CASE NO.:
Writ Petition (civil) of 242

PETITIONER:
John Vallamattom & Anr.

RESPONDENT:
Vs.
Union of India

DATE OF JUDGMENT: 21/07/2003

BENCH:
AR. Lakshmanan

JUDGMENT:

JUDGMENT

Dr. AR. LAKSHMANAN, J.

I have the benefit of going through the detailed and elaborate judgment prepared by My Lord Hon'ble the Chief Justice of India. I am respectfully in agreement with the same. However, I would like to add few more paragraphs as to how the Christians are aggrieved by the discriminatory treatment meted out to members of Christian community under the Indian Succession Act, 1925 (hereinafter referred to as "the Act") by which they are practically prevented from bequeathing property for religious and charitable purposes. The impugned provision has already been extracted in the judgment prepared by Hon'ble the Chief Justice of India. As per the impugned provision, a person having a nephew or niece or nearer relative cannot bequeath any property for religious or charitable use unless (1) the Will is executed not less than 12 months before the death of the testator, (2) it is deposited within six months from the date of execution in some place provided by law and (3) it remains in deposit till the death of the testator. The harsh and rigorous procedure envisaged under Section 118 of the Act in relation to testamentary disposition of property for religious and charitable use does not apply to members of Hindu, Mohammadan, Buddhist, Sikh or Jaina Community by virtue of Section 58 of the Act. At the same time, since no exemption is granted by the State Government to the members of the Christian community under Section 3 of the Act, Christians cannot bequest property for religious or charitable use unless fresh Will is executed on the expiry of every 12 months, if the testator does not suffer from the misfortune of death within the statutory period of 12 months.

There is no restriction on Muhammadan on bequeathing property for religious or charitable purposes. A Muhammadan can validly bequeath one third of his net assets, when there are heirs. The only restriction as regards the legator is that he should be of sound mind and he should not be a minor. As regards the legatee, it is stated that if the legatee causes the death of the legator, the Will becomes void and ineffective. Under Muhammadan Law, a Will can be lawfully made in favour of an individual, an institution, a non-Muslim, a minor and an insane. As regards the subject- matter, any property can form the subject of a Will, and both corpus and usufructs can be bequeathed.

In the case of Hindus, the founding of a temple or a charitable institution is considered as an act of religious duty and has all the aspects of Dharma.

In my opinion, there is no justification in retaining the impugned provision in the statute book, which is arbitrary and violative of Article 14 of the Constitution, since the mortmain statutes were repealed by the Charities Act, 1960 and by that the very basis and foundation of the impugned

provision has become non-existent. The impugned provision is also violative of Articles 25 and 26 of the Constitution inasmuch as it is an essential and integral part of Christian religious faith to give property for religious and charitable purposes. The teachings from the Holy Book of Bible also encourage Christians to practice charities to attain spiritual salvation. Whenever fundamental right to freedom of conscience and to profess, practice and to propagate religion is invoked, the petitioners contend that the act complained of as offending the fundamental right must be examined to dishonour whether such act is to protect order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practice or to provide for social welfare and reform. It is the duty and function of the Court so to do.

As per Section 118 of the Act, bequest of property for religious and charitable use fails, if, for any reason, the testator does not suffer from the misfortune of death within 12 months of execution of the Will or if it is not deposited in the place provided by law within 6 months, and that since as per the impugned provision a testator who lives beyond the statutory period of 12 months is not able to effectuate his wishes in relation to his property, the impugned provision defeats object of the Will and is harsh, unjust and arbitrary. In order to survive the challenge under Article 14 of the Constitution, it must be established that the classification arising out of the impugned provision is reasonable and that it has a nexus with the object sought to be achieved, and since in the instant case, the classification between bequests for religious and charitable use and bequests for other purposes is unreasonable and since it has no nexus with the object sought to be achieved, the impugned provision is hit by Article 14 of the Constitution. The impugned provision is also attacked as discriminatory and violative of Articles 14 and 15 of the Constitution inasmuch as the restriction on bequest for religious and charitable purpose is confined to Christians alone and not to members of other communities. In my opinion, the classification between testators who belong to Christian community and those belonging to other religions is extremely unreasonable. All the testators who bequeath property for religious and charitable purpose belong to the same category irrespective of their religious identity and so the impugned provision, which discriminates between the members of one community as against another, amounts to violation of Article 14 of the Constitution. There is no rationale behind limiting the survival of testator to a period of 12 months in order to give effect to his wishes. There is no rationale in the classification between a testator who survives beyond 12 months and a testator who does not survive beyond the same period in declaring the will of the former as void and that of the latter as valid. There is no logic behind fixing 12 months' period, and the testators who constitute a homogenous class cannot be decided arbitrarily on the basis of the duration of their survival which is unrelated to the purpose of executing a will. Since fixation of such a period has no nexus with the object of performing a philanthropic act, the impugned provision is attacked as liable to be declared void as violative of Article 14 of the Constitution.

Article 14 of the Constitution states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The first part of Article 14 of the Constitution of India is a declaration of equality of civil rights for all purposes within the territory of India and basic principles of republicanism and there will be no discrimination. The guarantee of equal protection embraces the entire realm of 'State action'. It would extend not only when an individual is discriminated against in the matter of exercise of his right or in the matter of imposing liabilities upon him, but also in the matter of granting privileges etc. In all these cases, the principle is the same, namely, that there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same. In my view, all persons of similar circumstances shall be treated alike both in privileges and liabilities imposed. The classification should not be arbitrary; it should be reasonable and it must be based on qualities and characteristics and not any other who are left out, and those

qualities or characteristics must have reasonable relations to the object of the legislation.

In the case of D.S. Nakara vs. Union of India (1983) 1 SCC 305, this Court has observed thus:

"Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that the grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

It has been also observed in the above judgment that in the very nature of things, the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged and in the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14 of the Constitution.

Article 25 of the Constitution deals with freedom of conscience and the right freely to profess, practice and propagate religion. The contribution for religious and charitable purposes is a philanthropic act intended to serve humanity at large and is also recognised as a religious obligation. Therefore, bequesting property for religious and charitable purposes cannot be controlled or restricted by the Legislature as it would offend the fundamental rights of the testator under Articles 25 and 26 of the Constitution and therefore, the impugned provision is arbitrary and unconstitutional. It is also violative of Article 26 of the Constitution inasmuch as it is an essential and integral part of Christian religious faith to give property for religious and charitable purposes. Every Christian shall have the right to establish and maintain institutions for religious and charitable purposes, manage its own affairs, own and acquire movable and immovable properties and to administer such property in accordance with law.

In my opinion, whether in an enactment religious bequests by a Christian is discriminatory and violative of Articles 14 and 15 of the Constitution must be determined as per the rule of procedure laid down by Section 118 of the Act, which comes with the purview of Articles 14 and 15 of the Constitution, and it is, therefore, necessary that all testators who are similarly situated should be subjected to the same rule of procedure. There cannot be any unusual burden on Christian testators alone when all other testators making similar bequests for similar charities and similar religious purposes are not subjected to such procedure. Therefore, in my opinion, Section 118 of the Act is anamalous, discriminatory and violative of Articles 14, 15, 25 and 26 of the Constitution and should be struck down.

The Indian Succession Act though is claimed to be a universal law of testamentary disposition, but in effect, crucial sections apply only to Christians. There is no acceptable answer from the other side as to why Section 118 of the Act is made applicable to Christians alone and not to others.

The Indian Succession Act came into effect on 30th September, 1925. As per Section 4, Part II of the Act shall not apply if the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina. Section 20 of Part III of the Act is not applicable to any marriage contracted before the first day of January, 1866; and is not applicable and is deemed never to have applied to any marriage, one or both of the parties to which professed at the time of marriage the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion. As per Section 23 of Part IV of the Act, that part shall not apply to any Will made or

intestacy occurring before the first day of January, 1866 or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh, Jaina or Parsi. Likewise, as per Section 29 of Part V of the Act, that part shall not apply to any intestacy occurring before the first day of January, 1866 or to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina. By Act 51 of 1991, Parsis were also excluded from the application of Section 118 of the Act. Thus, it is seen that the procedure

prescribed has been made applicable to Christians alone. There is also no acceptable answer from the respondent as to why it regulates only religious and charitable bequests and that too, bequests of Christians alone. The whole case, in my view, is based upon undue, harsh and special burden on Christian testators alone. A substantive restriction is imposed based on uncertain events over which the testator has no control. I, therefore, have no hesitation to hold that Section 118 of the Act regarding religious and charitable bequests of all testators who are similar should be subjected to the same procedure. As the law stands today, a Christian cannot make a bequest for religious or charitable purposes without satisfying the conditions and procedures prescribed by Section 118 of the Act. Such a burden, procedural burden and substantive law burden is not falling upon Hindu, Muhammadan, Jaina or Parsi testators.

The very same question was raised before the Kerala High Court. The Division Bench of Kerala High Court in the case of Preman vs. Union of India reported in 1998(2) KLT 1004 to which I was a party, declared thus:

a) discriminates against a Christian vis-Ã -vis non-Christians;
b) discriminates against testamentary disposition by a Christian vis-Ã - vis non-testamentary disposition;
c) discriminates against religious and charitable use of property vis-Ã - vis all other uses including not so desirable purposes;
d) discriminates against the Christian who has a nephew, niece or nearest relative vis-a-vis a Christian who has no relative at all; and
e) discriminates a Christian who dies within 12 months of execution of the Will, of which he has no control.

It is pertinent to notice that the judgment of the Kerala High Court was not appealed against by the respondent therein, namely, the Union of India. Even after the judgment of the Kerala High Court dated 16.10.1998, the Parliament did not remove the discrimination. Under such circumstances, this Court, in my opinion, in exercise of its jurisdiction and to remedy violation of fundamental rights, are bound to declare the impugned provision as invalid and being violative of Articles 14, 15, 25 and 26 of the Constitution. For the foregoing reasons, I am respectfully in agreement with My Lord Hon’ble the Chief Justice of India that Section 118 of the Act is unconstitutional and is liable to be struck down as unconstitutional.

In the result, the writ petition is allowed.