. The situation calls for the application of constitutional restraint and constitutional sagacity.

23. In “An Introduction to the Philosophy of Law”, (Fifth Indian Reprint, 2009 Universal Law Publishing Co. Pvt. Ltd. at page 168), Shri Roscoe Pound has observed:-

“Men’s desire to be equal and their desire to be free must be kept in balance. Either carried to the extreme negates the other.”

24. Invoking the Doctrine of Parens Patriae, this Hon’ble Court may kindly safeguard the identity and essential religious practices of this unique Temple in accordance with the will of the Lord in which millions of devotees bestow their faith and consequently worship in different forms from which the devotees experience the presence of the omniscient, omnipresent and omnipotent Lord.

This Written Submission is submitted.

Dated this the 26th Day of July, 2018.

Shri K. Radhakrishnan,
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Shri K.V. Jagdishvaran,
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Smt. G. Indira,
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