PETITIONER:
ACHARYA JAGDISHWARANAND AVADHUTA, ETC.

Vs.

RESPONDENT:
COMMISSIONER OF POLICE, CALCUTTA & ANR.

DATE OF JUDGMENT20/10/1983

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
BHAGWATI, P.N.
SEN, AMARENDRA NATH (J)

CITATION:
1984 AIR 512 1984 SCR (1) 447
1983 SCC (4) 522 1983 SCALE (2)565
CITATOR INFO :
HO 1987 SC 748 (23)
RF 1992 SC 377 (10)

ACT:
Constitution of India-Arts. 25 and 26-Scope of. Religious denomination-What is? Whether a particular rite or observance is an essential religious rite of a religion-Court can decide.
Constitution of India-Arts. 25 and 26-Whether protection of Arts. 25 and 26 available to Ananda Marga-A socio-Spiritual organisation. Ananda Marga not a separate religion but a religious denomination. Performance of Tandava dance in procession in public streets not an essential religious rite of Ananda Marga.
Code of Criminal Procedure, 1973-S.144-Scope of. Prohibitory Order under s.144-Meant to meet emergent situation-Order not permanent or semipermanent in character-Making of repetitive orders amounts to abuse of power.
Words and Phrases 'Religious denomination'.

HEADNOTE:
Respondent No. 1 was alleged to have been making repetitive orders under s.144 of the Code of Criminal Procedure, 1973 from August 1979 directing that no member of a procession or assembly of five or more persons should carry any fire arms, explosives, swords, spears, knives, tridents, lathis or any article which may be used as weapon of offence or any article likely to cause annoyance to the public, for example skulls. A writ petition was filed in the High Court for a direction on the respondents not to impose such restraints on the followers of Ananda Marga. The High Court dismissed the writ petition. The respondent No. 1 made a similar order on March 29, 1982. An application for permission to take out a procession in the public streets by the followers of Ananda Marga accompanied with Tandava dance was rejected. The petitioner filed writ petition under Art. 32 of the Constitution for a direction to the respondent No. 1 and the State to allow procession to be carried in the public streets and meetings to be held in public places by the followers of the Ananda Marga accompanied by the performance of Tandava dance within the State of West

Bengal. The petitioner submitted that Ananda Marga was a socio-spiritual organisation dedicated to the service of humanity in different spheres of life such as physical, mental and spiritual, irrespective of caste. creed or colour; one of the prescriptions of the religious rites to be
448
performed by an Ananda Margi was Tandava dance which was to be performed with a skull, a small symbolic knife, a trishul, and a damroo; and at intervals processions were intended to be taken out in public places accompanied by the Tandava Dance as a religious practice. The petitioner contended that Tandava Dance was an essential part of the religious rites of Ananda Margis and that they were entitled to practice the same both in private as also in public places and interference by the respondent was opposed to the fundamental rights guaranteed under Arts. 25 and 26 of the Constitution. The petitioner also contended that repetitive orders under s.144 of the Code of Criminal Procedure were not contemplated by the Code and, therefore, making of such orders was an abuse of the law and should not be countenanced.

Dismissing the writ petitions,

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HELD: The Ananda Marga is not a separate religion by itself. Therefore, application of Art. 25 of the Constitution is not attracted. The petitioner asserted that Ananda Marga was not an institutionalised religion but was a religious denomination. The writings of the founder of the Ananda Marga are essentially founded upon the essence of the Hindu philosophy. The test indicated in (1966) 3 S.C.R. 242 and the admission in para 17 of the writ petition that Ananda Margis belong to the Shaivite order lead to the clear conclusion that Ananda Margis belong to the Hindu religion.

[455 E.456 C]

Sastri Yagnapurushadji & Ors. v. Muldas Bhudar das Vaishya & Anr., [1966] 3 S.C.R. 242, referred to.

The words 'religious denomination' in Art. 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:

(1) 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;

(2) common organisation; and

(3) designation by a distinctive name.

In the instant case Ananda Marga appears to satisfy all the three conditions. Ananda Marga, therefore, can be appropriately treated as a religious denomination within the Hindu religion. [456 G-457 C]

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar or Sri Shirur Mutt, [1954] S.C.R. 1005 at 1021; The Durgah Committee Ajmer & Anr. v. Syed Hussain Ali & Ors., [1962] 1 S.C.R. 383; and S.P. Mittal etc. v. Union of India & Ors., [1983] 1 S.C.R. 729 at 774 referred to.
449

Article 26 of the Constitution provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion. Courts have the power to determine whether a particular rite or observance is regarded as essential by the tenets of a particular religion. [457 C-D, 458 H]

Ratilal Panachand Gandhi v. The State of Bombay & Ors., [1954] S.C.R. 1055; and Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan & Ors., [1964] 1 S.C.R. 561 referred to.

In the instant case the Tandva dance was not accepted as an essential religious rite of Ananda Margis when in 1955 the Ananda Marga order was first established. It is the specific case of the petitioner that Shri Ananda Murti, founder of Ananda Marga, introduced Tandva as a part of religious rites of Ananda Margis later in 1966. Ananda Marga as a religious order is of recent origin and Tandva dance as a part of religious rites of that order is still more recent. It is doubtful as to whether in such circumstances Tandva dance can be taken as an essential religious rite of the Ananda Margis. Even conceding that Tandva dance has been prescribed as a religious rite for every follower of the Ananda Marga it does not follow as a necessary corollary that Tandava dance to be performed in the public in a religious procession is a matter of religious rite. In fact, there is no justification in any of the writings of Shri Ananda Murti that Tandava dance must be performed in public. Therefore, performance of Tandava dance in procession in the public streets or in gatherings in public places is not an essential religious rite of the followers of the Ananda Marga. Thus, the Claim that the petitioner has a fundamental right within the meaning of Arts. 25 or 26 to perform Tandava dance in public streets and public places has to be rejected. [459 E-460 E]

An order made under s.144 of the Code of Criminal Procedure is intended to meet an emergent situation. The order is not intended to be either permanent or semi-permanent in character. The order is to remain valid for two months from the date of its making as provided in sub-s.(4) of s.144. The proviso to sub-s.(4) of s.144 which gives the State Government jurisdiction to extend the prohibitory order for a maximum period of six months beyond the life of the order made by the Magistrate is clearly indicative of the position that Parliament never intended the life of the order under s.144 of the Code to remain in force beyond two months when made by a Magistrate. The scheme of that section does not contemplate repetitive orders and in case the situation so warrants steps have to be taken under other provisions of the law such as s.107 or s.145 of the Code when individual disputes are raised and to meet a situation such as in this case, there are provisions to be found in the Police Act. If repetitive orders are made it would clearly amount to abuse of the power conferred by s.144 of the Code. [461 D-462 D]

Gopi Mohun Mullick v. Taramoni Chowdhrani, ILR 5 Cal. 7; Bishessur Chuckerbutty & Anr. v. Emperor, A.I.R. 1916 Cal. 47; Swaminatha Mudaliar v. Gopalakrishna Naidu, A.I.R. 1916 Mad. 1106; Taturam sahu v. The State of Orissa, A.I.R. 1953 Orissa 96; Ram Das Gaur v. The City Magistrate, Varanasi,
450
A.I.R. 1960 All. 397; and Ram Narain Sah & Anr. v. Parmeshwar Prasad Sah & Ors., A.I.R. 1942 Pat. 414, approved.

Babulal Parate v. State of Maharashtra & Ors., [1961] 3 S.C.R. 423 at 437; and Gulam Abbas & Ors. v. State of U.P. & Ors.,[1981] 2 Cr. L.J. 1835 at 1862, referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 6890, 7204 of 1982 and 3491 of 1983.

Under article 32 of the Constitution of India

Ram Jethmalani, V.M. Tarkunde and R. Dwivedi for the Petitioner.

M.K. Ramamurthi, D.P. Mukherjee and G.S. Chatterjee for the Respondents State of West Bengal.

K.K. Venugopal, M/s. Inderjit Sen and G.S. Chatterjee for the Respondent.

Danial A. Latiffi and R.S. Sodhi for the Intervener, All India Lawyers Union.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. The petitioner in Writ Petition No. 6890/82, a monk of the Ananda Marga and currently General Secretary, Public Relations Department of the Ananda Marga Pracharak Sangh, has filed this petition under Article 32 of the Constitution for a direction to the Commissioner of Police, Calcutta and the State of West Bengal to allow processions to be carried in the public streets and meetings to be held in public places by the followers of the Ananda Marga cult accompanied by the performance of Tandava dance within the State of West Bengal. There are two connected writ petitions being Writ Petition Nos. 7204/82 & 3491/83 by the Diocese Secretary of West Bengal Region and another follower of Ananda Marga. All these Petitions raise this common question and have been heard at a time. For convenience the petition by the General Secretary, Public Relations Department of the Ananda Marga Pracharak Sangh has been treated as the main petition and references in the judgment have been confined to it.

451

In the original petition certain factual assertions have been made and after counter affidavits were filed several further affidavits have been placed before the Court on behalf of the petitioner and counter affidavits too have been filed. Shorn of unnecessary details, the averments on behalf of the respective contenders are as follows:

Shri Pravat Ranjan Sarkar otherwise known as Shri Ananda Murti, founded a socio-spiritual organisation claimed to have been dedicated to the service of humanity in different spheres of life such as physical, mental and spiritual, irrespective of caste, creed or colour, in the year 1955. In the initial period the Headquarters of this organisation was located near Ranchi in the State of Bihar but later it has been shifted to a place within the City of Calcutta in West Bengal. It has been pleaded that Ananda Marga contains no dogmatic beliefs and teaches the yogic and spiritual science to every aspirant. In order to realise the Supreme, Ananda Marga does not believe that it is necessary to abandon home, profession or occupation and spiritual sadhana is possible at any place and concurrently with fulfilling all duties and responsibilities of family life. It has been pleaded that Ananda Marga shows the way and explains the methods for spiritual advancement and this helps man to practice his dharma. According to the petitioner Lord Shiva had performed Tandava Dance in 108 forms but Shaivite literature has given details of 64 kinds only. Seven forms out of these 64 appear to have been commonly accepted and they are called Kalika, Gouri, Sandhya, Sambhara, Tripura, Urdhava and Ananda. The first of these forms elaborates the main aspects of shiva while the seventh, i.e. the Ananda Tandava portrays all the manifold responsibilities of the Lord. Ananda Tandava is claimed to have taken place at Tillai, the ancient name of Chidambaram now situated in the State of Tamil Nadu. It is the

petitioner's stand that the word Tandava is derived from the root Tandu which means to jump about and Shiva was the originator of Tandava about 6500 years ago. Ananda Murtiji, as the petitioner maintains, is the Supreme Father of the Ananda Margis. It is customary for every Ananda Margi after being duly initiated to describe Ananda Murtiji as his father. One of the prescriptions of religious rites to be daily performed by an Ananda Margi is Tandava Dance and this is claimed to have been so introduced from the year 1966 by the preceptor. This dance is to be performed with a skull, a small, symbolic knife and a Trishul. It is also customary to hold a lathi and a damroo. It is explained that the knife or the sword symbolises the force which cuts through the fetters of the mundane world and
452
allows human beings to transcend towards perfection; the trishul or the trident symbolises the fight against static forces in the three different spheres of human existence-spiritual, mental and physical; the lathi which is said to be a straight stick stands out as the symbol of straightforwardness or simplicity; the damroo is the symbol to bring out rhythmic harmony between eternal universal music and the entitative sound; and the skull is the symbol of death reminding every man that life is short and, therefore, every moment of life should be utilised in the service of mankind and salvation should be sought. The petitioner has further maintained that Ananda Margis greet their spiritual preceptor Shri Ananda Murti with a dance of Tandava wherein one or two followers use the skull and the symbolic knife and dance for two or three minutes. At intervals processions are intended to be taken out in public places accompanied by the Tandava dance as a religious practice.

Though in subsequent affidavits and in the course of argument an attempt was made by Mr. Tarkunde to assert that Ananda Marga is a new religious order, we do not think there is any justification to accept such a contention when it runs counter to the pleadings in paragraphs 4 and 17 of the writ petition. In paragraph 4 it was specifically pleaded that "Ananda Marga is more a denomination than an institutionalised religion", and in paragraph 17 it was pleaded that "Ananda Margis are Shaivites..." We shall, therefore, proceed to deal with this petition on the footing that, as pleaded by the petitioner, Ananda Marga is a religious denomination of the Shaivite order which is a well known segment of Hindu religion.

Though the petitioner had pleaded that Tandava dance has been practiced and performed by every Ananda Margi for more than three decades, it has been conceded in the course of the hearing that Tandava Dance was introduced for the first time as a religious rite for Ananda Margis in or around 1966. Therefore, by the time of institution of this writ petition the practice was at best prevalent for about 16 years.

The Commissioner of Police, respondent 1 before us is alleged to have made repetitive orders under section 144 of the Code of Criminal Procedure, 1973 ('Code' for short) from August 1979, directing that "no member of a procession or assembly of five or more persons should carry any fire arms, explosives, swords, spears, knives, tridents, lathis or any article which may be used as weapon of offence or any article likely to cause annoyance to the
453
public, for example skulls..." A petition was filed before the Calcutta High Court under Article 226 of the

Constitution by the General Secretary of Ananda Marga for a writ of mandamus against the respondents for a direction not to interfere with or place restraints on the freedom of conscience and free profession, practice and propogation of their religion, including Tandava Dance, in matter No. 903 of 1980. The Calcutta High Court rejected the said petition on September 23, 1980 and observed:

> "It is open to any one in this country to practice any religion but the religious practice must not be inconsistent with the susceptibility or sensibility or fairness or public order. Tandava dance as such may not be objectionable. In the streets of Calcutta all kinds of demonstrations and procession are being held every day which may on many occasions cause disturbance to others and interrupt the free flow of traffic. In spite of the same, such demonstrations and processions are allowed to take place particularly every day by the authority concerned. If the petitioners or any member of their group want to hold a procession or reception or demonstration accompanied by any dance or music, that by itself may not be objectionable. However, brandishing fire torches or skulls or daggers in the public places including streets cannot come under the same category. Here other things are involved. The interests of other members of the public are involved, the sense of security of the others is also involved. The authorities concerned have to keep in mind the question of the feelings of other members of the public and the question of the possibility of any attempt to retaliate or counter-act to the same are also to be considered. Taking into consideration all these factors I am of the opinion that the petitioners do not have any legal right and they have not established any legal right to carry fire torches, skulls and daggers in public places or public streets and do not intend to pass any order entitling the petitioners to do so. However, the petitioners shall be entitled to go in procession or hold any demonstration without any such fire tourches, daggers or skulls. However, this would be subject to prevailing law of the land in the particular area. For example, in the High Court, Dalhousie Square and Assembly order under section 144
454
> of the Criminal Procedure Code is promulgated from time to time. This order would not entitle the petitioners to hold any such procession, demonstration in violation of such promulgation, if any. This order would also not entitle the petitioners to hold any procession or demonstration without the permission of the authority concerned when such permission is required for such purposes under any existing law."

On March 29, 1982, respondent 1 made a fresh order under s.144 of the Code wherein the same restraints as mentioned in the earlier order were imposed. An application for permission to take out a procession on the public street accompanied with Tandava dance was rejected and that led to the filing of this petition.

The petitioner asserts that tandava dance is an essential part of the religious rites of the Ananda Margis and that they are entitled to practise the same both in private as also in public places and interference by the respondents is opposed to the fundamental rights guaranteed under Articles 25 and 26 of the Constitution. The order under s.144 of the Code has been assailed mainly on the ground that it does not state the material facts of the case

though the statute requires such statement as a condition precedent to the making of the order. Repetitive orders under s.144 of the Code, it has been contended, are not contemplated by the Code and, therefore, making of such orders is an abuse of the law and should not be countenanced.

Two separate returns have been made to the rule nisi. Respondent 1 has filed a counter affidavit alleging that Ananda Marga is an organisation which believes in violence and if Ananda Margis are permitted to carry open swords or daggers in public processions it is bound, or likely, to disturb public peace and tranquillity and is fraught with the likelihood of breach of public order and would affect public morality. Carrying of human skulls and indulging in provocative dances with human skulls is not only repulsive to public taste and morality, but is bound, and is likely, to raise fears in the minds of the people particularly children thereby affecting public order, morality, peace and tranquility. It has been further pleaded that the petitioner, or for the matter of that, Ananda Margis can have no fundamental right to carry weapons in the public, in procession or otherwise, nor have they any right to perform tandava dance with daggers and human skulls. It is stated that Ananda

455

Marga is a politico-religious organisation started in 1961 by Shri Pravat Ranjan Sarkar alias Sri Ananda Murti, who is a self-styled tantrik yogi. Reference has been made to an incident of 1971 which led to prosecution of Sri Ananda Murti and some of his followers. It is stated that militancy continues to be the main feature of the organisation. Prior to promulgation of the prohibitory orders, it has been pleaded, Ananda Margis took out processions carrying lethal weapons like tridents, lathis as well as human skulls and knives from time to time and caused much annoyance to the public in general and onlookers in particular, and this tended to disturb public peace, tranquillity and public order. In spite of the prohibitory orders in force from August 10, 1979, a procession was taken out on the following day within the city of Calcutta by Ananda Margis with lathis, tridents, Knives, skulls, and the procession became violent. The assembly was declared unlawful and the police force was obliged to intervene. The police personnel on duty including a Deputy Commissioner of Police received injuries. Reference to several other incidents has also been made in the counter-affidavit of the Police Commissioner. The State Government has supported the stand of the Police Commissioner in its separate affidavit.

We have already indicated that the claim that Ananda Marga is a separate religion is not acceptable in view of the clear assertion that is was not an institutionalised religion but was a religious denomination. The principle indicated by Gajendragadkar, CJ, while speaking for the Court in Sastri Yagnapurushadji & Ors. v. Muldas Bhudardas Vaishya & Anr., also supports the conclusion that Ananda Marga cannot be a separate religion by itself. In that case the question for consideration was whether the followers of Swaminarayan belonged to a religion different from that of Hinduism. The learned Chief Justice observed:

> "Even a cursory study of the growth and development of Hindu religion through the ages shows that whenever a saint or a religious reformer attempted the task of reforming Hindu religion and fighting irrational or corrupt practices which had crept into it, a sect was born which was governed by its own tenets, but which

basically subscribed to the fundamental notions of Hindu religion and Hindu philosophy. ’

456

The averments in the writ petition would seem to indicate a situation of this type. We have also taken into consideration the writings of Shri Ananda Murti in books like Carya-Carya, Namah Shivaya Shantaya, A Guide to Human Conduct, and Ananda Vachanamritam. These writings by Shri Ananda Murti are essentially founded upon the essence of Hindu philosophy. The test indicated by the learned Chief Justice in the case referred to above and the admission in paragraph 17 of the writ petition that Ananda Margis belong to the Shaivite order lead to the clear conclusion that Ananda Margis belong to the Hindu religion. Mr. Tarkunde for the petitioner had claimed protection of Article 25 of the Constitution but in view of our finding that Ananda Marga is not a separate religion, application of Article 25 is not attracted.

The next aspect for consideration is whether Ananda Marga can be accepted to be a religious denomination. In The Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, Mukherjee, J. (as the learned Judge then was), spoke for the Court thus:

"As regards article 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’."

This test has been followed in The Durgah Committee, Ajmer & Anr. v, Syed Hussain Ali & Ors. In the majority judgment in S. P. Mittal etc. v. Union of India & Ors reference to this aspect has also been made and it has been stated:

"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:

457

(1) 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;
(2) common organisation, and
(3) designation by a distinctive name."

Ananda Marga appears to satisfy all the three conditions, viz., it is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well-being; they have a common organisation and the collection of these individuals has a distinctive name. Ananda Marga, therefore, can be appropriately treated as a religious denomination, within the Hindu religion. Article 26 of the Constitution provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion. Mukherjea, J. in Lakshmindra Thirtha Swamiar’s case (supra) adverted to the question as to what were the matters of religion and stated:

"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. In an American case (Davie v. Benson, 133

US 333 at 342), it has been said "that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and Character and of obedience to His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter". We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon article 44(2) of the Constitution of Eire and we have great doubt whether a definition of 'religion' as given above could have been in the minds of our Constitution-makers when they framed the Constitution. 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

458

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..."

"Restrictions by the State upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order, morality and health. Clause (2) (a) of article 25 reserved the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices .."

"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. It 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 oblations 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 article 26(b)..."

Courts have the power to determine whether a particular rite or observance is regarded as essential by the tenets of a particular

459

religion. In Laxshmindra Thirtha Swamiar's case, Mukherjea,

J. observed:

"This difference in judicial opinion brings out forcibly the difficult task which a Court has to perform in cases of this type where the freedom of religious convictions genuinely entertained by men come into conflict with the proper political attitude which is expected from citizens in matters of unity and solidarity of the State organization."

The same question arose in the case of Ratilal Panachand Gandhi v. State of Bombay & Ors.(1) The Court did go into the question whether certain matters appertained to religion and concluded by saying that "these are certainly not matters of religion and the objection raised with regard to the validity of these provisions seems to be altogether baseless." In Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan & Ors.,(2) this Court went into the question as to whether the tenets of the Vallabh denomination and its religious practices require that the worship by the devotees should be performed at the private temples and, therefore, the existence of public temples was inconsistent with the said tenets and practices, and on an examination of this question, negatived the plea.

The question for consideration now, therefore, is whether performance of Tandava dance is a religious rite or practice essential to the tenets of the religious faith of the Ananda Margis. We have already indicated that tandava dance was not accepted as an essential religious rite of Ananda Margis when in 1955 the Ananda Marga order was first established. It is the specific case of the petitioner that Shri Ananda Murti introduced tandava as a part of religious rites of Ananda Margis later in 1966. Ananda Marga as a religious order is of recent origin and tandava dance as a part of religious rites of that order is still more recent. It is doubtful as to whether in such circumstances tandava dance can be taken as an essential religious rite of the Ananda Margis. Even conceding that it is so, it is difficult to accept Mr. Tarkunde's argument that taking out religious processions with tandava dance is an essential religious rite of Ananda Margis. In paragraph 17 of the writ petition the petitioner pleaded that "Tandava Dance lasts for a few minutes where two or

460

three persons dance by lifting one leg to the level of the chest, bringing it down and lifting the other." In paragraph 18 it has been pleaded that "when the Ananda Margis greet their spiritual preceptor at the airport, etc., they arrange for a brief welcome dance of tandava wherein one or two persons use the skull and symbolic knife and dance for two or three minutes." In paragraph 26 it has been pleaded that "Tandava is a custom among the sect members and it is a customary performance and its origin is over four thousand years old, hence it is not a new invention of Ananda Margis." On the basis of the literature of the Ananda Marga denomination it has been contended that there is prescription of the performance of tandava dance by every follower of Ananda Marga. Even conceding that tandava dance has been prescribed as a religious rite for every follower of the Ananda Marg it does not follow as a necessary corollary that tandava dance to be performed in the public is a matter of religious rite. In fact, there is no justification in any of the writings of Shri Ananda Murti that tandava dance must be performed in public. Atleast none could be shown to us by Mr. Tarkunde despite an enquiry by us in that behalf. We are, therefore, not in a position to accept the contention of Mr. Tarkunde that performance of

tandava dance in a procession or at public places is an essential religious rite to be performed by every Ananda Margi.

Once we reach this conclusion, the claim that the petitioner has a fundamental right within the meaning of Articles 25 or 26 to perform tandava dance in public streets and public places has to be rejected. In view of this finding it is no more necessary to consider whether the prohibitory order was justified in the interest of public order as provided in Article 25.

It is the petitioner's definite case that the prohibitory orders under s. 144 of the Code are being repeated at regular intervals from August 1979. Copies of several prohibitory orders made from time to time have been produced before us and it is not the case of the respondents that such repetitive prohibitory orders have not been made. The order under s. 144 of the Code made in March 1982 has also been challenged on the ground that the material facts of the case have not been stated. Section 144 of the Code. as far as relevant, provides: "(1) In cases where in the opinion of a District Magistrate, a Sub-Divisional Magistrate, or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a
461
written order stating the material facts of the case and served in the manner provided by section 134, direct..." It has been the contention of Mr. Tarkunde that the right to make the order is conditioned upon it being a written one and the material facts of the case being stated. Some High Courts have taken the view that this is a positive requirement and the validity of the order depends upon compliance of this provision. In our opinion it is not necessary to go into this question as counsel for the respondents conceded that this is one of the requirements of the provision and if the power has to be exercised it should be exercised in the manner provided on pain of invalidating for non-compliance. There is currently in force a prohibitory order in the same terms and hence the question cannot be said to be academic. The other aspect, viz., the propriety of repetitive prohibitory orders is, however, to our mind a serious matter and since long arguments have been advanced, we propose to deal with it. In this case as fact from October 1979 till 1982 at the interval of almost two months orders under s. 144(1) of the Code have been made from time to time. It is not disputed before us that the power conferred under this section is intended for immediate prevention of breach of peace or speedy remedy. An order made under this section is to remain valid for two months from the date of its making as provided in sub-section (4) of s. 144. The proviso to sub-s. (4) authorises the State Government in case it considers it necessary so to do for preventing danger to human life, health or safety, or for preventing a riot or any affray, to direct by notification that an order made by a Magistrate may remain in force for a further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired. The effect of the proviso, therefore, is that the State Government would be entitled to give the prohibitory order an additional term of life but that would be limited to six months beyond the two months' period in terms of sub-s. (4) of s. 144 of the Code. Several decisions of different High Courts have rightly taken the view that it

is not legitimate to go on making successive orders after earlier orders have lapsed by efflux of time. A Full Bench consisting of the entire Court of 12 Judges in Gopi Mohun Mullick v. Taramoni Chowdhrani(1) examining the provisions of s. 518 of the Code of 1861 (corresponding to present s. 144) took the view that such an action was beyond the Magistrate's powers. Making of successive orders was disapproved by the Division Bench of the Calcutta High Court
462
in Bishessur Chuckerbutty & Anr. v. Emperor.(1) Similar view was taken in Swaminatha Mudaliar v. Gopalakrishna Naidu;(2) Taturam Sahu v. The State of Orissa;(3) Ram Das Gaur v. The City Magistrate, Varanasi;(4) and Ram Narain Sah & Anr. v. Parmeshwar Prasad Sah & Ors.(5) We have no doubt that the ratio of these decisions represents a correct statement of the legal position. The proviso to sub-s. (4) of s. 144 which gives the State Government jurisdiction to extend the prohibitory order for a maximum period of six months beyond the life of the order made by the Magistrate is clearly indicative of the position that Parliament never intended the life of an order under s. 144 of the Code to remain in force beyond two months when made by a Magistrate. The scheme of that section does not contemplate repetitive orders and in case the situation so warrants steps have to be taken under other provisions of the law such as s. 107 or s. 145 of the Code when individual disputes are raised and to meet a situation such as here, there are provisions to be found in the Police Act. If repetitive orders are made it would clearly amount to abuse of the power conferred by s.144 of the Code. It is relevant to advert to the decision of this Court in Babulal Parate v. State of Maharashtra & Ors.,(6) where the vires of s. 144 of the Code was challenged. Upholding the provision, this Court observed:

> "Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order...."

It was again emphasized:

> "But it is difficult to say that an anticipatory action taken by such an authority in an emergency where danger to public order is genuinely apprehended is anything other than an action done in the discharge of the duty to maintain order..."

463
This Court had, therefore, appropriately stressed upon the feature that the provision of s. 144 of the Code was intended to meet an emergency. This postulates a situation temporary in character and, therefore, the duration of an order under s. 144 of the Code could never have been intended to be semi-permanent in character.

Similar view was expressed by this Court in Gulam Abbas & Ors. v. State of U.P. & Ors., where it was said that "the entire basis of action under s. 144 is provided by the urgency of the situation and the power thereunder is intended to be availed of for preventing disorders, obstructions and annoyances with a view to secure the public weal by maintaining public peace and tranquillity ...." Certain observations in Gulam Abbas's decision regarding the nature of the order under s. 144 of the Code-judicial or executive-to the extent they run counter to the decision of the Constitution Bench in Babulal Parate's case, may require reconsideration but we agree that the nature of the order

under s. 144 of the Code is intended to meet emergent situation. Thus the clear and definite view of this Court is that an order under s. 144 of the Code is not intended to be either permanent or semi-permanent in character. The concensus of judicial opinion in the High Courts of the country is thus in accord with the view expressed by this Court. It is not necessary on that ground to quash the impugned order of March 1982 as by efflux of time it has already ceased to be effective.

It is appropriate to take note of the fact that the impugned order under s. 144 of the Code did not ban processions or gatherings at public places even by Ananda Margis. The prohibition was with reference to the carrying of daggers, trishuls and skulls. Even performance of tandava dance in public places, which we have held is not an essential part of religious rites to be observed by Ananda Margis, without these, has not been prohibited.

The writ petitions have to fail on our finding that performance of tandava dance in procession in the public streets or in gatherings in public places is not an essential religious rite of the followers of Ananda Marga. In the circumstance there will be no order as to costs.

H.S.K. Petitions dismissed

464