

1969

Present : H. N. G. Fernando, C.J.

C. SUNTHERALINGAM, Appellant, and R. HERATH
(Inspector of Police), Respondent

S. C. 1192/68—M. C. Mallakam, 4700

Prevention of Social Disabilities Act, No. 21 of 1957—Sections 2 and 3—Temple entry—Discrimination on ground of caste—Culpability—Ceylon (Constitution) Order in Council (Cap. 379), s. 29 (2) (d)—Tesawalamai Regulation (Cap. 63), s. 4—Penal Code, s. 183—Maxim generalia specialibus non derogant.

A person who prevents or obstructs, at the instance of the High Priest and hereditary trustee of a Hindu temple which constitutes a public religious trust, a Hindu worshipper of a different caste from entering into or beyond the inner court-yard of the temple in breach of the constitution of the religious trust and of the custom or ancient usage observed in that temple, contravenes the Prevention of Social Disabilities Act. In such a case, it cannot be contended that the Prevention of Social Disabilities Act is *ultra vires* of the provisions of section 29 (2) (d) of the Constitution of Ceylon or of section 4 of the *Tesawalamai* Regulation (Cap. 63).

Dictum in *Sevvanthinathan v. Nagalingam* (69 N. L. R. 419) disapproved.

APPEAL from a judgment of the Magistrate's Court, Mallakam.

C. Suntheralingam, with *S. N. Rajadurai*, *R. R. Nalliah*, *P. Nagendran* and *V. Shanmuganathan*, for the accused-appellant.

L. D. Guruswamy, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

May 13, 1969. H. N. G. FERNANDO, C.J.—

This is an appeal against the conviction of the appellant on a charge that in contravention of the Prevention of Social Disabilities Act, No. 21 of 1957, he did prevent or obstruct one Sinniah, being a follower of the Hindu religion, from or in entering or being present in or worshipping at a place of worship to which followers of that religion have access.

The appellant did not at the trial deny that he prevented or obstructed Sinniah from entering the inner court yard of a Hindu Temple, or that Sinniah is a follower of the Hindu religion. The grounds of his appeal are based on matters of law.

The appellant firstly referred to a decree of Court declaring this Temple and its appurtenances to be a public religious trust, and declaring the High Priest of the Temple to be its hereditary trustee, responsible *inter alia* for the proper conduct and performance of *poojahs* in the Temple.

The High Priest had by the document D6 authorised the appellant to act on his behalf in taking steps to secure that the customs and ancient usages of this Temple are observed, and the appellant's position was that his act of prevention or obstruction (in relation to Sinniah) was necessary to prevent defilement of the Temple by the entry of a person of low caste; if there had been such defilement, he argued, *poojahs* could not be thereafter performed in the Temple. On this basis, the appellant urged that the Act of 1957, in purporting to penalise the prevention of the entry of persons of low caste into this Temple, has the consequence that its operation can prevent the High Priest from performing *poojahs* in this Temple, and that it is thus a law which alters the constitution of a religious body; not having been passed with the consent of the governing body, this law offended the provisions of s. 29 (2) (d) of the Constitution of Ceylon, and was therefore void.

I agree with the learned Magistrate in rejecting this argument. Even if all the "facts" on which the appellant's argument is based be correct, the question whether some person may or may not enter, or be prevented from entering, premises controlled by a religious body, is not one which relates to the "constitution" of that body. Section 29 (2) (d) of the Constitution of Ceylon would in my opinion apply only to a law which purports to alter the mode by which a religious body is elected, appointed or otherwise set up, or to commit any power or function of such a body to some other person, or to change the principles governing the relationship *inter se* of members of the body.

The appellant relied also on s. 4 of the *Tesawalamai* (Cap. 63) which provides as follows:—

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

The appellant's contention was that it was a custom or ancient usage of the Northern Province that persons belonging to certain alleged "low" castes were not permitted entry into or beyond the inner courtyards of certain Temples, including the Temple to which this case relates, and that this custom or usage is a special law relating to Temple entry. This special law, he urged, was not superseded by any provision of the Act of 1957 because of the operation of the maxim "*generalia specialibus non derogant*". The simple answer to this argument is that the Act contains several provisions directly intended to afford to persons of all castes the freedom to enter places of several specified descriptions; these provisions thus constitute a special law which prohibits the obstruction of the entry of persons into such places on the ground of their caste. Even therefore if s. 4 of the *Tesawalamai* can be regarded as a special law regulating Temple entry, the later special law contained in the Act must prevail over the former.

The appellant also relied heavily on an observation in the judgment in *Sevvanthinathan v. Nagalingam*¹ to the following effect :—

“ I am inclined to agree also with the argument of Mr. Ranganathan that sections 2 and 3 of the Prevention of Social Disabilities Act, No. 21 of 1957 do not have the effect of conferring on the followers of any religion a right of entering, being present in or worshipping at any place of worship which they did not have before the Act came into force ; in other words, the Act penalised only the prevention or obstruction of the exercise of a right which was an existing right at the time the Act became law. ”

This observation was made *obiter* in the case under reference, but it is directly in point in the instant case. The Magistrate has found as a fact that people of the caste to which Sinniah belongs used to worship at this Temple only from the outer courtyard, and were not permitted to enter the inner yard. On that finding, the obstruction offered by the appellant did not interfere with rights which people of that caste used to enjoy before the enactment of the Act of 1957.

With the utmost respect, I am unable to agree with the very narrow construction which was given to the Act in the cited case. Let me consider the first of the “ rights ” in respect of which the Act prohibits discrimination on the ground of caste, namely the admission of a student to a school. If admission is refused on the ground of the student’s caste, there is nothing whatsoever in the Act which even by implication can permit the school management to plead, as a defence to a charge under the Act, that students of that caste were excluded from that school before the Act was passed. Nor is there anything in the Act from which it may be implied that in such a case the prosecution must establish that students of the complainant’s caste had prior to the Act enjoyed a right of admission to the school.

Having regard to the terms of the Act, a person commits an offence if “ *he prevents or obstructs another person in entering* ” any of several specified places. The terms are substantially the same as those which occur in a provision like s. 183 of the Penal Code :—“ *Whoever voluntarily obstructs any public servant in the discharge of his public functions* ”. If, as is manifest, s. 183 covers any obstruction to the discharge of functions committed to a public servant both before and after the enactment of the Code, the Act of 1957 equally covers obstruction to any entry to which the Act refers, whether or not a right to such entry had existed before the Act was passed.

The judgment in the 69 N. L. R. case appears to regard the Act of 1957 as having been intended merely to prevent the imposition of “ new ” social disabilities. If that be the intention, then the Act has achieved nothing in practice, for in my understanding the social evil arising from distinctions of caste in this country at the present time is

¹ (1960) 69 N. L. R. 419.

only that undemocratic and anti-social forms of discrimination still persist in some areas and communities despite popular opposition to such discrimination. I much prefer the construction, plainly appearing from the Act, that Parliament did intend to prevent forms of discrimination which prevailed in the past.

The reasons stated by the learned Magistrate in this case deal adequately with the other matters urged by the appellant in support of his case. The appeal is dismissed.

Appeal dismissed.

