BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **30.07.2024**
Pronounced on : **13.03.2025**

CORAM:

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.A.(MD).Nos.986 and 1261 of 2024
and C.M.P.(MD).Nos.7164 and 9737 of 2024
and C.M.P.(MD).Nos.8019 and 8520 of 2024

W.A.(MD).No.986 of 2024

1. The District Collector
   District Collector Office,
   Karur District.

2. The Revenue Divisional Officer
   Revenue Divisional Office,
   Karur District.

3. The Tahsildar
   Taluk Office,
   Manmangalam Taluk,
   Karur District. ... Appellants

Vs.

1. P.Naveen Kumar

2. Nerur Sathguru Sathasiva Brammediral Sabha
   Rep. by its President,

S.Ramesh,
S/o. D.Sundaresan,
Agraharam, Nerur,
Manmangalam Taluk,
Karur District - 639 004.

3. The Superintendent of Police
Karur District.

4. The Inspector of Police
Vangal Police Station,
Karur District. ... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 17.05.2024 passed in W.P.(MD).No.10496 of 2024.

W.P.(MD).No.1261 of 2024

V.Aranganathan ... Appellant

Vs.

1. P.Naveen Kumar

2. The District Collector
District Collector Office
Karur District.

3. The Revenue Divisional Officer
Revenue Divisional Office,
Karur District.

4. The Tahsildar
Taluk Office, Manmangalam Taluk,
Karur District.

5. Nerur Sathguru Sathasiva
Brammediral Sabha
Rep. by its President
S.Ramesh, S/o. D.Sundaresan
Agraharam, Nerur, Manmangalam Taluk,
Karur District - 639 004.

6. The Superintendent of Police
Office of Superintendent of Police,
Karur District.

7. The Inspector of Police
Vanagal Police Station,
Karur District. .... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 17.05.2024 passed in W.P.(MD).No.10496 of 2024.

For Appellants : Mr.N.R.Elango
Senior Counsel assisted
by Mr.P.Thilak Kumar, Govt. Pleader
in W.A.(MD).No.986 of 2024

Mr.C.Arul Vadivel @ Sekar,
Senior Counsel
for Mr.S.Vanchinathan
in W.A.(MD).No.1261 of 2024

For Respondents : Mr.G.Rajagopalan, Senior Counsel
for Mr.G.Thalaimutharasu for R1
in W.A.(MD).No.986 of 2024

Mr.Dama Seshadri Naidu, Senior Counsel
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in W.A.(MD).No.1261 of 2024

Mr.K.Suresh
for R2 in W.A.(MD).No.986 of 2024
and for R5 in W.A.(MD).No.1261 of 2024

Mr.P.Thilak Kumar, Govt. Pleader
for R2 to R4
in W.A.(MD).No.1261 of 2024

Mr.T.Senthil Kumar, APP for R3 and R4
in W.A.(MD).No.986 of 2024
and for R6 and R7
in W.A.(MD).No.1261 of 2024

Mr.R.Narayanan
in C.M.P.(MD).No.8019 of 2024

Mr.K.P.S.Palanivel Rajan, Senior Counsel
for Mr.S.Madhavan
in C.M.P.(MD).No.8520 of 2024

COMMON JUDGMENT

R.SURESH KUMAR, J.

Both the writ appeals have been filed challenging the order dated 17.05.2024 made in W.P.(MD).No.10496 of 2024. Both these writ appeals were heard together and are disposed of by this common order.

2. The necessary facts which are required to be noticed for the disposal of these appeals are as follows :

2.1. That one P.Naveen Kumar, S/o. Pitchai Muthu filed a writ petition, i.e., W.P.(MD).No.10496 of 2024, who is the first respondent in these appeals, seeking a writ of mandamus directing the respondents therein, i.e. Respondents 1 to 3 to consider the representation of him dated 22.04.2024 and grant permission to conduct Annadhanam and Angapradakshinam, i.e., rolling over the plantain leaves left by the devotees after the Annadhanam on 18.05.2024, i.e., on the eve of Jeeva Samadhi day of Sri Sadhasiva Brahmendral situate at Nerur Village, Manmangalam Taluk, Karur District.

2.2. The cause of action for filing the said writ petition, according to the first respondent Naveen Kumar as has been averred in the affidavit filed in support of the said writ petition, is that at the village Nerur in Karur District, there is a Sabha called Nerur Sathguru Sadhasiva Brahmendra Sabha. The first respondent / writ petitioner and others are strong devotees of Sri Sadhasiva Brahmendral. The Sabha is located nearby the place where the Sadhasiva Brahmendral has attained Jeeva Samadhi. The fourth respondent therein Sabha was organising the Annadhanam festival during the Jeeva Samadhi day.

2.3. As per the prevailing religious custom and practice, the Annadhanam food will be prepared and offered Neivedhiyam to Sri Sadhasiva Brahmendral, then the annadhanam food will be distributed to all the devotees irrespective of any caste and religion. After the annadhanam, the plantain leaves used by the devotees are left on the floor. Thereafter the devotees who want to offer their Nerthikadan will roll over the said plantain leaves. There is a strong belief behind this religious custom that Sri Sadhasiva Brahmendral himself will eat the annadhanam along with the devotees and rolling over such plantain leaves believed to be used by Sri Sadhasiva Brahmendral will be a blessing for the devotees.

2.4. It was the further case of the said Naveen Kumar, the first respondent herein that, the Annadhanam event will be held during the Tamil month Vaigasi and on the day of Sukhla Dhasami Thithi. Until 2015, the said religious custom was performed uninterruptedly, however during the year 2015, the District Administration has declined to permit the said Annadhanam by referring to an order passed by this Court in W.P.(MD).No.7068 of 2015. Due to the non co-operation of the Sabha, the villagers could not pursue the matters closely in the subsequent years.

2.5. It is the further case of the said Naveen Kumar that, now the villagers and devotees together want to perform the Annadhanam on the eve of the Jeeva Samadhi day as many devotees were not able to offer the Nerthikadan for the last few years. Upon perusing the order passed in W.P.(MD).No.7068 of 2015, it revealed that the order has been passed on misrepresentation that one section of people belongs to particular community will roll over in the plantain leaves left by the other community people after partaking Annadhanam, but that is not correct.

2.6. It is the further case of the said Naveen Kumar, the first respondent herein that, there has been no caste discrimination in practising the said religious custom and the devotees in consultation with the Sabha and villagers had scheduled to conduct Annadhanam on 18.05.2024, therefore seeking permission to conduct such Annadhanam followed by rolling over on plantain leaves left after partaking the meals by devotees, on 22.04.2024, the said Naveen Kumar, first respondent had given a representation to the official respondents, i.e., the District Administration who were respondents 1 to 3 in the said writ petition and the said

representation since had not been considered, he had approached this Court, filed the said writ petition, i.e., W.P.(MD).No.10496 of 2024, seeking for a writ of mandamus as stated herein above.

2.7. The said writ petition was filed on 25.04.2024 and came up for hearing on 29.04.2024 which was directed to be listed on 30.04.2024. On 30.04.2024, the writ court after *suo motu* impleading the Superintendent of Police, Karur District and the Inspector of Police, Vangal Police Station, Karur District, who were represented by the Additional Government Pleader who took notice for the impleading respondents and reserved orders on 30.04.2024. Thereafter on 17.05.2024, orders were pronounced in the said writ petition, where the writ petition was allowed by restraining the respondents 1 to 3, i.e., the District Collector, District Revenue Officer of Karur District as well as the Tahsildar, Manmangalam Taluk, Karur District from interfering with the conduct of the petition mentioned event, i.e., the Annadhanam followed by rolling over the left over plantain leaves after partaking meals by the devotees at or nearer to the Sri Sadhasiva Brahmendral Jeeva Samadhi's place at Nerur, Karur District.

2.8. Aggrieved over the said order passed by the writ court, dated 17.05.2024, the District Administration headed by the District Collector along with the Revenue Divisional Officer, Karur District and the Tahsildar,Manmangalam Taluk, Karur District had filed writ appeal in W.A.(MD).No.986 of 2024.

2.9. One V.Aranganathan after getting leave from this Court as a third party has filed W.A.(MD).No.1261 of 2024 challenging the order dated 17.05.2024. That is how these writ appeals came together for hearing and are being disposed of now.

3. It is the main contention on the part of the appellants that the writ petition ought not to have been entertained by the writ court, for the reason that, the issue has already been heard, decided and concluded by the decision of a Division Bench of this Court in W.P.(MD).No.7068 of 2015 filed by one V.Dalit Pandiyan, where the Chief Secretary, Govt. of Tamil Nadu, District Collector, Revenue Divisional Officer, Superintendent of Police, Karur District, Tahsildar, Manmangalam Taluk, Karur District,

Inspector of Police, Vangal Police Station, Karur District were the respondents, which was disposed by a Division Bench of this Court on 28.04.2015. In the said writ petition filed by the said V.Dalit Pandiyan, the prayer sought for was a writ of mandamus, directing the respondents therein to protect right to dignified life by stopping inhuman practice of rolling over on used plantain leaves left by Brahmins after their meal all over the State of Tamil Nadu.

4. The said writ petition was heard by a Division Bench as a Public Interest Litigation, where it was brought to the notice of the Division Bench that, a similar issue had already been taken to the Hon'ble Supreme Court arising from the High Court of Karnataka in the matter of State of Karnataka and others v. Adivasi Budakattu Hitarakshana Vedike Karnataka and others in Special Leave Petition (C) No.33137 of 2014, where the Hon'ble Apex Court by order dated 12.12.2014 has stayed a 500 years old ritual of “urulu seve” and “made snana” being performed at Kukke Subramanya Temple in Sullia Taluk of Dakshina Kannada District.

5. Having taken note of the said interim order of stay granted by the Hon'ble Supreme Court staying the similar practice which was prevailing in Kukke Subramanya Temple in Dakshina Kannada District for more than 500 years by the orders of the Hon'ble Supreme Court dated 12.12.2014, the Division Bench having taken note of the said order and also after hearing the parties to the writ petition, i.e., the District Administration, Police Administration as well as the Revenue Administration and the petitioner therein has passed the following order :

> " 10.We are conscious of the fact that in so far as religious practices and custom, Court has got its own limitations. But, such religious practice and custom should (not) affect the dignity of life, which is guaranteed under Article 21 of the Constitution of India. It is the heart and soul of the Constitution. No human being can be allowed to be degraded, by following any practice or custom in the name of religion, which may infringe Articles 14 and 21 of the Constitution of India. Right to live, with dignity, is the paramount object of the Constitution.
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> 11.Looking from that angle, though it is contended by the learned Special Government Pleader that irrespective of community, caste, etc, devotees, for fulfilment of their prayers,

decide on their own volition, to roll over on the left over plantain leaves. Such religious practice or custom should be inconsonance with Articles 14 and 21 of the Constitution of India. Even if there is any slightest infringement to the said rights, Court owes a duty to enforce the constitutional values and the same should not be allowed to continue. Event of rolling over, as per the instruction of the Collector in Na.Ka.E2/101/2015, dated 28.04.2015 is as follows:

> "இக்கோயிலில் சுமார் 100 வருடங்களுக்கு மேலாக நடைபெற்று வரும் திருவிழாவின் இறுதி நிகழ்ச்சியாக பக்தர்கள் தங்கள் வேண்டுதலுக்காக கோயிலுக்கு தரிசனத்திற்கு வந்துள்ள பக்தர்கள் அனைவரும் உணவு உண்ட பின்பு சாப்பிட்ட எச்சில் இலையில் உருண்டு அங்கபிரதட்சணம் செய்து தங்கள் வேண்டுதலை நிறைவேற்றுவது வழக்கம், இந்நிகழ்ச்சியில் எவ்விதமான சாதி சமய மற்றும் வகுப்பு வேறுபாடுகளும் கடைபிடிக்கப்படுவதில்லை. விழா முடிந்த பின்னர் விழாவிற்கு ஏற்பாடு செய்த அக்ரஉறாரத்தைச் சேர்ந்த பெண்கள் தங்களாகவே முன்வந்து இலையினை அகற்றி அருகிலுள்ள வாய்க்காலில் போட்டுவிடுகின்றனர்.
>
> இந்நிகழ்ச்சியில் உணவு சமைப்பது மற்றும் சாப்பிட்ட இலையினை அகற்றுவது மட்டுமே பிராமண வகுப்பினர் ஆவர், எந்த வகுப்பினர்

வேண்டுமானாலும் வேண்டுதல் செய்து கொண்டு தங்கள் வேண்டுதலை நிறைவேற்ற இவ்வாறு சாப்பிட்ட இலையில் உருளும் வழக்கம் உள்ளது."

12.In the light of the above discussion and having regard to the decision of the Hon'ble Apex Court in State of Karnataka and others Vs. Adivasi Budakattu Hitarakshana Vedike Karnataka and others in Special Leave Petition (C)No.33137 of 2014, we hereby direct the respondents not to allow anyone to roll over on the plantain leaves left, after the meal is taken.

13.Since, the above said event is stated to be conducted today (27.04.2015), learned Special Government Pleader is directed to communicate the order passed by this Court in this Writ petition, through e-mail or phone, to the respondents.

14.The Writ petition is disposed of.”

6. By the said order of the Division Bench, the practice of rolling over on the left over plantain leaves after partaking the meals at Nerur Temple has already been prohibited and the official respondents in the said writ petition were directed not to allow any one to roll over on the plantain leaves left after the meal is taken.

7. The said Division Bench order has become final as no appeal has been made against the said order. Therefore by virtue of the said Division Bench Order, dated 28.04.2015 which banned the practice of rolling over on the plantain leaves left after partaking the meals at Nerur, Karur District, the said practice has been stopped since 2015. Only at that juncture, after nine years during the tenth year festival, which was scheduled to be conducted on 18.05.2024, where the Annadhanam was planned, however the rolling over on the plantain leaves since has been banned by virtue of the orders of the Division Bench, the said Naveen Kumar as stated supra, had approached the writ court by filing the said writ petition in W.P.(MD).No.10496 of 2024.

8. Therefore it is the main contention on the part of the appellants counsel that when the exact issue has already been decided and a quietus have been given by a Division Bench Judgment which is operating on the issue and it has attained finality as no appeal has been filed, after nine years, whether the said Naveen Kumar or any other person would be entitled to seek any contrary relief that too from the writ court consisting of a single Bench.

9. It is their further contention that, the writ petition itself was not maintainable before the writ court and it ought to have been dismissed in limine in view of the decision having been made by the Division Bench by order, dated 28.04.2015 on the same issue. Moreover the issue also has been pending before the Hon'ble Supreme Court in the SLP, where the similar practice adopted in Kukke Subramanya Temple in Karnataka was stayed by the orders of the Hon'ble Supreme Court. When that being so, the writ court absolutely had no jurisdiction to entertain the writ petition and to allow the same through the impugned order and therefore on that ground itself, the impugned order is liable to be set aside, they contended.

10. Apart from this, main ground urged by the learned Senior counsel and counsel appearing for the appellants and one of the counsel who is appearing for one impleading party who filed the impleading petition in support of the appellants, they have made broadly the following arguments for consideration of this Bench.

10.1. The impugned order has been passed in violation of principles of Judicial discipline.

10.2. The Judgment passed in W.P.(MD).No.7068 of 2015, dated 28.04.2015 is nothing but Judgment in rem and the same is conclusive to everyone including the writ petitioner. In support of their contention, they relied upon the Judgment of the Hon'ble Apex Court in State of Karnataka v. All India Manufacturers Organisation reported in (2006) 4 SCC 683 stating that, in a Public Interest Litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bonafide, a Judgment in a previous Public Interest Litigation would be a Judgment in rem. It binds the public at large and bars any member of the public from coming forward before the Court and raising any connected issue or an issue which had been raised or should have been raised on an earlier occasion by way of Public Interest Litigation.

10.3. In the matter of State of Karnataka and others v. Adivasi Budakattu Hitarakshana Vedike Karnataka and others in Special Leave Petition (C) No.33137 of 2014, the Supreme Court had taken notice that “urulu seve” and “made snana” being performed at Kukke Subramanaya Temple in Dakshina Kannada District have been performed for five

centuries. In that performance, people roll over on the plantain leaves left after the meal during the annual jatra of the temple, however the Hon'ble Supreme Court taking note of the same, passed an interim order, dated 12.12.2014 staying the 500 years ritual of “urulu seve” and “made snana”.

10.4. The observation made by the writ court in the order impugned subvert the accepted notions about the force or precedents in our system of Judicial Administration. In support of this, they relied upon the Apex Court decision in Tribhuvandas Purshottamdas Thakur v. Ratilal Motilal Patel reported in 1967 SCC Online SC 123, which enunciates rules of law form the foundation of administration of justice and our system.

10.5. It has been held time and again that a single Judge of a High Court is ordinarily bound to accept as correct the Judgments of Courts of coordinate jurisdiction and of Division Benches and of the Full Benches of the Court as well as the Hon'ble Supreme Court.

10.6. The impugned Judgment of the writ court is contrary to the principles of judicial discipline. In support of which, they relied upon the Constitutional Bench decision of the Hon'ble Apex Court in Central Board of Dawoodi Bohra Community and another v. State of Maharashtra and another reported in (2005) 2 SCC 673.

10.7. On the point of Judicial discipline, they also relied upon yet another decision of the Hon'ble Apex Court in the case of Mary Pushpam v. Telvi Curusumary & Ors reported in 2024 LiveLaw (SC) 12 and stating that rule of Judicial Discipline and Propriety and the Doctrine of Precedents has a merit of promoting certainty and consistency in judicial decisions providing assurance to individuals as to the consequences of their actions.

10.8. It is their further contention that the Hon'ble Apex Court in the case of P.Suseela and others v. University Grants Commission and others reported in (2015) 8 SCC 129 has held that a Division Bench Judgment of the same High Court is binding on a subsequent Division Bench. The subsequent Division Bench can either follow it or refer such judgment to the Chief Justice to constitute a full Bench if it differs with it.

10.9. It is their further reference of Hon'ble Supreme Court Judgment in the case of Official Liquidator v. Dayanand reported in (2008) 10 SCC 1, where they relied upon the holding of the Hon'ble Supreme Court that, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

10.10. It is their further contention that the Judgment of the Division Bench in W.P.(MD).No.7068 of 2015 was not obtained by fraud or misrepresentation.

10.11. Since the Judgment of the Division Bench made in W.P.(MD).No.7068 of 2015 was declared to be null and void by the writ court through the impugned order on the ground that, the Judgment of the Division Bench was in violation of principles of natural justice, the ground raised stating that the Division Bench Judgment was out of fraud and misrepresentation is not based on any finding even by the writ court in the order impugned itself.

10.12. It is their further contention that, at the time when the Division Bench passed orders in W.P.(MD).No.7068 of 2015, the order of interim stay granted by the Supreme Court in SLP (Civil) No.33137 of 2014 was not produced may not be correct, because the Division Bench has specifically recorded that, in SLP (Civil) No.33137 of 2014, the Supreme Court has granted stay of the 500 years old practice at Kukke Subramanaya Temple in Karnataka.

10.13. It is the further contention of the learned counsels appearing for the appellants side that, the fundamental right of any individual cannot

be waived. The human dignity is a fundamental right, in the name of religious customs, such a fundamental right cannot be surrendered, they contended.

10.14. It is their further contention that, Articles 25 and 26 of the Constitution has not given any such absolute freedom to any individual or citizen of this country to offend the fundamental right of the individual citizen in the name of religion or religious practice. They would submit that, the freedom of conscience and free profession, practice and propagation of religion is only subject to public order, mortality and health and to the other provisions of Part-III.

10.15. Here in the case in hand, there would be a health hazard if this practice is permitted. Therefore in the name of protecting the health of the individuals or society at large in the locality concerned, it is open to the State, i.e., Administration to prohibit such kind of practice even though it is intended to be propagated in the name of religious practice.

10.16. It is also their contention that, the freedom to manage religious affairs under Article 26 is subject to public order, morality and health. Here in the case in hand, the Sabha cannot conduct a festival like permitting the devotees to roll over the plantain leaves left after partaking the meal as it would hamper the health condition of the devotees. Therefore the health being one of the subject, subject to which the freedom to manage religious affairs is provided or protected under Article 26 of the Constitution, such a prohibition or restriction could very well be made by the authorities concerned.

10.17. It is their further contention that, in the Madras High Court Writ Rules, 2021, the Rule 17(3) makes it clear that, if a writ petition on the criminal side is filed where the police has been impleaded as a party respondents against whom relief also has been sought for, such writ petition be posted and be decided by the Jurisdiction Judge who deal with criminal matters under Section 482 of Cr.P.C.

10.18. Here in the case in hand, on 30.04.2024, the writ court has *suo motu* impleaded the Superintendent of Police and concerned Inspector of Police as party respondents. Therefore the moment once they got impleaded, the writ petition should have been placed before the Administrative Judge to place it before the Judge who exercise the jurisdiction under Section 482 of Cr.P.C. Such a procedure has not been adopted in this case, therefore it is a clear violation of Rule 17(3) of the Madras High Court Writ Rules, they contended.

10.19. They also contended that, the writ court ought not to have entertained this writ petition on the other reason that, the representation admittedly had been given only on 22.04.2024 through Registered post. However, the writ petition was filed on 25.04.2024 without giving atleast a small breathing time for the authorities to consider such representation. Moreover on 30.04.2024 alone the police authorities have been *suo motu* impleaded as party respondents before the writ Court. However without giving any breathing time for such respondents impleaded by the writ court, *suo motu* on the very same day, the writ petition has been reserved for

orders, by thus, absolutely no opportunity had been given to the official respondents who had been impleaded only on that day itself. Therefore it is a clear case of violation of principles of natural justice on the part of the writ court who passed the impugned order.

10.20. It is their further contention that, the practice of rolling on the left over plantain leaves cannot seek constitutional protection guaranteed under Articles 25 and 26 of the Constitution as it does not fall under the ambit of religious denomination. In support of his contention, they relied upon the decision of the Hon'ble Supreme Court in S.P.Mittal v. Union of India reported in (1983) 1 SCC 51, where it has been held that, the words religious denomination in Article 26 of the Constitution must take their colour from the word “religion” and if this be so, the expression “religious denomination” must also satisfy three conditions, namely (i) it must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith; (ii) common organisation; and (iii) designation by a distinctive name.

10.21. In the present case, none of the aforesaid criteria were fulfilled, therefore it does not fall or constitute to be a Religious denomination nor the Nerur Sadhasiva Brahmendral Samathi / Temple is a denominational temple and there is no question of applicability of the constitutional protection under Articles 25 and 26 of the Constitution.

10.22. It is also their contention that, such a practice of rolling over on the left over plantain leaves after partaking meal is not a essential religious practice. In order to get such a constitutional protection, the practice must be an essential religious practice. In support of this contention, they relied upon the decision of the Hon'ble Supreme Court in Commissioner of Police v. Acharya Jagdishwarananda Avadhuta reported in (2004) 12 SCC 770.

10.23. It is their further contention that, it is not a customary practice and if it is not a customary practice, it cannot be treated as a custom. In support of this contention, they relied upon two decisions. (i) Mookka Kone v. Ammakutti Ammal, AIR 1928 Mad 299 (FB) and (ii) Bhimashya and others v. Jnabi Alias Janawwa, (2006) 13 SCC 627.

10.24. It is their further contention that, this practice of rolling over on plantain leaves is against the constitutional morality. In support of their contention, they relied upon the decision of the Hon'ble Supreme Court in Manoj Narula v. Union of India reported in (2014) 9 SCC 1 and also Government of NCT of Delhi v. Union of India reported in (2018) 9 Scale 72.

10.25. It is their further contention that, the practice of rolling over on the left over plantain leaves is in violation of Article 14 and 21 of the Constitution. In support of their contention, they rely upon the following decisions :

(i) P.T.Parmanand Katara v. Union of India and others, 1989 AIR 2039

(ii) R.S.Bharati v. The Government of Tamil Nadu and others, 2018 SCC Online Mad 2688

(iii) Indian Young Lawyers Association v. State of Kerala and others, (2019) 11 SCC 1.

10.26. It is also their contention that, the State is obliged to curb this kind of practice under Article 47 of the Constitution.

11. On the other hand, the learned Senior counsel and counsel appearing for the writ petitioner and the Sabha in support of the impugned Judgment, have broadly made the following submissions :

11.1. That the learned counsel would state that the religious right as provided under Article 25 and 26 of the Constitution since being the fundamental right, it cannot be restricted or prohibited on the ground of morality or fundamental right of the individual.

11.2. They would state that, the freedom of conscience and free profession, practice and propogation of religion is a fundamental right under Article 25 of the Constitution, of course subject to public order, morality and health.

11.3. Here in the case in hand, the practice of religious owe on the left over plantain leaves after partaking the meal does not in any way offend the

public order or morality. Even in case of the health, there is absolutely no materials or proof to establish that taking an Angapradakshinam or rolling over on a plantain leaves left over after partaking the meals would be a health hazard and therefore on the ground of health also, such a religious practice being the fundamental right guaranteed under Article 25 cannot be curtailed.

11.4. It is their further arguments that, the fourth respondent namely the Sabha has already been maintaining the Sadhasiva Brahmendral Samathi / Temple and is conducting the annual festival. If we look at the life history of Saint Sri Sadhasiva Brahmendral, there had been a considerable followers of the saint and he had made lot of wonders during his life time. He was a naked or half-naked sanyasi and it is a strong belief of many number of people who are the ordanant, supporters or followers or devotees of the said saint Sadhasiva Brahmendral that their Guru would bring good fortunes in their life, therefore in order to fulfil their vow and prayers they want to conduct this festival. Therefore it can easily be construed as a separate religious denomination and hence such a religious denomination

would have the fundamental right under Article 26 to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law.

11.5. Here in the case in hand, the devotees of Sri Sadhasiva Brahmendral being a religious denomination has every right to establish such institution which they have established as a Sabha and they manage its own affairs in matters of religion. When that being so, such a fundamental right cannot be interfered or curtailed except under the grounds of public order, morality and health. It is again to be stated that there could be no issue on public order or morality and even on the ground of health, if every part of the function is approved, the one part of the function namely, rolling over the left over plantain leaves alone since have been prohibited or curtailed without on any ground as stated in Article 26 of the Constitution, it is unlawful and therefore they contended that such a fundamental right guaranteed to the devotees under Article 25 and 26 cannot be taken away or abrogated even by a Judicial decision.

11.6. They contended that in (1954) 1 SCC 412, in the matter of Commr. Hindu Religious Endowments v. Lakshmindra Thirtha Swamiar of Shri Shirur Mutt case, it has been held that, if the tenants of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year. This kind of practices should be regarded as matters of religion within the meaning of Article 26(b).

11.7. They also relied upon (1954) 1 SCC 487 in the matter of Ratilal Panachand Gandhi v. State of Bombay to state that, religious practices or performances of acts, in pursuance of religious belief are as much apart from religion as faith or belief in particular doctrines.

11.8. They further relied upon AIR 1963 SC 1638 in the matter of Tilakyat Shri Govindalji Maharaj and others v. State of Rajasthan and others by quoting that, the religious practice to which Article 25(1) refers and affairs in matters of religion to which Article 26(b) refers include practices

which are an integral part of the religion itself and the protection guaranteed by Article 25(1) and Article 26(b) extends to such practices.

11.9. They further relied upon AIR 1962 SC 853 in the matter of Sardar Syedna Taher Saifuddin Saheb v. State of Bombay and would quote that, a person is not liable to answer for the variety of his religious views and he cannot be questioned as to his religions beliefs by the State or any other person.

11.10. They further relied upon (1986) 3 SCC 615 in Bijoe Emmanuel v. State of Kerala, quoting that, an action validly restricting the right under Article 25 must however be based on a law having statutory force and not on mere executive or departmental instruction.

11.11. They also relied upon the order of the writ court made in W.P.(MD).No.16701 of 2019, dated 29.05.2020 in the matter of Arul Migu Mahalakshmi Amman Thirukovil, Mettu Mahadhanapuram, Karur District v. L.Subramanian and others, where they quoted that, by making such an

offer of troubling their body, they feel that they fulfilled their promise or vow towards the God in response to the prosperity they already achieved or the expectation towards the future prosperity which they prayed to the God. It is further quoted from the Judgment that, if at all any individual member of the petitioner's association or in their community want to go out of this performance (religious performance), the individual can take his own decision not involve himself in such ritual which does not mean that the entire community people or the religious denomination who come to the temple to perform their customary rituals or poojas every year are opposing the move.

11.12. On the ground of misrepresentation, they relied upon (2003) 8 SCC 319 in the matter of Ram Chandra Singh v. Savitri Devi and others by quoting that, it is also well settled that misrepresentation itself amounts to fraud.

11.13. They further quoted (2005) 6 SCC 149 in the matter of State of A.P. v. T.Suryachandra Rao by quoting that, fraud is a conduct either by

letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter.

11.14. They further relied upon AIR 1967 SC 1269 in the matter of State of Orissa v. Dr.(Miss) Binapani Dei and others, quoting that, the rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to Judicial Tribunals and bodies of persons invested with authority to adjudicate upon mattes involving civil consequences.

11.15. They further relied upon (1994) 1 SCC 1 in the matter of S.P.Chengalvaraya Naidu (Dead) by LRs v. Jagannatha (Dead) by LRs and others by quoting that, it is a settled preposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and nonest in the eyes of law. Such a judgment / decree by the first court or by the Highest Court has to be treated as a nullity by every court, whether superior or inferior, it can be challenged in any court even in collateral proceedings.

11.16. They also relied upon (2012) 1 SCC 476 in the matter of Union of India v. Ramesh Gandhi on the same point of misrepresentation and fraud. They further quoted (2007) 4 SCC 221 in the matter of A.V.Papayya Sastry v. Govt. of A.P. on the point of fraud and misrepresentation.

11.17. On the ground that, under Article 226 both the Division Bench and the single Judge exercise the same jurisdiction, they relied upon (2018) 17 SCC 106 in the matter of Roma Sonkar v. M.P.State Public Service Commission.

12. Many number of decisions have been quoted by the learned Senior counsel and counsel appearing for the writ petitioner and the Sabha who are supporting the judgment impugned on the ground that (i) the event of rolling over on the left over plantain leaves after partaking the meal is a religious practice protected under Article 25 and 26 of the Constitution; (ii) also for the ground that, if a Judgment is obtained by fraud or misrepresentation, that can be interfered with or set aside even by a lower

forum; and (iii) the single Bench as well as the Division Bench exercising jurisdiction under Article 226, therefore the single Bench of the High Court is not inferior to a Division Bench and hence, the Division Bench Judgment can be declared to be null and void and set aside by a single Judge Bench.

13. These are all the broad propositions projected on behalf of the counsels who appeared for the respondent / writ petitioner and the Sabha who support the Judgment which is impugned herein.

14. ***Analysis*** :

We have heard the lengthy arguments advanced by number of counsels for both sides and have perused the voluminous materials filed before this Court.

15. The first issue to be decided is whether the rolling over by devotees on the left over plantain leaves after partaking the meal irrespective of their community is a necessary religious practice of any religion or religious denomination within the meaning of Article 25 and 26 of the Constitution or not.

16. In order to delve into this question, first let us go to the actual event which was taken place on the eve of the festival at Sri Sadhasiva Brahmendral Samathi /Temple at Nerur, Karur District.

17. Before which, a small life history of the saint can also be traced. Sadhasiva was born in 15th century to a Telugu Brahmin couple Moksha Somasundara Avadhani and Parvathi. His initial name was Sivaramakrishna. Sadhasiva lived in Kumbakonam in Tamil Nadu in 15th to 16th Century. He went to learn vedas and various other subjects in sanskrit in Thiruvisainallore. His contemporaries such as Sridhara Venkatesawara Ayagal and Sri Bhagawan Nama Bodendral lived in the nearby areas at that time.

18. Sivaramakrishna left his home in search of truth, he became the Sishya of Sri Paramasivendra Saraswathi. He started Athmavichara and he received Mahavakiya Upadesas from His Guru. After taking Sanyasa, he was set to have wandered around naked or semi-naked and often in a translife state. During his life time, he has exhibited some wonders on the

river banks of Cauvery in Mahadhanapuram. He was asked by some children to be taken to Madurai more than 100 miles away, for an annual festival. The saint asked them to close their eyes and few seconds later they opened their eyes and found they were in Madurai. At another time, by meditating on the banks of the Cauvery River he was carried away by a sudden flood. Weeks later when the villagers digging near a mount of earth, their shovels struck his body, he suddenly woke up and walked away.

19. On the development of temples, he had met Raja Thondaiman of Pudukottai and initiated him into the Dhakshinamoorthy Manthra. He said to have written Manthra on the sand, this sand was picked up by the king and it is in the worship of Royal family till now in the Dhakshinamoorthy Temple inside the Pudukottai Palace in Pudukottai. The saint was responsible to instal the deity at Punnainallore Mariamman near Thanjavur and guided the installation at Devadhanapatti Kamatchi Temple. He also was involved in the establishment of Thanthonimalai Kalyana Venkateshwara Temple in Karur. He also installed Hanuman Moorthy in the Prasanna Venkateshwara Temple at Naalukall Mandapam in Thanjavur. He

instructed king of Thanjavur to install the Saraswathy Mahal Library which runs till date. His Samathis are located in five places, Nerur, Manamadurai in Tamil Nadu, Omkareshwarar, Kasi and Karachi.

20. Every year in Nerur and Manamadurai, music festivals are conducted in his honour. In Manamadurai his Samathi is located at Somanathar Temple.

21. From the life history of the saint Sadhasiva Brahmendral as is available now, he was the saint in 15th and 16th century and he has given his contribution towards construction of temples, installation of idols and he has also wrote the Adhmavidhya Vilasa, an Advedic work and he has been the great composer of Carnatic music. Out of the five places, where claimed to be the Samathis of the saint, two places are in Tamil Nadu, one is at Nerur and another is at Manamadurai. Now we are concerned in this lis about his Samathi at Nerur in Karur District.

22. It is also the literature which we come across that, a larger Sadhasiva Shrine at Nerur was erected by the Raja of Pudukottai which is a pilgrimage spot and has been witnesses numerous divine feelings.

23. Therefore, certainly there could be number of devotees who can follow the said saint Sadhasiva Brahmendral. The Nerur Sadhguru Sadhasiva Brahmendral Sabha has been constituted and they have been looking after the festival annually conducted at Nerur Samathi / Temple of the saint. This festival seems to have been normally taken place in the month of Panguni, most probably in the second half of April and first half of May month of every year. During the festival, every day there would be a Vinja Viruthi, Gramapradhakshanam, Mahanyasa Poorva Abishekam, Latcharchanai and Vedaparanayam taken place. Probably on the last day of the festival, there would be a Urchava Aradhanai followed by Annadhanam. The Annadham, i.e., free meal would be provided to the devotees who come to the Temple / Samathi and after taking the meal, the left over plantain leaves would not be immediately removed, wherein on the row of left over plantain leaves after partaking the meal by large number of devotees, the

devotees who have any vow to be fulfilled in order to get the prospects which they prayed with the saint would take the exercise of rolling over on the left over plantain leaves. Therefore this also is part of the festival being conducted every year at the Samathi / Temple of the saint at Nerur.

24. Apart from other part of the festival, as we stated supra, the last part namely, the rolling over on the left over plantain leaves after partaking the meal whether could be allowed to be undertaken or not was the issue before this Court in the writ petition in W.P.(MD).No.7068 of 2015 filed by one V.Dalit Pandiyan. This writ petition was decided by a Division Bench of this Court, by order dated 28.04.2015. The relevant portion of the order has already been extracted herein above.

25. During the hearing, it was stated on behalf of the said writ petitioner that, such a practice of rolling over on the left over plantain leaves after partaking the meal would infringe the human dignity which is one of the fundamental right of every citizen of this country and moreover it would lead to health hazard, therefore on these grounds it should be prohibited.

26. At that time, an interim order of stay granted by the Hon'ble Supreme Court in SLP (Civil) No.33137 of 2014 arising out of Karnataka High Court was also produced before the Division Bench, which has been recorded by the Division Bench in Para 8 of the order stating that the “urulu seve” and “made snana” being performed at Kukke Subramanya Temple in Sullia Taluk of Dakshina Kannada District have been performed for five centuries. From the news item it could be deduced that in the above said ritual performance, people roll over on plantain leaves left by Brahmins after the meal during the annual Jatra of the temple.

27. The Division Bench considering Article 14 and 21 of the Constitution as well as the order passed by the Hon'ble Supreme Court in the Karnataka case cited supra, where the similar ritual has been stayed by the Hon'ble Supreme Court, it has come to the conclusion that such a ritual cannot be permitted to be undertaken at Nerur Brahmendral Samathi and therefore the writ petition was allowed, whereby the official respondents had been directed not to allow any one to roll over on the plantain leaves after the meal is taken.

28. Before we delve into, whether the said order dated 28.04.2015 passed by the Division Bench on the same issue will estop the present writ petitioner to file the writ petition after nine years, we must delve into the aspect of whether such a rolling over on plantain leaves left over after partaking the meal is to be considered as a religious practice protected within the meaning of Article 25 and 26 of the Constitution.

29. There are number of Judgments quoted on behalf of the writ petitioner side to support the contention that, whatever the religious practice which have been followed for several years or time immemorial by a religion, religious group or religious denomination, such kind of practice shall not be prohibited or hindered by the State or Authorities concerned, as such practice of religion is protected under Article 25 of the Constitution. If any such practice is adopted under the conduction and supervision of any religious denomination, that shall also be protected under Article 26 of the Constitution.

30. Even though arguments and counter arguments have been made by the learned counsel appearing for both sides, by citing various decisions, whether this kind of practice can be declared to be a part of religious practice by the court of law is yet another question.

31. The arguments were advanced by quoting the decision of the Constitutional Bench of the Hon'ble Supreme Court in Sabarimala case, which has been quoted in fact by both sides counsel. We do feel that in the said case, there has been a prohibition of women of particular age for entering into the temple of Lord Iyyappa to have Dharshan, in the name of religious practice, which in fact has been considered and decided in an exhaustive decision of the Hon'ble Supreme Court, ultimately permitting the women of the particular age group also to have Dharshan at Lord Iyyapa's Temple at Sabarimala.

32. Here in the case in hand, it is the court now has prohibited such a practice of rolling over on plantain leaves left over after partaking meals. Whether such a prohibition made by the Court of law on any part of the religions practice is acceptable within the meaning of Article 25 and 26.

33. In this context only, the counsels who support the writ petitioner to sustain the order impugned have made submissions stating that, such a practice is also being part of the religious practice or a practice of a religious denomination is very well protected under Article 25 of the Constitution. Whereas the counsel on the other side who are the appellants herein have made submissions stating that, such a practice cannot be construed as a religious practice within the meaning of Article 25 or 26 of the Constitution and moreover on the ground of health and public morality, if not under public order, such a practice cannot be permitted to and it shall be curbed.

34. Insofar as the religious practice is concerned, in one of the earliest case the Hon'ble Supreme Court in Commissioner, H.R.E v. L.T.Swamiar reported in AIR 1954 SC 282, held as follows :

> "(15) As regards Art.26, the first question is, what is the precise meaning or connotation of the expression "religious denomination" and whether a Math could come within this expression. The word "denomination" has been defined in the Oxford

Dictionary to mean "a collection of individuals classed together under the same name: a religious sect or body having a common faith and organisation and designated by a distinctive name. It is well known that the practice of setting up Maths as centres of the logical teaching was started by Shri Sankaracharya and was followed by various teachers since then. After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day.

Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name,-in many cases it is the name of the founder,-and has a common faith and common spiritual organization. The followers of Ramanuja, who are known by the name of Shri Vaishnabas, undoubtedly constitute a religious denomination; and so do the followers of Madhwacharya and other religious teachers. It is a fact well established by tradition that the eight Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of

these Maths profess to be followers of that teacher. The High Court has found that the Math in question is in charge of the Sivalli Brahmins who constitute a section of the followers of Madhwacharya. As Art.26 contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of this article.

16. The other thing that remains to be considered in regard to Art.26 is, what is the scope of clause (b) of the Article which speaks of management "of its own affairs in matters of religion ?" The language undoubtedly suggests that there could be other affairs of a religious denomination or a section thereof which are not matters of religion and to which the guarantee given by this clause would not apply. The question is, whereas the line to be drawn between what are matters of religion and what are not ?

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What then are matters of religion ? The word

"religion " has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition.

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Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else, but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

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19. The contention formulated in such broad terms cannot, we think, be supported. In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or ablations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Art.26(b).

What Art. 25(2) (a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they run counter to public order,

health and morality, but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices.

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Our Constitution-makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. As we have already indicated, freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down. Under Art.26(b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the

> tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters."

35. In yet another constitution decision of the Hon'ble Supreme Court in S.P.Mittal v. Union of India reported in (1983) 1 SCC 51, the L.T.Swamiar case has been considered and followed. In the S.P.Mittal case, the Hon'ble Supreme Court has made the following observation about the religion :

> "75. Article 26 confers religious denomination or any section thereof, subject to public order, morality and health, the right-
> (a) to establish and maintain institutions for religious and charitable purposes;
> (b) to manage its own affairs in matters of religion;
> (c) to own and acquire movable and immovable property; and
> (d) to administer such property in accordance with law.
> 76. In order to appreciate the contentions of the parties, it is necessary to know the implication of the words 'religion' and 'religious denomination'.

The word 'religion' has not been defined in the Constitution and indeed it is a term which is hardly susceptible of any rigid definition. In reply to a question on Dharma by Yaksha, Dharmaraja Yudhisthira said thus:

tarko pratisth,srutyo vibhinna neko risiyasya matan pramanam dharmaya tatwan nihitan guhayan mahajano jein gatah sa pantha

Mahabharta-Aranyakaparvan 313.117.

(Formal logic is vascillating. Srutis are contradictory. There is no single rishi whose opinion is final. The principle of Dharma is hidden in a cave. The path of the virtuous persons is the only proper course.)

77. The expression 'Religion' has, however, been sought to be defined in the 'Words and Phrases', Permanent Edn., 36 A, p. 461 onwards, as given below:

"Religion is morality, with a sanction drawn from a future state of rewards and punishments.

The term 'religion' and 'religious' in ordinary usage are not rigid concepts. 'Religion' has reference to one's views of his relations to his Creator and to the obligations they impose of re-verence for his

being and character, and of obedience to his will.

The word 'religion' in the primary sense (from 'religare, to rebind-bind back), imports, as applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without religion.

'Religion' is bond uniting man to God, and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things.

'Religion' has reference to man's relation to divinity; to the moral obligation of reverence and worship, obedience and submission, It is the recognition of God as as object of worship, love and obedience; right feeling toward God, as highly apprehended.

'Religion' means the services and adoration of God or a god as expressed in forms of worship; an apprehension, awareness, or conviction of the existence of a Supreme Being; any system of faith, doctrine and worship, as the Christian religion, the religions of the orient; a particular system of faith or worship.

The term 'religion' as used in tax exemption law, simply includes: (I) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets or belief, the content of such belief being of no moment.

While 'religion' in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and associations, and the term, "a religious purpose', as used in the constitutional provision exempting from taxation property used for religious purposes, means the use of property by a religious society or body of persons as a place for public worship.

'Religion' is squaring human life with superhuman life. Belief in a superhuman power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all 'religions'.

The term 'religion' has reference to one's views on his relations to his creator, and to the obligations they impose of reverence for his being and character and obedience to his will.

The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with.

78. These terms have also been judicially considered in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005, where in the following proposition of law have been laid down:

(1) Religion means "a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-

being".

(2) A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well.

(3) Religion need not be theistic.

(4) "Religious denomination" means a religious sect or body having a common faith and organisation and designated by a distinctive name.

(5) A law which takes away the rights of administration from the hands of a religious denomination altogether and vests in another authority would amount to violation of the right guaranteed under clause (d) of Art. 26."

The aforesaid propositions have been consistently followed in later cases including The Durgah Committee, Ajmer & Anr. v. Syed Hussain Ali & Ors, AIR 1961 SC 1402 and can be regarded as well settled."

36. Therefore the freedom of religion in our Constitution as per the dictum of the Hon'ble Supreme Court in the cited cases extents not only to religious beliefs but also to religious practices of course subject to the restriction under Article 26. Article 26 has given four types of religious freedom but they are subject to public order, morality and health.

37. Here in the case in hand, the practice of rolling over on the left over plantain leaves after partaking the meals by the devotees of any religious denomination, whether would hit public order or morality or health.

38. Insofar as public order is concerned, it may not directly offend the public order to be maintained as it is the belief of some set of people of a particular religious denomination and if they want to do such a practice of rolling over on the plantain leaves after partaking the meals on one day on the eve of the festival to fulfil their vow, such a kind of practice, in our considered view, cannot offend any public order.

39. On the word morality, as the Constitution does not define the word morality, it could have a larger connotation. If a particular act may affect the morality especially the public morality from the point of view of some one but the very same act may not be construed to be offending the public morality from the point of view of another one.

40. However in this regard, it is for the State to take a decision as to which are all the actions which could offend the public morality. As there has been no specific scale or yardstick available, normally Court will be very slow in declaring any act which is claimed to be a religious act or practice or custom, as either offending the public morality or not.

41. These kind of rituals or customary practices which are performed for more than 100 years or several 100 years cannot be said to be more awful act of some group of people.

42. Going further on the word Angapradakshinam which means rolling over, such kind of religious practice of Angapradakshinam is one of the accepted religious practice in Hindu religion. In many temples, we use to witness that such kind of Angapradakshinam is taken place almost as an every day affair. By taking this Angapradakshinam, it is the strong belief of those who involve in it that by troubling their body, by taking this Angapradakshinam, i.e., rolling over in the premises of the temple, that would be an offering of a devotee in order to fulfil their vow for the fortune

they have received from the God or for any fortune for which they have prayed to God.

43. Here in the case in hand, it is the strong belief of the devotees of Sri Sadhasiva Brahmendral that, during the time when the Annadhanam, i.e., free meal is provided to devotees, in the body of any one of such devotees who take the free meal, the saint Sadhasiva Brahmendral also would sit and take the meal. Therefore after completing the meal, if the devotees take a roll over on the left over leaves, the leaf where, as per their belief, the saint had taken the meal, could be touching the body of the devotees, thereby they may strongly believe that, they would get the blessings of the Guru.

44. Scientifically we cannot ask any such proof for such kind of belief. All religious belief is only based on the long standing belief and the customs being followed by people at large or a group of people. Every such religious practice is made by the devotees of any religion only on the basis of belief, for which no scientific proof can be sought for.

45. But at the same time, the Constitution though has given such freedom to every citizen to have their religious freedom of conscience and free profession, practice and propagation of religion, such a freedom has been restricted under the three heads, namely, public order, morality and health.

46. As we have discussed, such a practice of rolling over may not offend directly the public order and insofar as the morality is concerned, what is the yardstick for morality also since has not been finally concluded or found out, in the name of morality whether such practice can be restricted is also a question. But at the same time, on the ground of health, such kind of restrictions could be made by the State on any such practice claimed to be the freedom of conscience or free profession or practice or propagation of religion.

47. Here in the case in hand, the practice of rolling over on plantain leaves after partaking the meals, whether would be a health hazard is also the question to be answered, where we do not find any materials placed

before us to establish that, such kind of practice would lead to severe health hazard of the people who involved in such practice and also the people who have connections with those devotees who have completed such practice of rolling over on the leaves after partaking the meals.

48. In view of no proof or documents or literatures available before this Court suggesting that the practice of rolling over will have the health hazard, we cannot conclude that this practice would lead to a health hazard.

49. Therefore we do not think that such a practice can be prohibited by the State on the ground of health, but at the same time on the ground of morality, on the ground of alleged violation of Articles 14 and 21 of the Constitution in a democratic country having the equal right and opportunity of every citizen under our Constitution and there could be no discrimination in the name of caste and religion by allowing such a practice, whether that would lead to any discrimination among the citizens is the large question which has to be answered.

50. Insofar as the freedom under Article 25 which is subject to health is concerned, illustratively we can state about the religious practice being adopted, where, the devotees in order to fulfil their vow used to take a meal on the empty floor without having any vessel, plate or leaf, that is called "மண் சோறு" (Mun Soru) i.e., Earth Meal.

51. In this religious practice, the devotees after putting meal on the empty floor in the temple premises would eat the meal. The empty floor is called as soil or earth, in Tamil "மண்" (Mun) and the meal would be called as Rice, in Tamil "சோறு" (Soru), hence, it is called as "மண் சோறு" (Mun Soru), Earth Meal or Earth Rice. Even in this kind of practice, no one would feel that this practice would lead to some health hazard.

52. However, insofar as the word morality is concerned as occurred in Article 25 of the Constitution, the Hon'ble Apex Court in more than one occasion has considered the same and treated the word morality as a Constitutional Morality.

53. In a decision in (2002) 8 SCC 106, in the mater of N.Adithayan v. Travancore Devaswom Board, the Hon'ble Supreme Court has held that any custom or usage irrespective of even any proof of their existence in pre-Constitution days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by the Parliament. Paragraph 18 of the said Judgment is extracted hereunder:

> " In the present case, it is on record and to which we have also made specific reference to the details of facts showing that an Institution has been started to impart training to students joining the Institution in all relevant Vedic texts, rites, religious observances and modes of worship by engaging reputed scholars and Thanthris and the students, who ultimately pass through the tests, are being initiated by performing the investiture of sacred thread and gayatri. That apart, even among such qualified persons, selections based upon merit are made by the Committee, which includes among other scholars a reputed Thanthri also and the quality of candidate as well as the eligibility to perform the rites, religious observances and modes

of worship are once again tested before appointment. While that be the position to insist that the person concerned should be a member of a particular caste born of particular parents of his caste can neither be said to be an insistence upon an essential religious practice, rite, ritual, observance or mode of worship nor any proper or sufficient basis for asserting such a claim has been made out either on facts or in law, in the case before us, also. The decision in Shirur Mutt's case (supra) and the subsequent decisions rendered by this Court had to deal with the broad principles of law and the scope of the scheme of rights guaranteed under Articles 25 and 26 of the Constitution, in the peculiar context of the issues raised therein. The invalidation of a provision empowering the Commissioner and his subordinates as well as persons authorized by him to enter any religious institution or place of worship in any unregulated manner by even persons who are not connected with spiritual functions as being considered to violate rights secured under Articles 25 and 26of the Constitution of India, cannot help the appellant to

contend that even persons duly qualified can be prohibited on the ground that such person is not a Brahaman by birth or pedigree. None of the earlier decisions rendered before Seshammal's case (supra) related to consideration of any rights based on caste origin and even Seshammal's case (supra) dealt with only the facet of rights claimed on the basis of hereditary succession. The attempted exercise by the learned Senior Counsel for the appellant to read into the decisions of this Court in Shirur Mutt's case (supra) and others something more than what it actually purports to lay down as if they lend support to assert or protect any and everything claimed as being part of the religious rituals, rites, observances and method of worship and make such claims immutable from any restriction or regulation based on the other provisions of the Constitution or the law enacted to implement such constitutional mandate, deserves only to be rejected as merely a superficial approach by purporting to deride what otherwise has to have really an overriding effect, in the scheme of rights declared and guaranteed under Part III of the Constitution of India. Any custom or

usage irrespective of even any proof of their existence in pre constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by Courts in the country."

54. On the issue of morality, the lead Judgment is Sabarimala Temple case reported in (2019) 11 SCC 1 in the matter of Indian Young Lawyers Assn., (Sabarimala Temple-5J) v. State of Kerala, where the Hon'ble Supreme Court has declared that the word morality occurred in Article 25 of the Constitution is nothing but "Constitutional Morality", even though the word morality has not been defined in the Constitution. Paragraph 106 of the Judgment speaks about the term morality occurring in Article 25(1) which reads thus :

"106. The term "morality" occurring in Article

> 25(1) of the Constitution cannot be viewed with a narrow lens so as to confine the sphere of definition of morality to what an individual, a section or religious sect may perceive the term to mean. We must remember that when there is a violation of the fundamental rights, the term "morality" naturally implies constitutional morality and any view that is ultimately taken by the Constitutional Courts must be in conformity with the principles and basic tenets of the concept of this constitutional morality that gets support from the Constitution."

55. The Supreme Court has further spoken about the Constitutional morality in paragraph 219 which reads thus :

> "If the Constitution has to have a meaning, is it permissible for religion – either as a matter of individual belief or as an organized structure of religious precepts – to assert an entitlement to do what is derogatory to women? Dignity of the individual is the unwavering premise of the fundamental rights. Autonomy nourishes dignity by allowing each individual to make critical

choices for the exercise of liberty. A liberal Constitution such as ours recognizes a wide range of rights to inhere in each individual. Without freedom, the individual would be bereft of her individuality. Anything that is destructive of individual dignity is anachronistic to our constitutional ethos. The equality between sexes and equal protection of gender is an emanation of Article 15. Whether or not Article 15 is attracted to a particular source of the invasion of rights is not of overarching importance for the simple reason that the fundamental principles which emerge from the Preamble, as we have noticed earlier, infuse constitutional morality into its content. In our public discourse of individual rights, neither religious freedom nor organized religion can be heard to assert an immunity to adhere to fundamental constitutional precepts grounded in dignity and human liberty. The postulate of equality is that human beings are created equal. The postulate is not that all men are created equal but that all individuals are created equal. To exclude women from worship by allowing the right to worship to men is to place

> women in a position of subordination. The Constitution, should not become an instrument for the perpetuation of patriarchy. The freedom to believe, the freedom to be a person of faith and the freedom of worship, are attributes of human liberty. Facets of that liberty find protection in Article 25. Religion then cannot become a cover to exclude and to deny the basic right to find fulfilment in worship to women. Nor can a physiological feature associated with a woman provide a constitutional rationale to deny to her the right to worship which is available to others. Birth marks and physiology are irrelevant to constitutional entitlements which are provided to every individual. To exclude from worship, is to deny one of the most basic postulates of human dignity to women. Neither can the Constitution countenance such an exclusion nor can a free society accept it under the veneer of religious beliefs."

56. The Supreme Court ultimately held that, a claim for the exclusion of women from religious worship, even if it is founded in religious text, is

subordinate to the Constitutional value of liberty, dignity and equality. Exclusionary practices are contrary to Constitutional morality.

57. In (2023) 4 SCC 541 in the matter of Central Board of Dawoodi Bohra Community v. State of Maharashtra, the word "morality", once again has been taken into consideration. The Hon'ble Supreme Court under the heading "Morality", in the context of Articles 25 and 26 has held the following:

> ***" Morality in the context of Articles 25 and 26***
>
> 30. The freedom of conscience guaranteed under clause (1) of Article 25 is subject to public order, morality and health. All four clauses (*a*), (*b*), (*c*) and (*d*) of Article 26 are also made specifically subject to public order, morality and health. Thus, the right of the religious denomination to manage its own affairs in matters of religion is always subject to morality. As far as the concept of morality contemplated by Articles 25 and 26 is concerned, much water has flown after the decision in *Sardar Syedna* [*Sardar Syedna Taher Saifuddin Saheb* v. *State of Bombay*, 1962 Supp (2) SCR 496 : AIR 1962 SC 853] . Moreover, in*Sardar Syedna* [*Sardar Syedna Taher*

Saifuddin Saheb v.*State of Bombay*, 1962 Supp (2) SCR 496 : AIR 1962 SC 853] , the argument that Article 26(*b*) is subject to morality, was not at all considered as it was not canvassed and pressed at the time of hearing. In *Navtej Singh Johar* [*Navtej Singh Johar* v. *Union of India*, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] , this Court held that when this Court deals with the issue of morality, it must be guided by the concept of constitutional morality and not by societal morality. Moreover, notion of morality evolves with time and is not static. The question whether constitutional morality can be equated with equality, fraternity and non-discrimination needs consideration.

31. The concept of morality as contemplated by Articles 25 and 26 was considered in greater detail by another Constitution Bench in *Sabrimala Temple-5 J.* [*Indian Young Lawyers Assn. (Sabarimala Temple-5 J.)* v.*State of Kerala*, (2019) 11 SCC 1] There were four separate opinions rendered by the Constitution Bench. Dipak Misra, C.J., who wrote the opinion for himself and A.M. Khanwilkar, J. and Dr D.Y. Chandrachud, J. (as then he was), in their separate opinions concurred on the interpretation of the concept of morality under Articles 25 and 26 of the Constitution. They also dealt with the issue

of the interplay between the rights under Article 26 and the other rights under Part III of the Constitution.

32. The conclusions in the separate opinions of Dipak Misra, C.J. and Dr D.Y. Chandrachud, J. can be summarised as under:

32.1. The expression "morality" used in Articles 25 and 26 has an overarching position similar to public order and health.

32.2. The term "morality" cannot be viewed with a narrow lens so as to confine the definition of morality to what an individual or a religious sect may perceive to mean. Morality naturally implies constitutional morality and any view that is ultimately taken by the constitutional courts must be in conformity with the basic tenets of constitutional morality. "Morality" for the purposes of Articles 25 and 26 must mean that which is governed by fundamental constitutional principles.

32.3. The expression "subject to" is in the nature of a condition and therefore, public order, morality and health control Article 26.

32.4. There is no convincing reason to allow provisions of Article 26 to tread in isolation. Even if Article 26 is not specifically made subject to other fundamental rights, there would still be a ground to read both together so that

they can exist in harmony. Absence of specific words in Article 26 making it subject to other fundamental rights cannot allow freedom of religious denomination to exist in an isolated silo.

32.5. The freedom of religious denominations under Article 26 must be read in a manner that requires the preservation of equality, and other individual freedoms which may be impacted by unrestricted exercise.

33. Nariman, J in para 176.7 of *Sabrimala Temple-5 J.* [*Indian Young Lawyers Assn. (Sabarimala Temple-5 J.)* v.*State of Kerala*, (2019) 11 SCC 1] , stressed that the term "morality" refers to that which is considered abhorrent to civilised society, given the mores of the time, by reason of harm caused by way, inter alia, of exploitation and degradation.

34. In his opinion rendered in *Sabrimala Temple-5 J.* [*Indian Young Lawyers Assn. (Sabarimala Temple-5 J.)* v.*State of Kerala*, (2019) 11 SCC 1] , Dr D.Y. Chandrachud, J. (as he then was) has dealt with the engagement of essential religious practices with constitutional values. While dealing with the said issue, in para 289, he has observed thus : (SCC p. 188)

> "*289*. For decades, this Court has witnessed claims resting on the essentiality of a practice that militate

against the constitutional protection of dignity and individual freedom under the Constitution.*It is the duty of the courts to ensure that what is protected is in conformity with fundamental constitutional values and guarantees and accords with constitutional morality. While the Constitution is solicitous in its protection of religious freedom as well as denominational rights, it must be understood that dignity, liberty and equality constitute the trinity which defines the faith of the Constitution*. Together, these three values combine to define a constitutional order of priorities. Practices or beliefs which detract from these foundational values cannot claim legitimacy."

(emphasis supplied)

35. The question is whether the exclusionary practice which prevails in the Dawoodi Bohra community of excommunicating its members will stand the test of constitutional morality? As observed by Das Gupta, J. in *Sardar Syedna* [*Sardar Syedna Taher Saifuddin Saheb* v. *State of Bombay*, 1962 Supp (2) SCR 496 : AIR 1962 SC 853] , the excommunication of a member of the community affects many of his civil rights. The Privy Council, in *Hasanali* v. *Mansoorali* [*Hasanali* v.

Mansoorali, 1947 SCC OnLine PC 63 : (1947-48) 75 IA 1] , in para 4, has dealt with the effect of excommunication in Dawoodi Bohra community. Para 4 reads thus : (*Hasanali case* [*Hasanali* v. *Mansoorali*, 1947 SCC OnLine PC 63 : (1947-48) 75 IA 1] , SCC OnLine PC)

> "*4.The appellants would limit the effect of excommunication, whatever steps might have been taken to bring it into being, to complete social ostracism. There is nothing, they say, to show that it excluded from rights of property or worship. Their Lordships do not find themselves able to accept this limitation. The Dai is a religious leader as well as being trustee of the property of the community, and in India exclusion from caste is well known*. There is at least one case in which it is recorded that certain persons applied to the King to intercede with the thirty-third Dai, complaining that in consequence of excommunication they were kept from the mosques and places where true believers met; and no instance has been cited where excommunicated persons freely exercised their religious rights. Indeed, the complaint in the cases brought to their Lordships' attention as

regards which relief is claimed for the appellants or those whom they are said to represent is that they were wrongly excommunicated, not that if rightly excommunicated they were wrongly deprived of their religious rights. *Excommunication, in their Lordships' view, if justified, necessarily involves exclusion from the exercise of religious rights in places under the trusteeship of the head of the community in which religious exercises are performed*."

(emphasis supplied)

36. A person who is excommunicated by the community, will not be entitled to use the common property of the community and the burial/cremation grounds of the community. In a sense, such a person will virtually become untouchable (being banished or ostracised) within the community. In a given case, it will result in his civil death. It can be argued that the concept of constitutional morality which overrides the freedom conferred by clause (*b*) of Article 26, will not permit the civil rights of excommunicated persons which originate from the dignity and liberty of human beings to be taken away. The concepts of equality, liberty and fraternity are certainly part of our constitutional morality. Basic ideas

> enshrined in our Constitution are part of constitutional morality. The conscience of our Constitution is constitutional morality. Hence, it is contended that excommunication or ostracisation is anathema to the concepts of liberty and equality. It is against the anti-discriminatory ethos which forms a part of constitutional morality. Therefore, the constitutional court ought not to tolerate anything which takes away the right and privilege of any person to live with dignity as the concept of constitutional morality does not permit the Court to do so. Therefore, in our view, the protection under Article 26(*b*) granted by the decision in *Sardar Syedna* [*Sardar Syedna Taher Saifuddin Saheb* v. *State of Bombay*, 1962 Supp (2) SCR 496 : AIR 1962 SC 853] to the power to excommunicate a member of the Dawoodi Bohra community, needs reconsideration as the said right is subject to morality which is understood as constitutional morality. This issue will require examination by a larger Bench.

58. Therefore these decisions have made it very clear that, insofar as the Constitutional morality is concerned, whether a particular practice, claimed to be a religious practice or custom can be continued or prohibited

on the ground of morality cannot be decided within the meaning of water type compartment. Since the Constitutional morality is the broad term within which any such religious practices can be protected as a fundamental right of any religious group or denomination within the meaning of Articles 25 and 26 of the Constitution can be gone into depending upon the facts of each and every case.

59. However, such a decision cannot be taken by this Court at this juncture in view of the fact that the Hon'ble Supreme Court in a similar matter has seized of the same and granted stay of such a practice said to have been followed 500 years more in a temple called Kukke Subramanya Temple at Dakshina Kannada District in the State of Karnataka.

On the ground of Jurisdiction of the single Bench forum to declare a decision of the Larger Bench, (here, it is Division Bench) as a nullity, whether is permissible or not.

60. The practice of rolling over the plantain leaves after partaking the meal was sought to be prohibited or stopped. That is how the writ petition in

W.P.(MD).No.7068 of 2015 was filed by one V.Dalit Pandiyan as a Public Interest Litigation. The said writ petition was allowed by a Division Bench of this Court by order, dated 28.04.2015. The relevant portion of the order has already been extracted herein above.

60.1. Pursuant to this order of the Division Bench which has become final as no appeal has been filed against it, the order has been implemented by the District authorities as well as the fourth respondent, i.e., Sabha as no such event of rolling over on plantain leaves was undertaken since 2015 till the present writ petition was filed by P.Naveen Kumar who is the first respondent in these Writ Appeals.

60.2. When the writ petition was decided by the single Bench which is impugned herein, this Division Bench Judgment, dated 28.04.2015 was brought to the notice of the writ court, where the writ court has taken note of the entirety of the Judgment of the Division Bench which has been extracted in paragraph 26 of the Judgment. It was mainly on the reason that, the list of respondents in the said writ petition before the Division bench did

not contain any private respondents as it had only official respondents like the Chief Secretary, District Collector, Superintendent of Police and Revenue Divisional Officer of the District, concerned Tahsildar and Inspector of Police. Therefore, the writ court has wondered that, there has been no private respondents impleaded including the Sabha who are the affected parties by virtue of the order that has been passed by the Division Bench, stopping or prohibiting the practice of rolling over. Therefore it is a clear case of violation of principles of natural justice, was the first reason given by the writ court in declaring the Division Bench Judgment as a nullity.

60.3. It is the further reason given by the writ court that, the decision of the Division Bench is suffered from the fatal viz of non-joinder of necessary parties. Quoting the decision of AIR 1963 SC 786, the writ court held that, any person whose interest is affected will be a necessary party and that any order made without hearing the affected parties would be void. The decision of a Full Bench which declared a Division Bench order as a nullity as reported in 2022 (5) CTC 145 also has been quoted by the writ court.

60.4. The writ court has further stated that, the Division Bench went by a news items based on which such a conclusion had been arrived at as if that there has been a stay order passed by the Hon'ble Supreme Court.

60.5. However, the writ court has failed to verify whether any such stay order has been granted by the Hon'ble Supreme Court, because it is a fact that such an order of stay has been granted by the Hon'ble Supreme Court in SLP (Civil) No.33137 of 2014 by order, dated 12.12.2014.

60.6. In this context, let us note as to under which circumstances, such a stay order has been granted in the said case of State of Karnataka and others Vs. Adivasi Budakattu Hitarakshana Vedike Karnataka. In fact a Division Bench of the Karnataka High Court in W.P.No.8123 of 2012 as a Public Interest Litigation, by order, dated 08.11.2012 has decided the issue, where, the issue was the practice of Pankti Bheda and Made Made Snana whether can be practiced continuously, for which any modified order can be passed. The Division Bench of the Karnataka High Court has passed the following order:

"2. The mater has been heard in detail in a very congenial atmosphere. On behalf of respondents, it is voluntarily submitted that so far as the practice of 'Pankti Bheda', 'Madesnana', 'Made Seve' and 'Madesevane' shall henceforth be regulated and practiced adhering to the following:

1. The ceremony shall be open to all persons regardless of religion, caste, creed or gender.

2. The practice of a particular community partially eating the food which has been offered to the Deity as an oblation shall be discontinued. The food, i.e., offered to the Deity after offering in the sanctum-sanctorum as 'Naivedyam' shall be placed on plantain leaves in the outer yard of the temple over which, those willing devotees shall be allowed to perform 'Made Made Snana'. This food will not have been tasted or partially eaten by the members of any community.

3. The respondents shall neither encourage nor sponsor or permit any form of 'Pankti Bheda' on the basis of religion, caste, creed or gender.

4. The 'Made Made Snana' shall be totally voluntary.

3. Learned Senior counsel appearing on behalf of the petitioners submits that if the new form of religious practice is

adhered to, it will remove whatever is perceived as discrimination.

4. In view of the above modifications and the assurance given by the respondent Nos.1 to 5 that it will be meticulously followed, we are satisfied that no further attention of this Court is called for in this petition.

5. Petition is accordingly disposed of."

60.7. The main modification that has been made by the Division Bench of the Karnataka High Court in the said Judgment was that, the practice of a particular community partially eating the food, which has been offered to the deity as an oblation shall be discontinued. The food that is offered to the Deity after offering in the sanctum-sanctorum as 'Naivedyam' shall be placed on plantain leaves in the outer yard of the temple over which, those willing devotees shall be allowed to perform 'Made Made Snana'. This food will not be tasted or partially eaten by the members of any community.

60.8. This order was in fact reviewed by another Division Bench on 19.11.2014, where the earlier practice that was prevailing, whereby two

community people were permitted to perform pooja etc., were directed to be restored and continued. The relevant portion of the order in review, dated 19.11.2014 reads thus :

> "17. We are of the view that, the practice which was prevailing earlier shall continue till we decide this review petition on merits. So that the modified practice is not given effect to, as was done by the Supreme Court for the last two years. Therefore, we pass the following : ORDER - The order passed by this Court on 08.11.2012 in W.P.No.8123 of 2012 is stayed pending disposal of the review petition on merits. Issue notice to all other respondents in this case. The learned Government Advocate is directed to take notice for respondent Nos.12 to 15."

60.9. This order passed in the Review on 19.11. 2014 by the Division Bench of the Karnataka High Court has been appealed by the State of Karnataka and others in SLP (Civil) No.33137 of 2014. In that SLP only the Hon'ble Supreme Court by order, dated 12.12.2014 has passed the following order :

"Issue notice.

Mr.K.K.Rai, learned senior counsel appearing for Respondent No.1 accepts and waives formal notice on behalf of Respondent No.1.

Mr.E.C.Vidya Sagar, learned counsel appearing for Respondent Nos.2 and 6 accepts and waives formal notice on behalf of Respondent Nos.2 and 6.

Learned counsel appearing for Respondent Nos.1, 2 and 6 seeks some time to file their reply. Reply and rejoinder be filed and the matter be listed after pleadings are complete.

In the meanwhile, there shall be stay of the operation of the impugned order, dated 19th November, 2014 passed by the High Court of Karnataka in R.P.No.1248 of 2014 in W.P.No.8123 of 2012."

(Emphasis supplied)

60.10. Therefore the permission that has been given by the Division Bench by order, dated 19.11.2014 to perform the "“urulu seve” and “made snana” in the old form, i.e., rolling over the plantain leaves after partaking

the meals restored by the Division Bench has been stayed by the Hon'ble Supreme Court.

60.11. It is to be noted that, the said practice, as has been claimed by the stakeholders at a temple called Kukke Subramanya Temple at Dakshina Kannada District at Karnataka State, has been more than 500 years old. Despite that, the practice has been stayed by the Hon'ble Supreme Court. Therefore, the said Judgment since has been brought to the notice of the Division Bench during the year 2015, merely because a news item alone has been brought to the notice of the Division Bench not the Judgment, therefore the Judgment was wrong, cannot be the conclusion arrived at by the writ court in the impugned order.

60.12. The writ court has also stated that, just an Executing Court who can declare the decree sought to be executed as a nullity, the writ court of single Bench have the jurisdiction to declare the order, dated 28.04.2015 made by the Division Bench as nullity. The relevant portion of the order impugned reads thus :

" 34. There is merit in the contention of the learned Additional Government Pleader that individuals and officials cannot on their own assume that a judicial order is nullity and can be ignored. It is true that the Hon'ble Supreme Court in the decision reported in (2022) 1 SCC 209 (Amazon.com NV Investment v. Future Retail Limited) reiterated the well known proposition that no order bears the stamp of invalidity on its forehead and that it has to be set aside in regular court proceedings as being illegal. In this case, the petitioner has filed petition under Article 226 of the Constitution of India and it is in these proceedings the order dated 28.04.2015 made in WP(MD)No.7068 of 2015 has been declared as nullity. Just an executing court can declare the decree sought to be executed as nullity, I also have the jurisdiction to declare the order dated 28.04.2015 made in WP(MD)No.7068 of 2015 as nullity."

60.13. The learned writ court has also taken clue from a decision of a single Bench from Karnataka High Court, dated 20.12.2023 made in

W.P.No.47144 of 2018, where it was held that the single Bench is not subordinate to the Division Bench and on that score, the single Bench here in the order impugned has declared that, the single Bench is not guilty of judicial indiscipline. The relevant portion of the order reads thus :

> "35. It is pertinent to note that a Single Bench is not a court subordinate to Division Bench. His Lordship Mr.Justice M.Nagaprasanna of the High Court of Karnataka vide order dated 20.12.2023 in WP No.47144 of 2018 took exception to the remand order made by the Hon'ble Division Bench. The learned Judge cited the observation of the Hon'ble Supreme Court made in Roma Sonker v. M.P.S.P.S.C (2018) 17 SCC 106 which was to the effect that both the learned Single Judge as well as the Division Bench exercise the same jurisdiction under Article 226 of the Constitution of India. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that a single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench is called upon in the intra-court appeal primarily and mostly

to consider the correctness or otherwise of the view taken by the single Judge. The Division Bench must consider the appeal on merits by deciding on the correctness of the judgment of the single Judge instead of remitting the matter to the single Judge. Justice M.Nagaprasanna also quotes at length the judgment of the Full Bench of the Karnataka High Court rendered in Town House Building Co-operative Society Limited v. Special Deputy Commissioner, 1988 (2) KLJ 510. The Hon'ble Full Bench in turn relied on an earlier Full Bench decision in State of Karnataka v. H.Krishnappa (ILR 1975 (Kar) 1015). It was held that the writ appeal jurisdiction cannot be compared and is not akin to an appellate jurisdiction as ordinarily understood which presupposes the existence of a superior court and an inferior court. No such relationship exists between a single judge and a Division Bench as both exercise the jurisdiction vested in the High Court. There is no difference between a writ petition referred to a Division Bench or a writ petition which comes up before a Division Bench through a Writ Appeal in the matter of exercise of

> the jurisdiction and powers of the Court under Article 226 of the Constitution. I am therefore convinced that I am not guilty of judicial indiscipline. This is more so because I have only examined the character of an earlier judicial order passed in exercise of the jurisdiction under Article 226. "

60.14. Whether this approach of the single Bench assuming jurisdiction to declare the Division Bench Judgment on the same subject as a nullity is a moot question to be answered in this lis.

60.15. In this context, many number of decisions have been cited by the learned counsel appearing for the appellants.

60.16. In (2005) 2 SCC 673 in the case of Central Board of Dawoodi Bohra Community v. State of Maharashtra, the Supreme Court has elaborately discussed about the decision of the coordinate Bench or coequal benches, course permissible in case of bench doubting the view taken by the coordinate Bench, doctrine of stare decisis, what is binding precedent, law

declared by the Supreme Court, per incuriam decisions, meaning etc. The aforesaid legal position have been summed up in paragraph 12 of the Judgment which reads thus :

> "12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:
>
> (*1*) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.
>
> (*2*) [Ed.: Para 12(2) corrected vide Official Corrigendum No. F.3/Ed.B.J./21/2005 dated 3-3-2005.] A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for

a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(*3*) [Ed.: Para 12(3) corrected vide Official Corrigendum No. F.3/Ed.B.J./7/2005 dated 17-1-2005.] The above rules are subject to two exceptions: (*i*) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (*ii*) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in

> question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in *Raghubir Singh* [(1989) 2 SCC 754] and *Hansoli Devi* [(2002) 7 SCC 273] ."

60.17. In Official Liquidator v. Dayanand reported in (2008) 10 SC 1, the Supreme Court has lamented the practice of not adhering to the judicial discipline. The relevant portion of the order reads thus :

> "89. It is interesting to note that in *Coir Board* v. *Indira Devi P.S.* [(1998) 3 SCC 259 : 1998 SCC (L&S) 806] , a two-Judge Bench doubted the correctness of the seven-Judge Bench judgment in *Bangalore Water Supply & Sewerage Board* v.*A. Rajappa* [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] and directed the matter to be placed before Hon'ble the Chief Justice of India for constituting a larger Bench. However, a three-Judge Bench headed by Dr. A.S. Anand, C.J., refused to entertain the reference and observed that the two-Judge Bench is bound by the judgment of the larger Bench—*Coir Board* v. *Indira Devai P.S.* [(2000) 1 SCC 224 : 2000 SCC (L&S) 120]

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up

every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judge Bench in *U.P. SEB* v. *Pooran Chandra Pandey* [(2007) 11

> SCC 92 : (2008) 1 SCC (L&S) 736] should be read as obiter and the same should neither be treated as binding by the High Courts, tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench."

60.18. In (2015) 8 SCC 129 in the matter of P.Suseela v. University Grants Commission, the Supreme Court has held as follows :

> "25. In SLPs (C) Nos. 3054-55 of 2014, a judgment of the same High Court dated 6-1-2014 [*Vinay Singh* v. *Union of India*, 2014 SCC OnLine All 175 : (2014) 103 ALR 192] again by a Division Bench arrived at the opposite conclusion. This is also a matter which causes us some distress. A Division Bench judgment of the same High Court is binding on a subsequent Division Bench. The subsequent Division Bench can either follow it or refer such judgment to the Chief Justice to constitute a Full Bench if it differs with it. We do not appreciate the manner in which this subsequent judgment (even though it has reached the right result), has dealt with an earlier binding

Division Bench judgment of the same High Court. In fact, as was pointed out to us by the learned counsel for the appellants, the distinction made in para 20 between the facts of the earlier judgment and the facts in the later judgment is not a distinction at all. Just as in the 2012 judgment [*Ramesh Kumar Yadav* v. *University of Allahabad*, 2012 SCC OnLine All 667 : (2013) 4 All LJ 635] PhD degrees had been awarded prior to 2009, even in the 2014 judgment [*Vinay Singh* v. *Union of India*, 2014 SCC OnLine All 175 : (2014) 103 ALR 192] PhD degrees with which that judgment was concerned were also granted prior to 2009. There is, therefore, no distinction between the facts of the two cases. What is even more distressing is that only sub-para (4) of the conclusion in the 2012 judgment [*Ramesh Kumar Yadav* v. *University of Allahabad*, 2012 SCC OnLine All 667 : (2013) 4 All LJ 635] is set out without any of the other sub-paragraphs of para 105 extracted above to arrive at a result which is the exact opposite of the earlier judgment. This judgment is also set aside only for the reason that it did not follow an earlier binding judgment. This

> will, however, not impact the fact that the writ petitions in the 2014 judgment [*Vinay Singh* v. *Union of India*, 2014 SCC OnLine All 175 : (2014) 103 ALR 192] have been dismissed. They stand dismissed having regard to the reasoning in the judgment delivered by us today. In view of this pronouncement, nothing survives in Contempt Petitions Nos. 286-87 of 2014 which are disposed of as having become infructuous. The other appeals from the Delhi [*All India Researchers' Coordination Committee* v. *Union of India*, 2010 SCC OnLine Del 4304 : (2011) 121 DRJ 297] , Madras [*P. Suseela* v. *UGC*, 2010 SCC OnLine Mad 6041 : (2011) 2 CTC 593] and Rajasthan [*Ravindra Singh Shekhawat* v. *Union of India*, 2012 SCC OnLine Raj 2751] High Courts are, consequently, also dismissed. There shall be no order as to costs."

60.19. In Mary Pushpam v. Telvi Curusumary & Ors reported in 2024 LiveLaw (SC) 12, the Hon'ble Supreme Court has held as follows :

> "18. The legal position on Coordinate Benches has further been elaborated by this Court in State of Punjab & Anr. v. Devans

Modern Breweries Ltd. & Anr.2 :

> "339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench.
>
> 340. In Halsbury's Laws of England (4th Edn.), Vol. 26 at pp. 297-98, para 578, it is stated: "A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow."

19. We have already discussed about the importance of ensuring judicial discipline and the same has also been upheld by various judgement of this Court. In Central Board of Dawoodi Bohra Community & Anr. vs. State of Maharashtra & Anr.3 , this Court has summed up the legal position of rules of judicial discipline as follows:

> "12. ***
>
> (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal

strength.

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted."

20. In the current case, as previously mentioned, the High Court's judgment from the initial round dated 30.03.1990, noted that the disputed property included 8 cents of land, not just the building structure on it. As per the Doctrine of Merger, the judgments of the Trial Court and the First Appellate Court from the first round of litigation are absorbed into the High Court's judgment dated 30.03.1990. This 1990 judgment should be regarded as the conclusive and binding order from

> the initial litigation. Following the principles of judicial discipline, lower or subordinate Courts do not have the authority to contradict the decisions of higher Courts. In the current case, the Trial Court and the High Court, in the second round of litigation, violated this judicial discipline by adopting a position contrary to the High Court's final judgment dated 30.03.1990, from the first round of litigation."

60.20. Still many number of decisions can be quoted from the Hon'ble Supreme Court which underline the need of following the judicial discipline among the Judicial fraternity. Even if a decision of the higher Judicial forum is wrong and such a conclusion cannot be arrived at by the higher Judicial forum, even then, the Bench of lesser strength has only to accept the verdict. In case a coequal forum or Bench differs with the view already taken by yet another coequal forum or Bench, even then, the coequal Bench or forum can place the matter before the Hon'ble Chief Justice to constitute a Larger Bench to whom the matter to be referred for an authoritative pronouncement.

60.21. This method of judicial discipline has been underlined and reiterated in many decisions of the Hon'ble Supreme Court, only few have been quoted herein above.

60.22. When that being so, the single Bench forum cannot assume the jurisdiction to declare a Division Bench Judgment consisting of two Judges forum a nullity. Even though the reason has been stated as if the Division bench has passed order without joining the necessary party, therefore for non-joinder of necessary party that can be nullified and also for the reason that, the Division Bench has not given proper opportunity to the affected parties, thereby it is a case of violation of principles of natural justice and moreover the Judgment was rendered on the basis of misrepresentation which amounts to fraud, therefore for all these reasons, the Division Bench Judgment is to be declared as nullity and on that score, whether the single Bench can assume the jurisdiction to declare such a Division Bench Judgment as a nullity one.

60.23. On analysing the aforestated Judgments and several other Judgments, since it is a settled proposition of law in the realm of judicial discipline that even if it is a wrong judgment in the opinion of the lesser forum of a higher judiciary, the same cannot be touched upon unless it is referred for a larger forum, if it is coequal forum or bench and if it is a lesser forum certainly binding on them.

60.24. This basic judicial discipline have to be strictly maintained, as without which, among the judicial fraternity no uniformity of decision can be possible, thereby it would give an alarming signal to the general litigant public who may raise doubt over the decision making process of the higher judicial forum.

60.25. That is the reason why in many number of decisions, the Hon'ble Supreme Court has repeatedly held that, the judicial forum with a binding nature have to strictly follow the Judicial precedents.

60.26. In some of the cases where the Hon'ble Supreme Court has held that, even a comment or criticism that has been made by a lesser quorum of the Hon'ble Supreme Court of the decision of the Constitutional Bench of the Supreme Court cannot be approved.

60.27. A Division Bench Judgment in Review Application 173 of 2019 in W.A.No.98 of 2017 dated 06.11.2019 in the matter of J.Sathish v. The Member Secretary, Tamil Nadu Pollution Control Board, has made this position clear. The relevant portion of the Judgment of the Division Bench in J.Sathish case is extracted hereunder for easy reference.

> " 15.At this juncture, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of Official Liquidator v. Dayanand and others, reported in (2009) 1 SCC (L&S) 943, in which the aspect of judicial discipline has been discussed in detail. Paragraphs 75 to 92 of the said judgment are relevant and the same are extracted as under:
>
> > 75.By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in Secretary, State of Karnataka vs. Uma Devi (2006 SCC (L&S) 753) is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the

Constitution Bench judgment has been followed by different two-Judges Benches for declining to entertain the claim of regularization of service made by ad hoc/temporary/ daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees - Indian Drugs and Pharamaceuticals Ltd. vs. Workmen [2007 (1) SCC 408], Gangadhar Pillai vs. Siemens Ltd. [2007 (1) SCC 533], Kendriya Vidyalaya Sangathan vs. L.V. Subramanyeswara [2007 (5) SCC 326], Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh [2007 (6) SCC 207]. However, in U.P. SEB vs. Pooran Chand Pandey [2007 (11) SCC 92] on which reliance has been placed by Shri Gupta, a two-Judges Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judges Bench in Maneka Gandhi vs. Union of India [1978 (1) SCC 248]. 76.The facts of U.P.SEB vs. Pooran Chand Pandey (supra) were that the respondents (34 in number) were employed as daily wage employees by the Cooperative Electricity Supply Society in 1985. The Society was taken over by Uttar Pradesh Electricity

Supply Board in 1997 along with daily wage employees. Earlier to this, the Electricity Board had taken a policy decision on 28.11.1996 to regularize the services of its employees working on daily wages from before 4.5.1990, subject to their passing the examination. The respondents moved the High Court claiming benefit of the policy decision dated 28.11.1996. The learned Single Judge of the High Court held that once the employees of the society became employees of the Electricity Board, there was no valid ground to discriminate them in the matter of regularization of service. The Division Bench approved the order of the Single Bench. A two-Judges Bench of this Court dismissed the appeal of the Electricity Board. In para 11 of its judgment, the two-Judges Bench distinguished Secretary, State of Karnataka vs. Uma Devi (supra) by observing that the ratio of that judgment cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution. The two-Judges Bench then referred to State of Orissa vs. Sudhanshu Sekhar Misra [AIR 1968 SC 647], Ambica Quarry Works vs. State of Gujarat [1987 (1) SCC 213], Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. [2003 (2) SCC 111], Bharat Petroleum Corpn. Ltd. vs. N.R.Vairamani [2004 (8) SCC 579] and observed:

"16. We are constrained to refer to the above decisions and principles contained therein because we find that often Umadevi (3) case is being applied by courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University and Bharat Petroleum Corpn. Ltd. a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Umadevi (3) case cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Umadevi (3) case inapplicable to the facts of that case."

“18.We may further point out that a seven-Judge Bench decision of this Court in Maneka Gandhi vs. Union of India has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the Government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. Maneka Gandhi case is a decision of a seven-Judge Bench, whereas Umadevi (3) case is a

> decision of a five Judge Bench of this Court. It is well settled that a smaller Bench decision cannot override a larger Bench decision of the Court. No doubt, Maneka Gandhi case does not specifically deal with the question of regularisation of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application." [Emphasis supplied]

77.We have carefully analyzed the judgment of the two-Judges Bench and are of the considered view that the above reproduced observations were not called for. The only issue which fell for consideration by twoJudges Bench was whether the daily wage employees of the society, the establishment of which was taken over by the Electricity Board along with the employees, were entitled to be regularized in terms of the policy decision taken by the Board and whether the High Court committed an error by invoking Article 14 of the Constitution for granting relief to the writ petitioners. The question whether the Electricity Board could frame such a policy was neither raised nor considered by the High Court and this Court. The High Court simply adverted to the facts of the case and held that once the daily wage employees of the society became

employees of the Electricity Board, they could not be discriminated in the matter of implementation of the policy of regularization. Therefore, the two-Judges Bench had no occasion to make any adverse comment on the binding character of the Constitution Bench judgment in Secretary, State of Karnataka vs. Uma Devi (3) (2006 SCC (L&S) 753).

78.There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia vs. Administrator General of W.B. [1960 (3) SCR 578], this Court observed:

> "19.If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a

previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court." [Emphasis added]

79.In Lala Shri Bhagwan vs. Ram Chandra [AIR 1965 SC 1767], Gajendragadkar, C.J. Observed:

"18. ... It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer

> the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger bench to examine the question. That is the proper and traditional way to deal with such mattes and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself."

80.In Union of India vs. Raghubir Singh [1989 (2) SCC 754], R.S. Pathak, C.J. while recognizing need for constant development of law and jurisprudence emphasized the necessity of abiding by the earlier precedents in following words :

> "9.The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of law, besides providing assurance to the individual as to the consequence of transaction forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

81. In Sundarjas Kanyalal Bhatija and others vs. Collector, Thane [1989 (3) SCC 396], a two-Judges Bench observed as under :

> "22.. In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting opinion. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute."

82.In Dr.Vijay Laxmi Sadho vs. Jagdish [2001 (2) SCC 247], this Court considered whether the learned Single Judge of Madhya Pradesh High Court could ignore the judgment of a coordinate Bench on the same issue and held:

> "33.As the learned Single Judge was not in

> agreement with the view expressed in Devilal case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."

83.In Pradip Chandra Parija and others vs. Pramod Chandra Patnaik and others [2002 (1) SCC 1], the Constitution Bench noted that the two learned Judges denuded the correctness of an earlier Constitution Bench judgment in Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha [2001 (4) SCC 448] and reiterated the same despite the fact that the second Constitution Bench refused to reconsider the earlier verdict and

observed:

> "3.We may point out, at the outset, that in Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha (2001 (4) SCC 448) a Bench of five Judges considered a somewhat similar question. Two learned Judges in that case doubted the correctness of the scope attributed to a certain provision in an earlier Constitution Bench judgment and, accordingly, referred the matter before them directly to a Constitution Bench. The Constitution Bench that then heard the matter took the view that the decision of a Constitution Bench binds a Bench of two learned Judges and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, the Bench of two learned Judges could have ordered that the matter be heard by a Bench of three learned Judges.
>
> * * *
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> 5.The learned Attorney-General submitted that a Constitution Bench judgment of this Court was binding on smaller Benches and a judgment of three learned Judges was binding on Benches of two learned Judges -- a proposition that learned

counsel for the appellants did not dispute. The learned Attorney-General drew our attention to the judgment of a Constitution Bench in SubCommittee of Judicial Accountability v. Union of India (1992 (4) SCC 97) where it has been said that "no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another coordinate Bench" (SCC p. 98, para 5). The learned Attorney-General submitted that the appropriate course for the Bench of two learned Judges to have adopted, if it felt so strongly that the judgment in Nityananda Kar (1991 Supp. (2) SCC 506) was incorrect, was to make a reference to a Bench of three learned Judges. That Bench of three learned Judges, if it also took the same view of Nityananda Kar, could have referred the case to a Bench of five learned Judges.

6.In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial

> discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.
>
> [Emphasis supplied]

84.In State of Bihar vs. Kalika Kuer and others [2003 (5) SCC 448], the Court elaborately considered the principle of per incuriam and held that the earlier judgment by a larger Bench cannot be ignored by invoking the principle of per incuriam and the only course open to the coordinate or smaller Bench is to make a request for reference to the larger Bench.

85.In State of Punjab vs. Devans Modern Breweries Ltd. [2004 (11) SCC 26], the Court reiterated that if a coordinate Bench

does not agree with the principles of law enunciated by another Bench, the matter has to be referred to a larger Bench.

86.In Central Board of Dawoodi Bohra Community vs. State of Maharashtra [2005 (2) SCC 673], the Constitution Bench interpreted Article 141, referred to various earlier judgments including Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha (supra), Pradip Chandra Parija and others vs. Pramod Chandra Patnaik and others (supra) and held that "the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three Judges. The Court further held that such a practice would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on the point of law; consistency and certainty in the development of law and its contemporary status - both would be immediate casualty"

87.In State of U.P. and others vs. Jeet S.Bisht and another [2007 (6) SCC 586], when one of the Hon'ble Judges (Katju, J.) constituting the Bench criticised the orders passed by various Benches in the same case, the other Hon'ble Judge (Sinha, J.) expressed himself in the following words:

"100. For the views been taken herein, I regret to

> express my inability to agree with Brother Katju, J. in regard to the criticisms of various orders passed in this case itself by other Benches. I am of the opinion that it is wholly inappropriate to do so. One Bench of this Court, it is trite, does not sit in appeal over the other Bench particularly when it is a coordinate Bench. It is equally inappropriate for us to express total disagreement in the same matter as also in similar matters with the directions and observations made by the larger Bench. Doctrine of judicial restraint, in my opinion, applies even in this realm. We should not forget other doctrines which are equally developed viz. Judicial Discipline and respect for the Brother Judges."

88.In U.P. Gram Panchayat Adhikari Sangh vs. Daya Ram Saroj [2007 (2) SCC 138], the Court noted that by ignoring the earlier decision of a coordinate Bench, a Division Bench of the High Court directed that parttime tube-well operators should be treated as permanent employees with same service conditions as far as possible and observed :

> "26.Judicial discipline is selfdiscipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a coordinate Bench of the same High Court is

> brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity."

89.It is interesting to note that in Coir Board, Ernakulam vs. Indira Devi P.S. [1998 (3) SCC 259], a two-Judges Bench doubted the correctness of the sevenJudges Bench judgment in Bangalore Water Supply & Sewerage Board vs. A.Rajappa [1978 (2) SCC 213] and directed the matter to be placed before Hon'ble the Chief Justice of India for constituting a larger Bench. However, a three-Judges Bench headed by Dr. A.S. Anand, C.J., refused to entertain the reference and observed that the two-Judges Bench is bound by the judgment of the larger Bench – Coir Board, Ernakulam, Kerala State vs. Indira Devai P.S. [2000 (1) SCC 224].

90.We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid

down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

91.We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and

society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

92.In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judges Bench in UP State Electricity Board vs. Pooran Chandra Pandey (supra) should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.

16.As per the principles enunciated by the Hon'ble Supreme Court, it is clear that High Court cannot sit in appeal in an earlier order passed by it in the same matter, which has already attained finality and set aside that order. Further, the doctrine of precedent is well explained by observing that a coordinate Bench of the High Court is bound by another coordinate Bench where the order has attained finality, and judicial discipline has to be maintained in this regard."

60.28. When that being so, the Division Bench Judgment cannot be doubted by the single bench and even if it is doubted, the lesser forum of single Bench at the most can refer the matter for a larger forum, i.e., Full Bench. Therefore assuming the jurisdiction and to declare such a Division Bench Judgment on the same issue as a nullity one cannot be approved under the scrutiny of law by taking into account of the celebrity principle of judicial discipline by following the judicial precedents.

60.29. Therefore, we do not have any hesitation to hold that, the approach and conclusion reached by the writ court in allowing the said writ petition by declaring the Division Bench Judgment, dated 28.04.2015 as a nullity one is absolutely unlawful and unjustifiable, therefore the Judgment impugned is liable to be set aside.

61. It is foremost to be noted that, exactly the same issue in a similar litigation has been seized of by the Hon'ble Supreme Court and it is pending even till date. In fact the order of stay granted by the Hon'ble Supreme Court in SLP (Civil) No.33137 of 2014, dated 12.12.2014 was sought to be

vacated, for which, I.A.No.1 of 2015 was filed before the Hon'ble Supreme Court. The said Interlocutory Application was disposed by the Hon'ble Supreme Court by order, dated 26.02.2021 by passing the following order :

> "1. The interlocutory application was filed on 7 December 2015 for vacating the interim order dated 12 December 2014. The contents of paragraph 4 of the interlocutory application would indicate that this was in view of the fact that certain ceremonies were to take place from 15 to 18 December 2015. The basis of the interlocutory application does not survive. Hence, the interlocutory application is disposed of as infructuous.
>
> 2. List the Civil Appeal for final disposal in accordance with its turn."

62. In fact, the SLP (Civil) No.33137 of 2014 has been converted into Civil Appeal No.4543 of 2017 and the same is still pending.

63. In this context, a decision of the Hon'ble Supreme Court in 1995 Supp (1) SCC 461 in the matter of Vishnu Traders v. State of Haryana can

be usefully referred to with the following passage :

> "3. In the matters of interlocutory orders, principle of binding precedents cannot be said to apply. However, the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is assurance of consistency, uniformity, predictability and certainty of judicial approach."

64. Hence, even the Interlocutory orders in such kind of matters granted by the highest court of land by seizing of the matter at their jurisdiction and disposal, shall be respected to by all courts in the country. Knowing well that the Hon'ble Supreme Court has seized the matter and granted interim order of stay of the practice of this rolling over on the plantain leaves in a related case arising from Karnataka High Court granted the stay of the 500 years old practice and the same has been quoted mainly

by the Division Bench in its order dated 28.04.2015, the writ court should have laid off their hands and dismissed the said writ petition by allowing the writ petitioner to agitate the issue against the Division Bench Judgment of the year 2015 in the manner known to law.

65. However, the writ court having assumed the jurisdiction in its domain since has gone to the extent of declaring a Division Bench Judgment as a nullity one, such an approach on the part of the writ court cannot be approved by this Court. Therefore the impugned Judgment for all these reasons and discussions herein above made is liable to be set aside.

66. **Conclusion** :

66.1. The practice of rolling over on the left over plantain leaves after partaking the meals at Nerur Sri Sadhasiva Brahmendral Samathi / Temple or in that locality at Karur District may be a religious practice or the practice of a particular religious denomination which may not hit either under public order or health within the meaning of Article 25 of the Constitution.

66.2. However, such a practice, whether would go against the public morality or constitutional morality is a matter to be gone into, which, cannot be decided by this Corut at this juncture, in view of the issue in a similar lis arising out of the High Court of Karnataka having been seized off and pending with an order of stay before the Hon'ble Supreme Court of India in Civil Appeal No.4543 of 2017 in the matter of State of Karnataka and others v. Adivasi Budakattu Hitarakshana Vedike Karnataka and others.

66.3. At the same time, since the Division Bench Judgment made in W.P.(MD).No.7068 of 2015, dated 28.04.2015 in the matter of V.Dalit Pandiyan v. Chief Secretary of Tamil Nadu and others, has already attained the finality and being the Judgment of a higher forum of the High Court (Division Bench), the same since cannot be nullified by a lesser forum (single Bench), the decision that has been made in that regard by the writ court through the impugned order cannot be approved by this Court.

66.4. For all these reasons, the impugned order, dated 17.05.2024 made in W.P.(MD).No.10496 of 2024 is set aside. Parties can await the

ultimate decision to be rendered by the Hon'ble Supreme Court in the pending Civil Appeal No.4543 of 2017. Till such time, the practice of rolling over on the left over plantain leaves after partaking the meals at Nerur, Karur District shall not be permitted by the State and District Administration.

67. To the extend indicated above, both these writ appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) (G.A.M., J.)
13.03.2025

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

tsvn

To

1. The District Collector
   District Collector Office
   Karur District.

2. The Revenue Divisional Officer
   Revenue Divisional Office,
   Karur District.

3. The Tahsildar
   Taluk Office, Manmangalam Taluk,
   Karur District.

4. The Superintendent of Police
   Office of Superintendent of Police,
   Karur District.

5. The Inspector of Police
   Vanagal Police Station,
   Karur District.

R.SURESH KUMAR, J.
AND
G.ARUL MURUGAN, J.

tsvn

Common Judgment in
W.A.(MD).Nos.986 and 1261
of 2024

13.03.2025