

(1994) 01 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 2071 of 1993-S

C.K. Rajan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-01-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10, 151, 92
Constitution of India, 1950 — Article 226
Kerala Guruvayoor Devaswom Act, 1978 — Section 27

Citation : AIR 1994 Ker 179

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : B. Radhakrishna Pillai and A. Ambika Devi, for the Appellant; A.G., K.P. Dandapani, P.G. Parameswara Panicker, Govind K. Bharathan, V. Divakaran Poti, V.R. Venkatakrishnan, Madhu N. Namboodiripad, R. Ramadas, K.S. Radhakrishnan, T.P.M. Ibrahimkhan, V.P. Seemandini and T.P. Kelu Nambir, Amicus Curiae, S. Sankara Subban, K.C. Sankaran and N.N. Venkitachalam, for the Respondent

Judgement

Paripoornan, J.—This is a public interest litigation. It concerns the famous Sree Krishna Temple, Guruvayur -- a very ancient temple of unique importance worshipped and held in great reverence by millions all over the country. The temple owns extensive movable and immovable properties and endowments. The temple has its own heritage and traditions of renowned referred memory, which adds grandeur and majesty to it over the entire globe. Shri C.K. Rajan, Chennara House, P.O. Nhamanghat, via. Kunnamkulam sent a communication to one of us (Paripoornan, J.) dated 3-2-1993 highlighting gross irregularities, corrupt practices, maladministration and mismanagement in Sree Krishna Temple, Guruvayur. A statement from Shri C.K. Rajan was recorded by the Registrar of this Court on 11-2-1993. He owned the sending of the petition, its content, etc. Gross irregularities, misadministration and various lapses were disclosed. The matter was placed before My Lord the Chief Justice, who, by order dated 11-2-1993, treated the said communication of Shri C.K. Rajan as an original

petition under Article 226 of the Constitution of India and posted the matter before this Bench for passing appropriate orders. By order dated 12-2-1993, this Bench admitted the original petition and ordered notice to the respondents mentioned in paragraph 6 of the said order. Originally, there were only four respondents. The other respondents were subsequently impleaded, either on their own application or suo motu by this Court. Prima facie, the allegations highlighted in the communication of Shri C.K. Rajan dated 3-2-1993 were found to be serious requiring a per examination and an in depth study to ascertain the root causes of the evil that are said to have crept in the management and administration of the famous temple. In the order dated 12-2-1993, this Bench had briefly highlighted 23 aspects, which have been brought to our notice (see paragraph 4 of the Order). In paragraph 6 of the Order, this Bench stated thus:

"We are satisfied that in public interest urgent action, on the above aspects, is necessary. It appears that "all is not well" in the set up. The administration of a well known institution should not be under any cloud and it is in the interests of all concerned, that the matter is enquired into, and if found necessary, remedial action is taken. A preliminary enquiry by an independent agency will facilitate the process....."

We appointed Shri S. Krishnan Unni, District Judge officiating as the Director of Training, High Court of Kerala, as the Commissioner (hereinafter referred to as Commissioner) "to make a general enquiry and in particular, make a study on the various aspects highlighted in the complaints of Shri C.K. Rajan". The Commissioner was asked to submit a report or reports from time to time on the various matters and suggest overall remedial actions, if necessary, and seek directions or clarifications, if he deems them essential.

2. The aforesaid order passed by us on 12-2-1993 was assailed in special leave petitions filed before the Supreme Court of India, by one of the members of the Guruvayur Devaswom Managing Committee and also by its Chairman. In I.A. No. 1 in SLP (Civil).... /93 C.C. 20040, by order dated 26-3-1993, Their Lordships Mr. Justice Kuldeep Singh and Mr. Justice Yogeshwar Dayal, while declining to interfere with the order passed by this Court, suggested the following guidelines for the consideration of this Court:

(i) It is not disputed that the management of the Guruvayur temple is governed by the Guruvayur Devaswom Act, 1978. There may be other State legislations governing the functioning of religious institution in the State. The High Court shall take into consideration the relevant provisions of these enactments.

(ii) The Guruvayur Devaswom Managing Committee and the State of Kerala are necessary parties in this public interest litigation. The High Court shall take into consideration the objections including of preliminary nature raised/to be raised by these parties.

(iii) The appointment, tenure of office and other conditions of service of the Administrator and other officers connected with the Guruvayur, as are provided

by law shall be kept in view while passing any orders concerning these officers.

The High Court is requested to conclude the proceedings expeditiously and if possible, within six months from today. Again, in SLP No. 3231 of 1993, Their Lordships Mr. Justice R.M. Sahai and Mr. Justice N. Venkatachala, by order dated 10-5-1993, adverted to the earlier order passed by the Court on 26-3-1993 and dismissed the SLP with the following observations:

"Learned counsel for the petitioner urged and vehemently pleaded for restraining the Enquiry Commissioner from submitting his final report as in that case the High Court may not decide the preliminary objection raised on their behalf that there being a detailed procedure provided in the Statute, the High Court should not have exercised its extra ordinary jurisdiction. We do not find any justification for such apprehension.

In the result, this petition fails and is dismissed".

3. The Chairman of the Guruvayur Devaswom Managing Committee filed C.M.P. No. 10669 of 1993 to consider the maintainability of the original petition as a preliminary issue. Due to one reason or other, the matter stood adjourned and was finally heard on 4-8-1993. The State of Kerala also took up the plea that the original petition initiated on the basis of a letter is not maintainable. As directed by the Supreme Court, the matter was posted for hearing as a preliminary issue.

4. We heard the Additional Solicitor General Mr. V.R. Reddy, who appeared on behalf of the State of Kerala, Mr. K.P. Dandapani, counsel for the Guruvayur Devaswom Managing Committee (hereinafter referred to as Committee or Devasom Committee) and other advocates. By the time preliminary issue regarding jurisdiction was taken up, the Commissioner has submitted ten interim reports, innumerable persons were examined, fresh parties were impleaded and the enquiry had gone a long way. Faced with the situation, the learned Additional Solicitor General, who appeared for the State of Kerala, frankly conceded that the plea regarding want of jurisdiction raised did not merit consideration at that stage. It was conceded that the question of jurisdiction has become in fructuous. However, the learned Additional Solicitor General wanted this Court to record the various submissions made by all parties in the case. This Court passed a detailed order in C.M.P. No. 10669 of 1993 on 25th August 1993 and held that the plea of the State of Kerala and the Committee regarding want of jurisdiction of this Court does not merit consideration.

5. Shri S. Krishnan Unni, the Commissioner, has filed fifteen interim reports. The above reports came up before this Bench for consideration from time to time. We granted time for the parties to file their objections. Even so, objections have not been filed for many of the interim reports by any party within time. The Commissioner filed the final report on 25-9-1993 in two volumes. All these reports were made available to all contesting parties. The parties were given time to file their objections. By order dated 27-9-1993, we recorded the receipt of the final report and granted time to the parties to file their objections to the

final report on or before 11-10-1993.

6. The details regarding the interim reports and final report are furnished herein below : The final report is filed in two parts. Part I deals with introduction, Shri Rajan's complaints, a survey of general matters and the conclusion and the summing up about all matters dealt with in the interim reports. It contains 20 different Chapters. Chapters I to XIX deal with various specified matters and Chapter XX is appendices to Part I containing various records, which are relevant for understanding the final report. Chapters I to XIX are in pages 1 to 233 and Chapter XX contains 1 to 152 pages. Part II of the final report contains all the fifteen interim reports -- pages 1 to 303. The final report makes the above fifteen interim reports as part thereof. The details of the interim reports are as follows:

Number of the reports. Date interim Subject dealt with therein Date of the order passed by Court on the interim reports Objections, if any, filed by the parties

(1) (2) (3) (4) (5)

1 of 1993 15-2-1993 General -- Records showing the 16-2-1993,

first visit of the Commissioner to 17-2-1993,

Guruvayur 22-2-1993. No objections.

2 of 1993 10-3-1993 Gokulam -- Vengad Estate 11-3-1993

18-3-1993 No objections.

3 of 1993 30-3-1993 Inspection of paddy 31-3-1993 Objections filed by the Devaswom Managing

Kalavara, publication division of Devaswom

Devaswom Shopping complex Managing Committee

security arrangements, etc dated 5-4-1993.

4 of 1993 3-4-1993 Shri K. K. Rajasekharan Nair's 7-4-1993 do do dated report regarding security 19-4-1993 17-10-1993

5 of 1993 16-4-1993 Complaint by Tanthri and the statements filed by the Members 19-4-1993 Replies by various members of the Committee

in reply thereto -- Complaints against Tanthri for and against.

6 of 1993 12-5-1993 Inspection of Devaswom Medical Centre by the Commissioner. 24-5-1993 Objections by Committee dated 17-10-1993

7 of 1993

9-6-1993

Commissioner seeking directions regarding the allegations made by the Tanthri

and preliminary findings.

15-6-1993

Objections by Committee dated 17-10-1993

8 of 1993

26-6-1993

Money due to Devaswom fund. Misappropriation of money by producing false vouchers.

6-7-1993

Objections by Committee dated 17-10-1993

9 of 1993

20-7-1993

Allegations regarding Panchajanyam Restaurant. Misapplication of Devaswom funds for non-trust purpose. Misuse of car by the Administrator.

27-7-1993

do do dated 17-10-93

10 of 1993

21-7-1993

Encroachment in immovable property belonging to the Devaswom, Vengad Estate -- Allegations regarding the construction of statue of Guruvayur Kesavan.

27-7-1993

do do dated 17-10-93

11 of 1993

4-8-1993

Premature withdrawal of deposits from Dhanalakshmi Bank -- Discipline of Devaswom servants, complaints against Keezhsanthies, appointment of Lecturer in S.K. College, Guruvayur, appointment of mahouts, security staff, etc.

5-8-1993

do do dated 17-10-93

12 of 1993

11-8-1993

Allegations against Electrical Engineering Department

17-8-1993

do do dated 17-10-93

13 of 1993

13-8-1993

Commissioner's inspection of Kalanilayam. Filling up of management quota of S. K. College by non-Hindus.

25-8-1993

do do dated 17-10-93

14 of 1993

2-9-1993

Additional Block in Sree Krishna College -- Contract given to one Shri K. N. Madhusoodhanan.

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do do dated 18-9-93

15 of 1993

2-9-1993

Report relating to enquiry into the allegations in respect of delay in reinvestment of Indira Vikas Patra

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do do dated 17-10-93

Besides the above, the Government (first respondent) and the Commissioner for Guruvayur Devaswora (second respondent) had filed general objections. The various recommendations on the above interim reports by the Commissioner are contained at pages 202 to 205 of Part I of the final report. They are as follows:

Action suggested

Interim Report No. 1

Nil

Interim Report No. 2

Explanation to be called for from the Committee.

Interim Report No. 3

Explanation to be called for from Shri Harikrishna Menon, P. A. (Fin.) and explanation to be called for from Temple Kalavara Clerk, Koima concerned.

Interim Report No. 4

Nil

Interim Report No. 5

Notice to be issued to all Managing Committee members calling for explanation for changing the plan and also not fixing the rates of reconstruction. Call for explanation from members of the Committee and the

Commissioner.

Interim Report No. 6

Explanation to be sought from the Committee and the concerned persons. Explanation to be called for from the doctor and the pharmacist. Call for explanations from the Administrator and concerned officials.

Interim Report No. 7

Explanation to be called for from the Committee and the Commissioner.

Interim Report No. 8

Explanation to be called for from Shri Harikrishna

Menon, P. A. (Fin.)

Interim Report No. 9

Nil

Interim Report No. 10

Explanation to be called for from the concerned Engineer and also the Committee relating to the spending of excess amounts and source of steel and cement.

Interim Report No. 11

Explanation to be called for from the then Chairman and the then Administrator.

Interim Report No. 12

Vigilance enquiry to be conducted and AE I to be asked to explain.

Interim No. 13

Nil

Interim No. 14

Call for explanation from the Committee

Interim Report No. 15

Nil

Besides the above, in the final report (Part 1), the Commissioner has dealt with several general matters -- Chapters II to XV. The Commissioner has also made specific observations and recommendations in those Chapters, on all aspects. In areas covered by recommendations in the interim reports, he has adopted the same. The specific recommendations regarding the various matters dealt with in Chapter II, Chapter III and Chapter X (of the final report) are contained at pages 202 to 204 of Part I of the final report. They are Item Nos. 1,2,3,4,7,8,9,10,11,12, 14, 15, 16 and 17. The remaining recommendations of the Commissioner are contained in pages 205 to 213 of Part I of the final report. The Commissioner has examined 85 persons and has marked 39 exhibits, apart from various reports submitted to him by experts. He has also examined other documents and papers of the Devaswom. There are copies of fifteen documents, proceedings of Court and Government, marked as Appendix I to XV. The total expenditure incurred by the Guruvayur Devaswom for this enquiry is Rs. 58,586.25 (vide Part I Final Report --Chapter XIX page 233).

7. The State of Kerala filed C.M. P. No. 27168 of 1993 praying for one month's time for filing objections to the Commissioner's report. The parties were given time to file their objections to the final report on or before 11-10-1993. The matter stood posted for hearing on 12-10-93. The State of Kerala filed C.M.P. No. 25158 of 1993 praying for time to file objections. By order dated 12-10-1993, we granted three weeks time. Though the time so granted by this Court had expired, no objection or statement was filed on behalf of the State of Kerala, when the matter came up before this Court on 2-11-1993. After adverting to the order passed by the Supreme Court dated 26-3-1993, as a last chance, we granted two weeks time to the State of Kerala to file its statement or objection to the final report on or before 16-11-1993 and posted the case for hearing on 17-11-1993. Again the parties applied for time on 17-11-1993 and we adjourned the hearing of the matter to 24-11-1993. The hearing accordingly began on 24-11-1993. It was heard on many days. Hearing was over on 20-12-1993.

8. The third respondent Committee has filed the following statements to the interim reports:

No. of the interim reports	Date of the statement
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3	5-4-1993
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4	17-10-1993
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6	17-10-1993
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7	17-10-1993
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9	17-10-1993
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10	17-10-1993
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11 17-10-1993

12 17-10-1993

13 17-10-1993

14 18-9-1993

15 17-10-1993

The first respondent -- State of Kerala -- has filed the following statements :

1. Statement filed by the Commissioner and Secretary (Finance) dated 15-10-1993
2. Statement filed by the Government Pleader dated 2-12-1993
3. Preliminary objections dated 29-5-1993

The 9th respondent has filed objections to the report of the Commissioner dated 31-10-1993. One of the members of the Managing Committee, Shri K. Gopinathan (15th respondent) has filed a statement dated 7-11-1993. Shri P. N. Narendranathan Nair and Shri A. P. Mohandas, Members of the Committee (respondents 12 and 13) have filed a joint statement dated 23-10-1993. The fourth respondent (Administrator) has filed a statement dated 7-6-1993 to interim reports 4, 5 and 6, statement dated 16-4-1993 to interim reports 3 and 4, statement dated 24-3-1993 to interim report 2. Counsel for the fourth respondent has filed a memo dated 5-7-1993 along with the resolution of the Committee, wherein the Committee has welcomed the enquiry ordered by this Court. They are resolutions dated 13-2-1993, 20-2-1993 and 25-10-1993.

9. We felt that some aspects stated by the Commissioner in his reports can be evaluated better, if we examine or discuss the matter with the Thanthri (9th respondent), the Administrator (4th respondent) and one of the persons who has acted as Melsanthi of the Sree Krishna Temple, Guruvayur. Accordingly, Shri Chennas Divakaran Namboodiripad, present Thanthri of the Guruvayur Temple, Shri K. Raghavan, Administrator of Sree Krishna Temple, Guruvayur and Shri V. T. Krishnan Bhattathiripad, former Melsanthi of the Guruvayur Temple were questioned by us on certain aspects in the presence of advocates for all parties and brief statements from them were recorded by us on 16-12-1993. Those statements also form part of the records.

10. The hearing in this case was practically over on 17-12-1993. The matter was posted to 20-12-1993 for being spoken to. The entire report was read in Court and comments invited. We had indicated to counsel appearing for various parties during the hearings that they may specifically state their objections to the recommendations of the Commissioner, since we found that Shri T. R. G. Warriar, counsel appearing for the 10th respondent (Shri P. T. Mohanakrishnan, Chairman, Guruvayur Devaswom Managing Committee), Shri K. P. Dandapani, counsel for the third respondent-Committee and the Senior Government Pleader who

appeared for respondents 1 and 2 agreed with many of the recommendations made by the Commissioner appointed by this Court. Counsel appearing for the other parties also substantially agreed with the various recommendations of the Commissioner. So, we indicated during many of the hearings and also passed an order on 17-12-1993 informing all counsel that it will be desirable if a statement in writing is filed by the respective counsel regarding (i) the recommendations made by the Commissioner which are not accepted, and (ii) the recommendations on which partial modifications or amendments are required. We further stated that if such a statement is filed regarding the recommendations or suggestions objected to or modifications sought, all others will in effect stand accepted. We passed an order directing the parties in the original petition, especially respondents 1, 2 and 3, to file statements in writing as to which of the recommendations they are objecting in whole and which of the recommendations they are objecting in part. Parties were directed to file their statements on or before 20-12-1993. Accordingly, the Guruvayur Devaswom Commissioner (2nd respondent) has filed a statement dated 20-12-1993. The fifth respondent has filed a detailed statement dated 20-12-1993 along with two annexure. The third respondent has also filed a statement dated 20-12-1993. The other parties have not filed any statement, as directed by this Court in the order dated 17-12-1993. At this juncture, we should point out one important aspect. Though, as stated in paragraphs 6 and 8 of the judgment, respondents 1, 2, 3, 5, 9, 12, 13 and 15 have filed statements, either objecting to the interim reports or the final report and/ or the recommendations of the Commissioner, at the time of arguments, only a few of the matters stated in the statements were highlighted or pressed by their counsel. We are, therefore, advertent to only those specific aspects or points which were pressed before us at the time of hearing and proceed to pronounce our decision on that basis.

11. Sri Krishna Temple, Guruvayur is governed by the Guruvayur Devaswom Act, 1978 (Act 14 of 1978). There are 43 sections in the said Act. The Government have framed rules entitled "Guruvayur Devaswom Rules, 1980". There are 20 rules in the said Rules. There are three main Full Bench decisions of this Court dealing with Sree Krishna Temple, Guruvayur. The earliest of them is *Manavedan and Others Vs. The State of Kerala and Others*, -- Full Bench of three Judges). Therein, the Guruvayur Devaswom Act, 1971 came up for consideration. The later decision is *Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others*, -- Full Bench of 5 Judges). In this larger Bench, again the Guruvayur Devaswom Act, 1971 came up for consideration. These two decisions led to the passing of the Guruvayur Devaswom Act, 1978 (Act 14 of 1978). Act 14 of 1978 came up for consideration before a Full Bench of three Judges in *K.V. Narayanan Namboodiri and Others Vs. State of Kerala and Others*, In paragraph 7 of the said judgment (at pages 635 to 637) (of Ker LT) : (at pp. 166-68 of AIR), the Full Bench has referred to the salient features of Act 14 of 1978. For the purpose of easy reference, we shall extract the said portion of the judgment in detail:

" The Act purports to be one to make provision for the proper administration of the Guruvayur Devaswom. The Preamble of the Act refers to the Scheme under which the temple had been administered, the old Act passed in the interests of the general public and the decision of this Court striking down the old Act as violative of Articles 25 and 26 of the Constitution. It further states that if the administration and control of the temple is vested in the hereditary trustees, the same situation which had rendered it necessary, to pass the old Act would again arise and it is in the public interest and in the interests of the worshippers of the temple, the new Act is passed for the proper administration of the Devaswom in accordance with law. Section 3 of the Act enacts that the administration, control and management of the Devaswom shall be vested in a Committee constituted as per the Act. The Committee shall be a body corporate and shall have perpetual succession and a common seal; it may sue in its own name and may be sued through the Administrator. As per Section 4 the Committee is to consist of (a) the Zamorin Raja, (b) the Karanavan for the time being of the Mallisseri Illam at Guruvayur, (c) the Thanthri of the temple, ex-officio, (d) a representative of the employees of the Devaswom nominated by the Hindus among the Council of Ministers, and (e) not more than five persons, of whom one shall be a member of a Scheduled Caste, nominated by the Hindus among the Council of Ministers from among persons having interest in the Temple. Sub-section (2) enumerates the disqualifications for nomination as members of the Committee. Sub-section (3) provides for the election of a Chairman of the Committee and Sub-section (4) requires the members of the Committee before entering upon office to make and subscribe to an oath in the form mentioned therein. As per Sub-section (1) of Section 5 the nominated members are entitled to hold office for a period of two years and are eligible for re-nomination. Sub-section (2) relates to resignation by a member by notice in writing issued to the Government and Sub-section (3) empowers the Government to remove a member from office for any of the reasons mentioned therein. The member is entitled to a reasonable opportunity to show cause against his removal and is also entitled to institute a suit, in case he is removed from office. Section 6 empowers the Government by notification in the Gazette to supersede the Committee for such period not exceeding six months as the Government may deem fit. The section empowers any member of the superseded Committee to institute a suit to set aside the notification of the Govt. superseding the Committee. The Commissioner under the Act is required to exercise the powers and perform the functions of the Committee during the period of its super session. Section 7 relates to the meetings of the Committee and Section 8 enacts that the proceedings of the Committee shall not be invalidated for any of the defects mentioned therein. Section 9 states that members of the Committee are not entitled to salary or other remuneration except such traveling or daily allowances, if any, as may be prescribed. Section 10 enumerates the duties of the Committee; Section 11 provides for the sanction of the Commissioner before any property of the Devaswom is sold or alienated. The sanction referred to in the section can be granted only if the Commissioner is

satisfied that the alienation in question is necessary or beneficial to the Devaswom. The section provides also for a suit against the order of the Commissioner sanctioning or declining to sanction alienation of property proposed by the Committee. Section 12 enacts the limitations of powers of the Committee to borrow on behalf of the Devaswom or lend its money to any person. Section 13 requires the Committee to submit annual administration reports to the Commissioner. Chapter III of the Act relates to the administration and establishment. Section 14 empowers the Committee to appoint an officer of the Government not below the rank of a Deputy Collector to be the Administrator of the Devaswom from among a panel of names furnished by the Government. The Administrator should be a person professing Hindu Religion and having belief in temple worship. Section 15 provides for the conditions of service of the Administrator. The Government is entitled to appoint an officer of the Government not below the rank of a Deputy Collector to be in additional charge of the office of the Administrator when the post is Vacant. Section 17 enumerates the powers and duties of the Administrator. The Administrator is required u/s 18 to prepare and submit an establishment schedule to the Committee showing the duties, designations, grades, etc. of the officers and employees of the Devaswom and the Committee is required to forward the same to the Commissioner with its recommendations. The Commissioner is entitled to make such modifications as are found necessary and the schedule would come into force on its approval by the Commissioner with or without modifications. The right to appoint officers and employees of the Devaswom is vested in the Committee subject to the provisions of Section 19 of the Act. Section 20 requires the Committee to submit proposals to the Commissioner fixing the dittam or scale of expenditure and for allotment of funds for the various objects. The Commissioner is required to scrutinise the proposals and, subject to such modifications or alterations as may be made by him, the proposals submitted by the Committee shall be final. The Committee is given a right to file a suit against orders to make rules passed by the Commissioner on the proposal submitted u/s 20. Chapter IV relates to budget accounts and audit. u/s 27 the Committee is authorised to incur expenses for the purposes mentioned therein. The Committee is entitled to take and be in possession of all movable and immovable properties belonging to the Devaswom (vide Section 28). Section 29 relates to the protection of action taken by the Government, the Commissioner, the Committee or any member thereof or the Administrator or any other person acting under the instructions of the Committee for anything done in good faith or intended to be done under the Act or the Rules made hereunder. Section 32 enacts a bar of suits against any orders passed, decisions made or proceedings taken or other things done under the Act by the Government or the Commissioner except as expressly provided in the Act. Section 33 confers a power of revision on the Government in respect of the proceedings of the Commissioner or the Committee in all cases where no suit or application before a court is provided for under the Act. Section 34 enacts a saving clause in respect of any honor, emolument or perquisite to which any person is entitled to by custom or otherwise from or in the Devaswom or its

established usage in regard to any other matter. Section 35(1) enacts a prohibition against the Committee or the Commissioner or the Government from interfering with the religious or spiritual matters pertaining to the Devaswom, and as per Sub-section (2) the decision of the Thanthri shall be final in all such matters. Section 36 relates to a transitory provision for removal of difficulties that may arise in giving effect to the provisions of the Act. Section 38 empowers the Government by notification in the Gazette to make rules to carry out the purposes of the Act. The Committee is authorised u/s 39 to make regulations not inconsistent with the provisions of the Act and the Rules made thereunder to provide for the manner in which the duties imposed on it under the Act and its functions thereunder are to be discharged. Section 40 enacts that the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951 shall cease to apply to the Guruvayur Devaswom. Section 41 repeals the Guruvayur Devaswom Act, 1971 and saves the orders passed, decision made, etc. under the repealed Act in so far as they are not inconsistent with the provisions of the new Act. As per Section 42, the Committee constituted u/s 4 shall be the successor of the Renovation Executive Committee constituted under the old Act. Section 43(1) repeals the Guruvayur Devaswom Ordinance, 1977 and under Sub-section (2) anything done or any action taken under the Ordinance shall be deemed to have been done or taken under the new Act".

12. For the purpose of this original petition, we have to deal, in more detail, with some important provisions of the Act and the Rules made thereunder, which were highlighted by counsel in the course of arguments. Section 2(b) of the Act defines the word Commissioner" as follows:

"Commissioner means, an officer not below the rank of Secretary to Government, who professes the Hindu Religion and believes in temple worship appointed by the Government, by notification in the Gazette to be the Commissioner for the purposes of this Act".

Section 2(i) defines "temple" u/s 4(4), every member of the Committee shall, before entering upon his office, make and subscribe in the presence of the Commissioner, an oath. Section 6(4) provides that where the Committee is superseded, the Commissioner shall exercise the powers and perform the functions of the Committee until the expiry of the period of super session. Section 11 deals with alienation of Devaswom properties. Section 11(1) states that no movable property of a non-perishable nature, which is in the possession of the Committee and the value of which is more than five thousand rupees and no jewellery shall be sold, pledged or otherwise alienated unless it is sanctioned by the Commissioner as being necessary or beneficial to the Devaswom. Section 11 (2) requires sanction of the Commissioner for exchange, sale or mortgage or lease of any immovable property belonging to or given or endowed for the purposes of the Devaswom. Before according sanction, the Commissioner shall publish the particulars and invite objections and suggestions from the Committee or from the public (Section 11(3)). u/s 11(4), sanction may be given by the

Commissioner upon such conditions as he deems fit. u/s 11(5), the Commissioner shall communicate the order passed by him to the Government and to the Committee. It is open to the Committee to file a suit to set aside or modify the order passed by the Commissioner u/s 11(6). u/s 12 of the Act, the Committee shall have no power to borrow money from or to lend money to any person unless it is sanctioned by the Commissioner as being necessary or beneficial to the Devaswom. Section 13 envisages that the Committee shall submit to the Commissioner a report on the administration of the affairs of the Devaswom and such report shall be published by the Committee in the prescribed manner; Under Sub-section (2) of Section 13, the Commissioner shall submit a copy of the report to the Government. Section 20 deals with fixation of standard scales of expenditure, dittam, etc. The Commissioner may direct that the proposals shall be published and invite objections from any person having interest in the temple. u/s 20(3), after scrutinising the objections and suggestions made by persons having interest in the temple and advertent to the remarks of the Committee, the Commissioner may pass orders thereon. Section 21 deals with budget. Before the end of March in each financial year, the Committee shall submit a budget to the Commissioner containing details envisaged by Section 21(2) of the Act. u/s 21(3), the Commissioner may, after considering the representations, make alterations or additions as he deems fit. He shall send a copy of the budget as approved by him to the Government (Section 21(4)). Section 22 envisages revised or supplementary budget. The same should be submitted to the Commissioner. u/s 24, after completing the audit for any year or shorter period or for any transactions as he deems fit, the auditor shall send a report to the Commissioner. u/s 25(2), the auditor shall also submit a report on such other matters relating to the accounts as may be prescribed, or on which the Commissioner may require him to report. Section 26 provides for rectification of defects disclosed in audit and order of surcharge against Committee, etc. Section 26(1) provides that the Commissioner shall send a copy of every audit report to the Committee and it shall be the duty of the Committee to remedy any defects or irregularities pointed out by the auditor and report the same to the Commissioner. u/s 26(2), the Commissioner can pass order of surcharge against an erring Committee or any other officer or employee. u/s 26(3), the Commissioner shall forward a copy of such order to the Committee or the officer or other employee concerned. The persons aggrieved can take proceedings to set aside the said order, u/s 26(4) of the Act. Section 29 protects the Commissioner for anything done under the Act and in good faith. u/s 30 of the Act, all public officers having custody of any record, register, report or other document relating to the Devaswom shall furnish such copies of or extracts from the same as may be required by the Commissioner or the Committee. Under Rule 12(4) of the Guruvayur Devaswom Rules, 1980, the Commissioner shall publish a notice before according sanction for the alienation of any immovable property with details. Under Rule 12(6), the Committee shall conduct annual physical verification of movable properties of the Devaswom, including jewels and gold and send a certificate to the effect, with remarks, if any, to the

Commissioner before 30th June every year. Under Rule 8, prior sanction of the Commissioner shall be obtained in respect of any new work costing over Rs. 2,00,000/-. It should also be noticed that u/s 2(b) of the Act, the Commissioner is appointed by the Government. u/s 5(3) of the Act, the Government may, by order, remove any member of the Committee from office in certain circumstances provided therein. Section 6 gives power to the Government to dissolve and supersede the Guruvayur Devaswom Managing Committee. u/s 13, the administration report submitted by the Committee shall be submitted by the Commissioner to the Government, which shall be laid before the Legislative Assembly. u/s 21(4), the Commissioner shall send a copy* of the budget as approved by him to the Government. Section 33 vests power in the Government to call for records of the Commissioner or of the Committee in respect of any proceeding and pass orders to see that the provisions of the Act are not violated. It is a supervisory power of revision. Section 38 enables the Government to frame rules to carry out the purposes of the Act. Mr. T. P. Kelu Nambiar, amicus curiae appointed by this Court, highlighted the above provisions for his submission that the Commissioner is an important statutory functionary under the Act and is "part and parcel of the administration". He also submitted that the Government have got overall supervisory power to see that the provisions of the Act are properly implemented and the administration is carried on properly. Mr. Nambiar also laid emphasis on Sections 10 and 27 of the Guruvayur Devaswom Act, 1978 which deal with the duties of the Guruvayur Devaswom Committee and the authority of the Committee to incur expenditure for specified purposes. The provisions of Sections 10 and 27 will have a great bearing in adjudicating many acts of mismanagement, maladministration and unauthorised and illegal acts of the Committee as found by the Commissioner in Interim Report Nos. 1 to 15 and in the final report. We may extract the above two statutory provisions for reference:

"10. Duties of Committee:-- Subject to the provisions of this Act and the Rules made thereunder, it shall, be the duty of the Committee----

(a) subject to the custom and usage in the temple to arrange for the proper-performance of the rites and ceremonies in the temple and the subordinate temples attached thereto in accordance with the dittam or scale of expenditure fixed for the temple and the subordinate temples u/s 20 or till the dittam or scale of expenditure is fixed under that section, in accordance with the dittam or scale of expenditure fixed for the temple and the subordinate temples u/s 51 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951);

(b) to provide facilities for the proper performance of worship by the worshippers;

(c) to ensure the safe custody of the funds, valuable securities and jewelleries and the preservation and management of the properties vested in the temple;

(d) to ensure maintenance of order and discipline and proper hygienic conditions

in the temple and the subordinate temples attached thereto and of proper standard of cleanliness and purity in the offerings made therein;

(e) to ensure that the funds of the endowments of the temple are spent according to the wishes so far as may be known of the donors;

(f) to make provision for the payment of suitable emoluments to the salaried staff of the Devaswom; and

(g) to do all such things as may be incidental and conducive to the efficient management of the affairs of the Devaswom and the convenience of the worshippers.

27. Authority of Committee to incur expenditure for certain purposes :-- The Committee may, after making adequate provision for the purposes referred to in Sub-section (2) of Section 21, incur expenditure out of the funds of the Devaswom for all or any of the following purposes, namely:--

(a) maintenance, management and administration of the temple, its properties and the temples subordinate thereto;

(b) training of archakas to perform the religious worship and ceremonies in the temple and the temples subordinate thereto;

(c) medical relief, water supply and other sanitary arrangements for the worshippers and the pilgrims and construction of buildings for their accommodation;

(d) culture and propagation of the tenets and philosophy associated with the temple;

(e) the establishment and maintenance of or the making of any grant or contribution to, any poor home or other similar institution which is maintained for the benefit mainly of persons belonging to the Hindu community;

(f) the establishment and maintenance of any educational institution which provides for encouragement of education in the Sanskrit language or the maintenance of any such educational institution owned or managed by the Devaswom or in which the Devaswom has interest; and

(g) the making of any contribution to any religious institution:

Provided that nothing contained in Clause (e) shall prevent the continuance of any grant or contribution to any poor home or other similar institution which is maintained by or for the benefit of persons other than those belonging to the Hindu community, if such grant or contribution was being made to such poor home or institution before the commencement of this Act as the customary practice associated with the temple.

Provided further that no expenditure shall be incurred for any of the purpose mentioned in Clauses (f) and (g) unless the same is sanctioned by custom or

practice associated with the temple".

13. In *K.V. Narayanan Namboodiri and Others Vs. State of Kerala and Others*, while considering the validity of the provisions of the Guruvayur Devaswom Act, 1978, the Court came to the following conclusion in para 32 (page 653) (of Ker LT): (at p. 184 of AIR) of the judgment:

"The results of the foregoing discussion are as follows:

(a) Clauses (d) and (e) of Sub-section (1) of Section 4, relating to nomination of members to the Committee by the Hindus among the Council of Ministers will be interpreted as "Hindus among the Council of Ministers having faith in temple worship";

(b) Section 32 of the Act is declared as unconstitutional and void;

(c) Section 33 will be read omitting the words "or is not in the interest of the Devaswom";

(d) Sub-section (2) of Section 35 will be read as a proviso to Sub-section (1) and the decision of the Thanthri of the temple on religious, spiritual, ritual or ceremonial matters will be final only as against the authorities mentioned in Sub-section (1) of Section 35; and

(e) The remaining provisions of the Act are valid and are perfectly within the competence of the State Legislature".

14. At the final hearing, Senior Government Pleader Mr. N. Sankara Menon took up the plea that the initiation of this proceeding by way of public interest litigation is not sustainable. Counsel for the third respondent submitted that the petitioner has got an alternative remedy to file a suit u/s 92 of the Code of Civil Procedure. While treating the complaint letter of Shri C. K. Rajan as an original petition under Article 226 of the Constitution of India as a public interest litigation, this Court adverted to the fact that in the administration of this most renowned temple, there are allegations of gross irregularities, corrupt practices, maladministration and mismanagement, that they are serious, that the matter requires an in depth examination in the root causes of the evil that has crept in the management and administration which are focussed in the petition for remedial action, that in public interest urgent action is necessary, that it appears that all is not well in the set up and the administration of a well-known institution should not be under any cloud and it is in the interest of all concerned that the matter is enquired into and if it is found necessary, remedial action is taken. So, this Court appointed Shri S. Krishnan Unni, District Judge, as Special Commissioner to make a general enquiry and make a study on the various aspects, examine the records, persons and other materials and submit a report. The order so passed by this Court on 12-2-1993 was assailed in two special leave petitions filed before the Supreme Court and the special leave petitions were dismissed with certain observations, which are adverted to in paragraph 2 supra. The public interest litigation so initiated was approved by the Supreme Court.

The Commissioner appointed by this Court filed fifteen interim reports and also a final report, after examining various persons, records and other circumstances. Many acts of omissions and commissions of the administration have come to light. Respondents 1 to 3, who initially took a stand against the enquiry, later stated that many recommendations and proposals of the Commissioner are welcome and they are prepared to implement such recommendations. The matter has gone a long way and has brought to light realities which cannot be over-looked or ignored by any person. In such circumstances, it is idle for the Senior Government Pleader to contend that the initiation of this public interest litigation was without jurisdiction or in any way unauthorised or improper. We repel the said plea.

15. Then it was faintly suggested by counsel for the third respondent-Committee Mr. Dandapani that the petitioner had alternative remedies to ventilate his grievances and in that perspective, the proceeding under Article 226 of the Constitution by initiating this public interest litigation was unnecessary. According to counsel, as per the provisions of the Act, the petitioner could have brought to the notice of the Commissioner or the Government the various acts of omissions and commissions and could have obtained redress. He did not do so. The petitioner could have also filed a suit u/s 92 of the CPC and ventilate his grievances. He did not do so, In the absence of the above alternative remedies, resort to Article 226 of the Constitution was improper. We are of the view that the above plea also should fail. It is trite law that the remedy under Article 226 of the Constitution is discretionary. But it is equally settled law that the availability of an alternate remedy is never considered to be a bar to maintain an action under Article 226 of the Constitution of India. Stated briefly, the rule is that availability of an alternative remedy is a factor to be taken into consideration in the exercise of the discretionary jurisdiction vested in this Court under Article 226 of the Constitution. But the matter needs a different look or perspective in the case of a public interest litigation. Where the rights of innumerable persons have been infringed bordering on violation of fundamental rights -- here the right of denomination under Article 226 of the Constitution of India is involved -- the remedy by way of suit is likely to be dilatory and the delay will irreparably prejudice and damnify the public. In a public interest litigation where a substantial population of the country -- the general public -- are interested in the vindication of the rights and the enforcement of some public duty, the Court is bound to consider the gravity or seriousness of the complaint and in so considering, if satisfied, *prima facie*, that the information laid before Court is of such a nature that it calls for examination, the availability of alternative remedy will never prevent the Court nor will it fetter the exercise of jurisdiction under Article 226 of the Constitution of India. Therefore, we are of the view that the plea of availability of alternative remedy on the facts of this case, has no substance. We shall also indicate in the latter portion of this judgment as to how far the (internal) remedy provided by the Act is ineffectual or dilatory and have not or will not serve the purpose in the instant case.

16, It is settled law that the bar relating to alternate remedy is a rule of self-imposed limitation by the Courts -- a rule of policy and expediency, convenience and discretion. We are of the view that in cases where there are allegations of infringement of fundamental rights or the pursuit of alternate remedy is a meaningless ritual or an empty formality or the alternate remedy is not equally efficacious or there is violation of the principles of natural justice or fairness, the alternate remedy is never a bar. We are also of the view that in a public interest litigation, the entire complexion changes and the availability of alternate remedy sinks into oblivion.

17. In evaluating the alternative remedies available to a person to ventilate his grievances regarding the mismanagement or maladministration of the Sree Krishna Temple, Guruvayur, an important aspect highlighted before us by Mr. Kelu Nambiar, amicus curiae appointed by this Court deserves mention. According to Mr. Nambiar, apart from the right of suit u/s 92 of the CPC and initiation of proceedings under Article 226 of the Constitution, this Court has got "inherent jurisdiction" (a reserve power) not conferred by the statute to protect the interest of a religious or a charitable trust or deity, the class of persons who cannot, on their own, take proceedings to protect or safeguard their interests and set right the abuses or mismanagement or maladministration. When the question regarding jurisdiction was argued before us at length by the learned Additional Solicitor General, the presence of inherent jurisdiction in this Court, as stated above, was put in the forefront by Mr. Nambiar. We have indicated the main aspects in our interim order dated 25-8-1993 in para 10. We have referred to Tudor on Charities (VII Edition) page 294, Snell's Principles of Equity (XXVIII Edition) pages 210, 211 and 170, Hindu Law of Religious and Charitable Trusts by Justice Mr. B. K. Mukherjea (IV Edition) pages 452, 455 and 456 and 460 and Law of Hindu Religious and Charitable Endowments; V. K. Varadachari (III Edition), Chapter XIII Enforcement of Trustees, pages 471 to 474. We need only extract what we have stated in our order dated 25-8-1993, since the passages in the text books, succinctly bring out the legal position:--

"This Court is the guardian of the deity. Apart from jurisdiction under Article 226 of the Constitution and Section 92, C.P.C., this Court has got inherent jurisdiction not conferred by the Statute. The following passage from Tudor on Charities, VII Edition, page 294 was relied on in this context:

"1. The Court and the Crown : The Crown as "parens patriae". The character of "parens patriae" which formerly imposed upon the Crown the duty of watching over the interests of wards makes it the protector of charity in general. Therefore, as Lord Eldon said, "where money is given to charity generally and indefinitely, without trustees or objects selected, the King as parens patriae is the constitutional trustee". While the jurisdiction of the court of Chancery over charitable foundations and gifts was in general conterminous with that over trusts of every kind, in one respect it had a jurisdiction peculiar to charitable trusts, in that wherever there was an intention to create a trust in favour of

charity, the Court would give effect to the intention, in the first place by validating a defective gift and subsequently by reforming the trusts, if necessary, so that the donor's paramount intention might be perpetually observed. This was an inherent jurisdiction, not conferred by statute, and now vested in the High Court of Justice and assigned to the Chancery Division".

Reference was made to the following passage occurring in Snell's Principles of Equity 28th Edition, pages 210 and 211:

"Apart from statute, the court has an inherent jurisdiction to remove a trustee and to appoint a new one in his place. As the interests of the trust are of paramount importance to the court, this jurisdiction will be exercised whenever the welfare of the beneficiaries requires it, even if the trustees have been guilty of no misconduct".

The further passages occurring in page 170, Section I(b)(ii) and (iv) and Section 4 (page 171) of the same book were relied on in this connection:

"(ii) The power to institute inquiries with regard to charities or a particular charity or class of charities to call for documents relating to a charity to inspect records and to take steps to remedy misconduct or mismanagement.

(iv) The power to establish a scheme, to appoint, discharge or remove trustees, officers or servants of a charity and to make vesting orders.

4. It is the province of the Crown as *parens patriae* to enforce the execution of charitable trusts, and it has always been recognised as the duty of the law officers of the Crown to intervene for the purpose of protecting charities and affording advice and assistance to the court in the administration of charitable trusts. This duty is recognised by the Charities Act, 1960, which in addition allows proceedings with reference to a charity (but not as to whether a charitable trust exists) to be taken by "the charity, or by any of the charity trustees, or by any person interested in the charity, or by any two or more inhabitants of the area of the charity, if it is a local charity".

The following passages from the Hindu Law of Religious and Charitable Trusts by Justice Mr. B. K. Mukherjea, Fourth Edition, pages 452, 455 and 456 and 460 were relied on:

"Remedies for breaches of charitable trust in English law:-- In English law, charitable trusts are synonymous with public trusts, and what is called religious trust is only a form of charitable trust. The beneficiaries in a charitable trust being the general public or a section of the same and not a determinate body of individuals, the remedies for enforcement of a charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. In English law, the Crown as *parens patriae* is the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern. The Attorney General represents the proper person to take proceedings on this behalf and to protect charities.

Whenever an action is necessary to enforce the execution of a charitable purpose, to remedy any abuse or misapplication of charitable funds, or to administer a charity, the Attorney General is the proper plaintiff, whether he is acting alone ex officio as the officer of the Crown and, as such, the protection of charities, or ex relations, that is to say, at the request of a private individual called a "relator" who thinks that the charity is being or has been abused. The Attorney General does not come before the court as a plaintiff asserting a private right but as an officer of the Crown informing the Judge, another officer of the Crown, of some breach of trust or neglect of duty on the defendant's part in the management and administration of charities which requires to be remedied. That is why such actions were called "information" -- a name which was dropped only after the Supreme Court of Judicature Act, 1871"

".....from very early times the religious and charitable institutions in this country came under the protection of the ruling authority. There is indeed no clear written texts directly bearing on the subject and the text of Narada, which says that "a king can reduce to slavery a Sanyashin who is guilty of incontinence", may conceivably suggest only in a vague way that the King had some sort of jurisdiction over religious bodies and institutions. As I have pointed out, however, there was undoubtedly some sort of customary law in India relating to temples and endowments which in the last resort had to be enforced by the King. The Smrit writers make it a duty on the part of the King to uphold the customs and usages of the land unless they are contradictory to revelation; and the Mitakshara, in commenting upon a passage of Yajna-vaalkya relating to the enforcement of customs, expressly refers to customs in connection with management of temples.

The duty of protecting endowments is one of the primary duties of the King as mentioned in Sukraniti and other treatises and this is borne out by various historical documents which exist even at the present day. That such jurisdiction existed in ancient times has been asserted in more than one pronouncement of the judicial committee as well as of the other High Courts in India. In *Raju Muttu Rama Linga v. Perianayagum*, (1874) 1 Ind App 209 at 233, it was observed by Privy Council that there could be little doubt that this superintending authority over temples and religious endowments was exercised by the old rulers. Sir Montague Smith in course of his judgment in this case relied upon the opinion expressed by Nelson in his *Madura Manual* that "the Dharmakartas of the Pagodas had but little communication with one another and regarded no earthly superior except the King himself. Each was independent of all control and acted altogether as he pleased. This freedom naturally led to gross abuses and the King was compelled to interfere in the management of some of the churches....."

"The fact that a temple committee has been appointed does not oust the general jurisdiction of the Court to make any order that it considers necessary for due administration of the trust. The true principle undoubtedly is that the courts

would not ordinarily interfere with the statutory powers conferred upon the members of the temple committee so as to deprive them of their legitimate functions. But the general right of a subject to ask for the Court's assistance to set right abuses or to have other remedies independent of the statute is not thereby taken away. In England, it is settled law that the Court's jurisdiction to make suitable orders in the case of a charitable trust is not in any way affected by reason of the existence of visitatorial powers. In *Attorney General v. St. Cross Hospital* (1853) 51 ER 1103, Sir Samuel Romilly observed as follows:

"The only remaining point then on this part of the case is whether the jurisdiction of this Court is taken away by reason of the visitor-ship of the Bishop of Winchester. If this were the law it would be very unfortunate, for it does not require the history of this case to teach us that the visitor ship vested in any one, whether a corporation sole or aggregate or the heir of the founder is a mere nominal office, the duties and functions of which are rarely if ever spontaneously performed. But the law is not so. Where there is a clear and distinct trust, this Court administers and enforces it as much whether there is a visitor as where there is none. This is clear both on principle and on authority."

To somewhat the same effect is the decision by the Madras High Court in *Sitharama Chetty v. Sir S. Subramania Ayyar* ILR 39 Mad 700 : AIR 1917 Mad 551, where it was held that in spite of there being a committee constituted under the Religious Endowments Act, the Court has jurisdiction to frame a scheme u/s 92 of the C.P.C., 1908 and introduce changes in the administration which the committee is not legally competent to introduce but which the Court considers desirable to meet the altered circumstances and requirements of the time."

Law of Hindu Religious and Charitable Endowments, V. K. Varadachari, III Edition, Chapter XIII Enforcement of Trusts, pages 471 to 474 was also relied on in this connection."

We will only add the following passages from Law of Hindu Religious and Charitable Endowments, V. K. Varadachari, III Edition (pages 473 and 474) to the following effect:

"In *Manohar Ganesh v. Lakshmiram* ILR (1888) 12 Bom 247, West J. also observed:

Under the native system of Government though it was looked upon as a heinous offence to appropriate to secular purposes the estate that had been once dedicated to pious uses, yet the State in its secular executive and judicial capacity habitually intervened to prevent fraud and waste in dealing with religious endowments."

"In *Manohar Ganesh v. Lakshmiram* ILR (1888) 12 Bom 247, West and Birdwood, JJ. observed :

Civil Courts have jurisdiction to enforce trusts for charitable and religious purposes, having connection with Hindu and Mohammadan foundations and to

prevent fraud and waste in dealing with religious endowments, though incidentally it has to take cognisance of religious or caste questions. The religion of the Hindu population being jurally allowed, the duties and services connected with it must be deemed objects of public concern and at least as to their physical and secular elements enforceable like other obligations.

In *Sitarama Chetty v. Subramania Ayyar* 39 Mad 700 : AIR 1917 Mad 551, the Madras High Court, citing *Attorney General v Bro-die*, (1846) 4 Moo Ind App 190 and *Maharanee Shibessoree v. Mothooranath*, (1869-70) 13 Moo Ind App 270, held that the High Courts and the mofussil Courts were Courts of both law and equity and that they can exercise jurisdiction over religious and charitable institutions in the same way as the Courts Chancery did in England."

The statement of the law in the leading legal treatises and the decisions are illuminating and they have our full concurrence. We are of the view that apart from the remedy available u/s 92 of the CPC and the initiation of proceedings under Article 226 of the Constitution of India, the Civil Courts have got "inherent power" to initiate action, probe into the matter and set right the abuses by a remedial action in the case of charitable and religious trusts or deities as guardian of such juridical entities. This is a "reserve power" vested in Courts to protect the interests of persons, who, by themselves, cannot initiate proceedings and safeguard their interests. We are inclined to take such a view. But so far as this case is concerned, it is unnecessary to call in aid such power since this Court has already initiated this action under Article 226 of the Constitution of India.

18. We shall now inform ourselves as to the value and weight to be placed on the report submitted by the Commissioner appointed by this Court, Shri Krishnan Unni, District Judge. Shri Krishnan Unni is a senior Selection Grade District Judge with considerable experience and background. He is a judicial officer of repute and credibility. None of the parties, who appeared before us, at any point of time, questioned the capacity, credibility and integrity of Shri Krishnan Unni. The Commissioner has submitted" fifteen interim reports and the final report in two volumes. He has taken enormous pains to meet various persons, gather details and discuss all aspects that arose for consideration. He took the trouble for personally inspecting very many places on many occasions. A bare perusal of the fifteen interim reports and the final reports, which contain more than 500 pages, will go to show that the Commissioner has done the job entrusted to him with remarkable ability and skill. The Commissioner has posed the question that arose for "consideration in a straight forward manner and in the real perspective. The details of all aspects that arose for consideration were adverted to and the pros and cons were considered with remarkable ability. After a discussion of various aspects and perusal of various materials that were available, the Commissioner has entered specific findings and has made specific recommendations. It is true that the provisions of O. XXVI, R. 10 of the CPC is inapplicable to proceedings under Article 226 of the Constitution of India. Even before the CPC came into force, the Judicial Committee of the Privy Council had occasion to remind the

Courts in India about the approach to be made regarding a Commissioner's report made on local enquiry. In *Ranee Surut Soondree Debea v. Baboo Prosanna Coomar Tagore*, (1869-70) 13 Moo Ind App 607 at page 617, the Judicial Committee of the Privy Council after stating that interference with the result of a local enquiry should be only upon clearly defined and sufficient grounds, stated the law thus:

"The integrity of the Ameen (Commissioner) is unquestioned; this careful and laborious execution of his task is proved by his report; he has not blindly adopted the assertions of either party; and without going minutely into details, Their Lordships think it sufficient to say that they see no ground for impugning the accuracy of his conclusion upon what they conceive to be the broad and cardinal issue upon which the determination of this case depends."

In AIR 1940 3 (Privy Council) at page 6, the Judicial Committee again laid down the correct statement of the principle to be adopted in dealing with the Commissioner's report. It was observed:

"It has been laid down that interference with the result of a long and careful local investigation except upon clearly defined and sufficient ground is to be deprecated. It is not safe for a Court to act as an expert and to overrule the elaborate report of a Commissioner whose integrity and carefulness are unquestioned, whose careful and laborious execution of his task was proved by his report, and who had not blindly adopted the assertions of either party."

The above is the position in law uninfluenced in any manner by the provisions of the Code of Civil Procedure.

19. The Supreme Court of India had occasion to consider the jurisdiction of the Courts in exercising the powers under Articles 32 and 226 of the Constitution of India in appointing Commissioners and the evidential value of such reports in such proceedings. The matter arose in a public interest litigation. In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, , Bhagwati, J. at page 816 (paragraph 14) of the judgment stated thus:

"The report of the Commissioner would furnish prima facie evidence of the facts and data gathered by the Commissioner and that is why the Supreme Court is careful to appoint a responsible person as Commissioner to make an enquiry or investigation into the facts relating to the complaint. It is interesting to note that in the past the Supreme Court has appointed sometimes a district Magistrate, sometimes a district Judge, sometimes a professor of law, sometimes a journalist, sometimes an officer of the Court and sometimes an advocate practising in the Court, for the purpose of carrying out an inquiry or investigation and making report to the Court because the Commissioner appointed by the Court must be a responsible person who enjoys the confidence of the Court and who is expected to carry out his assignment objectively and impartially without any predilection or prejudice. Once the report of the Commissioner is received, copies of it would be supplied to the parties so that either party, if it wants to

dispute any of the facts or data stated in the Report, may do so by filing an affidavit and the Court then consider the report of the Commissioner and the affidavits which may have been filed and proceed to adjudicate upon the issue arising in the writ petition. It would be entirely for the Court to consider what weight to attach to the facts and data stated in the report of the Commissioner and to what extent to act upon such facts and data. But it would not be correct to say that the report of the Commissioner has no evidentiary value at all, since the statements made in it are not tested by cross-examination."

At page 817 of the judgment, in paragraph 15, the learned Judge said thus:

"We may point out that what we have said above in regard to the exercise of jurisdiction by the Supreme Court under Article 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same powers can and must therefore be exercised by the High Courts while exercising jurisdiction under Article 226. In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights."

Pathak, J. in concurring the judgment, observed at page 845 (paragraph 70) thus:

"It is true that the reports of the said Commissioners have not been tested by cross-examination, but then the record does not show whether any attempt was made by the respondents to call them for cross-examination. The further question whether the appointment of the Commissioners falls within the terms of Order XLVI of the Supreme Court Rules, 1966 is of technical significance only, because there was inherent power in the Court, in the particular circumstances of this case to take that action."

Amarendra Nath Sen, J. in a concurring judgment, at page 849 (paragraph 81) stated the law thus:

"The power to appoint a commission or an investigating body for making enquiries in terms of directions given by the Court must be considered to be implied and inherent in the power that the Court has under Article 32 for enforcement of the fundamental rights guaranteed under the Constitution. This is a power which is indeed incidental, or ancillary to the power which the Court is called upon to exercise in a proceeding under Article 32 of the Constitution. It is entirely in the discretion of the Court, depending on the facts and circumstances of any case, to consider whether any such power regarding investigation has to be exercised or not. The Commission that the Court appoints or the investigation that the Court directs while dealing with a proceeding under Article 32 of the

Constitution is not a Commission or enquiry under the Code of Civil Procedure. Such power must necessarily be held to be implied within the very wide powers conferred on this Court under Article 32 for enforcement of fundamental rights. I am, further of the opinion that for proper exercise of its powers under Article 32 of the Constitution and for due discharge of the obligation and duty cast upon this Court in the matter of protection and enforcement of fundamental rights which the Constitution guarantees, it must be held that this Court has an inherent "power to act in such a manner as will enable this Court to discharge its duties and obligations under Article 32 of the Constitution properly and effectively in the larger interest of administration of justice, and for proper protection of constitutional safeguards. I am, therefore, of the opinion that this objection is devoid of any merit."

The latest decision on this subject is *Goodwill Paint and Chemical Industry Vs. Union of India and another*, . We are of the view that the above decisions establish that the Court, in exercising the powers under Article 226 of the Constitution of India, can appoint a Commission. The Commission so appointed by the Court must be responsible persons who enjoy the confidence of the Court and who are expected to carry out the assignment objectively and impartially without any predilection or prejudice. The report of the Commission should be served on all the parties or made known to the public. If any person wants to dispute any of the fact or data stated in the report, he may take steps in that regard by filing an affidavit or by leading evidence. If the Commission so appointed by the Court to hold enquiry, considered facts and circumstances and made local inspection and discussed the matter with the parties and submitted a report containing reasoned findings, prima facie it constitutes evidence which can be acted by a Court of law. Interference with the result of a detailed and careful report so submitted should be made only for cogent and compelling reasons. In a case where an elaborate report is filed by the Commissioner, whose integrity, credibility and carefulness are not questioned, whose careful and laborious execution of his task is proved by the report itself, interference will be made only in exceptional circumstances, in cases where convincing evidence contra is available before court.

20. In the light of the above principle, we have to evaluate the importance to be given to the report filed by the Commissioner. As stated already, Shri Krishnan Unni is a very responsible, experienced and credible judicial officer. His competency, credibility and capacity were never questioned. He has done his job with utmost care and has gone into details with utmost circumspection, after going into all aspects reasonably, fairly and objectively. We should say that the Commissioner has done a commendable job in a very short span of six months. He has entered findings and has made recommendations based on proper material, inclusive of the inferences drawn from the various facts and circumstances. We hold that, prima facie, the reports submitted by the Commissioner are acceptable and constitute evidence in the case, on the basis of which this Court will be entitled to proceed further. We should bear in mind that

respondents 1,2 and 3 only filed statements, None of them have filed affidavits objecting to the reports filed by the Commissioner. There is only a solitary case of an affidavit filed by the Commissioner and Secretary (Finance) in-charge of Devaswoms dated 29-5-1993 when the preliminary objection was taken by the State of Kerala about the maintainability of the petition. The other parties have also filed only statements. It is true that the fourth respondent has filed affidavits for certain matters. But none of the parties have filed proper affidavits controverting the findings of the Commissioner; nor has any evidence been let in, to assail the well considered findings of the Commissioner. There was no request from any of the parties to examine the Commissioner. In these circumstances, we are of the view that prima facie evidence and various findings entered by the Commissioner are not disproved. They have not been demonstrated to be wrong. There are only mere assertions made in the form of statements by the respondents as against the prima facie evidence disclosed by the reports of the Commissioner. We hold that in so far as the evidence and conclusion reached by the Commissioner are not properly assailed or shown to be wrong by leading evidence by those who attack it, the interim reports and the final report filed by the Commissioner are acceptable. Ordinarily, they cannot be departed from. So, we hold that the reports filed by the Commissioner should form the basis for passing appropriate orders by this Court except to the limited extent this Court holds that the recommendations are impractical or otherwise cannot be given effect to in law or as a matter of expediency, may not serve the purpose. We shall consider such of those aspects in detail when we consider the interim reports and the final report in their appropriate places.

21. At this stage, we should state that this public interest litigation was initiated since this Court was satisfied that the public in general all over India and elsewhere are very much concerned with the management and administration of the famous Sree Krishna Temple, Guruvayur and it is a matter of serious concern that the allegations prima facie disclosed that all is not well with the set up therein and grave and serious lapses and wrongs, by perhaps arbitrary and irrational or perverse action of all authorities concerned have brought about the situation. The facts brought to the notice of this Court were of such a nature that it called for a detailed probe and scrutiny in the entire administration. So, this Court passed an order on 12-2-1993 directing the Commissioner to make a general enquiry and in particular make a study on the various aspects highlighted by the complainant, Shri C. K. Rajan. The Commissioner appointed by this Court was directed to submit a report or reports, from time to time, and suggest overall remedial actions or measures also. We are aware that there are inherent limitations in the exercise of jurisdiction by this Court in public interest litigations. We are further aware of the fact that we should be extremely circumspect in the matter and unless the lapses or mismanagement and other acts highlighted, either in the petition or by the Commissioner, have foundation and are bona fide and that "public interest" demands action, we should restrain ourselves while passing orders or giving directions. There are innumerable

decisions of the Supreme Court in the matter. It is unnecessary to refer to all of them. The broad guidelines or principles laid down in the following important decisions of the Supreme Court on the subject are relevant:

1. Fertilizer Corporation Kamagar Union v. Union of India AIR 1981 SC 344 -- Constitution Bench.
2. S.P. Gupta Vs. President of India and Others, -- Bench of seven Judges.
3. People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others,
4. Bandhua Mukti Morcha Vs. Union of India (UOI) and Others,
5. State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others,
6. Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others,
7. State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others,
8. M. C. Mehta v. Union of India AIR 1987 SC 1086 -- Constitution Bench.
9. Rural Litigation and Entitlement Kendra Vs. State of U. P.,
10. Sheela Barse v. Union of India AIR 1988 SC 2211.
11. Janata Dal Vs. H.S. Chowdhary and Others, .
22. We shall quote the relevant and important passages in the above decisions hereunder.

In Fertilizer Corpn. Kamagar Union v. Union of India AIR 1981 SC 344 in an agreeing judgment, Krishna Iyer, J. for himself and P. N. Bhagwati, J. stated the law thus, at pages 354 and 355 (para 41):

"Law, as I conceive it, is a social auditor and this audit function can be put into action only when some one with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation happy and waste their time and money and the time of the Court through false and frivolous cases. In a society where freedoms suffer from atrophy and activism is essential for participative public justice, some risks have to be taken and more opportunities opened for the public minded citizen to rely on the legal pro-minded citizen to rely on the legal process and not be repelled from it by narrow pendantly now surrounding locus standi."

In S.P. Gupta Vs. President of India and Others, at pages 188, 189 and 190, delivering the majority judgment, P. N. Bhagwati, J. stated thus:--

" 17. It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by

reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High-Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons..... This Court will readily respond even to a letter addressed by such individual acting pro-bono publico... .. Today a vast revolution is taking place in the judicial process; the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. It is in this spirit that the Court has been entertaining letters for judicial redress and treating them as writ petitions and we hope and trust that the High Courts of the country will also adopt this proactive, goal-oriented approach. But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court, We may also point out that as a matter of prudence and not as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class or group of persons is violated and as far as possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases..... But there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation, resulting in injury to public interest or what may conveniently be termed as public injury as distinguished from private injury..... The view has therefore been taken by the Courts in many decisions that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary

to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury..... It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only Judge; they are responsible to a Court of Justice for the lawfulness of what they do, and of that the Court is the only Judge."

In *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, at pages 1476 and 1477 (paras 2 and 3 of the judgment), the law was stated thus :--

"..... .Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of Government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights..... Public interest litigation, as we conceive it is essentially a co-operative or collaborate effort on the part of the petitioner the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them..... .. The legal aid movement and public interest litigation seek to bring justice to these forgotten specimens of humanity who constitute the bulk of the citizens of India and who are really and truly the "People of India", who gave to themselves this magnificent Constitution. It is true that there are large arrears pending in the Courts but that cannot be any reason for denying access to justice to the poor and weaker sections of the community."

In *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, at pages 811, 813 and 817, the Court said thus:

"..... .We have on more occasions than one said that public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest litigation, because it would provide them an occasion to examine whether the poor and the down-trodden are getting their social and economic entitlements or whether they are

continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements. When the Court entertains public interest litigation, it does not do so in a cavillier spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. The Court is thus merely assisting in the realisation of the constitutional objectives..... It is clear on the plain language of Clause (1) of Article 32 that whenever there is a violation of a fundamental right, any one can move the Supreme Court for enforcement of such fundamental right. Of course, the Court would not, in exercise of its discretion, intervene at the instance of a meddlesome interloper or busybody and would ordinarily insist that only a person whose fundamental right is violated should be allowed to activate the Court, but there is no fetter upon the power of the Court to entertain a proceeding initiated by any person other than the one whose fundamental right is violated, though the Court would not ordinarily entertain such a proceeding, since the person whose fundamental right is violated can always approach the Court and if he does not wish to seek judicial redress by moving the Court, why should some one else be allowed to do so on his behalf. This reasoning however breaks down when we have the case of a person or class of persons whose fundamental right is violated but who cannot have resort to the Court on account of their poverty or disability or socially or economically dis-advantaged position and in such a case, therefore, the Court can and must allow any member of the public acting bona fide to espouse the cause of such person or class of persons and move the Court for judicial enforcement of the fundamental right of such person or class of persons. This does not violate, in the slightest measure, the language of the constitutional provision enacted in Clause (1) of Article 32..... We may point out that what we have said above in regard to the exercise of jurisdiction by the Supreme Court under Article 32 must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226, for the latter jurisdiction is also a new constitutional jurisdiction and it is conferred in the same wide terms as the jurisdiction under Article 32 and the same powers can and must therefore be exercised by the High Courts while exercising jurisdiction under Article 226. In fact, the jurisdiction of the High Courts under Article 226 is much wider. because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as

fundamental rights."

In *State of Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others*, at page 913, the Court observed thus :

"..... .The Division Bench would have been certainly justified in enquiring from the Chief Secretary as to what action the State Government proposed to take in regard to the recommendation of the Anti-Ragging Committee to initiate legislation on the subject of ragging. Such enquiry could have been legitimately made by the Division Bench for the purpose of obtaining information on a matter which the Division Bench regarded and in our opinion rightly as necessary for eradicating the evil practice of ragging which is not only subversive of human dignity but also prejudicially affects the interests of the students and the discipline in the Campus and no exception could have been taken to it because it would have left the State Government free to decide whether or not to initiate any legislation on the subject and not mandatorily required the State Government to initiate any such legislation..... . what the Division Bench intended was not merely to obtain information as to what action the State Government proposed to take but to obligate the State Government to faction by way of initiation of legislation against ragging. The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. This the Division Bench was clearly not entitled to do."

In *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others*, at page 398, dealing with the question whether the principle of *res judicata* applies to public interest litigation, the Court stated thus :

"..... .In view of Explanation VI it cannot be disputed that Section 11 applies to public interest litigation as well but it must be proved that the previous litigation was the public interest litigation, not by way of a private grievance. It has to be a bona fide litigation in respect of a right which is common and is agitated in common with others."

In *State of Himachal Pradesh and Another Vs. Umed Ram Sharma and Others*, at page 78 : (AIR 1986 SC 847 at P. 853) (Para 23), the Court posed three questions for consideration. (It was a public interest litigation case).

"23. Three questions, however, remain to be considered, namely, how far the Court could give directions which are administrative in nature and secondly whether any direction could be given to build roads where there are no roads for the enrichment of the quality of life or access to life, and thirdly whether the Court could direct that the administration should report from time to time so that action taken can be supervised by the Courts."

The said three questions were answered at pages 80 and 81 (of SCC): (at Pp. 854 and 855 of AIR) of the report, in paragraphs 30 and 33, as follows :

"30. So far as the first and second questions are concerned, in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, this Court has given guidance. One of us (Pathak, J.) speaking about the nature and extent of relief which has to be given in litigation where public interest was concerned, observed at page 161 of the report (SCC p 231, para 59) that there were certain fundamental constitutional concepts which need to be recalled, namely, the Constitution envisaged a broad division of the power of the State between the legislature, the executive and the judiciary. Although the division is not precisely demarcated, there is general acknowledgement of its limits, there is certain overlapping. It is for the legislature to legislate, the executive to implement and carry out that legislation and the judiciary to supervise. Affirmative actions are sometimes necessary to keep the judiciary in tune with the legislative intention. Having regard to the observations made in this case at page 161 to 163 of the report in the light we read the present order, we do not think that the learned Judges of the Himachal Pradesh High Court have transgressed this jurisdiction of supervising executive action in view of the time taken to construct this road.

33. The only other aspect, which is the third aspect, is the direction of the court to report to the court what progress had been done. In our opinion, if we read the order properly, the court's direction was not intended to supervise the action taken and to enforce its implementation but only to be apprised of the action taken in order to bring about a certain sense of urgency so that there was no delay."

In *M.C. Mehta and another Vs. Union of India and others*, , the court said as follows:--

"6. So far as the power of the Court under Article 32 to gather relevant material bearing on the issues arising in this kind of litigation, which we may for the sake of convenience call so called action litigation, and to appoint Commissions for this purpose is concerned we endorse what one of us namely, Bhagwati, J., as he then was, has said in his judgment in *Bandhua Mukti Morcha's case (supra)*. We need not repeat what has been stated in that judgment. It has our full approval.

7. The power of the Court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha's case AIR 1984 SC 802 (supra)*

He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases."

In *Rural Litigation and Entitlement Kendra Vs. State of U. P.*, , at page 2195 (para 16) the Court stated as follows:

"..... We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the Court. Even if it is said that there was a final order, in a dispute of his type it would be difficult to entertain the plea of res judicata."

In *Sheela Barse Vs. Union of India (UOI) and Others*, , Venkatachaliah. J. as he then was, delivering the judgment of the Bench stated thus (at pp. 2214-15):

"In a public interest litigation, unlike traditional dispute-resolution-mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party structure is merely bi-polar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditional forms and inhibitions The technique of public interest litigation serves to provide an effective remedy to enforce these group rights and interests. the relief to be granted looks to the future and is, generally, corrective rather than compensatory which, sometimes, it also is. The pattern of relief need not necessarily be derived logically from the rights asserted or found. More importantly, the court is not merely a passive, disinterested umpire or onlooker, but has a more dynamic and positive role with the responsibility for the organisation of the proceedings, moulding of the relief and -- this is important --also supervising the implementation thereof. The Court is entitled to, and often does seek the assistance of expert-panels, Commissioners, Advisory Committees, Amici etc. This wide range of the responsibilities necessarily implies correspondingly higher measure of control over the parties, the subject-matter and the procedure. Indeed, as the relief is positive and implies affirmative action the decisions are not "one-shot" determinations but have on going implications. Remedy is both imposed, negotiated or quasi-negotiated".

23. In *Janata Dal Vs. H.S. Chowdhary and Others*, speaking for the Bench, Ratnavel Pandian, J. observed at pages 342 and 345 of the report (paragraphs 89, 96 and 97 (of SCC) : (at pages 278 and 281, para 87, 94 and 95 of AIR) as follows:

"89. From the above pronouncements, it emerges that this summit Court has widely enlarged the scope of PIL and rendered many virtuosic pronouncements and issued manifold directions to the Central and State Governments, all local and other authorities within the territory of India or under the control of the Government of India for the betterment of the public at large in many fields in conformity with constitutional prescriptions of what constitutes the good life in a socially just democracy. The newly invented proposition of law laid down by many learned Judges of this Court in the arena of PIL irrefutably and manifestly establish that our dynamic activism in the field of PIL is by no

means less than those of other activist judicial systems in other parts of the world.

96. On an assiduous analysis and scrupulous study of the major landmark decision of Gupta case which serves as a charter of PIL, we unreservedly hold that the said decision describes the broad definition of the expression "PIL" explores the conceptual problems, outlines the evolution of legal strategies, discusses the institutionalisation of the PIL movement and concludes with innovative methods and devices for increasing citizens' participation to promote reforms of the of the legal system in order to ensure real access to the justice delivery system, and to encourage the continuation and expansion of public interest representation. Above all, it has opened wide the doors of the Court to millions of poor, ignorant and socially or economically disadvantaged to articulate their grievances and seek justice which otherwise would have been denied to them.

97. In short, the decision in Gupta case is a golden master key which has provided access to the Courts for the poor and downtrodden."

24. There is a useful discussion regarding the scope and width of the public interest litigation in the book "Writ Jurisdiction under the Constitution" by Shri B.L. Hansaria, Second Edition, 1992 -- pages 15 to 21. Similarly, there is a useful discussion regarding public interest litigation in the book of Shri V.G. Ramachandran's "Law of Writs" revised by Justice Shri C.K. Thakker, Fifth Edition, 1993 -- Part II, Chapter XIII pages 549 to 577. In particular, the following passage is instructive, at page 552:

"In public interest litigation, the role held by the Court is more assertive than in traditional actions; it is creative rather than passive, and it assumes a more positive attitude in determining facts."

Earlier, at page 551, the nature of public . interest litigation is stated thus:

"Public interest litigation is part of the process of participate justice. It is a strategic arm of the legal aid and movement and is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity. It is a totally different field of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to pro-mote and vindicate public interest which" demands that violations of constitutional or legal rights of large number of people who are; poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed Public interest litigation as we conceive it, is essentially a co-operative or collaborative effort on the part of the petitioner the State or public authority and the Court to secure observance of the

constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically dis-advantaged position, as the petitioner who brings the public interests litigation before the Court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority."

25. It should also be noticed that in the inquisitory type of public interest litigation, the Court on the report of the Commissioner gives its verdict and proposes a remedial relief and monitors its implementation, as was done in *M.C. Mehta and another Vs. Union of India and others*, and *Sheela Barse Vs. Union of India (UOI) and Others*, . The Court passes orders, either interim or final, issues directions and monitor or oversee its implementation from stage to stage. In other words, the continuing proceeding is also contemplated in public interest litigations so as to see that the affirmative directions or remedial action suggested are fairly, reasonably and properly implemented. See in this connection the decisions of the Supreme Court, wherein, from stage to stage, orders were passed:

Banwasi Seva Ashram Vs. State of U.P. and Others, ; *Banwasi Seva Ashram Vs. State of U.P.*, ; *Banwasi Seva Ashram Vs. State of U.P. and Others*, .

An interesting case came up before the Supreme Court in *Chaitanya Kumar and Others Vs. State of Karnataka and Others*, . In the said case, some public spirited citizens determined to expose Governmental misconduct with regard to the grant of contract to bottle arrack. The main thrust of the argument was mala fides against the Chief Minister, whose son-in-law was stated to be interested in some of the firms, to whom the contracts were awarded. This main allegation against the Chief Minister was found to be unfounded and false. Even so, it turned out that the Government showed anxiety to favour the "chosen ones" with the bottling contracts. The court took the view that even though the allegation of mala fide against the Chief Minister was found to be false, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. At page 831 of the report (para 10), the Court stated thus:

"..... The allegation against the Chief Minister has been found to be unfounded and false. According to Shri Venugopal, while the institution of public interest litigation is a good thing in itself, those professing to be public spirited citizens cannot be encouraged to indulge in wild and reckless allegations besmirching the character of others and so the Court must refuse to act at the instance of such pseudo-public spirited citizens. We agree with Mr. Venugopal. But,

simultaneously, the Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed, when arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations. As always, the Court is concerned with the balancing of interests, and we are satisfied that in the present case, that the High Court had little option but to act as it did and it would have failed in its duty had it acted otherwise and refused to issue a writ on the ground that the allegation of personal bias against the Chief Minister was false. Had that been done the public mischief perpetrated would have been perpetuated. That is not what Courts are for".

This decision highlights the principle that when arbitrariness, mal administration, mismanagement or other unbecoming conduct or act of the Government or a public authority comes to the notice of the Court, the Court is bound to take notice of it and issue appropriate directions in the matter.

26. Now we shall consider the case on the merits. As stated by us in paragraph 10 supra, we are adjudicating or discussing in detail only those aspects which were specifically urged at the time of hearing. We have already noticed that the Commissioner has filed fifteen interim reports and the final report in two volumes. The interim reports really formed part of the final report. The Commissioner has made specific recommendations on matters dealt with in the various interim reports. To some extent, the matters dealt with in the interim reports find a place in the final report also and there is overlapping. Therefore, we shall deal with the interim reports in seriatim, including the recommendations made thereon and give our decision on those aspects. Thereafter, we shall deal with the final report and deal with the recommendations made therein. As soon as interim reports were filed, by separate orders, this Court recorded the same and directed the parties to file their explanations or objections thereto, within a particular time. For most of the interim reports, objections were not filed by the parties within the time granted by this Court. In recording the interim reports from time to time, we had also given directions on certain aspects or points which called for immediate action. We are not adverting to those interlocutory orders at this stage, because those aspects do not call for any adjudication.

27. We should at once mention that the present Guruvayur Devaswom Managing Committee took charge in March 1992. Shri K. Raghawan, the present Administrator, took charge on 15-1-1992. The present Thanthri took charge in 1989.

28. We will take up the interim reports one by one. Interim Report No. 1 of 1993 dated 15-2-1993 dealt with the Commissioner's visit to Guruvayur as per the orders passed by this court dated 12-2-1993 on the same day. He stated that the Administrator extended to him all co-operation in locating the files and in handing over them. Some important files, though not handed over, were located. The Commissioner took into custody some documents. The Commissioner

requested for orders of Court regarding the audit work and for infrastructure for effectively discharging the work. He also prayed that persons in key posts may be not be changed. No adjudication is called for regarding Interim Report No. 1 of 1993. In fact, none of the parties have filed their objections to Interim Report No. 1 of 1993; nor any arguments advanced regarding Interim Report No. 1 of 1993 at the time of hearing. We accept Interim Report No. 1 of 1993.

29. Interim Report No. 2 of 1993 is dated 10-3-93. It deals mainly with Gokulam, situate in Vengad, a place 50 Kms. away from Guruvayur. The matter is referred to in the final report also (see Part I Chapter II Item No. 14, pages 40 to 48). The Gokulam in Vengad Estate has an extent of about 96.5 acres with 820 coconut trees, 3000 cashew trees, 20 mango trees and 16 jack trees. For the current financial year, the right to take usufructs from the estate is sold for Rs. 31,451/-. As per the records, there are 165 animal. The Commissioner made a surprise visit to Gokula on 8-3-1993 along with Shri C. P. Neelakanta Iyer, Professor and Head of the Department of Animal Reproduction, College of Veterinary and Animal Sciences, Mannuthy, Thrissur and Shri Ravindran, Finance Officer, Guruvayur Devaswom. In the audit report by the Local Fund authorities, it is mentioned that there was a mass death of animals during 1985-86, i.e. 113 animals (Appendix F). According to the Commissioner, the animals are not kept in good condition, the existing sheds are not kept clean, there are no meadows to graze, there is no pure water to drink, the only source of water was dirty and unfit for drinking, the surroundings were also dirty, sick animals were never-attended to, no" medical treatment was provided for them, the general health of the animals are very poor, etc. The physical verification disclosed only 120 animals. There was no separate register showing the admission and death of animals. If animals are sold for slaughtering, there is no means to verify. There was no ear tag for the animals. The general health of the animals are poor. The animals which were dead were not even removed. Little or no treatment was given to them. Most of them suffer from malnutrition. There are only a few milking animals and 19 litres of milk is obtained every day. Professor C. P. Neelakanta Iyer, College of Veterinary and Animals Sciences, Mannuthy has given a report, which is Appendix D to Interim Report No. 2 of 1993. He has made a few recommendations. In brief, the Commissioner's report taken along with the report of Professor Neelakanta Iyer reflects that the establishment is not properly kept, it provides little or no treatment to the animals, there are no proper sheds, the premises are not kept clean, there are no shade trees and the sick animals are never attended to, etc. The Commissioner gave written instructions to the Administrator and the Managing Committee to make available a full time Veterinary Surgeon and two Livestock Inspectors so as to prevent further loss of animal lives and for preservation of the existing ones. Further directions are also given that animals brought to Gokulam should be numbered by ear tags and separate register should be maintained and to take steps to obtain electric connection for the borewell, for water supply to the Gokulam.

The Guruvayur Devaswom Managing Committee has not filed any objections to

the said report. The other parties also have not filed any objections. The Commissioner has recommended that for the acts of commissions and omissions, explanation is to be called for from the Managing Committee (see Parti, Chapter XV, page 203). Identical matters have been dealt with in the final report -- Part I, pages 41 and 68 and 15 and 16. The Thanthri has alleged indifference on the part of the Devaswom Administration regarding the animals dedicated to the deity. He has stated that after he took charge, at least 300 cows were dedicated to the temple by the devotees. They are accommodated long away from the temple. The plight of those animals is deplorable. They are not fed properly and also not taken care of. About 200 cows have already disappeared. It is stated, at page 69 of Part I of the final report, that the Managing Committee has passed a resolution (Resolution No. 54) dated 26-4-1992 to purchase land from Nenmini Mana to have a Gokulam near the temple. There is also a proposal to construct a Gosala at Kaveed in the property belonging to the Devaswom. The Commissioner has found that the Thanthri's allegation regarding the Gokulam is substantially true. In the final report (Part I, page 72), the Commissioner has stated that the Administrator has complied with the directions given by him to this extent by appointing a Veterinary Surgeon and also two Livestock Assistants. Electrical connection has also been given to the borewell so that now perennial supply of fresh drinking water is available for animals. Even after this, the fact remains that the animals are not properly kept, they are not looked after properly, the surroundings and conditions are not hygienic, proper registers are not kept and the overall administration of the Gokulam is in the hands of an Upper Division Clerk. The entire matter requires revamping. It discloses a deplorable state of affairs and the authorities concerned have never cared to inform themselves about the reality of the situation or to take remedial action.

The fourth respondent (Administrator) has filed a statement dated 24-3-1993 stating that the defects pointed out are being cured. The Thanthri is of the opinion that the Gosala should be near the temple. Good quality of pure milk is required for the temple purposes -- Abhishekam, Palpayasam, etc. Unless a dairy is maintained near the temple, it will be difficult to obtain good and substantial quantity and quality of milk for temple purposes. The Thanthri complains that the Devaswom Committee has not taken any steps in that direction. This is found to be true and correct. The stand of the Government regarding Interim Report No. 2 of 1993 (Gokulam) in the statement dated 2-12-1993 is as follows :

"Gokulam should be maintained properly as recommended by the Enquiry Commissioner."

We accept Interim Report No. 2 of 1993 filed by the Commissioner. We are of the view that appropriate explanation should be obtained from the Managing Committee for the various lapses pointed out by the Commissioner. We are further of the view that steps should be taken to maintain a "Gokulam", as far as possible, near the Guruvayur temple to enable the Devaswom to obtain sufficient and good quality milk for "Abhishekam" and for preparation of "Palpayasam". We

are told that at present, milk from MILMA Dairy is used. This can be avoided, if a good dairy is maintained near the temple and sufficient quantity of pure and good milk is assured for the needs of the temple. The Devaswom Managing Committee should take appropriate steps in this regard forthwith. This is a matter of every day requirement in the temple and so, should receive urgent attention.

30. Interim Report No. 3 of 1993 dated 30-3-1993 deals with inspection of paddy godown, Kalavara, publication division of Devaswom Shopping Complex, furniture in Kausthubam Rest House, absence of register for immovable properties, security arrangement in the temple, etc. In the complaint of Shri C.K. Rajan, paragraphs 4, 10, 13 and 16 highlight the various acts of commissions and omissions on such matters, which are dealt with in Interim Report No. 3 of 1993 (Final Report Part I, pages 12-15, also deal with paddy and rice),

The Commissioner visited Guruvayur on 24-3-1993 to inspect the records and godowns, The publication division was also inspected. In the detailed report filed after physical verification, the Commissioner, has found that the stock-register regarding paddy showed excess stock for which there is no proper explanation. It is evident that the stock register does not reflect, the true stock position in the godown (page 21 of Part II). The Commissioner took different samples of paddy from different gunny bags and got them examined by Dr. R. Gopalakrishnan, former Director of Research, Kerala Agricultural University, Thrissur. He is a Very experienced officer and was the Rice Adviser to the Government of Kerala. The certificate given by him has been referred to, to hold that the quality of paddy examined is substandard. Regarding paddy, there is no proper stock register, no periodical verification and the quality is substandard. The Commissioner inspected the rice godown inside the temple known as "Kalavara" along with Shri P. S. Menon, Senior Chartered Accountant. The stock position for the month of February and 23 days in March was not recorded. When rice is measured from "Kalavara" it was received by Koima, who actually gives it to the kitchen (Thidappally). There is a printed account form which should be filled up by Koima every day. There were no entries regarding the quantum of rice measured. The pass book entries are not up-to-date. The Commissioner has concluded that correct and true account of rice measured by Kalavara to Koima and by Koima to temple kitchen is not maintained. This account is not supervised or checked by the temple Manager or the Superintendent every day. This state of affairs leaves large room for manipulation of accounts. Regarding the publication division, there was a minor variation and no serious irregularities of stock in the publication division were found. Regarding furniture in the Kausthubam Rest House, there was no real stock register. Similarly, in Panchajanyam and Sree Valsam Guest Houses also, there was no separate register regarding the furniture maintained. Similarly, there was no complete register of immovable assets maintained by the Devaswom. The Devaswom owns many buildings and many of the rooms are let out to commercial establishments. There is no register showing the details of lessees of each room, the rent payable by them, the rent due from

them and under which kychit they were holding the space. No register is maintained showing the leased properties and details of the lease and the lessee. The Commissioner has also adverted to the fact that the properties of the Devaswom in Dwaraka Beach are trespassed by certain persons. No systematic action is taken by the Devaswom authorities to collect rent from the lessees of the buildings and some of the arrears have become time-barred. Large arrears are due from various lessees. As there were theft of movables from the temple, the Commissioner requested Shri Rajasekharan Nair, former Director General of Police, Tamil Nadu, who has vast and rich experience in the temple security, to visit Guruvayur and submit a report. The Commissioner has placed on record his view that the security arrangements at the Guruvayur temple are not at all satisfactory. The persons in charge are not trained and not suited to do the security work. The auction of male calves, dedicated to the deity, which enables them to be obtained for slaughtering is another thing noticed by the Commissioner. He is of Opinion that this should be prevented. The Commissioner suggested that explanation to be called for from Shri Harikrishna Menon, P.A. (Finance) and from temple Kalavara Clerk and Koima concerned.

The Managing Committee has filed a statement or objection to Interim Report No. 3 of 1993 dated 5-4-1993. The Committee has not offered any proper explanation for the various defects pointed out; nor has the explanation given in the statement been substantiated. The explanation offered for excess stock of paddy, the quality of paddy, rice stock, absence of stock register for furniture in the Guest Houses, encroachment in the immovable properties of the Devaswom, sale of male calves, etc. are all vague, evasive and are of a general nature. When this was pointed out at the time of hearing, the only plea of counsel for the third respondent is that the Managing Committee is prepared to take remedial action and conduct an enquiry as proposed by the Commissioner. The Committee has no defence worth mentioning for the various lapses pointed out and such instances show how the administration is being carried on. Respondents 1 and 2 have also nothing to state on Interim Report No. 3. The stand of the Government, as seen from the statement dated 2-12-1993 on Interim Report No. 3 is as follows :

(1) Inspection of paddy godown, Kalavara, etc.

Registers should be maintained properly and on a regular basis. Irregularities noticed should be dealt with by the Guruvayur Devaswom Managing Committee (GDMC) and action taken.

(2) Purchase of furniture in Rest Houses/ Guest house

Stock register of furniture should be maintained and periodically inspected. Immoveable/movable property register should be maintained and the defects pointed out are to be rectified. This should be done by GDMC.

(3) Sale of male calves to slaughter houses Recommendations may be accepted.

(4) Vigilance enquiries

If, on enquiry, it is found that any of the employees have committed irregularities, misappropriation, etc., Managing Committee should take action against them.

Counsel, who appeared for the individual members of the Managing Committee, also supported the stand of Mr. Dandapani counsel for the third respondent and the other counsel appearing in the case supported the report of the Commissioner based on material.

We accept Interim Report No. 3 of 1993 filed by the Commissioner. We further direct that the remedial action suggested by the Commissioner at page 202 of Part I of the final report should be implemented by the Managing Committee. Indeed, counsel for the Managing Committee agreed that remedial action may be taken as proposed by the Commissioner. This shall be so done at the earliest possible time and the third respondent is directed to file a statement about the steps taken in this regard within three months from today.

31. Interim Report No. 4 of 1993 dated 3-4-1993 is regarding security staff in the temple, installation of television, movables, strong rooms, identity cards, registers, lamps, shifting of sale of tickets, thulabharam and distribution of prasadam outside the temple compound wall, jewels and other valuable articles, etc.

Shri C. K. Rajan's complaint (paragraph 12) covers a portion of the matters dealt with in Interim Report No. 4 of 1993.

The Commissioner obtained a report from Shri K. K. Rajasekharan Nair, former Director General of Police, Madras, who visited the temple and studied the security problems and submitted a report. The Commissioner states that the security staff are not trained in security work. They are temporary employees. They are not disciplined and they are not accountable. The state of affairs does not guarantee the temple security. Shri Rajasekharan Nair has suggested that in order to improve the security, it would be desirable to put temple security in charge of a police officer in the rank of Superintendent of Police or Deputy Superintendent of Police on deputation from the State Police and to select the subordinate staff at the level of Inspector of Police, Sub-Inspector of Police, Head Constables and Constables, including a few women police, on deputation. The persons selected for temple security should be noted for their integrity, devotion to duty, etc. Policemen should be deployed for security within the temple premises and outside. They should have an arm band indicating their rank. The Commissioner has also concurred with the recommendations made by Shri Rajasekharan Nair. The security of the temple requires revamping including the keeping of Hundies and their structure; situation etc. The Commissioner suggested that the police security staff should not be controlled by the Committee and complaints against them should be heard by judicial authority. Instead of television by closed circuit television, camera in the front portion of

the sanctum sanctorum and other places has been suggested. The name of the Deva-swom should be engraved on all vessels and movables. Permanent guards should be posted in front of the strong rooms. There should be beats and patrols round the clock in the temple premises and outside. Photo identity cards should be given to all temple staff except Thanthri, melsanthi, Othikkans and Keezhsanthies. A register showing persons on duty should be kept with details. It should ensure that who were on duty and at what place. Powerful are lamps should be provided in the temple between the compound wall and outer portion of the sanctum sanctorum. The vazhipadu tickets can be sold and prasadam distributed outside the temple. Similarly Thulabharam can also be conducted. This will minimise the crowd inside the temple. This will facilitate better security and the entry of the persons inside the temple will be only for worship. The jewels and other articles are handled by the Thanthri, Melsanthi, Othikkans and Keezhsanthies. The Melsanthi is a person from outside for a term of six months. It is unfair to hold Melsanthi alone liable for the loss of valuable properties without responsibility being shared by others who are also handling the same. After taking an inventory, persons who handle the articles should be made jointly and severally liable, The Commissioner has suggested that all demonstrations, meetings and all kinds of protest should be banned in that area, so that it will ensure a calm atmosphere and serenity to the temple and its vicinity. According to the Commissioner, these aspects should be considered by the temple administration, Government and this Court and suitable changes suggested wherever necessary. The Commissioner has not made any specific recommendation as to how all these should be done.

The Managing Committee has filed a statement dated 1740-1993. The Committee has agreed that the security system should be re-arranged and it cannot be entrusted to police officers. There should be reorganisation of the security wing by increasing the number of staff. The location, situation and the inbuilt of the Bhandarams do not require any change. The Committee is agreeable for the installation of a short "circuit TV at vantage point inside the temple. The Committee is also agreeable for the suggestion that the temple and its vicinity should be made a protected area and to ban all demonstrations, meetings, etc. Similarly, the suggestion to provide for powerful Arc Lamps and to post Guards on duty round the clock in front of the strong room and outside the temple is accepted. The Committee is of opinion that no change is required regarding jewels and other valuables. It is not practicable to issue identity cards. The Committee has very serious objections to the suggestion to shift the ticket counter and Thulabharam and distribution of prasadam outside the temple boundary wall. It should be inside the temple.

The various matters dealt with in Interim Report No. 4 of 1993 are very sensitive. It cannot be denied that utmost security should be ensured for the temple, its vicinity and its properties. The serenity of the atmosphere should be maintained. This is agreed to by all parties. How this should be done is the only question that calls for adjudication. We are of opinion that the Committee has

totally failed to advert to such matters and to take proper steps, keeping in view the need of the changing times. There has been lack of care and efficiency in management. There is complaint about the nature of security that exists, the behaviour of the security staff and the poor arrangements in that behalf.

Considering the totality of the facts and circumstances brought to our notice, we are of the view that the security arrangements require a thorough overhaul, better management and efficient organisation. We are disturbed to note occasional thefts of valuable articles and jewels. We do not accept the report of the Commissioner when he says that the security should be put in charge of "police officers". In the course of arguments, we noticed that there is practical unanimity amongst all parties that the "regular police force" should not be put in charge of security" considering the necessity to maintain a calm, serene, peaceful atmosphere in the temple, vicinity, etc. We concur with this view. But, at the same time, we feel that the Managing Committee itself should have a strong and substantial security force. The persons recruited to the said force should be men of character, should have faith in temple worship, should have good training and should possess good physique, to enable them to discharge the job assigned to them. The security force should be strengthened. There should be vigil for all the 24 hours, inside the temple, its vicinity and appurtenant buildings. The entire security department should be under the control of a person who should be ranked similar to the District Superintendent of Police. The qualifications, competency, emoluments, etc. should be on that scale. Sufficient trained security staff should be posted inside the temple with strict instructions to conduct themselves consistent with the serenity of temple atmosphere. There should be strong vigil regarding hundies, movables and, other temple properties. We also hold that the situation, structure and placement of the Bhandarams should be so done as to ensure that there is no loss or pilferage from the Bhandarams. Installation of short circuit television sets near the main door of the sanctum sanctorum and other important places is a must. We hold so. The costly movables and vessels should bear the mark and name of the temple. Permanent guard should be posted in front of the strong rooms, one inside the temple and another in the Administrator's office. There should be beats and patrols round the clock in the temple premises. The working of the sub-ordinate staff should be periodically watched and proper registers should be kept about the personnel employed, supervision etc. It is also highly desirable that proper registers are maintained showing the persons on duty and at what place and the time during which they were on duty. Powerful Arc lamps should be provided in the outer portion of the sanctum sanctorum. Regarding the shifting of the sale of tickets and distribution of prasadam, we are of the view that they should not be in a place completely away and outside the temple compound. We had occasion to discuss with the Thanthri. He agreed that the distribution of prasadam can be in a building adjacent and contiguous to the temple premises or "prakaram"; so the sale of vazhipadu and distribution of prasadam or even Thulabharam can be arranged in a building which is adjacent and contiguous to the temple, but need

not necessarily be inside the temple premises, so as to minimise the crowd of worshippers inside the temple. The Thanthri made it clear to us that the prasadam and other things cannot be sold in a place wholly outside and far away from the temple. But distribution of prasadam and other things and Thulabharam can be done in a building contiguous to the temple or in a building adjacent to the temple. We accept the above suggestion. These directions shall be implemented by the Managing Committee as early as possible, at any rate within one year from today. It has also come to our notice that jewels and other valuable articles inside the sanctum sanctorum are handled by the Thanthri, Melsanthi, Othikkans and Keezhsanthies. In our view, all those persons who have occasion to handle the articles along with the Melsanthi should have joint and several responsibility for the said articles. The Thanthri, who appeared before us, also agreed with this view. Steps should be taken by the Managing Committee to ensure that all persons who had access to the sanctum sanctorum should be made jointly and severally liable for all the jewels and other movables. We also agree with the Commissioner that the temple and its vicinity should be a protected area and all the demonstrations and meetings should be banned in that area. Let it not be forgotten that the temple -- abode of God -- is resorted to by millions, many with tears to tell their tales of awe and with full faith that they will get solace and peace in life. Even today, these aspirations are fulfilled in an abundant measure and so, we find increasing crowd of people throng to the temple, and it is highly essential that the serenity, calm and peaceful atmosphere should be maintained, both inside and outside the temple, in the vicinity, at all costs. This requirement should not be diluted at all. The Guruvayur Devaswom Managing Committee and also the Government are bound to take note of the above suggestions made by the Commissioner and also by us and take steps in all such matters within three months from today.

In selecting the personnel for the security staff, we see no reason why trained retired personnel from the Military or from the Police Department should not be recruited. Such persons will be disciplined. They should be trained to meet the special requirements of the temple, consistent with what we have stated above. Military personnel may be given preference. By their training and equipment, they are disciplined and well equipped. We give a direction to the Managing Committee to take appropriate steps in that regard forthwith. Interim Report No. 4 is accepted to the extent indicated herein above and the directions in that regard shall be implemented by the Managing Committee, as stated herein above.

32. Interim Report No. 5 of 1993 dated 16-4-1993 is a landmark in this proceeding. It has really opened the eyes of many. For more, reasons than one, the matter requires a careful scrutiny. Shri P. C. Divakaran Namboodiri-pad Thanthri of the Guruvayur pevaswom has sent a statement to the Commissioner by registered post, wherein he has raised very serious allegations against the administration of the temple and has also alleged irregularities, corrupt practices and mismanagement in the temple affairs. Many of these allegations are voiced by other members of the public also. In particular, the Thanthri has complained

about the "Sree Padam" building under construction. The decision of the Committee relating to the building was taken when fee was not present and the tenderer was given about 45% in excess of the tender amount. This has given monitor considerable public criticism and the Thanthri has requested the Commissioner to make a thorough investigation. Since the last date for filing complaints by the public was 27-3-1993 and the statement of the Thanthri reached the Commissioner only on 13-4-1993, the Commissioner asked for clarification from this Court as to what should be done in the matter. Considering the fact that the Thanthri, "the high priest", is an ex officio member of the Managing Committee, as per the provisions of the statute and occupies a very important place in the scheme of the administration of the temple, this Court directed that the complaint sent by the Thanthri should also be enquired into and the Commissioner shall submit a report thereon. In brief, the Thanthri has stated thus:

He welcomes the appointment of a Commissioner to enquire into the maladministration of the affairs of the temple. The functioning of the Managing Committee is far from satisfactory. Though he is a member of the Managing Committee, he was not served with notice of the meetings sufficiently early. The minutes of the meetings of the Committee are not prepared in time. The method of discussion and the way in which decisions are taken are unsatisfactory. Important decisions are taken in his absence, especially concerning contracts. The tender regarding "Sree Padam" building is an instance in point. The Thanthri wanted to be present in the Committee meeting before the tender is finalised. But the tender was given in a meeting in which he was absent. The tenderer was given about 45% in excess of the tender amount. This resulted in public criticism. The dismantling of the old Thekke Pathayappura" also deserves investigation." Construction of College Auditorium is another matter which requires investigation. The nomination of the members to the Managing Committee is made on political grounds and the nominees have definite connection with political parties and especially the parties in power. The decisions of the members are often tainted by self interest and allegiance to their political bosses. The politicalisation of the Committee is largely responsible for the major maladies of the Devaswom. The Thanthri has suggested that the Managing Committee must be under the effective control of an independent judicial authority, even if no structural change is possible. At least some of the complaints made by the public regarding indifference and maladministration by the concerned officers are justified. The administration of the Gokulam is an example. The plight of the animals is deplorable. During the last three years, about 200 cows have disappeared. The cows are the dearest animals of the Lord and the illtreatment of the cows is the one thing which may never be forgiven by the Almighty. The decision to acquire some property near the temple to accommodate the cows was never implemented. The position of elephants also is almost identical. The animals are ill-treated. Indifference and delay in the discharge of duties by concerned officers are common. Loss of valuable articles

occurs very often. There is widespread rumour regarding corruption and favouritism about officers connected with the administration of the temple. Illegal gratifications are taken by the concerned authorities in the matter of appointment of teaching and non-teaching staff of the schools and colleges owned by the temple and also in the matter of appointment of staff to the temples subordinate to Guru-vayur Devaswom. Direct evidence may not be available regarding these matters. In the matter of choosing banks for depositing the surplus funds of the Devaswom, considerable favouritism is shown on extraneous considerations. Banks are being nominated by the members of the Committee on the basis of collusion and mutual understanding. "Nive-dyam" of the Lord is sold outside the temple. It was opposed by him. The prasadam distributed from the counter outside is substandard in quality. The milk used for Palpayasam is purchased from- Milma. It suffers from pollution and is of low quality. It is against all norms of sanctity. As a member of the Committee, expert knowledge may be necessary in administrative matters and so, personal staff should be provided to him. There is grave impropriety on the part of the administration in the matter of conducting the purificatory ceremony called "Punnya-ham". The work of "Koimas" should be properly supervised, which is totally absent now. The quality of the materials supplied by the contractors for the use of the Devaswom should be tested. Recently, some unfortunate instances pointed out some ill omens. The remedial measures suggested by the astrologers in "Devaprasnam" have not been fully carried out. It is absolutely essential. Special ceremonies and rituals should be conducted considering the wealth and potentialities and greatness of the temple to increase the "Chaithanya". The Thanthri has also given some suggestions in that regard. He has stated that the public complaints regarding misuse of funds, maintenance of registers and records, lack of proper accounting, etc. should be examined by the Commissioner. The Thanthri has requested that his statement may be filed in Court.

We should bear in mind that the Thanthri is an ex officio member of the Managing Committee. He is the "high priest". He is the final authority in all religious matters u/s 35 of the Guruvayur Devaswom Act, 1978. He occupies an august position. The continuity in office enables him to have a better overall view of the matters in preference to the other members, who serve in office only for a limited period of time (two years). Very serious allegations regarding corruption, mismanagement, maladministration of the temple and its affairs and its properties coming from such an august person like the Thanthri should be taken serious note of. The grievance is focussed by a person who himself is a member of the Committee. What is more, at least four more members of the present Managing Committee support the broad stand taken by the Thanthri. Zamorin Raja of Calicut, by his communication dated 25-5-1993, has stated that it is eminently a fit case to conduct a thorough probe into all the allegations levelled against the administration by the Thanthri and to take necessary steps to streamline the administration. Shri P. N. Narendranathan Nair, retired District

Judge and one of the members of the Managing Committee, by his communication dated 22-5-1993, has informed the Commissioner that all is not well at Guruvayur and there is total confusion in the affairs of the various departments resulting in mismanagement. The Maramath Department, the Electricity Wing, the Hospital, the Publication Wing, the various lodges the affairs of the temple, etc. are not properly attended to and there is no coordination of these departments. There is no effective control or supervision. There is no effective administration in the temple for the last several years. He welcomes the enquiry and he is convinced that it will be a turning point in the history of Guruvayur temple. He prays that this Court may be pleased to cure the maladies affecting the temple administration. Some drastic steps, including legislative measures, are required to revamp the temple administration. The Committee may be renamed as Guruvayur Devaswom Board and they have to be full time members devoting their entire time for the purpose for which they are chosen. Competent officers of the Government or the Judiciary may be considered for appointment as President and Members. There is inadequacy of staff. More qualified persons may be appointed to the Maramath, Electricity, Public Health and Accounts Departments. There should be concurrent audit. Trade Union activity of any kind may be prohibited among the employees of the temple. An outer complex to the temple may be built by acquiring land around the temple and that space should be kept from security point of view. A "Thanthri Council" should be formed.

Another member, Shri K. Gopinathan, has stated that all is not well at Guruvayur and there is utter confusion among the members of the staff and other employees, the way in which things are handled to the dissatisfaction of all. There is no effective supervision. The present judicial enquiry will be a turning point in the history of Guruvayur temple. He has also made some suggestions in the statement dated 30-5-1993. Shri A. P. Mohandas, another member of the Managing Committee, has also stated things to similar effect and has echoed similar sentiments. His statement is dated 24-5-1993. Only three members, M/s. Mallisserry Parameswaran Namboodiripad, Payipra Krishnan and K. Rajan Karumathil, have taken a stand different from the one taken by the Thanthri, the Zamoran of Calicut, Shri Narendranathan Nair, Shri K. Gopinathan and Shri A. P. Mohandas. The Chairman of the Managing Committee, Shri P. T. Mohanakrishnan, is totally silent. In effect, the majority of the members, who constitute the Guruvayur Devaswom Managing Committee, are agreed that all is not well with the administration, that there is mismanagement, maladministration and many other pitfalls which require to be properly investigated and remedial measures taken. The stand so taken by the majority of the members of the present Managing Committee proclaims that the administration of the Guruvayur Devaswom is far from satisfactory and is beset with innumerable evils resulting in mismanagement and maladministration. We appreciate the frank views so expressed by the majority of the Managing Committee. The proceeding initiated by this Court and the appointment of a Commissioner for taking remedial

measures are amply justified. The initial stand taken by a few of the Committee members resenting the initiation of this proceeding and the appointment of the Commissioner, stands self-condemned. We do not think that the matter requires any further elaboration except to advert to the statement filed by the Thanthri, which is supported by four other members. The fourth respondent-Administrator has also filed a detailed statement controverting some of the allegations made by the Thanthri. We should also state in this connection that a few members of the Committee viz. M/s. P. N. Narendranathan Nair, K. Gopinathan and A. P. Mohandas, have got a complaint that the Thanthri was demanding exorbitant "Dakshina" for various religious rites and ceremonies.

Interim Report No. 5 of 1993 does not contain any specific finding on any matter. It should be taken along with Part I, Chapter III, particularly relating to the construction of Sree Padmam buildings and non- performance of remedial measures in the Devaprasnam. Advertence is to be made to recommendations of the Commissioner in Part I, page 204 (Items 14 and 15). We shall deal with such aspects in detail while considering Chapter III, Part I. Even so, we adverted to Interim Report No. 5 of 1993 only to highlight that a lot of discord, dissension and dissatisfaction, even amongst the members of the Managing Committee, exist and the further fact that the majority of the members of the Managing Committee are agreed that "all is not well" in the administration and that there is gross mismanagement, inefficiency, etc. which requires revamping of the entire set up, even by resort to legislative amendment. The view so pointedly focussed cannot be lost sight of and the matters so stated by the majority of the members justify a probe and deserves serious notice.

In the statement filed on behalf of the Government dated 2-12-1993, the stand of the Government is stated thus :

"Thanthri's letter There is no specific re- and replies. commendation of the commission on this."

It is a pity that the Government, in whom the supervisory jurisdiction is vested under the Act to oversee that the administration of the Managing Committee is carried on in accordance with the provisions of the Act and according to law, has not even taken serious note of the patent discord, dissension and dissatisfaction in the majority members of the Managing Committee. We record our views on Interim Report No. 5 of 1993 and the matter connected therewith, as stated above.

33. Interim Report No. 6 of 1993 dated 12-5-1953 deals with the Guruvayur Devaswom Hospital, its administration and the sandal wood stock of the Devaswom. Briefly stated, the Commissioner states that no proper registers are kept for the medicines spent, the hospital is not properly maintained, the supplies are inadequate, there is no proper personnel, inclusive for the X-ray machine, the hospital is ill-equipped, there is no proper system and device and the entire admin- istration of the hospital requires restructuring. The

Commissioner inspected the hospital along with Dr. P. S. Sangameswaran, District Immunisation Officer of the District Medical Office, Thrissur. It was a surprise inspection. A surprise inspection of sandalwood stock was also made by the Commissioner. The hospital has 60 beds and 100 to 150 patients are registered as out-patients every day. No fee is levied from patients. According to the Commissioner, the distribution register will not show the flow of the medicines to the patients in all cases. The purchase of medicines is made on piecemeal bases. The medicines and other hospital materials are kept in open racks and there is a lot of room for pilferage. The cleanliness of the hospital is very bad. The water tank is not kept properly. The surroundings are littered with all dirt and contaminated with all infectious materials. The X-ray equipments are not made use of for want of a technician. The Clinical Laboratory is found to be average. There is no qualified Lab Technician to supervise. There are two Lab Assistants, who do not have any training from institutions recognised by the Government. The Lab Technicians have no basic qualification or previous experience. Sufficient doctors and ministerial staff are not posted. The records of the patients are not kept in proper fashion. They are littered on the floor. Out-patient department does not have any records to show the stock of medicine distributed to the out-patients or by which doctor it was prescribed. The Commissioner has made suggestions to improve the standard of the hospital.

The Commissioner has stated that the register regarding sandal wood showed a deficit of 1704.900 kgs. the value of which approximately comes to Rs. 4.5 lakhs. No proper registers are kept inside the temple to show the receipt of the logs, and there is no record to verify the correctness of the logs issued to the temple. In the final report (Part I), the Commissioner has recommended explanation to be called for from the Doctor and the Pharmacist regarding misappropriation of hospital funds (Part I of the Final report -- Chapter XV, page 202, Item 5). He has also suggested explanation to be sought from the Managing Committee and concerned persons regarding the appointment of unqualified persons as Lab Assistant (Part I of the final report -- Chapter XV, page 203, Item 6). The Commissioner also suggested to call for an explanation from the Administrator and concerned officials regarding the shortage of sandal wood stock (Part I of the final report, Chapter XV, page 205, item 21). As against this, the Managing Committee has filed a statement dated 17-10-1993. All that the devaswom Committee has stated is that it is difficult to implement the recommendations of the Commissioner. The Committee has also stated that immediate steps will be taken to appoint a Technician and other matters stated will be attended to immediately and remedial measures will be adopted. Regarding deficit of sandal wood stock, it is stated that the Committee will enquire into the matter and deficit seems to be because the sandalwood chips were not reckoned.

It is distressing to note that in a case where mismanagement and maladministration and deficiencies are pointed out in the running of a hospital, which is a public welfare scheme and very precious property of the Devaswom viz. sandalwood is not properly accounted resulting in a loss to the Devaswom in

the sum of Rs. 4.5 lakhs, the reply of the Managing Committee is far too general and simply evasive. Still worse is the statement by the Government dated 2-12-1993 regarding Interim Report No. 6 of 1993. It is stated therein regarding "Devaswom Medical Centre" that the Government accept in principle the recommendations, except the formation of a Committee for advisory purpose and administration could be improved otherwise. Regarding "sandalwood stock", it is stated that the proposal to maintain register, etc. may be accepted and an enquiry into deficit should be ordered by the Managing Committee. One would expect the Government, in whom is vested the revisory power of supervision, to come forward with more positive and real suggestions and steps instead of leaving the matter at large at the mercy of the Managing Committee. To say the least, this amounts to abdication of the statutory duty and responsibility cast on the Government to satisfy itself that the provisions (Section 33) of the Act have not been violated. When serious allegations regarding the running of a hospital and pilferage of sandalwood amounting to Rs. 4.5 lakhs are highlighted, the repository of the revisory power seems to simply fold its hands in despair. This discloses a sorry state of affairs.

We accept the recommendations and the suggestions of the Commissioner and direct that the recommendations with regard to Interim Report No. 6 of 1993 shall be given effect to by the Managing Committee. That the Managing Committee has no answer worth the name for the maladministration and mismanagement of the hospital and the large scale pilferage in sandalwood throws floodlight regarding the evils that have crept in the administration of the Guruvayur Devaswom. No further material or argument is necessary demanding a thorough change in the set up, structure and organisation of the entire administration. We hope, the eyes of the responsible authorities will be opened and appropriate action will be taken to remedy the situation.

34. In Interim Report No. 7 of 1993 dated 9-6-93, the Commissioner has adverted to the statement given by Shri P. C. Divakaran Namboodiripad, the Thanthri of Guruvayur Devaswom, and the order passed by this Court dated 24-5-93 directing the Commissioner to serve copies of the Thanthri's statement to all the members of the Managing Committee and invite their comments. The Commissioner states that copies of the statement of the Thanthri were served on all the members of the Managing Committee and except Shri P.T. Mohanakrishnan, Chairman, all other members of the Managing Committee sent their comments. The Commissioner refers to the statements of the Zamorin of Calicut, Shri P. N. Narendra-nathan Nair, Shri A. P. Mohandas and Shri Gopinathan, who have welcomed the enquiry, and stated that all is not well at Guruvayur Devaswom and there is total confusion in the affairs of the various departments resulting in mismanagement. All of them whole-heartedly welcome the judicial enquiry and expected a turning point in the history of the temple. Relevant portions of the statements submitted by these persons are extracted in the report. The Commissioner has also stated that Shri Malliserry Parameswaran Namboodiripad and Shri K. Rajan have filed statements denying the

allegations raised by the Thanthri. The Administrator Shri K. Raghavan has also filed a statement denying the various allegations in the statement made by the Thanthri. The Thanthri seems to have raised new allegations on 25-5-1993. But the Commissioner has not investigated the same. The Commissioner states that the three members of the Committee viz. Shri P.N. Narendrannathan Nair, Shri A. P. Mohandas and Shri K. Gopinathan, as also the Administrator have raised a common allegation against the Thanthri that he is not performing the functions that he is expected to perform personally, but he deposes his son, Shri Dinesan Namboodiripad, for the purpose. Many members of the public also have raised this issue. Another allegation against the Thanthri is levying of exorbitant "Dakshina", nearly five-fold than the previous one and without following the procedure the Managing Committee has sanctioned the exorbitant charges so levied by the Thanthri. The Commissioner pointed out that the rates were revised by the Managing Committee on the application of the Thanthri and the procedure prescribed under the Act was not followed. Incidentally, the Commissioner refers to some impediments and obstructions caused by members of the Class IV employees and how the police had to intervene and has expressed the view that the day-to-day administration and discipline of the temple require attention. He has just mentioned about the allegations raised against the civil engineering works as well as electrical engineering works and has promised to file further statements.

The Managing Committee in the statement dated 17-10-1993 has admitted that the rate of Dakshina for the Thanthri for "Kalasam", etc. has been increased on the application from the Thanthri. But this was done by the Managing Committee only on the apprehension that the pooja of the temple may come to a standstill. It is also stated that the Committee hopes that the steps will be ratified by the Commissioner. Nothing further is stated. In the statement filed by the Government dated 2-12-1993, the stand of the Government is as follows :

"Payment of enhanced Dakshina without revising Dittam was not in order. Dakshina can be enhanced reasonably after complying with the procedure laid down in Section 20 of the Act.

When Thanthri misbehaves or when it is not possible for him to perform his duties, some way is to be found to deal with the situation. This is being considered by Government."

The complaint of the Thanthri and complaint against the Thanthri have been investigated and dealt with by the Commissioner in detail in the final report (Part I, pages 54 to 86). Regarding Thanthri's allegations, the findings are as follows :

(1) After the present Administrator took charge on 15-1-1992, he always issued notices of the meeting together with agenda sufficiently early to all members, including the Thanthri. As on the date of filing of the statement, the Managing Committee met 37 times and the Thanthri participated only in 14 meetings. Even in those 14 meetings, the Thanthri did not sit for the entire duration. It is

incorrect to say that the minutes of the Committee meetings are not prepared in time. The Thanthri has not raised any such objections before,

(2) Regarding the construction of "Sree Padmam" building, the proceedings show that the Thanthri also participated in the meeting; but he has not raised any objection. The Thanthri has attended the meeting and has signed the minutes also. He never protested against the decision in subsequent meetings. The allegations of the Thanthri regarding the construction of "Sree Padmam" building is not substantiated. Regarding the construction of Sreekrishna College auditorium and the southern Pathayappura, the decision was taken by the Committee on 17-10-1992 and it is signed by all the members, including the Thanthri. The allegations of the Thanthri to the contrary are not proved.

(3) The Thanthri did not pursue his objection regarding the extension of the Administrator's term by three years.

(4) Politicalisation of the Managing Committee.

After evaluating the statements of the Chairman and members of the Committee and also independent witnesses, the Commissioner has stated that it is true that so far, barring few exceptions, Government were nominating persons who were active politicians to be the members of the Managing Committee, so that the Managing Committee bears the same political complexion as that of the Government in power and naturally they reflect the same thought and views as those of the political parties, definitely overriding other considerations of fair play and justice. It is even spoken to by the Devaswom servants, (see Part I of the final report at page 67). Many members of the public have given evidence on that score. The Commissioner has stated that there is substance in the said allegation. Allegation regarding "Gokulam" is substantially true. This has already been dealt with in Interim Report No. 3 of 1993.

(5) Loss of silver uruli: The investigation has not suffered on account of any delay.

(6) Corruption and favouritism in the temple administration: Though no corruption and illegal gratification is proved, it is difficult to understand as to why the Managing Committee should have gone to the extent of preferring Changanassery Branch (far away from Guruvayur) for its dealings to an insurance company which has an office at Guruvayur (Part I of the final report page 77). There is no substance in the objection raised by the Thanthri regarding the distribution of prasadam (except the theertham, the holy water and the flowers and sandal paste) outside the temple premises, especially when the outside counter is manned by Devaswom itself. It will be desirable if Devaswom has a Gosala in Guruvayur itself. Non-performance of remedial measures as per the "Devaprasna" is due to the communication gap between the Thanthri and the temple management. In our view, this should be remedied and the remainder of the religious rites as per "Deva-prasna" should be performed or conducted in concurrence with the Thanthri at the earliest opportunity, within six months.

Regarding the allegations against the Thanthri voiced by the three members and the Administrator, which are also substantiated by the public, the Commissioner has stated thus: The Thanthri admits that he is not performing many poojas and he is entrusting them to his son. The Committee has not followed the procedure prescribed by Section 20 of the Guruvayur Devaswom Act before revising the rates of Dakshinas. This is irregular. There is no evidence to prove that the telephone was misused by the Thanthri.

On a cumulative review of Interim Report No. 7 of 1993, the Commissioner has recommended at page 204 of Part I of the final report, as against Item No. 16, thus :

"Call for explanation from the Thanthri and members of the Managing Committee and the Commissioner".

We accept the report of the Commissioner and the recommendation made by him, only to the following extent :

"Explanation may be called from the members of the Managing Committee and the Commissioner. No explanation need be called from the Thanthri".

All Concerned should bear in mind the pivotal position of the Thanthri and the finality attached to his opinion in religious and spiritual matters. The Thanthri is the high priest. In one sense, he is the guardian and the protector of the deity. u/s 35 of the Act, the Thanthri is the final authority in all religious matters. Payment of "Dakshina" is part of the religious ritual. Of course, the Thanthri should be fair and reasonable, but, in our view, a few members of the Managing Committee and the Administrator have unnecessarily raised a bogey of exorbitant "dakshina" being demanded by the Thanthri.

We would say that the complaint raised is wholly unauthorised in view of Section 35 of the Act. It is unwholesome and such an allegation should not have been made. We entertain very grave doubts whether the power of the Devaswom Commissioner in determining or passing orders in fixing the standard scale of expenditure u/s 20 of the Act will take in at all the fixation of "dakshina" for the various religious rites or ceremonial matters or their performance, regarding which the decision of the Thanthri shall be final as per Section 35 of the Act. We were pained to note that a few members of the Managing Committee and the Administrator have gone to the extent of belittling the high office of the Thanthri by raising a bogey, that the Thanthri demanded exorbitant amounts as "dakshina". It should be remembered that the Thanthri is the high priest, the guardian and protector of the deity and it is in his prestigious and magnificent personality, the tone, temper and "chaithanya" of the Lord prevails. All concerned should remind themselves these aspects before making allegations against the Thanthri, his act and conduct. In our opinion, the plea of the Thanthri that the enhanced "dakshina" was demanded by all "sevaks" and that alone was put forward by him seems to be plausible. We leave the matter at that.

35. Interim Report No. 8 of 1993 submitted by the Commissioner dated 26-6-1993 brings into focuss the fact that monies due to the Guruvayur Devaswom were not traced and/or not realised. It also highlights the fact that the concerned authorities were negligent and wilfully closed their eyes in not realising the amounts due to the Devswom. This forms part of the allegations made by Shri C. K. Rajan. We will deal with the matter in little details.

The first allegation is that monies due under the will of deceased Sreedevi Amma to the Devaswom were not brought to account. One Puthusseri Sreedevi Amma executed Will No. 40 of 1984 of Thottappally Sub Registry Office on 11-1-1983. A photo copy of the will was produced and proved before the Commissioner As per the will Sreedevi Amma bequested all her properties, including the bank deposits, in favour of Guruvayur Deva-swom. She had advanced a loan of Rupees. 10,000/- to Stnt. Leelamma and Radhamma, dauthers of Ammuvamma, Poothambillil, on 10-1-1983 for constructing a house, payable with interest at the rate of 12% and interest upto June was received and the principle amount and balance interest are due. Guruvayur Devaswom was directed to collect the above amount after her death. The Commis-sionere has pointed out the fact that the Administrator of the Devaswom was aware of the will. Sreedevi Amma died on 2-6-1985. The Devaswom Inspector (Witness No. 51) was aware of her will and on the day she died he knew about her death and on 4-6-1985 himself and the Liaison Officer (Witness No. 56) went to the residence of deceased Sreedevi Amma and took an inventory of her movables. It is stated that Leelamma admitted the borrowal of the amount from deceased Sreedevi Amma and also the arrears due, though there is no signed statement by Leelamma. The loan having been given on 10-1-1983, action should have been taken to recover the same by 10-1-1986. The Devaswom was aware of the loan even on 2-6-1985, the day on which Sreedevi Amma died. They sent a letter to Leelamma, who was liable to repay the loan. No follow up action was taken. The Devaswom Inspector reported that the matter has become time barred. The concerned file was put up before the Adminis-trator only on 18-1-1986, by which time the claim became time barred. After analysing the evidence, the Commission has stated in Part II page 171 of the final report that a sum of Rs. 10,000/-, which was due to the Deva-sowm, was lost due to the negligence in putting up the file in time and in obtaining an acknowledgment of that debt. Another aspect touching the matter is that no action was taken to collect the other amounts due to the Devaswom lying in the bank in the name of Sreedevi Amma and the file was closed on 15-11-1991. One of the deposits in the name of Sreedevi Amma was withdrawn by One Seemanthini Amma, her relative, on 18-10-1985. The Administrator had sent letters to the Managers of the Nedungadi Bank, Canara Bank and Co-operative Urban Bank, Guruvayur informing them about the will of Sreedevi Amma and claiming amounts standing in her name. The Canara Bank stated that Seemanthini Amma produced the death certificate of Sreedevi Amma and withdrew the amount on 18-10-1985, a sum of Rs. 5,000/-. Sreedevi Amma had made another deposit of Rs. 5,000/- with Co-operative Urban Bank, Guruvayur.

Smt. Seemanthini Amma claimed this amount also and when that was not paid, she approached the Consumer Protection Forum, Malappuram, when the Devaswom approached the Court and filed a suit in the Munsiffs Court, Chavakkad. The amount was not paid by the bank. While amounts of Sreedevi Amma were lying in bank deposits, the file was closed without taking any proper action to recover the same. One Subramanian Unni, U.D. Clerk, who was in charge of A7 Section of Devaswom at that time (Witness No. 57) admitted that he has made the note to close the file. He has stated that the Devaswom Inspector has reported that recovery of the amount is time barred and as parties are dead, no further action need be taken as per the report of the Devaswom Inspector. The file did not go to the Assistant Manager (Finance). Normally, the file should have gone to her and then forwarded to P.A. (Finance). The Assistant Manager (Finance) was bye-passed and P.A. (Finance), Shri Harikrishna Menon (Witness No. 58) closed the file. He was not authorised to do so. The files should have gone to the Administrator and to the Managing Committee. Shri Harikrishna Menon (Witness No. 58) admitted before the Commissioner that he made the endorsement closing the file. Shri K.. S. Vellody (Witness No. 59), who was the then Administrator, stated that the action of closing the file is wrong and the file should have been put to the Administrator and only the Commissioner of the Guruvayur Devaswom has the right to writ off the amounts. No legal opinion was obtained by the Devaswom relating to the will or the matters connected therewith. So, the Commissioner has found that the action of the concerned Clerk in putting up the note and order of P. A. to Administrator (Finance) closing the file were clearly out of the way and illegal, and the Devaswom has lost Rupees 15,000/-. It was also found by the Commissioner that a sum of Rs. 60,098.30 is lying in the name of deceased Sreedevi Amma in the Co-operative Urban Bank, Guruvayur and instructions were issued"to the Administrator to take steps to collect the amounts.

The only other - allegation dealt with in Interim Report No. 8 of 1993 is that there was misappropriation of money by producing false vouchers. The Commissioner has found in Part II of the final report (page 178) that no instance has come to his notice to show false vouchers were produced and money misappropriated by anyone in the Guruvayur Devaswom and so the allegation is not proved.

The Government, in the statement dated 2-12-93, has stated that the recommendations in Interim Report No. 8 of 1993 may be accepted. The third respondent, in their statement dated 17-10-1993, has stated that it will enquire into the matter in detail and will take appropriate action.

The Commissioner has recommended in Part I of the final report (page 204 -- item 18) that explanation is to be called for from Shri Hurikrishna Menon, P. A. (Finance). This shall be done. We accept Interim Report No. 8 of 1993 and the recommendations made by the Commissioner. We are distressed to find that amounts admittedly due to the Devaswom were lost by inaction and carelessness

and substantial amounts not yet realised, though all concerned were aware that such amounts are due to the Devaswom. The amounts should have been realised more than eight years ago. What is worse is that the files were closed as late as 15-11-1991 without collecting the amounts and without taking action to recover the further amounts due : All these were done unauthorisedly. We are told that Shri Harikrishna Menon, P. A. (Finance) is still in service. In this connection, we have to remember the allegation against Shri Harikrishna Menon that he has amassed wealth disproportionate to his income (part I Chapter X Recommendation No. 17), which is very relevant. So also, Interim Report No. 15 of 1993 and the discussion therein in para 42 infra and our view on that aspect. How the Managing Committee, the Administrator and other persons shut their eyes wilfully in not realising the amounts admittedly due to the Devaswom. passes one's comprehension. Whether this is only an isolated instance or whether there are other instances of this type is also anybody's guess. This is the only instance that is highlighted by Shri C. K. Rajan, perhaps there are other such instances about which Shri C. K. Rajan or other persons are not aware of. In such a serious matter of importance, how lightly the Managing Committee, the Administrator and all concerned have acted or behaved shows that such persons have acted in a callous and negligent manner and unmindful of their obligations as trustees. It is a mystery that this matter has not drawn the attention of the Commissioner of the Guruvayur Devaswom and the Government in whom vests the overall supervisory jurisdiction.

We are candidly of opinion that the existing administrative mechanism faltered or failed in its functions. The supervisory machinery, the Devaswom Commissioner or the Government, as the case may be, was a mere looker-on. There was no proper care by the administration, nor was there any effective check by the supervisory authority, the Commissioner of Guruvayur Devaswom or the Government, as the case may be. This brings home the fact that the existing set up, structure and administration is wholly unsatisfactory and the entire set up requires appropriate modification. We record our finding on the above effect, for appropriate follow up action at the earliest time.

36. Interim Report No. 9 of 1993 dated 20-7-1993 deals with the allegations in respect of Panchajanyam Restaurant and misapplication of Devaswom funds for non-religious purposes.

M/s. T. N. Murali, A. Velayudhan and others complained that the lease of Panchajanyam Restaurant is apparently given on monthly rent of Rs. 10,000/- to one Shri M. S. Mohan, a Hindu. But Shri Mohan is only a benamidhar and the restaurant is actually run by a non-Hindu, Shri Ummer of Eramanagalam. The further allegation in respect of Panchajanyam Restaurant is that the licence was given in favour of Shri Mohan without reasonable cause, causing loss and detriment to the Guruvayur Devaswom.

Formerly, Panchajanyam Restaurant was leased for Rs. 21,000/- per month, the Commissioner made field investigation through Shri N. G. Sankarankutty, Deputy

Superintendent of Police and also examined witnesses and has entered the following findings :

(a) Shri M. S, Mohan, the lessee, is an employee of Hotel Buhari, Hotel Buhari is run by M/s. K. M. Mohammedunni, U. Ummer and AH of Eramangalam;

(b) For the bank guarantee to the Devaswom for Rs. 1,00,000/-, a counter guarantee was given by Shri Ummer. The total monthly salary of Shri Mohan is Rs. 985/- including E.S.I, and P.P. He was not in possession of funds to deposit Rs. 1,00,000/- in the Devaswom. One Shri Nair is actually running the restaurant. Shri Mohan is an employee under Shri Ummer managing his hotel "Hotel Buhari" at Calicut. He did not have the requisite cash of Rs. 1,00,000/- to deposit in the Devaswom;

(c) The business really belongs to Shri Ummer and not Shri Mohan. It is clearly against the tender notification, which says that only Hindus are eligible for running the restaurant and Shri Ummer could not have applied for it;

(d) Formerly, the restaurant was given on a rent of Rs. 21,000/-. Three persons applied for the instant year, Shri Sathyapalan, offered Rs. 17,5100/-, Shri Mahadeva Iyer of Thi-ruchanthavar offered Rs. 18,000/- and Shri Mohan offered Rs. 10,000/-. All the above three persons only sent letters. They did not submit tenders as stipulated. Instead of calling for fresh tenders or clarification, the Devaswom Managing Committee accepted the offer of Shri Mohan at Rs. 10,000/- per month. A loss of Rs. 8,000/- per month thereby resulted, since Shri Mahadeva Iyer offered Rs. 18,000/-. The relevant files show that Shri Mohan was provided utensils also. The licensee Shri Mohan was preferred without reasonable cause, causing loss and detriment to the Guruvayur Devaswom of Rs. 8,000/- per month.

The Kerala Kshethra Samrakshana Sami-thy alleged that the Devaswom funds have been misapplied by the Managing Committee by giving donations for non-religious purposes. A sum of Rs. 5,000/- was paid for "Matha Sauhardha Sammelan" at Vadanap-paly, Rs. 5,00,000/- to the Chief Minister's Flood Relief Fund, Rs. 20,000/- to the Federation Cup Football Tournament and Rs. 50,000/- to Saksharatha. The payment was found to be true by the Commissioner. The Devaswom Commissioner gave sanction to donate Rs. 5,00,00/- to the Chief Minister's Flood Relief Fund as per the order dated 23-10-1992 and cheque in that connection was paid on 29-10-1992 and the receipt is dated 14-5-1992 (Receipt No. 42007). It is stated that the amounts paid to the Federation Cup Football Tournament, etc. were to exhibit the banner or advertisement regarding "Bhaktha-priya", a journal run by the Guruvayur Devaswom. A sum of Rs. 5,000/- was paid to the Vaikkom Rajiv Gandhi Smaraka Samithy and Rs. 5,000/- to the Onam Special Edition of the Indian Express. The Commissioner has stated that such payments are not warranted or permitted by statute. If the matter is looked at from the point of an ordinary Hindu devotee, who deposits money in the Bhandaram of the temple, however laudable the purpose may be, no devotee will

agree or could have thought that the money deposited in the Bhandaram will be used for such non-religious purposes. So, the Commissioner has found that the contributions are unauthorised and not lawfully incurred and trust funds are misapplied. The Commissioner has suggested a further enquiry as to how trust money has been spent on similar ventures.

There is a complaint from Shri P. Sankara Rajan that the Administrator has misused the Devaswom car on various dates. The Commissioner has found that there is no substance in this charge. Similarly, there was a charge that the Administrator is drawing Rs. 1,000/-p.m. as deputation allowance. The Managing Committee has sanctioned it. It is pending for consideration with the Devaswom Commissioner. The Commissioner has not found that the Administrator is drawing deputation allowance.

The Managing Committee, in its statement dated 17-10-1993, has stated that the finding of the Commissioner that Panchajanyam Restaurant is being run by a non-Hindu is wrong. It is stated that applications were invited only from Hindus to run the restaurant. Shri Mohan was one of them. He was selected as per the decision of the Managing Committee dated 26-6-1992. He has deposited Rs. 1,00,000/- in cash and given bank guarantee. It is further stated that it is beyond the duty of the Managing Committee to find out the source of money. The Committee was satisfied that the lessee was a Hindu. It is also stated that he was preferred after analysing the qualification with others and after satisfying that there was no loss or detriment to the Guruvayur Devaswom. Regarding the misapplication of funds, the Managing Committee has stated that the Committee has contributed money to certain organisation and that too by giving advertisements of its magazine "Bhakthapriya". The Managing Committee feels that an enquiry should be made in respect of the allegations against the Administrator.

The first respondent -- Govt. of Kerala --in its statement dated 2-12-1993, has explained its stand thus :

"Allegation re-) This irregularity will
garding Panchajan) be dealt with by the
yam restaurant) Devaswom Commis-
) sioner when the audit
) report for the period is
) considered.

Payment of dona-) Finding of the Com-
tion from Deva-) missioner may be ac-
swom funds) cepted."

On an overall analysis of the matter, we are of the view that the Managing Committee was not obliged to conduct a roving enquiry as to who provided the funds for Shri Mohan, who is apparently or ostensibly the lessee of the Panchajanyam Restaurant. We do not accept the finding of the Commissioner that the restaurant is run by a non-Hindu. The eonome lessee is Shri Mohan a Hindu. The fact that somebody else provided funds for him to enable him to run the restaurant is not an aspect which is relevant to the enquiry. We reject the finding of the Commissioner to the extent he holds that Panchajanyam Restaurant is run by a non-Hindu.

But the matter does not end here. There are admittedly three persons who sent letters, viz. Shri Sathyapalan, who offered Rs. 17,500/-Shri Mahadeva Iyer, who offered Rupees. 18,000/- and Shri Mohan, who offered Rs. 10,000/-. None of them submitted tenders were not called. Clarifications were not sought. Instead, abruptly, the offer of Shri Mohan was accepted for Rs. 10,000/-. The Devaswom has sustained a loss of Rs. 8,000/ -per month. In the statement filed by the third respondent, no reason or basis is shown as to how and why and in what circumstances, the higher offer of Shri Mahadeva Iyer was rejected and Shri Mohan was preferred though for smaller sum. We accept the finding of the Commissioner that the licensee Shri Mohan was preferred without reasonable cause, causing loss and detriment to the Guruvayur Devaswom. The Managing Committee as trustees acted in an unfair and arbitrary manner. They are responsible for the loss. They should be made liabel for this loss. We hold so.

We also accept the finding of the Commissioner that the payments of Rs. 5,000/- for Matha Sauhardha Sammelan, Rs. 5,00,00/-to the Chief Minister's Flood Relief Fund, Rs. 20,000/- to the Federation Cup Football Tournament and Rs. 50,000/- to the Saksha-ratha were not for purposes which are directly connected with Hindu religion nor warranted or permitted by the Guruvayur Devaswom Act, 1978. The payments so made will not come within the scope of Section 27 of the Guruvayur Devaswom Act, which is to the following effect :

"Authority of Committee to incur expen- diture for certain purposes :-- The Committee may, after making adequate provision for the purposes referred to in Sub-section (2) of Section 21, incur expenditure out of the funds of the Devaswom for all or any of the following purposes, namely :

- (a) maintenance, managment and administration of the temple, its properties and the temples subordinate thereto;
- (b) training of archakas to perform the religious worship and ceremonies in the temple and the temples subordinate thereto;
- (c) medical relief, water supply and other sanitary arrangmems for the worshippers and the pilgrims and construction of building for their accommodation;
- (d) culture and propagation of the tenets and philosophy associated with the

temple;

(e) the establishment and maintenance of or the making of any grant or contribution to, any poor home or other similar institution which is maintained for the benefit mainly of persons belonging to the Hindu Community;

(f) the establishment and maintenance of any educational institution which provides for encouragement of education in the Sanskrit language or the maintenance of any such educational institution owned or managed by the Devaswom or in which the Devaswom has interest; and

(g) the making of any contribution to any religious institution;

Provided that nothing contained in Clause (e) shall prevent the continuance of any grant or contribution to any poor home or other similar institution which is maintained by or for the benefit of persons other than those belonging to the Hindu community, of such grant or contribution was being made to such poor home or institution before the commencement of this Act as the customary practice associated with the temple.

Provided further that no expenditure shall be incurred for any of the purpose mentioned in Clauses (f) and (g) unless the same is sanctioned by custom or practice associated with the temple".

The Managing Committee has no case that the payments will come within the provisions of the said section. We are of the view that the payments may be to very laudable purposes, but we have got to consider whether the payments made by the statutory authority --the Managing Committee -- are authorities by law. In our view, Section 27 of the Act does not authorise the Managing Committee to make the aforesaid payments. The said payments are unauthorised and appropriate steps should be taken to realise the loss that has resulted to the Guruvayur Devaswom by such payments. We hold so.

The Commissioner has stated that the misuse of the car by the Administrator is not substantiated. Similarly, the drawing of Rs. 1,000/- as deputation allowance by the Administrator is not proved. We accept the above finding of the Commissioner.

37. Interim Report No. 10 of 1993 dated 21-7-1993 relates to three matters, viz: (a) encroachment in Dwaraka Beach, (b) Vengad Estate, and (c) irregularities in the construction of the statue "Guruvayur Kesavan".

There are 20 encroachments in the Dwaraka Beach. One encroachment is as early as 1973-74. Similarly, in Vengad Estate, there are encroachments. The properties have not been properly surveyed. In Vengad Estate, the extent in the actual possession of the Guruvayur Devaswom is only 98.57 acres excluding the area occupied by the tenants. The total area of the Estate is 113.19 acres. The matter requires further investigation, proper survey, etc. and steps should be taken to evict the encroachers. The Commissioner has found that there were

two quotations for the construction of the Statue "Guruvayur Kesavan". One was from Shri V. Krishnan Namoodiripal for Rs. 28,000/- and another from Shri M.R.D. Dalian for Rs. 45,000/-. Shri Dattan's quotation was accepted. There were various irregularities in the work. The final bill was submitted on 11-1-1983. The balance of advance taken by the Assistant Engineer (Rs. 9,688.31) was returned by him only on 16-5-1983 and this amount must have been used by him for private purposes during the five months. The cement and steel required for the work were taken from the Devaswom Octupura Store. The Assistant Engineer could not explain as to how the cement and steel required for the work were taken from the Octupura Store because they were not recorded in the register. There was total lack of control or safe custody of stores. There was no stock register. The final bill was submitted on 11-1-1983 and the bill was returned with remarks and re-submitted with Assistant Engineer's reply after ten years : The matter has not been settled. There is no knowing as to how and why Shri Datta's quotation for a higher amount was accepted in preference to the quotation of Shri V. Krishnan Namboodiripad, who quoted Rupees. 28,000/- only. A survey of the above three events shows that the Managing Committee has not taken proper steps to evict the encroachers from the Dwaraka Beach and Vengad Estate, the properties themselves have not been properly surveyed and the actual extent of the properties in the possession of the Devaswom is not properly demarcated and fenced and in the construction of the statue "Guruvayur Kesavan", there have been irregularities and the matter is still at large.

The third respondent, in its statement dated 17-10-1993, has stated that the Committee will take earnest efforts to recover possession by initiating legal action. It is further stated regarding the construction of the statue "Guruvayur Kesavan" that the Committee will obtain explanation from the Assistant Engineer and other concerned persons and will take appropriate action.

The Government, in their statement dated 2-12-1993 have only stated that regarding the encroachment of Devaswom properties, the suggestions may be accepted and the lands trespassed upon should be got vacated. Regarding construction of the statue "Guruvayur Kesavan", it is stated that those who are responsible should be dealt with by the Managing Committee.

We accept the findings of the Commissioner that there are encroachments both in Dwaraka Bench and Vengad Estate, It is unfortunate that the Managing Committee has not so far taken proper steps to survey the properties and to evict the encroachers. Some of the encroachments are not of recent origin and why the Committee kept quiet and simply folded its hands is really surprising. The Committee has a duty to protect the properties Devaswom and they have failed to discharge their duty. The failure to take appropriate and prompt steps to evict the encroachers in Dwaraka Beach and Vengad Estate is evidence of the inefficient management and maladministration of the Committee. They have no excuse. By inaction, there is every risk of very valuable property of the Devaswom being lost. We hold that the Managing Committee wholly failed to

discharge its duty to preserve and manage the properties of the Devaswom. Similarly, we find that no prompt and timely action has been taken to settle the accounts regarding the construction of the statue "Guruvayur Kesava". Even after ten years, the matter is at large. What more proof is required to show is the thorough inefficiency of a statutory committee than this ? We hold that appropriate explanation should be obtained from the Managing Committee of the above lapses and further action should be taken and protect the Devaswom property and to settle the bill finally regarding the construction of the statue "Guruvayur Kesavan". We accept the recommendation of the Commissioner in Part I Pages 202 (Para 3) and 204 (Para 19) when it states that explanation should be called from the Managing Committee and the Administrator regarding the encroachment in Vengad Estate and Dwaraka Beach and that explanation is to be called from the concerned Engineer and the Managing Committee regarding the spending of excess amounts and the source of cement and steel, vide Part I Page 202, Para 3.

38. Interim Report No. 11 of 1993 dated 4-8-1993 deals with irregularities and also loss caused to the Devaswom by the premature withdrawal of deposits from Dhanalakshmi Bank Ltd. and also regarding discipline of Devaswom Servants. The Commissioner has highlighted the inaction, wrong action and carelessness with regard to the disciplinary action which proclaims a state of "no management".

The Guruvayur Devaswom had large deposits with Dhanalakshmi Bank Ltd. In 1984, there was a premature withdrawal of Rs. 46,50,000/- from the fixed deposit accounts (nearly Rs. 50,00,000/-). The withdrawal was on 18-7-1984 by the then Administrator Shri K. S. Vellodi. Some of the deposits were withdrawn just three days prior to their maturity. The Commissioner examined the entire files in this connection and also examined Shri P. T. Mohanakrishnan, the then Chairman, and Shri K. S. Vellodi, the then Administrator, and also took into account an affidavit filed by Shri A. Harihara Iyer, - who was the Chairman and Chief Executive Officer of the Dhanalakshmi Bank Ltd. during relevant time. Shri Mohanakrishnan requested the Administrator to take immediate action for withdrawal of all funds, including premature fixed deposits, in anticipation of the sanction of the Managing Committee on the ground that he understood from "reliable and knowledgeable sources" that Dhanalakshmi Bank is in "serious financial crisis". The Commissioner requested the Chairman to identify what he meant by "reliable and knowledgeable source" and to explain what he meant by "serious financial crisis". No reply was received by him. The Commissioner says that it is not disputed and is evident from the statement furnished by the bank that, as a result of the premature withdrawal, Devaswom has sustained a loss of Rs. 2,12,621.60. This premature withdrawal was the subject matter of challenge by a worshipper in O.P. No. 6906 of 1984. This Court declined to go into the question as to whether the withdrawal was justified or not and whether any substantial loss was caused to the Devaswom since disputed questions of fact were involved, which was declined to be gone into in a proceeding under Article

226 of the Constitution. The Commissioner states that it cannot be disputed that due to premature withdrawal, Rs. 2,12,621.60 is the loss suffered by the Devaswom. It was pleaded before the Commissioner that subsequent to withdrawal, the amount was reinvested in nationalised banks in schemes which fetched higher interest. So, the withdrawal has not ended in loss. The Commissioner has found that the loss was caused on 18-7-1984 when the amount was withdrawn and if it is a plea to cover up the loss by investing money in schemes which may fetch higher interest, that could have been done even earlier and the loss sustained is never made up by such acts. On the basis of the evidence before him, the Commissioner found that Shri Mohanankrishana, the then Chairman, was unable to give any satisfactory explanation for his action. He could not identify the anonymous letter, which he stated, he received from Ernakulam as "knowledgeable and reliable sources". This plea was belated and has no foundation in the earlier correspondence in the file. The Chairman has no case that he saw the audit reports. According to the Commissioner, Shri Mohanakrishnan has totally failed to satisfy that he had valid and reasonable grounds when he wrote the letter to the Administrator directing to withdraw the deposits. According to Shri Harihara Iyer, who was the Chairman and Chief Executive Officer of the Dhanalakshmi Bank Ltd. (an officer of the State Bank of India on deputation to Dhanalakshmi Bank Ltd.), the action of the Chairman was politically motivated and not motivated by the financial instability of the bank. The Commissioner found that the explanation of Shri Mohanakrishnan appears to be flimsy and unsatisfactory. Shri Vellodi was examined. He said that on an "independent assessment" of the situation with the help of a Chartered Accountant and after a comparative study of the annual report, he came to the conclusion that the bank was in financial crisis. The Commissioner found that Shri Vellodi could not read the balance sheet. He does not know about the debit/credit ratio. He does not know anything about the guidelines issued by the Reserve Bank of India to determine the liquidity of the bank. He does not know about the statutory liquidity ratio. He does not know or remember the name of the Chartered Accountant whom he consulted on receiving the Chairman's letter. No fee was paid to him. On these facts, the Commissioner came to the conclusion that Shri Vellodi has absolutely no knowledge about the banking affairs and he could have never read the balance sheet of the bank with any meaning. What he has written in his letter to the Devaswom Commissioner about the "independent assessment" it was done without knowing about its contents. The Commissioner concluded that the evidence of Shri Vellodi and Shri Mohanakrishnan does not show the circumstances under which such huge bank deposits were withdrawn abruptly resulting in heavy loss to the Devaswom. The Commissioner has found that no one could have come to the conclusion from the materials available that the Dhanalakshmi Bank was in financial crisis. Neither the Chairman, nor the Administrator had any concrete information or data about the financial position of the bank when they ordered withdrawal of the deposits, which resulted in huge loss to the Devaswom amounting to Rs. 2,12,621.60.

The third respondent has filed a statement dated 17-10-1993 along with annexures. The annexures are the copies of O.P. No. 6906 of 1984 and the affidavits and counter-affidavits filed in the said case, the note given to the Administrator by the Chairman, balance-sheet of the Dhanalakshmi Bank, etc. The judgment in O.P. No. 6906 of 1984 is also given as an annexure. The original petition was filed by one Shri P. K. Ramachandran, a Hindu worshipper of the Guruvayur temple. The petitioner therein prayed for declaring the action on the part of the Chairman and the Administrator withdrawing the amounts on deposit in the Dhanalakshmi Bank prematurely as illegal and incompetent and for other reliefs. According to the statement of the third respondent, the event happened before the present Committee took charge and the Commissioner has no jurisdiction to enquire into the complaint. The plea of the third respondent is that in view of the earlier original petition -- O.P. No. 6906 of 1984 --the matter is concluded, i.e. barred by res judicata. An alternative plea is also made that the deposits prematurely withdrawn were reinvested in such a manner in a "scheme" as not to cause loss to the Devaswom. The "scheme" was explained at the time of arguments as "reinvestment by way of recurring deposits". In paragraph 4 of the statement filed by the third respondent, it is stated that the amounts prematurely withdrawn were reinvested in such recurring deposits (probably for a longer term of years) and as against the loss of Rs. 2,21,621.60, the Devaswom made a net profit of Rs. 1,72,317.04 as a result of the premature closure of deposits and the re-deposits made with the nationalised banks. It is stated that the Devaswom has not suffered any loss. Appendix XIV (report of the Chartered Accountant) annexed to the final report of the Commissioner is attacked as one not based on the background of the above facts. Annexures D60 and D61 give some details of the fixed deposits closed on 18-7-1984. Column 10 therein shows as interest reversed in the sum of Rs. 2,12,621,.60. It is the amount which the Commissioner has found as the amount "interest loss". In Annexure D61, it is shown that the amounts were deposited for five years in nationalised banks under reinvestment scheme and that resulted in increase of interest in a sum of Rupees, 3,84,938.64.

It is not clear to us at all how a premature withdrawal ended in a profit. It is common knowledge that any premature withdrawal will entail a loss of interest. This is not disputed. In order to appreciate the stand taken by the Devaswom, one has to analyse on what terms the fixed deposits were originally made in the Dhanalakshmi Bank and if the amounts so originally deposited in fixed deposits in the Dhanalakshmi Bank were themselves at that time invested as a cumulative deposit, what would have been the interest so obtained as per the conditions then; and then compare the same with the interest that is obtained after the premature withdrawal and the reinvestment made, as cumulative deposits. The details are wanting on this score. The third respondent was not able to substantiate nor is any evidence available before us as to how it is said that the Devaswom really gained a sum of Rupees. 1,72,317.04 by the premature withdrawal of the fixed deposit accounts. We accept the finding of the

Commissioner that the action of the then Chairman Shri Mohanakrishnan and the then Administrator Shri Vellodi has resulted in huge loss to the Devaswom amounting to Rs. 2,12,621.60. The above finding of the Commissioner has not been shown to be wrong by proper or sufficient evidence.

The third respondent has a legal plea to the effect that the Commissioner was incompetent to make this enquiry. Indeed, counsel for the tenth respondent Mr. T. R. Govinda Warner put forward the plea that the matter is concluded in view of the earlier decision of this Court in O.P. No. 6906 of 1984, and so barred by res judicata and that disputed questions are involved which cannot be gone into by this Court in a proceeding under Article 226 of the Constitution. This argument should fail for more reasons than one. In Annexure E filed along with the statement filed by the third respondent for Interim-Report No. 11 of 1993, the judgment of this Court dated 5-9-1985 in O.P. No. 6906 of 1984 is appended. In the judgment, this Court held thus:

"..... Whether the withdrawal of deposits in the circumstances stated was justified and whether the re-deposit of those amounts in nationalised banks had resulted in any substantial loss to the Devaswom are all matters not appropriate to be gone into in a writ petition under Article 226 of the Constitution. These are disputed questions of fact which can be decided only on evidence to be adduced in that behalf by the contesting parties. We do not consider a writ petition as an appropriate remedy to settle such disputed questions of fact....."

In the earlier proceedings, the matter was not adjudicated. It was left open. In this proceeding, neither the third respondent nor the tenth respondent has let in any evidence to show that the premature withdrawal of the deposits did not entail any loss. It was not explained or made clear to us, as we have stated earlier, as to how it is stated that there was no loss at all, but, on the other hand, there is a profit. Further, the plea of res judicata has no substance. In the earlier proceeding, the matter was not adjudicated. That apart, the earlier proceedings was an adversary litigation. It was by way of a private grievance. The present proceeding is a public interest litigation. Unless it is proved that the previous litigation was a public interest litigation, the plea of res judicata will not apply on facts (see -- Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, at page 398). In Rural Litigation and Entitlement Kendra Vs. State of U. P., -at page 2195 para 16, the Court stated thus :

"..... We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time, it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the Court. Even if it is said that there was a final order, in a dispute of this type, it would be difficult to entertain the plea of res judicata...."

For the above reasons, we hold, that there is no material to hold that the devaswom was in way profited; and the plea of res judicata has no substance.

So, the finding of the Commissioner that the action of the then Chairman Shri P. T. Mohanakrishnan and the then Administrator Shri Vellodi resulted in huge loss to the Devaswom amounting to Rupees. 2,12,621.60 stands. We are of the view that appropriate action should be taken in this behalf.

In the statement filed by the Government Pleader on 2-12-1993, all that is stated about the premature withdrawal of the deposits is this:

"This will figure in the audit report and hence it will be dealt with by the Commissioner without delay."

The matter happened more than nine years ago. It does not appear that even today, the matter has received any attention of the supervisory revisional authority (Government). To say the least, there is total inaction and a negative attitude, to such flagrant acts of mismanagement and maladministration.

The next aspect considered in Interim Report No. 11 of 1993 is regarding the discipline of Devaswom servants and management's attitude towards "discipline". It is stated that a good portion relates to the lack of discipline among Devaswom servants as well as the lax attitude adopted by the management towards serious acts of indiscipline. The cases of S/Shri Sunil Kumar, Raju, Muraleedhara Panicker, Public Relations Officer, Keezhsanthies, who spoiled "Paatpayasam" worth Rs. 14,000/- and K. Ramachandran, security staff of the temple have been dealt with the Commissioner in different paragraphs. (Part II pages 213 to 226). The matter has been dealt with in detail. We do not want to repeat the various unfortunate incidents which took place. Besides, the Commissioner requested the Administrator to give a list of disciplinary proceedings taken against the Devaswom servants for the last two years and on a perusal thereof, it was found that no action was taken whenever public makes complaints against them (see page 226 of Part II of the report). After dealing with many of these matters, the Commissioner has opined that even in the few instances given by him, it is clear that whenever members of the public or devotees made complaints of misbehaviour against Devaswom servants, the administration was showing extreme unwillingness to take action against them (see page 229).

One Shri Ganesan was appointed as Lecturer in Botany in Sree Krishna College, Guruvayur. This was while Shri Narayanan was the Chairman of the Managing Committee. Shri Ganesan is the brother of Shri Narayanan. In so doing, the claims of the better qualified candidates were overlooked. Favouritism was shown by the then Chairman in favour of his brother. After analysing the entire evidence, the Commissioner has stated that he tried his best to find out what weight with the selection committee to place Shri Ganesh on the top of the list, but his attempts were in vain, and from the materials available on record, no reason is given as to why Shri Ganesan was found suitable when better qualified candidates were available. The Chairman has shown undue favouritism in the matter of selection of this brother overlooking the better claims of qualified

candidates. The complaint raised by Shri T. Suresh was found to be correct.

The Commissioner has concluded from the above that all the instances mentioned in Interim Report No. 11 would show the bad effect of politicalisation of administration. First one is a serious instance where deposits of Devaswom were withdrawn prematurely from the bank for unsatisfactory reasons causing a loss of Rs. 2,13,000/- to the Devaswom. The other instances are all cases of disciplinary actions which were hushed up without an enquiry and even in cases where punishment was recommended, the Committee declined to act or to impose proper punishment. There were instances when even "Nivedyam" to the tune of Rs. 14,000/- was scalded and spoiled and only a fine of Rs. 201/- was imposed on the concerned persons and subsequently, it was cancelled by the Administrator for extraneous reasons. Then there was a case of the Chairman's brother being appointed when better qualified hands were available.

With regard to the discipline of Devaswom servants and appointment of Shri Ganesan as Lecturer in Botany, in the objection filed by the Committee dated 17-10-93, it is stated that the Committee has taken decisions in the case of S/ Shri Sunil Kumar, Raju, Muraleedhara Panicker and Keezhsanthies after assessing the situations and the Commissioner cannot sit in appeal over the same. The appointment of Shri Ganesan was not by the present Committee. It was done as early as 29-9-88. None of the defeated candidates has chosen to challenge the same before any Court of law so far. So, the findings on the above matters are untenable.

The Government, in their statement dt. 2-12-93, has stated as Item X that instances of indiscipline pointed out are not the outcome of politicalisation. However, strict discipline is to be maintained. Nothing is stated about the improper appointment of Shri Ganesan in preference to better qualified candidates.

We accept the finding of the Commissioner that in proceedings relating to discipline of Devaswom servants, the attitude taken by the managing committee was far from satisfactory and patently unreasonable. Disciplinary proceedings were either hushed up without enquiry or cases where punishment was recommended, the committee refused to impose proper punishment. The complaints of the worshippers were totally discarded or brushed aside. Even in a case where Nivedhyam to a tune of Rs. 14,000/- was spoiled the punishment imposed was a farce. Only a fine of Rs. 201/- was imposed on the concerned persons. That was even cancelled later. The appointment of the Chairman's brother in preference to better qualified candidates was improper. We accept all such findings of the Commissioner. In our view, the above instances expose the ill that has set in in the administrative set up and it is high time that a meaningful and better administration is ensured in the interest of larger worshipping public and to safeguard the Guruvayur Devaswom from disaster. Appropriate remedial action should be taken in this behalf at the earliest possible time, to see that such acts are not repeated and the steps taken to ensure

safeguards against repetition of such acts. We may say that the above instances pointed out by, the Commissioner refle total inaction, wrong action and careless action, which point out a state of affairs leading to "no management" at all.

39. In Interim Report No. 12 of 1993 dated 11-8-1993, the Commissioner has dealt with the allegations against the work of Electrical Engineering Department raised by some of the complainants. The Commissioner obtained the assistance of Shri K. V. Manickam, Chief Engineer (Thermal Division), Madras and also Shri N. D. Madhavan Namboodiri, Deputy Chief Engineer, Kerala State Electricity Board. The Commissioner took them for inspecting various electrical works. There are serveral complaints on this score. The more important complaints dealt with by the Commissioner related to the following. We shall discuss them along with the findings and recommendations relating thereto.

Pump sets purchased for the borewells at Punnathrkotta: The above pump sets are not functioning. Tenders were not invited for the purchase of the pump sets. Submersible pumps were purchased from one single firm in Coimbatore. One of the pumps installed did not function even on the next day. No explanation was forthcoming as to why the pumps were purchased without inviting quotations. The matter requires further probe.

Installation of yard lights in Mini Stadium : There is difference in tender material specification and bill measurement. Some of them are not working. The guarantee period is not over. The contractor should be directed to make good the lamp which is not burning.

Installation of sodium vapour lamps at Punnathur Kotta: Out of 17 sodium vapour lamps erected, only 9 are burning. The faults were not attended to. There is lack of periodical checking of these lights. It should be done.

Installation of 11 KV SS: Substandard items were used in the installation. Several items were excluded deliberately. There are other minor faults. The Chief Engineer has suggested remedies in his report. Copies of the reports filed by the Chief Engineer and the Deputy Chief Engineer are part of the report "of the Commissioner. The remedies suggested in the report of the Chief Engineer should be attended to.

Repair and maintenance of fans in the Devaswom Rest House : 150 fans were directly purchased without inviting quotations. 167 defective fans were kept in the stores for repair. No quotations were called for repairing and these fans are replaced by new fans. Timely action would have prevented purchase of new fans. The concerned Engineer must be directed to explain this omission.

Electrification of new block to Sree Krishna High School : It is alleged that the cable used for the work is not of good quality and there is difference in measurement and specification. It is impossible to ascertain the length of the underground cable used for the work. Shri K. V. Manickam, Chief Engineer submitted Ext. 10A and Shri Madhvan Namboodiri, Deputy Chief Engineer

submitted Ext. 10B. Those reports deserve consideration.

The major complaint dealt with in Interim Report No. 12 of 1993 is regarding the supply of water to the Devaswom. Shri A. Velayudhan, Advocate (Witness No. 36) complained that excess cost is being collected for the water supplied to Guruvayur Devaswom in Lorries. The work will fall under the domain of the Assistant Engineer-I (Electrical and Water). After evaluating the entire evidence on this score, the Commissioner has found that the average price for 1 K. Lr. water in 1990 was Rs. 8.14, in 1991 Rs. 15.05, in 1992 Rs. 17.43 and in 1993 Rs. 12.18. During the earlier period, when this was under the charge of Assistant Engineer-I, from 1990 to 1992, the price for the supply of water had increased steadily. After it was entrusted to the Assistant Engineer-II in 1993, the price has come down to Rs. 12/-. There is no satisfactory explanation for this. The Commissioner has felt that something is wrong, on a look at the table prepared by the Finance Officer contained in Ext. 11A. The matter requires further investigating by the vigilance. In Part I (page 203) under Item 13, the Commissioner has stated that in the matter relating to distribution of water, vigilance enquiry should be conducted and the Assistant Engineer--I should be asked to explain.

On going through Interim Report No. 12 of 1993, we are inclined to hold that the inspection of the Commissioner along with the Chief Engineer and the Deputy Chief Engineer disclosed minor irregularities, variations etc. which point out lack of proper and effective management. We feel that the administrative machinery should be geared and toned up and remedial measures should be taken in the light of the findings of the Commissioner as also the Chief Engineer and the Deputy Chief Engineer.

The third respondent, in its statement dated 17-10-1993, has agreed that appropriate action or remedial measures will be taken if found necessary. Counsel for the Government of Kerala, in the statement dated 2-12-1993, has stated that the views of the Commissioner are generally correct.

We direct that appropriate remedial measures any be taken and the entire machinery geared to tone up the administration. Besides, the vigilance enquiry suggested by the Commissioner and the explanation to be called for from the Assistant Engineer-I may be implemented within a period of six months from today.

40. Interim Report No. 13 of 1993 dated 13-8-1993 deals with some of the matters which, though apparently innocuous, highlight how vested interests of persons have worked in the administration. Three aspects are dealt with in Interim Report No. 13 of 1993 viz. (i) Kalanilayam; (ii) Bank deposits of the Guruvayur Devaswom; and (iii) Filling up of management quota of Sree Krishna College.

The Commissioner inspected Kalanilayam along with Shri P. V. Govinda Warriar, retired Professor, Kerala Kalamandalam. One Shri P.C.O. Ilayath was the

Superintendent in charge of the Kalanilayam. He had taken large amounts on advance and mis-appropriated the money. He was examined as Witness No. 41. Disciplinary proceedings were taken against him. He has been asked to return the money. The matter seems to have been closed. Be that as it may, the Commissioner has found that up-to-date stock register is not maintained in the Kalanilayam by the authorities. The stock register is one prepared in 1983. Subsequent additions were merely written in certain pages. The correct stock could not be ascertained. Actual physical inventory of available items was taken, which is shown as Ext. 12. Some items were found in excess and some items were found short. The inspection revealed that no proper stock register is maintained till 1983 leaving a lot of room for pilferage, manipulation and even misappropriation. The entire matters in Kalanilayam disclose a sorry state of affairs. The Commissioner has given direction to the Superintendent of the Kalanilayam to prepare an up-to-date stock register.

The more interesting aspect dealt with is the bank deposit of Guruvayur Devaswom. The Commissioner has found on enquiry, on the basis of a list furnished by the Administrator (Ext. 14) that large number of fixed deposits of the Devaswom are put in banks throughout the Kerala State. The large number of deposits in many banks maturing at different dates in far off places like Trivandrum, Mahe, Tellicherry and interior places like Kunisserry, Kodunthurupully Perinkulam, etc. baffles one as to why the Guruvayur Devaswom, which has an administrative office and infrastructure at Guruvayur and wherein there are leading banks, should have the deposits scattered throughout Kerala in far off places even without knowing proper details. The Commissioner has stated that it causes great inconvenience and the Devaswom is not benefited even by a paise by such deposits. The Devaswom is unable to keep track of these accounts. Earlier the Devaswom authorities never knew how much they had in the accounts of each bank. The situation has now improved. Even so, the Commissioner has found that the allegation that the deposits were so made in very many branches throughout the State to cater to the vested interests of the Managing Committee members is true. This shows a total unsatisfactory state of affairs creating confusion giving rise to undesirable practices. This incident itself is a pointer to show mismanagement, favouritism and faulty administration.

Regarding filling up of management quota of Sree Krishna College, the Commissioner has found that the management does not adopt any fixed criteria in choosing candidates under the management quota. There are no guidelines therefore and the complaint that even eligible Hindus are denied seats seems to be well founded. The matter requires appropriate corrective.

The third respondent, in its statement dated 17-10-1993, has stated thus :

"The Committee will ensure that the stock register is made up-to-date every year as suggested by the Commissioner regarding Kalanilayam".

Relying on Rule 18 of the Guruvayur Devaswom Rules, it is stated that the rules

do not prescribe that the deposit shall not be given to any bank situated outside Guruvayur. The Guruvayur Devaswom has complete list of deposits made by the Devaswom, and is invariably insisting upon payment of 1% of the deposit for the advertisement charges in its magazine "Bhaktha Priya". The deposits are given only to such banks who make such payments. The Committee is of the opinion that no change is required in the system of deposit now in force. Regarding the filling up on the seats under the management quota, no norms are prescribed. It is governed by precedent.

The Government, in their statement dated 2-12-93, have stated regarding Kalanilayam that the stock register should be maintained and that recommendations of the Commissioner may be accepted. Bank deposit registers should be properly maintained to watch the position. Regarding filling up of management quota in the Sree Krishna College, it is stated that the management quota is filled up according to the discretion of the Managing Committee subject to minimum qualification as per rules.

We accept the report of the Commissioner, which highlights absolute lack of management and supervision regarding Kalanilayam. As suggested by the Commissioner, registers may be directed to be kept up-to-date. Regarding bank deposits spread all over Kerala, we find that the explanation offered by the Committee is only an apology. Similar is the case with regard to the filling up of the seats under the management quota in the Sree Krishna College. For both these matters, it is high time that appropriate guidelines are laid down and some reasonable and fair procedure is followed in the interest of the good administration. We direct that appropriate steps should be taken in this regard.

41. Interim Report No. 14 of 1993 dated 2-9-1993 deals with the acceptance of a tender by the Devaswom to build an additional block in the Sree Krishna College, Guruvayur from a private contractor, Shri K. N. Madhusoodhanna, The Gravamen of the charge is that the Guruvayur Devaswom invited tender for the said work and the Government concern viz. Steel Industries Kerala Limited (Silk), quoted a lesser price and the tender of M/s. Silk was rejected on flimsy grounds to prefer the tender of Shri Madhusoodhanan. It is alleged that the decision was taken in haste and there is some foul play. The matter has been dealt with in detail by the Commissioner in pages 264-276. The Commissioner also perused the relevant files and documents and examined the concerned persons. After discussing the matter in great details and adverting to all the circumstances, the Commissioner has stated that the Committee has accepted the tender of Shri Madhusoodhanan in an excess amount of Rs. 16,80,000/-, much above the rate quoted by Silk (para 8 page 272). The Commissioner opines that the contract by Shri Madhusoodhanan for Rupees. 1,56,87,000/-, which is an exorbitant figure, can never be justified on any ground (page 274). He winds up the discussion at page 275 (paragraph 10) as follows :

"Therefore, the discussion "shows that though M/s. Silk did not claim in the tender, exemption from payment of EMD of Rs. 50,000/- Devaswom did not

reject its tender and called them for price negotiations on 9-7-1993. On that day the tender of M/s. Silk was rejected for want of EMD as invalid. This appears to be improper in the face of Govt. order exempting M/s. Silk from payment of EMD. Devaswom must also be deemed to have waived the conditions regarding EMD, when they called M/s. Silk for price negotiation. It is true that M/s. Silk also did not point out about this exemption order even though they were aware of it. But by refusing to negotiate with M/s. Silk and rejecting its offer, Devaswom is likely to incur loss of Rs. 16,80,000/-. The loss would be much more, if Devaswom had persuaded M/s. Silk to accept a lesser rate than they quoted. I have in detail shown that even if the maximum rates based on 1992 schedule is allowed, it will not come to Rs. 1,56,00,000/-for which price the tender is confirmed in favour of contractor, Shri Madhusoodhanan".

The Commissioner has found that the procedure adopted by the Committee and the conclusions arrived at in awarding contract to Shri Madhusoodhanan are vitiated by illegalities and imprudence and the Committee may be directed to start negotiations with M/s. Silk to bring down the price.

The third respondent that filed a detailed statement dated 18-9-1993. It has sought to justify the award of contract to Shri Madhsoodhanan. The committee has stated that M/s. Silk has not challenged the action of the Guruvayur Devaswom and so, the matter does not deserve consideration. "

The first respondent, in the statement dated 2-12-1993, has stated that the Devaswom Committee should negotiate with Silk as recommended by the Commissioner.

We should remember that the Government has got statutory revisional powers u/ s 33 of the Act. It has got the overall power to satisfy itself that the provisions of the Act are not violated by the Committee. We accept the overall reasoning and finding of the Commissioner and hold that in the interest of the Guruvayur Devaswom and as opined by the Government, the Committee should be directed to negotiate with SILK in the larger public interest. The Commissioner has recommended in Part I (page 205) to call for explanation from the Managing Committee. We are of the view that the Managing Committee is bound by the views expressed by the Government, which we have accepted, and in that view of the matter, it may not be necessary to call for further explanation from the Managing Committee on that score. We hold so.

42. Interim Report No. 15 of 1993 dated 2-9-1993 deals with the purchase of Indira Vikas Pathra by the Guruvayur Devaswom.

The Guruvayur Devaswom purchased India Vikas Pathra from Guruvayur Post Office for Rs. 50,00,000/- The maturity value is Rs. 1 crore on 14-6-1993. It should have been renewed on that day. It was not done. It was renewed only on 5-7-1993. The delayed renewal has resulted in loss of interest to the Devaswom quantified at Rs. 69,041/-. The Commissioner has dealt with this matter in great detail from pages 277 to 303 of the report and has analysed the entire evidence

and has entered the following finding at page 303 :

".... The main responsibility for the delay rests with Harikrishna Menon, P.A. (Finance), and Smt. Radha and Smt. Parukutty and the Administrator has got only collective responsibility as mentioned earlier. Finance Officer has no responsibility for this lapse."

We have gone through the report in detail and we fully concur with the aforesaid finding of the Commissioner. We are of the view that Shri Harikrishna Menon, P.A. (Finance) who was having the custody of the relevant document, was putting forth evasive excuses and trying to escape from the responsibility. We fully concur with the finding of the Commissioner that Shri Harikrishna Menon exhibited callous indifference in his duties and can never escape from the responsibility. The Commissioner has also stated at page 303 (Part II) of the report that the Administrator has addressed the Post Master General, Trivandrum and is trying to get the interest from 14-6-1993 itself. If ultimately the Devaswom gets interest from 14-6-1993, this problem will be solved happily for all concerned. He has also added that nevertheless, the enquiry reveals the callous indifference of officials and in particular Shri Harikrishna Menon and their attempt to throw the blame on others.

The third respondent wants a fullfledged enquiry in the statement dated 18-9-1993. In the statement filed by the Government Pleader dated 2-12-1993, it is stated as against Interim Report No. 15 of 1993 thus :

"Government of India have accorded special sanction for payment of interest for the period for which Indira Vikas Pathras remained unrenewed. There is no loss for Devaswom and hence no further action on this seems to be necessary."

We are happy to note that the Devaswom has not lost any amount by way of interest. The matter has ended happily. But, however, the facts stated in Interim Report No. 15 of 1993 have thrown light on the callous and careless way in which the entire matter has been handled and Shri Harikrishna Menon, P.A. (Finance) has bungled in the matter. In the circumstances, we are of the view that appropriate disciplinary action should be taken against Shri Harikrishna Menon, P.A. (Finance). We doubt very much whether Shri Harikrishna Menon, who has acted so carelessly in the matter, unmindful of the financial implications, is competent to continue to hold the post and whether it is in the interest of the Devaswom to continue the said person in the same job. We direct the Managing Committee to give effect to our observations in the matter, at least within a period of six months.

43. The final report of the Commissioner is contained in Part I. It has 20 chapters. Pages I to 233 deal with 19 chapters on 19 topics. Chapter XX contains the appendices to Part I (pages I to 152). The final report makes all the interim reports, which is codified as Part II of the report, as part of Part I. The following are the 19 subjects dealt with in Part I :

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At this juncture, we should state that the final report is the codification of all aspects --many of the matters dealt with in the interim reports and some of them new ones. We are dealing hereinafter with those matters, on which mismanagement or other lapses of the management are alleged and found and findings and recommendations generally made by the Commissioner in the final report, about which we have not already dealt with in considering the various interim reports. This is an important aspect to be borne in mind. We should further state that the objections filed by the Managing Committee in the form of statement to the final report dated 20-12-1993 as also the general statement filed by the Devaswom Commissioner dated 20-12-1993 have been borne in mind by us, in dealing with the final report and in evaluating the entire matter. It should be stated that the objections of the Devaswom Commissioner are far too general and vague and have not in any way disproved the various findings of the

Commissioner. The general objections filed by the fifth respondent dated 20-12-1993 have also been taken into account.

44. Chapter I "introduction to the report" contains the glory of the temple of Lord Krishna at Guruvayur, the allegations of Shri C. K. Rajan, the events that led to the initiation of this proceeding and the subsequent events up to the filing of the report. It also contains the methodology and key to the report.

Chapter II deals with the various complaints levelled by Shri C. K. Rajan. The complaints relating to purchase of paddy for "Nivedyam", "rice stock", purchase of milk from Milma for Palpayasam, demanding of excess Dakshina by the Thanthri, Statute of Guruvayur Kesavan, covering items 1 to 5 in the final report have already been dealt with, while considering the interim reports. Interim Report No. 1 deals with paddy and rice. Interim Report No. 2 deals with purchase of milk from Milma. Interim Report No. 7 deals with excess demand of Dakshina by the Thanthri and Interim Report No. 10 deals with construction of the statute of Guruvayur Kesavan. Items Nos. 6 and 7 relate to allegation of corruption against Shri Rajan Panicker (K. Rajan), Member Guruvayur Devaswom Managing Committee. Shri K. Rajan is a member of the Managing Committee. He is stated to possess perceptible assets now, for which he had no perceptible means to acquire the same. So, the inference is that he has misused his office as a Member of the Managing Committee. The Commissioner had conducted a roving enquiry into these matters and has analysed the matters from pages 18 to 23 of Part I of the final report. The Commissioner has felt that Shri . K. Rajan is holding assets disproportionate to his known sources of income. The Guruvayur Devaswom is dealing enormous cash and assets. A member of the Managing Committee will normally wield good influence and power. The further allegation against Shri K. Rajan is the irregularity in the allotment of a shop room in the name of his wife. The Commissioner, after analysing the evidence in pages 23 to 28, has given facts which may point out that the allotment of a shop room to his wife is irregular and definitely an act of favouritism. Since Shri Rajan is a Member of the Managing Committee, we concur with the Commissioner that a vigilance enquiry may be ordered against Shri Rajan and his assets so as to determine whether he is holding assets disproportionate to his income.

Item No. 9 in Chapter II deals with allegation regarding shooting of film "Guruvayur Mahathmyam". The Commissioner has found that the Devaswom has incurred a loss of Rs. 16,91,906/- in this venture (para 25 at page 32). He has further found that the attempt is a fool-hardy," speculative and imprudent transaction and is an instance of gambling with the funds of the Devaswom (para 26, page 33). Shri P. T. Mohanakrishnan, the then Chairman, stated that the Devaswom never intended to make a profit. The Commissioner of the Guruvayur Devaswom stated that he has thought that it would be a profitable venture and so, gave sanction.

That was highlighted to show that the persons concerned with the matter had cross purposes in view. In paragraph 29 (page 37), the Commissioner has found

thus :

"The story of production of this film "Guruvayur" Mahathmyam" is extremely disturbing. Nearly Rs. 20 lakhs of trust funds was spent on this venture with absolutely no profit. Chairman's answer is, profit was not aimed or intended. Procedures were violated and audit objections remained unanswered with no follow up action."

The Commissioner has concluded that the Managing Committee was certainly gambling with the funds of the Devaswom and the Devaswom Commissioner had sanctioned it in violation of the provisions of Sections 21, 22 and 27 of the Act.

Since many things said against the film are subjective, it was felt that the parties and their counsel may have an opportunity to witness the film. After notice to all parties, it was so arranged by the Commissioner on 31-10-1993 at 9.30 a.m. Immediately thereafter, we had recorded our view about the film in proceedings dated 31-10-1993. The total view we gathered was that the film was of inferior quality, due to lack of proper attention and done in a light hearted manner. In Part I (Chapter XV) at page 203 (Item 8), the Commissioner has suggested further action as follows :

"Audit query is to be answered immediately and explanation elicited from the members of the Managing Committee and concerned officials and follow up action to levy the loss from the persons responsible."

We fully concur with the reasoning and finding of the Commissioner that the shooting of the film was a speculative, imprudent and uncalled for venture and the Managing Committee has spent trust funds negligently and imprudently. The amount of nearly Rs. 20,00,000/- was spent in the year 1982-83 ten years ago when the cost of production was not high and the film has no highly paid star or setting, etc. The finding and recommendations of the Commissioner are accepted. We direct that follow up action should be taken against the persons concerned.

Item No. 11 -- complaints against "publication division" -- has already been dealt with Interim Report No. 3. Item No. 13 --misappropriation in hospital -- has been dealt with Interim Report No. 6. Item No. 14 -- Gosala at Vengad -- is dealt with Interim Report No. 2. Item No. 15 in Chapter II deals with "corruption in the Maramath department". Special mention is made regarding western Gopuram and Oottupura (items 16 and 17). The Commissioner has discussed this matter at pages 41 to 46. Regarding "Oottupura", the original estimate was varied and additional expenditure has been incurred for ornamental granite doors and windows in the sum of Rs. 4,40,000/-. This additional expenditure was not sanctioned by the Devaswom Commissioner. So, it is unauthorised. Details of materials got after dismantling the old Oottupura and their disposal were not available in the file. In paragraph 39, dealing with Item No. 17 (Western Gopuram reconstruction), the Commissioner has found that there would have been a saving of Rs. 2,93,412/-. In view of the above lapses, the Commissioner

has recommended in Chapter XV, page 203 (items 11 and 12) as follows :

"11. Oottupura (Chapter II and appen- Call for explanation from the concerned engineer dices 6 and 14) relating to stock of cement and steel and to conduct a vigilance investigation.

12. Western Gopuram --- shortage of Explanation to be called for and loss levied from teak quantified by the auditor the persons responsible" (Chapter II appendices 6 and 14)

We accept the reasoning and finding of the Commissioner and also the recommendations made. Appropriate follow up action should be taken, as suggested by the Commissioner, since the amounts involved are large and that the additional expenditure was not even sanctioned.

Chapter II, Item No. 18 -- complaint against electrical wing -- has been dealt with in Interim Report No. 12. Item No. 19 deals with "various purchases for temple needs made from society without proper bills or vouchers". The matter has been dealt with in pages 47 to 49 of Part I of the report. The Guruvayur Devaswom Employees Society supplied articles to the Devaswom like paddy, rice, various provisions, stationary, "Maddlam" flasks, etc. The parties have executed an agreement, whereby the Society has agreed to supply the articles at fair price obtained in the market from time to time plus 3% profits. No earnest money deposit is taken from the Society. There is no material to show, what is the market rate for the articles, from time to time. Even so, there is absolutely no reason why the Devaswom should pay 3% above market rate. Shri Harikrishna Menon, P.A. (Finance), is the President of the said Society. He sells these goods to the Devaswom in that capacity. He buys those goods in the capacity as P.A. (Finance). The Society has not produced the original vouchers obtained by them. In many cases, they are only producing their own vouchers adding 3% to "the market price" of the goods. The Commissioner has found that the Devaswom has lost lakhs of rupees by this practice. The Commissioner has recommended that the purchase bills of the Society should be audited thoroughly and the loss sustained by the Devaswom should be ascertained and persons responsible for the loss should be surcharged.

We are of the view that no ostensible reason is shown why the Devaswom should purchase goods from the Society at the market rate plus 3% profit. The matter requires a complete investigation and audit and if it is found that any loss is caused to the Devaswom, persons responsible therefore should be surcharged.

Item No. 21 specifies "Praychitha Karma" not done. This is dealt with separately later while considering the complaints against the Thanthri.

Part I, Chapter II, Item 22 deals with "work at Vengad Estate". It is stated that loss was caused to the Devaswom in revising the estimate of the work. Shri Unnikrishnan Nedungadi, who conducted an inspection and verification, had reported that 142 bags of cement returned to the contractor, on the plea that he

has used his own cement was not justified. This is a matter for further probe and appropriate action should be taken against concerned persons. Chapter II, Item 24 deals with "gold lockets". Gold has been sent to the Government Mint, Bombay for manufacturing gold lockets. According to the contract, the balance quantity of standard gold that will be available in the Mint is 4 kgs. 20 gms. 91 mgs. But as per the letter from the Mint dated 7-12-1991, it had only 4 kgs. 14 gms. 100 mgs. Difference of 6 gms. 801 mgs. is seen. It is not shown as to why 4 kgs. of gold are still lying idle with the Reserve Bank. Appropriate explanation should be obtained from the persons concerned and the matter pursued. 45. Chapter III of Part I (final report) deals with the complaints of the Thanthri and the complaints against the Thanthri voiced by certain members of the Managing Committee. Very exhaustive discussion on these matters has been made by the Commissioner at pages 54 to 86 of Part I of the final report. We had dealt with certain vital aspects pertaining to these matters while considering Interim Report Nos. 5 and 7 of 1993. We would only stress the pivotal place occupied by the Thanthri in religious, spiritual, ritual or ceremonial matters, which has been recognised by Section 35 of the Guruvayur Devaswom Act, 1978. The Thanthri's decision on such matters is final; of course, the decision of the Thanthri should be fair and reasonable and should be in accord with Dharma. We do not propose to repeat over again, either the reasoning or the finding or the recommendations of the Commissioner on many matters dealt with in Interim Reports 5 and 7 or what we have stated therein. We would only stress the noticeable discord amongst the members of the Managing Committee. The whole episode is unfortunate and speaks for itself.

Chapter III of Part I deals with two main aspects. The first aspect deals with the allegations of the Thanthri. The Thanthri has made a plea that he was not served with notices or agenda of many meetings. He has also made a plea that many important decisions were taken in his absence. After examining the concerned persons and the relevant documents, this plea has been found against. There is nothing to disprove such finding by the Commissioner.

The Thanthri has a complaint that the Sree Padam building was originally designed and intended for devotees at Rs. 5/- per day when Shri V. R. Ramakrishnan was the Chairman. Immediately after the succeeding Committee took charge, presided over by Shri P. T. Mohanakrishnan, the plan and the estimate were changed overnight and the building changed into an administrative block and V.I.P. suite. In this connection, the duties enjoined on the Committee u/s 10(b)(e) read with Section 27(c) of the Act are important. There are further allegations about the construction of the auditorium for Sree Krishna College and that a "Pathayappura" worth Rs. 2,00,000/- was sold for Rs. 30,000/-. These aspects have been adverted to by the Commissioner and appropriate recommendations made, which we shall advert to later.

The Thanthri, ex officio member of the Managing Committee and a very important person in the entire set up, has made a serious allegation about the

nomination to the Devaswom Committee, which, according to him, is made on political grounds and the nominees have definite connection with political parties in power. According to him, the decisions taken by the members were often tainted by self-interest and allegiance to their political bosses and it is the politicalisation in the Committee that is largely responsible for the major maladies of the temple. He pleads that the Committee must be under the effective control of an independent judicial authority. The matter has been discussed by the Commissioner in Part I (pp. 65, 66, 67 & 68). The plea of the Thanthri has been found to be substantially correct. The said plea of the Thanthri is also spoken to by two Devaswom servants. We accept the finding of the Commissioner that politicalisation prevails in the nomination to the members of the Managing Committee and in the long run it is ruinous to the temple and the administration. Wisdom should prevail with the concerned persons to set right matters.

Many other complaints voiced by the Thanthri have been dealt with in the interim reports. We shall only indicate them :

Gokulam -- Interim Report No. 2 Nivedyam, out -- Interim Report No. 4 side the temple Milma milk for -- Interim Report No. 2 Nivedyam Remuneration -- Interim Report Nos. for religious 5 and 7 rites

Since the matters have already been dealt with, no repetition is necessary.

The Thanthri has also a plea that corruption and favouritism exist in the temple administration pertaining to the business of insurance also. The Commissioner has in Part I (page 77) opined that though it is not proved, there is no reason as to why the Managing Committee preferred Changanas-serry Branch for its dealings to an insurance company, which has office at Guruvayur! This seems to be strange and in the absence of explanation, requires further investigation.

The Thanthri has very strongly objected to the non-performance of remedial measures in pursuance to "Devaprasnam" and he has made some recommendations in that behalf, which we shall advert to while considering the recommendations in Chapter IV of Part 1.

The allegations against the Thanthri that he does not personally perform the poojas and rituals, that he receives very high remuneration and has misused the telephone have been unfortunately made much of. We have dealt with these matters in Interim Reports Nos. 5 and 7 of 1993. We would only emphasise that so long as the office of the Thanthri is bestowed on a family, any competent and eligible member of the family can be deputed and the only question is, whether the functions are carried on satisfactorily and properly. In the above perspective, and what we have stated in Interim Reports 5 and 7, the allegations against the Thanthri do not merit further consideration.

We conclude Part I, Chapter III by adverting to the recommendations of the Commissioner contained page 204 (Items 14, 15 and 16). They are follows :

"14.

Sree Padman building (IR 5/93, Chapter II and Appendix 6)

Notice to be issued to all Managing Committee members calling for explanation for changing the plan and also not fixing the fates of reconstruction.

15.

Non-performance of remedial measures in the Devaprasnam (Chapter III)

Call for explanation from the Thanthri as well as members of the Managing Committee and Administrator.

16.

Enhancement of Dakshina for Kalasam from Rs. 800/- to Rs. 4,000/- and Dakshina for Utsav was enhanced from Rs. 248/- to Rs. 3200 (IR 5, 7/93 and Chap. III of Part I)

Call for explanation from the Thanthri and members of the Managing Committee and the Devaswom Commissioner."

We accept the recommendations of the Commissioner regarding Item No. 14. Regarding non-performance of the remedial measures in the Devaprasnam, explanation should be called from the Managing Committee and the Administrator and remedial measures performed as directed in the Devaprasnam in concurrence with the Thanthri. For the various reasons stated in Interim Reports Nos. 5 and 7 of 1993, we decline to accept the recommendations of the Commissioner on Item No. 16 -- Enhancement of Dakshina of the Thanthri, etc.

46. Chapter IV of Part I of the final report deals with temple, its rites, security and management. After elaborating the structure of the temple and its adjacent structures, the Commissioner has highlighted the problem of "crowd management". The complaints are : The prasadam is not properly distributed in the sense that devotees do not get the quantity for which they have paid. The quality of the prasadam is poor. About the quality of palpayam and appam, there is complaint. It is also stated that there are complaints that there is no check on the quality of the goods obtained for temple. The devotees are not treated equally in the distribution of prasadam and the Devaswom staff show favour to some. The matter has been dealt with in detail in pages 87 to 113. The Commissioner has adverted to various aspects and has opined as follows :

The only way to reduce the crowd inside the temple, which is causing much difficulty, is to allow the devotees inside the temple for worship alone. It is better to shift the ticket counter and the prasadam counter outside the temple. Matured guards, at least of 40 years old, may be posted inside the temple, especially at Sopanam. A senior officer should always be inside the Sreekovil. There should be trained guards inside and outside the temple. Discourteous behaviour towards devotees should be avoided and stern action taken against erring staff. There

must be a senior officer to supervise matters inside the sanctum sanctorum. There must be two elder members from the Keezhsanthies Illom, who should be in charge of the Nivedyam every day. These two senior members can be appointed by rotation and can be paid a special allowance for supervision of Nivedyam alone, making them responsible for the hygienic and proper quality of the Nivedyam. There should be proper control over the Keezhsanthies. A chart specifying the persons in the temple who are entitled to get the prasadam and the quantity they have to get should be prepared. There should be strict vigil regarding the discipline and discourteous behaviour of the staff or other officials of the temple. Any discourteous behaviour on the part of temple servants must be discouraged with stern action. The temple should have trained security staff. All persons who handle the jewels, including Keezhsanthies, Othikkan, Melsanthi and Thanthri should be jointly and severally liable. The temple and its premises should be made a protected area and all demonstrations and protests banned. Steps should be taken for the acquisition of pre-emption right to the Devaswom with regard to adjacent properties, so that in future, when expansion of the temple and its surroundings is required, there may not be difficulty. There should be arrangements to start "Veda Parayanam" every day. The temple must also start institutions for the purpose of training Archakas. The Keezhedam temples must have a watchman during day time as well as night. The temple tank at Kaveedu should be maintained properly. The construction of the Katyana Mandapam at Thalakkottukara Siva temple should be undertaken and the project completed without delay. There are lot of complaints and irregularities regarding "Udayasthamana Pooja", which requires attention. Undue preference is given to influential persons or V.I.Ps. to get the poojas stealing a march over persons who have booked them even earlier, without following the priority list. There should be corrective against such irregularities.

On a total evaluation of the various aspects stated in Chapter IV of Part I, we are largely in agreement with the findings and observations of the Commissioner aforesaid. There should be "quality checking" of goods obtained by the temple and appropriate competent machinery should be devised. The recommendations are entitled to great weight and it will be in the interest of the administration to effectively implement those recommendations. In this connection, we extract the Thanthri's suggestions made mention, by the Commissioner at pages 112 and 113 of Part I of the final report :

"The Thanthri, in paragraph 17 of his statement, has recommended certain poojas and rituals to be performed. He has suggested that "sudhhi" ceremony must be conducted once in every month. He has recommended "Namaskara Oottu" and "Athazha Oottu", which were stopped years back, may be resumed. He has also suggested that "Saptha-sudhi Abhishekam" chanting of the relevant "Manthra" 1008 times must be conducted every day. He recommended recital of Vedas every day. This is essential Then he has also recommended chanting of "Bhagavatha Mura". This also can be done. He has suggested that "Laksharchana Pushpanjali" must be done every week. He has recommended

"Sukrutha Homam" once in a year."

Since all these matters pertain to religious, spiritual, ritual and ceremonial matters, decisions or suggestions of the Thanthri shall be final, as specified in Section 35 of the Guruvayur Devaswom Act, 1978. In our view, the Managing Committee has no option but to implement the Thanthri's suggestions aforesaid, unless it is demonstrated that the suggestions are unfair or unreasonable or against Dharma. It has not been done. Apart from the above, we also accept on these aspects the recommendations of the Commissioner contained in Part I (pages 206 and 207) to the following extent :

"The staff pattern of the temple should be reviewed and sufficient number of staff posted. The Nivedyam should be prepared properly and for this purpose, senior Keezhsanthies should be made responsible to the management. They can be paid special allowance as supervision charges. The security of the temple must be strengthened.

The vazhipad tickets must carry not only the price of the Nivedhyam, but quantity of the Nivedyam to be supplied. The staff of the temple must be trained properly. Vedaparayanam and training of Archakas should be insisted. The Kalyana Mandapam at Thalakkottukara Siva Temple should be put up with all speed so as to avoid escalation on cost. The issue of vazhipad tickets and Udayasthamana pooja booking should be computerised. Guides must be recruited to help the devotees."

We would only add that the Managing Committee should devise some procedure and find out a way to provide special arrangements every day for at least 15 minutes, whereby old, sick, handicapped and disabled persons can worship without joining the crowd and without difficulty, which should be notified in advance for information. We had occasion to record statements from the Thanthri, a former Melsanthi and the Administrator on 16-12-1993. We have taken their views into consideration, in accepting some of the recommendations made by the Commissioner and the Thanthri. For example, maintenance of Gosala near the temple, provision for distribution of prasadam by opening a counter in one of the outer walls in a building adjacent to the temple, necessity to improve the quality of the Nivedyam, lack of discipline among Keezhsanthies, necessity to have joint responsibility of all persons who have access to the movables and jewels, necessity to do "prayaschitha karma" as per the Devaprasnam, etc. We discussed at length with the Thanthri and recorded his statement regarding the question whether plurality of persons can perform the Udayasthamana Pooja. The Commissioner has dealt with this matter. In our opinion, some serious consideration is required regarding the permissibility of plurality of persons performing the Udayasthamana pooja. According to the Thanthri, there can be no objection for this. But he is clear that there can be only one Udayasthamana, pooja every alternate day. He states that the consent of Guruvayurappan shall be had, either by "pushpa prasnam" or by taking a "rasi prasnam" as to whether plurality of persons can join in performing the

Udayasthamana pooja -- in the name of more than one person and collecting from each person, the full amount for the pooja. This may augment the revenue of the temple. Such vazhipadu is so done at present in Tirupathi. Rasi prasnam is considered to be the most safe method. According to the Thanthri, there is no inhibition for the plurality of persons conducting Udayasthamana pooja. The present position is that for more than a dozen years, the Udayasthamana pooja has been booked and many are waiting in the long queue. If plurality of persons can join in one pooja, the situation will be eased, enabling a chance for many to participate early. In the larger public interest, we consider that the Managing Committee should take steps as suggested forthwith to have the matter thoroughly examined, in concurrence with the Thanthri, as to whether plurality of persons can join in the performance of Udayasthamana pooja. In this connection, we should also state that Shri K. P. Dandapani, counsel for the Managing Committee, Shri T. R. G. Warriar, senior Advocate, who appeared for the Chairman of the Managing Committee, and other advocates appearing in the case wholly welcome the suggestions made by the Thanthri at page 112 of Part I and also the other suggestions. Shri T. P. Kelu Nambiar laid stress on the fact that the Managing Committee should take appropriate steps to promote the bhakthi cult. This is a laudable suggestion. We accept this also.

47. Chapter V of Part I deals with Guest Houses. The Devaswom has got four Guest Houses -- Sreevatsam, Panchajanyam, Kausthubham and Sathram (the old building). Complaints are voiced that Government officials and a few others are occupying the Guest Houses without paying any rent. It is seen that the Devaswom has issued a circular exempting certain class of V.I.Ps. from payment of rent and has allowed the Administrator to exempt persons, whom he thinks fit, to receive such a treatment. The Commissioner has stated that this clause is vague. Definite rules should be made as to who are entitled to free accommodation and rent should be collected from all other persons. There should be proper register with details therefor. There is also a complaint that devotees find it difficult to get accommodation whenever there is a "rush". There should be provision for reservation. Appropriate procedure or rule should be made therefor. There is also a complaint that the Guest Houses are not kept clean and the behaviour of the staff towards the devotees is not courteous or decent. So, the Commissioner has suggested that a complaint book should be kept and action taken against erring officials. The opinion expressed by the Commissioner seems to be very fair and reasonable. In Part I (page 207), the Commissioner has made the following recommendation :

"Reservation of accommodation in the Guest Houses must be computerised. The Devaswom must go in for a laundry plant of its own to wash the linen. Rules must be framed specifying the VIPs entitled for free accommodation."

We are of the view that the opinion expressed by the Commissioner is entitled to acceptance as also the recommendations made. We do so.

48. Chapter VI of Part 3 deals with "material management". The aspects dealt

with are the mode of stocking materials and mode of issue of materials to various departments. The Commissioner has adverted to Interim Report No. 3, wherein the absence of stock registers in the paddy godown was highlighted. It is also stated that there is no proper account of the rice measured from Kalavara. Interim Report No. 6 is also adverted to show that there is no stock register for purchase of medicines and show its distribution. Interim Report No. 10 is referred to show irregularity in the removal of the rods, steel, etc. from the stores. Interim Report No. 12 is referred to show that 167 defective fans were kept in the store for repair and without calling for quotations for repairing them, new fans were purchased. Purchase could have been avoided, if timely action was taken to repair the fans. Wrong entries were made in the stock register of the electrical stores. Interim Report No. 13 is referred to show that the stock register maintained in the Kalanilayam is unsatisfactory and reflect things as on 1983 only (a decade back!!). In Interim Report No. 6, the Commissioner has - stated that on physical verification of sandal-wood stock, a shortage of 1704.900 kgs. was found, worth Rs. 4.5 lakhs (a big shortage, indeed!). No records were maintained inside the temple to show the receipt of sandalwood logs issued to the temple. When old Oottupura was dismantled, details of disposal of the materials were not available. Purchase of teak was unnecessary for the western Gopuram considering the stock that was available. For Vengad Estate, 242 bags of cement were unnecessarily issued to the contractor, on a wrong notion that the contractor has spent his own cement.

Supply of all goods to the Devaswom is made by the Guruvayur Devaswom Employees Co-operative Society. All goods from A to Z are purchased by the Society from the open market. The Devaswom pays the market price plus three per cent profit. There is no acceptable material to show the market price. Some rough voucher is the sole basis for fixing the market value. The paddy found in the store was sub-standard quality. The P.A. to the Administrator as President of the Society, sells materials to the Devaswom. He buys and issues the materials to various departments, as P.A. Finance. Where purchases are in lakhs of rupees, this is a most unsatisfactory state of affairs opening the door for corruption in all manner. No stock register is maintained, in any section. No proper rules are followed in the matter of stock purchase. Issue of materials is not properly recorded. No physical verification is made. All these leave the doors wide open for pilferage, corruption etc.

The Thanthri has suggested that there should be some machinery for quality control. There is none at present. At page 122, the following recommendation has been made by the Commissioner :

"I would suggest that this sort of affairs must be put an end to. It is better that the Devaswom go in for a central warehouse or godown where every materials can be stocked. If necessary, Devaswom should construct a new one with proper facilities. One responsible officer must be in charge of the stores and under him there can be many other Assistant Store Keepers in control of each section. They

can issue the stock for various sections and whole process can be computerised. If it is so done the clear stock position with regard to each material will be recorded and we will be able to locate each item of the material issued, and for what purpose. If we introduce this system, it will reduce the chances of pilferage, corruption and mismanagement."

In Part I, page 207, further recommendation has been made regarding management of movable and immovable properties :

"There must be annual verification of stores, if necessary by the Local Fund Audit and report sent to the superior authority. Devaswom must go in for a Central Warehouse or godown and the responsible officer must be posted in charge of the same. All stores should be issued from the Central godown and purchase and issue of materials must be computerised. There must be a quality check for the materials at the point of purchase as at the point of issue, Devaswom must maintain a permanent register of its immovable properties showing the details as suggested in Chapter VII. prompt action must be taken wherever it is trespassed. There must be an annual verification of the immovable properties by a member of the Managing Committee."

We are of the view that the above recommendations are reasonable and should be accepted in public interest. We do so. The Guruvayur Devaswom Managing Committee shall take steps to implement the above recommendations expeditiously.

49. Chapter VII in Part I deals with management of movable and immovable properties. Section 10(c) of the Act behoves the Managing Committee to ensure safe custody of the funds, valuable securities and jewelleries and the preservation and management of the properties vested in the temple. The said section lays down certain safeguards regarding alienation of movable and immovable properties. Section 28 envisages that the Committee should be in possession of all movable and immovable properties. Chapter VI of the Guruvayur Devaswom Rules, 1980 deals with custody of records and properties of the Devaswom. The Administrator has to maintain necessary registers containing particulars of jewels, gold and other valuables belonging to the temple (Rule 12). u/s 12(6), the Committee shall conduct annual physical verification of movable properties including jewels and gold and send a certificate to the Commissioner every year. The Commissioner has specifically found that though rules provide for custody and management of the movable and immovable properties, no proper registers are maintained in the Devaswom. No property registers are maintained with regard to the immovable properties of the Devaswom. The discussion in Interim Report No. 3/93 is adverted to show that the buildings and rooms let out or leased by the Devaswom are not evidenced by proper records and there are no registers showing the details. There is no permanent register showing the immovable properties belonging to the Devaswom and how they are being dealt with. Interim Report No. 10/93 is highlighted to show the encroachments in Dwaraka Beach and Vengad Estate.

The above are pointers, showing that the maintenance of the immovable properties is extremely unsatisfactory. The rent due to the buildings is not properly collected and no legal action is taken in time for recovery of rent or eviction of the lessees. The Commissioner has suggested that a permanent register should be kept and proper responsible officers should be put in charge for the maintenance of immovable properties. Specific rules should also be framed for appropriate handling and checking. Regarding movables, the Commissioner has adverted to Chapter IV of the report and other facts and circumstances brought out in the case, and has opined that all persons who deal with the movables (especially the jewels), like Thanthri, Melsanthi, Othikkan and Keezhsanthies should be jointly and severally liable. The Commissioner has also held that appropriate arrangements should be made for keeping silver and golden vessels, jewels etc., by the Administrator in his room with sufficient security guards. Identification marks should be inscribed on all the movable properties of the Devaswom. Rules should be made regarding the maintenance of movable properties. There should be an appraiser at the time of verification. The Commissioner has in Part I, page 208, apart from the general recommendations regarding the management of movable and immovable properties, which we have accepted, separately made a specific recommendation regarding movables thus :

"The temple jewels must be physically verified in the presence of the Commissioner and a representative of the High Court with the help of and appraiser. This must be done immediately."

The overall recommendations made by the Commissioner appear to be fair and in larger public interest we accept the same. The Managing Committee is directed to take steps to implement the same without delay.

80. Chapter VIII of Part I deals with "Management of Finance". Even at the outset, the Commissioner has stated that the management of finance is completely unsatisfactory. There are various source of income -- Hundi, offerings of the devotees, income from the publications, from Guest Houses, interests on bank deposits and income from immovable properties like rent of the shop buildings and yield from Vengad Estate. The Commissioner has dealt with the administrative set up and also, referred to specific instances to illustrate the financial cell. He has highlighted the fact that audit objections are pending for a long time. The auditor has pointed out that more than 1900 audit objections are even now pending. They are spread over the years and nothing has been done to answer these objections. There is absolutely no use in auditing these accounts. This is a dangerous symptom. After adverting to Interim Report No. 8, the Commissioner has stated that a sum of Rs. 65,000/- is due to the Devaswom from the Banks which has not been realised. The file was closed by the P.A. (Finance) Shri Harikrishna Menon without authority. The third aspect highlighted is that the Indira Vikas Pathra worth Rs. 1 crore was not reinvested in time which might have resulted in a heavy loss (Interim Report No. 15/93). Fortunately, the

Government of India has agreed to pay the interest from the date of maturity. This is an instance to show absolute carelessness and negligence. The fourth aspect highlighted is that large amounts are advanced to Devaswom servants and there is long delay in settling these advances. One such instance is mentioned in Interim Report No. 11/93, in the case of Shri Muraleedhara Panickcr, who was ultimately suspended. Similar advances were given to Engineers in the Civil Works Department, which are not settled even after seven or eight years. The sixth aspect pointed out is the financial mismanagement highlighted in Interim Report No. 11/93 where about Rs. 46.5 lakhs of bank deposits were withdrawn without any justifiable reason resulting in a huge loss of nearly Rs. 2.13 lakhs by way of interest. There is no concurrent audit with regard to expenditure side. This is a serious defect. There was misapplication of Devaswom funds for non-trust purposes. To crown all these, as pointed out in Interim Report No. 11/93, money of the Devaswom is put in various banks throughout the State, even in far off places, resulting in unmanageable state of affairs. The Commissioner has opined that all these are dangerous trends pointing out to financial indiscipline and mismanagement which required urgent action.

The Commissioner has made as much as nine recommendations, at pages 134 to 137 of Part I. This has been carried over, as specific recommendations, regarding mismanagement of finance, as items 11 to 16, at pages 208 and 209. They are as follows :

"11. The Finance Department must be headed by an Accounts Officer and an Assistant Accountant General deputed from the Accountant General's Office and the present set up should be discontinued immediately. A crash programme must be undertaken to clear all outstanding audit objections at least within three to six months and orders passed u/s 26 against persons who are responsible for the loss.

12. There must be concurrent audit of expenditure. At present expenditures are audited fairly after a long interval.

13. Rules must be framed for expenditure and extending advances and any infraction of .Rules should be sternly put down.

14. Devaswom should open a cash counter for disbursing money and stop practice of advancing large amounts to its officers. Even if advance is made, it must be finally settled without delay.

15. Computerisation of accounts is recommended.

16. The Devaswom should withdrawn money from various banks as they mature and deposit them into Government Treasury at Guruvayur or Chavakkad, subject to two conditions (i) that the Government shall not impose any ban relating to Devaswom money and whenever it issues a ban order on treasury, Guruvayur Devaswom funds should be exempted from such a ban; and (ii) that the Government shall pay the same interest and benefits to the Devaswom as paid

by the Nationalised banks from time to time. At any rate, the Devaswom should not deposit any money in any bank outside Guruvayur."

It would with extreme pains, we note that the management of finance of the Devaswom is in a very bad shape. The various aspects stated by the Commissioner and the recommendations made by him in detail at pages 134 to 137 of Part I as also the ways and means suggested finally at pages 208 and 209 as Items II to 16, seem to be fair and reasonable, except with regard to the deposit of money belonging to the Devaswom in the Government Treasury. All parties opposed the same. We have got serious reservation regarding the opinion of the Commissioner for depositing the money belonging to the Devaswom in the Government Treasury. We do not agree with the said suggestion. To that extent, we cannot accept Item No. 16 stated above. In the statement filed by the Devaswom Commissioner dated 18-12-1993 at page 2, he has dealt with the audit report. Again at page 4, in paragraph 6, it is stated thus :

"The fact that a large number of audit objections have been pending since 1978-79 came to my notice only recently in the context of the enquiry conducted by the Commissioner by this Hon"ble Court. The relevant records were thereafter traced out and action was taken to dispose of the audit objections, It appears that many of the audit reports were not put up in time to the then Commissioner for disposal. After I took charge in August, 1990, three audit reports were received in all, viz. those relating to 1987-88, 1988-89 and 1989-90. These reports were duly forwarded to the Guruvayur Devaswom Managing Committee. Replies to the audit report for 1987-88 were received in February 1993. Replies to the subsequent audit reports are yet to be received. Replies to audit reports for 1985-86 and 1986-87 were also received in February 1993. Replies to several audit paras are yet to be received. The idea was to dispose of all the paras for each year in single proceedings. As this was found to take a long time, it was decided to dispose of individual audit paras on merits. Accordingly, 69 audit paras relating to 1985-86, 60 audit paras relating to 1986-87 and II audit paras relating to 1987-88 have been disposed of. Year wise details of audit paras are produced herewith as Annexure A".

Annexure A, at page 10, will show that audit reports from the year 1978-79 onwards up to the year 1989-90 amounting to 147 paragraphs, have been made and no action has been taken thereof. The Guruvayur Devaswom Act itself was passed in 1978. All the audit objections, ever since the Act came into, force are still pending. The earliest audit objection is dated 30-11-1981, which is more than twelve years old. The subsequent audit reports are also made immediately after the year is over and yet no action has been taken about these audit objections! What is worse in the frank admission by the Devaswom Commissioner that his attention was drawn to such reports which are more than twelve years old, only after this Court appointed the Enquiry Commissioner, i.e. only recently!! And records had to be traced out!! Steps were hastily taken after the Commissioner was appointed by this Court. This throws floodlight regarding

the utter carelessness and mismanagement of the finance of the Devaswom. This also points out the disregard, indiscipline and non-adherence of the statutory provisions by the Devaswom Commissioner, Managing Committee and all persons concerned. In our opinion, the inference is irresistible, that the Devaswom Commissioner as also the Managing Committee have completely abdicated their duties enjoined by the Statute and were thoroughly negligent in the performance of their statutory duties resulting in a stalemate in financial administration. This is a glaring instance which calls for a change in the entire set up of the administration besides the change in the personnel of the Devaswom Commissioner.

We concur with the findings and the recommendations of the Commissioner, which we have extracted hereinabove, except Item 16 to the extent of directing the deposit of the money belonging to the Devaswom in the Government Treasury. Instead of the said provision, we are of opinion that the entire amount belonging to the Guruvayur Devaswom should be deposited in banks as envisaged in Chapter VIII of the Guruvayur Devaswom Rules, 1980, but it should be only, in banks which have a branch in Guruvayur itself. We make this position clear. All the deposits should be garnered and deposited as per the rules in banks situated in Guruvayur itself. We express our anguish in the functioning of the Devaswom Commissioner and the Managing Committee by sleeping over the audit reports ever since the Act came into force. The purpose and laudable object behind Sections 23 to 26 of the Act regarding "accounts and audit" have been thoroughly frustrated and the statutory provisions have been rendered a dead letter. Probably, the Managing Committee and the Devaswom Commissioner have taken the "audit" only as a meaningless ritual or empty formality! We are afraid that the enquiry by the Commissioner has really opened a Pandora's box -- inevitable and impregnable discrediting the entire administrative set up and bringing everything into disrepute. Indeed, alleging corruption and rank nepotism, Shri C.K. Rajan has highlighted that the defects and illegalities pointed out by the auditor in the accounts have not been answered at all by the Devaswom Commissioner, Managing Committee and other concerned persons; nor has any step taken, in pursuance thereto! This was put forward in the forefront in Shri Rajan's complaint. How true it is!

We would also deprecate the donations made by the Devaswom unauthorisedly and unmindful of its duties and obligations contained in Sections 10 and 27 of the Act. In this connection, Interim Report No. 11 refers to various donations which are totally unauthorised and incompetent in view of Sections 10 and 27 of the Act. That aspect should also be taken note of and appropriate follow up action should be taken in that direction forthwith to recoup the amounts unauthorisedly disbursed by the then Managing Committee. The statutory authorities would do well to remind themselves about the Full Bench decision of this Court in *Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others*, at p 103) (paragraph 57 and 58), which forbids the disbursement of the Devaswom funds unconnected with the Devaswom, which are not related to

the purposes for which the trust was founded. Let this not be forgotten.

51. Part I Chapter IX of the report deals with Civil Engineering Works and Building contracts, The discussion is contained in pages 138 to 157. In earlier reports, the Commissioner has dealt with the "western Goupram", Oottupura, the construction of statue of Guruvayur Kesavan and Vengad Estate. Great irregularities were pointed out in the matter of material management, keeping of accounts, etc. It is stated that this breach of activity is a cause for the unnecessary drain of Davaswom funds and a source of complaint. Two specific instances are pointed out. The first is relating to the construction of Sreeknshna College Auditorium. Regarding the Sreekrishna College Auditorium, the original estimate provided for filling the low portion with excavated earth. Instead, the contractor was permitted to convey and supply his own earth for filling stating that the medium rock got from excavation was not useful for filling. Additional sum of Rs. 16,370/-, an avoidable expenditure was incurred. The Devaswom failed to implement and carry out the work as per the agreement. There was also an over payment of Rs. 11,165/- which was overlooked.

The construction of Sreepadmam buildings, discloses a worse state of affairs. The original purpose of the work was to provide cheap accommodation to pilgrims. The estimate was for Rs. 1 crore. Before accepting the plan the Committee worked out no cost benefit ratio. The Government sanctioned exemption from zonal regulation for three floors as against the plan for 5 stroeys. The plan was revised and sanction accorded for three floors for an estimate amount of Rs. 70 lakhs. The tender was given to the lowest tenderer M/s. Silk, a Government concern. The work was started. It is stated to be in progress. While so, the Managing Committee decided to change the plan by constructing 5 floors on converting the building for Administrative block and V1P suites with shopping complex. It was decided to entrust the work to M/s- SILK and to pay them for dismantling the work already done and to pay extra rate for additional work. The rates have not been fixed. The original plan and structural details were made by Shri Ramakrishnan, Architect, Bangalore, free of cost. But, the revised plans were prepared by one Shri C. George and he was paid Rs. 15,000/-. He has demanded payment at the rate of 7.5 per cent of the estimated rate of Rs. 7.5 lakhs. The matter is not decided yet. If the matter was entrusted to Shri Ramakrishnan, the original Architect, payment to Shri George could have been avoided. Similarly, the rates to be paid to M/s. SILK for additional work is not yet decided. The change in attitude of the Managing Committee in revising the plan and structure from one of a Guest House for ordinary pilgrims to the other, to accommodate officers and VIPs, is totally unreasonable and unfair. The new building will not yield any income. The change in the attitude of the Managing Committee is also against the duty enjoined on the Managing Committee under Sections 21 and 27 of the Act. The Managing Committee is bound to construct buildings for pilgrims. It was started. But, it was given up after the work was started. Why? Is it the way the Managing Committee intends to serve the worshipping public? There was lot of mismanagement in the matter of

construction. The new construction will be non-productive. No prior sanction of the Devaswom Commissioner was obtained, though the work involves more than Rs. 2 lakhs. The Commissioner has relied upon the suggestions of Mr. Nedumgadi, who has stressed that a proper person should be put in charge as Works Superintendent and the Committee should avoid delay in payment of bills, which will reduce the total cost. The result of the investigation has been summarised by the Commissioner in pages 149 to 153. In the main, the Commissioner has recommended that there should be a proper plan and estimate of the expenditure before the work is started. It should not be changed in midway and the construction should go on as scheduled. The Commissioner has also referred to the construction of quarters to house Government servants at Alathur, known as "Ambadi Estate". This is clearly violative of the provisions of Section 27 of the Act. Why such quarters were built far away, passes one's comprehension. There was no sanction by the Devaswom Commissioner. Similarly, the construction of an operation theatre in the Guruvayur Medical Centre is unsatisfactory and it is not in accord with accepted medical and hygienic principle. Advances are made to engineers to meet the demands of petty contractors, but no final settlement is made even after a long time. No check measures are taken by the engineers.

Regarding buildings contracts, the Commissioner has stated that without getting proper expert advice, contract is entered into. A classical instance can be found in the contract entered into by the Devaswom with the Kerala State Construction Corporation. This has come in for severe criticism at the hands of the auditor. Construction regarding Sreevatsam, Kousthubham, Panchajanyam, etc. has also been severely criticised. Disputes have arisen with regard to the above and they are the subject matter of arbitration. According to the Commissioner, the contracts are one-sided, beneficial only to the Kerala State Construction Corporation and against the interests of the Devaswom. The actual cost of the work has gone several times the estimated rate. The Commissioner has made suggestions on this score, at pages 155 to 157 of Part I.

On the above aspects, the final recommendations made by the Commissioner are contained in Part I at page 209, paragraphs 17, 18 and 19. They are as follows:

"17. Commissioner's sanction should be insisted for all expenditure above Rs. 2 lakhs and it shall not be incurred first and sanction granted later. All expenditure incurred in a building or project within two years should be pooled together to consider whether the expenditure exceeds Rs. 2 lakhs.

18. Before passing any expenditure of doubtful nature, the Committee should take legal advice. An expert committee to be constituted with two experienced civil engineers of integrity, a Chartered Accountant and the Law Officer of Devaswom. All plans should be approved by the Managing Committee only if it is recommended by the said expert committee. The two experts should not be engineers employed by Devaswom. Plans should not be changed by the Managing Committee alone, unless it is referred to the Expert Committee and

approved by it.

19. Before building contracts are entered into, Law Officer should be consulted and his approval taken. There must be wide publicity given to notifications inviting quotations. All tenders must be scrutinised by the Expert Committee mentioned above. The said Committee should inspect the work and give its approval that the work is satisfactorily completed according to plan and budget. All pending bills on engineering works should be settled not later than one year after the completion and completion report should be made."

We are of the view that the various findings of the Commissioner and also the recommendations regarding civil engineering works and building contracts are in accord with sound business principles and practice and should be adopted by the Managing Committee. We see no reason why such systems and devices should not be followed for proper and efficient execution of engineering works and building contracts.

In this connection, we should strongly deprecate the changed attitude of the Managing Committee in its construction of Sree Padmam buildings. The Managing Committee was obliged by Section 27 of the Act to construct buildings for the accommodation of pilgrims. So, the original plan to provide cheap accommodation to pilgrims and make construction on that basis was justified. While the work was in progress, without any reason, the original plan was altered and the plan was changed to accommodate officers and V.I.Ps. a project which is unremunerative and at the same time, designed by sacrificing the project intended for the benefit of ordinary pilgrims. The Managing Committee owes an explanation for the changed attitude and for not effectuating the original work of constructing the building for providing accommodation to the pilgrims. Appropriate action is called for in this behalf by directing the Managing Committee to explain. The reasons for the change in the nature, structure and purpose of the building are undisclosed. The matter requires investigation also.

We are also of the view that the construction of quarters for Government servants in Alathur (Ambadi Estate) is against the provisions of the statute. The Managing Committee was not authorised to undertake such a construction. The Managing Committee should be directed to explain. The Committee, which was responsible for the construction, has done it unauthorisedly. Appropriate action is called for regarding this also.

52. Chapter X of Part I deals with personal management and discipline. The Commissioner has made an exhaustive survey of the matters in pages 158 to 170 of Part I. He has stated that there is malpractice in appointments, besides favouritism and corruption. In Interim Report No. 6, it has been brought out that in the clinical laboratory, four unqualified persons are holding posts. So also, in Interim Report No. 11, the illegal appointment of Shri Ganesan as Lecturer in Botany in Sreekrishna College, Guruvayur has been highlighted. The Commissioner states that the Managing Committee members are not experts in

the field and there should be a Recruitment Committee, consisting of eminent persons well-versed in the particular subject, including experts in the field and appropriate procedure should be laid down by way of regulations or rules to avoid favouritism and corruption. The method of selection should be made foolproof since the selections now made are highly unscientific and irrational. The Commissioner has also dealt with "discipline" and has referred to Interim Report No. 11 about specific cases of Shri Muraleedhara Panicker, P.R.O. Sunil Kumar, Raju and Keezhsanthies. Minor infractions have also noticed. He regrets that discipline is never enforced and adequate punishments are not administered. The problem is serious and discipline is in shambles. The complaints of the worshipping public against the Devaswom servants are not seriously taken (It is a cry in the wilderness, perhaps!?). There are complaints from the public that politicalisation of the services has led to inefficiency, indiscipline and lack of a proper temple atmosphere. The Commissioner has recommended that an independent judicial authority, e.g. District Judge, should be entrusted with the authority to conduct disciplinary proceedings. He has stated that a District Judge may be obtained on deputation by the Managing Committee and posted as Law Officer and disciplinary authority, with exclusive authority to deal with matters of discipline of the devaswom servants.

The Commissioner has also dealt with complaints against Shri Harikrishna Menon, P.A. to Administrator (Finance). The Commissioner has recommended an immediate vigilance investigation into the assets and income of Shri Harikrishna Menon to find out whether he is owning assets disproportionate to his income and whether he has misused his official position to amass wealth.

The Commissioner has also recommended that the Devaswom must have a Welfare Officer to enquire into and report regarding the needs, necessities and welfare of the Devaswom employees. That apart, the Commissioner has strongly suggested that trade union activities or political affiliation should be interdicted and employees should have only one association to ventilate their grievances so that the serene and calm temple atmosphere can be kept up. The general and overall recommendation on the above matters are contained in paragraphs 20, 21, 22, 23, 24 and 25, at pages 210 to 212 of Part I. They are as follows:--

"20. A District Judge may be designated as Law Officer-cum-Disciplinary Authority. There must be a legal cell under him in the Devaswom. All contracts, tenders proposals for donation, alienation of movable, immovable properties should go thorough him before Managing Committee or Administrator takes any decision. He shall be responsible for taking disciplinary proceedings and his decisions should be challenged only in the High Court (in the present set up) or before the Commissioner, if he is retired High Court Judge. Litigations in which Devaswom is involved also should receive his attention. Rules be framed for disciplinary procedure and conduct of Devaswom employees.

21. An independent Recruitment Committee consisting of experts like Civil Engineer, Lawyer, Educationist, Doctor or Administrator must be constituted who

will be solely in charge of the recruitment. These persons should not be employees of the Devaswom, but must be independent persons with reputation for the character and integrity. It shall be their sole responsibility to recruit to various posts in the Devaswom and select suitable persons. If the recruitment is for Shanthikkar or some other posts involving religious rites, Thanthri should be a member of the Committee and his opinion should prevail unless the Committee records special reasons for the contrary. Employees must be asked to file their property statement annually and take prior permission before acquisition of immovable properties or movable properties exceeding Rs. 5000/-.

22. Devaswom must appoint one or two Welfare Officers who will enquire into and report regarding the needs and necessities for the welfare of the employees.

23. All trade union activities must be banned from the service of the Devaswom and it must be declared as an essential service. The devaswom should have some employee's association to speak to their cause.

24. Devaswom must have a Vedapadanasala of its own where they will train its Archagas.

25. There must be a fulfilled training programme for all employees of the Devaswom which must include principles and of Vyshnava faith."

We are of the view that the said recommendations are fair and reasonable, and will enable maintenance of proper discipline, proper recruitment of personnel and keeping away politics and trade union activities from the temple atmosphere. The recommendations contained in paras 20 to 25, at pages 210 to 212, are entitled to acceptance. We hold so. That alone will ensure a good and orderly method of systems and devices.

53. Chapter XI of Part I deals with legal affairs and litigation. The Commissioner has stated that the Devaswom is handling crores of money and entering into contracts involving huge sums. They are very big projects. All these require proper, legal contracts to be entered into which should safeguard the interest of the Devaswom. There is no legal department or cell attached to the Devaswom, A Law Officer has recently been appointed. But, he has no experience as lawyer. He is a retired officer from the Hindu Religious and Charitable Endowment Department. The Commissioner is of the view that this is insufficient. The Commissioner has adverted to Interim Report No. 8 of 1993 wherein money due to the Devaswom under the Will executed by late Smt. Sreedevi Amma was not realised. It is also stated that a brahmin couple had executed a Will in favour of the Devaswom bequeathing properties in Ernakulam city and no action has been taken so far, on it. There are many such cases. The contracts that are entered into by the Devaswom are far from satisfactory. The Commissioner refers to Interim Report No. 14/93, whereby the tender submitted by M/s. SILK was rejected illegally and the loss to the Devaswom is estimated in the sum of Rs. 17 lakhs. It is also stated that the contract entered into by the Devaswom with the Kerala State Construction Corporation is purely one sided and the Devaswom's

interest was not safeguarded in that contract. With these aspects in the background, the Commissioner has stated that the Devaswom should have a Law Department to deal with the legal affairs and also litigation. He has recommended that a District Judge should be posted on deputation to head this department. All the legal aspects should be referred to his opinion and clearance obtained. If the said Law Officer is a District Judge, he can be invested with powers to take disciplinary proceedings against the Devaswom servants. He can be designated as Law Officer and Disciplinary Authority. The recommendations regarding legal affairs and disciplinary action are contained in paragraph 20, at page 210, which we have extracted earlier, while considering Chapter X. We accept the said recommendation.

54. Chapter XII of Part I deals with functionaries under the system and their performance and the -need for change. The Commissioner has analysed the provisions of the Guruvayur Devaswom Act and has endeavoured to assess the role played by the Administrator, the Managing Committee and the Devaswom Commissioner and has given his own reasons to hold that there is a total failure in the functions in the statutory functionaries, necessitating a change in the nature, structure and organisation. This involves statutory amendments. The matter has been discussed in great detail at pages 174 to 195 of Part I. It contains an interesting and exhaustive discussion detailing the reasons for the changes suggested in the statute for a proper and effective functioning. In substance, the Commissioner has stated the following:--

The Managing Committee contains a representative of the employees. The Administrator is bound to obey the Managing Committee and the net result is to obey an employee under him. There is too much interference by the Managing Committee with the day-to-day administration and powers must be made specific. The Managing Committee should not be able to interfere in the day-to-day administration. The Managing Committee comprises of "chosen ones" and the Government has a decisive voice in its composition. There is no qualification of the members of the Committee who carry on the administration of a big establishment, enter into Engineering contracts, appoint persons to Educational institutions including Colleges and undertake a variety of other commitments. The Chairman and Mr. Narendranathan Nair and Mr. A. P. Mohandas (Members) are of the view that the composition of the Committee should be changed and there should be only three members. The Managing Committee has no expert in its fold and in effect the Government can "tune and control" the Devaswom to suit its interest. The Devaswom Commissioner is a top functionary under the statute. He has to scrutinise the budget and sanction it. The audit report is sent to him. He is to scrutinise it and pass an order of surcharge, if necessary. The administrative report is sent to him and he has to forward the same to the Government with his remarks. Construction over Rs. 2 lakhs requires previous sanction. He has got a vital role to play. But, in practice, the Commissioners never discharge their statutory functions. Till now, they have slept over the audit objections. There is no regular inspection by Devaswom Commissioner. He takes

no active interest in the Devaswom affairs. He has been termed "a political executive" and the "God that failed". The reason for this is in two-fold. Firstly, the Commissioner is having a part-time job. Secondly, he is having only a "remote control" over the committee and the administration. In effect, there is no proper or effective control or supervision. In Part I, at page 190, the Commissioner has suggested various remedial measures. The Devaswom Commissioner should be a person in the spot, at Guruvayur. A person in the status of a retired High Court Judge should be posted to the post. The composition of the Committee should be different, Talented and professional persons, like lawyer, Engineer, Chartered Accountant or leading non-political men should be appointed. The power of revision u/s 33 of the Act should be vested in the High Court. The term of the Managing Committee should be at least four years. Hereditary and ex-officio trustee should be excluded.

On a perusal of the entire discussion regarding functionaries under the system and their performance and the changes needed, as recommended by the Commissioner at pages 205 and 206 of the report, we are of the view that while many aspects stated therein are worthy recommendations which will improve the tone and temper of the administration and are commendable, and have our approval, the alterations in the structure of the Committee and the functionaries and the amendment in the Act suggested are normally beyond the purview of a public interest litigation. We refrain from giving any affirmative direction on those matters now. We should only express our disapproval with regard to one recommendation, i.e. that hereditary and ex-officio members should not find a place in the Managing Committee. To that extent, the observations and recommendations of the Commissioner are not entitled to acceptance.

55. In Chapter XIII of Part I, the Commissioner has dealt with politicalisation and administrative disfunction. The matter is dealt with at pages 196 to 199 of Part I. After referring to the various complaints and the structure of the administrative apparatus, the Commissioner has stated that nomination of politicians in the Managing Committee should be avoided. Invariably the nomination made reflects the political complexion of the State. There is no effective check on the Managing Committee. There is wide spread dissatisfaction regarding the politicalisation of the Committee and the administrative system which is designed to serve a laudable purpose is subverted by an over-whelming political influence and that has its echo in the discipline of the Devaswom servants and other matters handled by the Managing Committee. The Commissioner has also suggested that a retired High Court Judge may be appointed as the Devaswom Commissioner, disqualifying persons in active politics from becoming members of the Managing Committee and insistence on some special qualifications to be the member of the Managing Committee, banning of union activities among the Devaswom employees and allowing only one association for the staff and other matters. These are all no doubt laudable, but many of these will require legislative amendment. Such of those aspects dealt with in Chapter XIII, which will not require statutory changes should be given effect to. We hold so. With regard to

those matters which require statutory changes, it is for the appropriate authority to consider.

56. Chapter XIV of Part 1 is styled as "Chewing the Cud -- Good, Bad and Ugly". The Commissioner has given his total impression about the temple, its structure, its set up, the functioning of the various authorities and the impact on the public. According to him, there is politicalisation in the administration. There is total mal-administration and paralysis of the normal functions. There is misapplication of funds also. There is great truth in all such comments.

57. Chapter XV of Part I is styled as "Picking up the Thread", where various recommendations have been made on various interim reports and the final report. They are contained in pages 202 to 205. Further, general recommendations are contained in paragraphs 28 to 30 at page 213, which are to the following effect:

"28. Devaswom should construct cheap lodging houses for devotees even if at a distance. The devotees can be taken from the lodging houses to the temple by a chain service conducted by the Devaswom so that the rush near the temple for lodging houses can be avoided.

29. Devaswom should either acquire all properties within the radius of 100 Mts. from the outer wall of the temple or law must be enacted giving a pre-emption right to the Davaswom to purchase those properties whenever owners want to sell them. This is very urgent and necessary for future development and security of the temple.

30. A master plan must be drawn for development of the temple town and its surroundings and a development authority constituted. There must be clear planning and healthy development of the temple town."

We are of the view that the three general observations are necessary for the temple and its preservation and efficient and good administration in the long run. Therefore we hold that recommendations Nos. 28, 29 and 30, at page 213 (extracted hereinabove) are acceptable and practical effect may be given to those recommendations by the Managing Committee by taking proper steps in that regard.

58. Before concluding, we should advert to two important aspects stressed by Shri Govind K. Bharathan, counsel for the fifth respondent Kshethra Samrakshana Samithy. He has filed a detailed statement accepting some of the recommendations of the Commissioner and objecting to a few. It is dated 20-12-1993. We are not pronouncing on some of the crucial aspects stated therein. It was argued that this public interest litigation is a social or legal audit stressing on public accountability. The report of the Commissioner has revealed startling matters which point out the evils in the administration. Therefore, counsel pleaded that there should be such technical audit every five years regarding Guruvayur Devaswom in so far as the present Guruvayur Devaswom

Act does not contain a provision similar to Travancore-Cochin Hindu Religious Endowments Act, wherein the High Court is enabled to conduct the audit of the Travancore and Cochin Devaswom Boards every year. We are of the view that this is a commendable suggestion and it has our approval.

59. Another aspect stressed by Shri Govind K. Bharathan was that after the 42nd amendment of the Constitution, 1976, whereby the words "social" and "secular" have been added to the word "democratic republic", the provisions of the Guruvayur Devaswom Act enabling the Hindu member of the Council of Ministers to nominate their representatives to the Managing Committee as if representing the denomination, cannot stand. According to him, after the 42nd amendment of the Constitution, the aforesaid Ministers are not competent or authorised to nominate the representatives of the Managing Committee. This aspect was not gone into in the Full Bench decision reported in K.V. Narayanan Namboodiri and Others Vs. State of Kerala and Others, Article 26 of the Constitution, in the light of the amended preamble, requires a different interpretation, says counsel. These and other aspects require a re-evaluation and reappraisal of the provisions of the Act and the Rules and also a determination about their validity.

60. We are of the view that consideration of the above aspects is foreign to the scope of this public interest litigation and such matters should be agitated in an appropriate proceeding, at the appropriate time. We make it clear that we leave those questions and other allied aspects open.

61. Now we are at the end of the journey. Shri T.P. Kelu Nambiar, amicus curiae, highlighted the fact that the Guruvayur Devaswom is every day growing and it is already a big empire. With the extension of the railways, it is bound to attract more crowd from all over. The expansion has already taken many dimensions and was not in the mind of the authorities who were running the administration decades ago. The Guruvayur Devaswom Acts of 1971 and 1978 were largely enacted reckoning the existing order and things and without reckoning the realities of modern times, and in the wake of the next century, a complete restructuring of the administration and its apparatus are necessary. There should be more dynamic and pragmatic systems and devices, which will take into account the ever growing modern developments, innovations and requirements. Crores of rupees, valuable jewels, gold and silver are pouring in every day. The infrastructure is of very weak type and cannot take in such heavy rush of pilgrims, offerings, etc. More space is required and also efficient, expertise personnel with training. A lot of reorientation and rethinking is required on many aspects. Steps should be taken in that regard or else there will be impasse in the administration and total chaos and confusion. Counsel, therefore, suggested that the Institute of Management of Government, Trivandrum may be directed to make an in-depth study about the administrative set up and functions and directed to submit a report, taking into account the modern trends and "developments. We feel, the weight of the above plea. We are of the view that such a study should be undertaken to have sweeping reforms to suit the modern

needs. Appropriate steps should be taken in that regard at the earliest time.

62. We have considered the various interim reports (1 to 15) and also the final report. By and large, we have expressed our agreement with many of the recommendations of the Commissioner. Now the stage has come for us to recapitulate the various recommendations of the Commissioner accepted by us and also the observations made and directions given for implementation thereof. We shall do so in the succeeding paragraphs.

63. For effectively carrying out the various recommendations, there should be appropriate machinery and personnel. Our orders and directions are only within the broad frame work of the Act and provide an effective machinery. In considering the directions to be given for the implementation of the various recommendations, we have felt the need for a Commissioner of Guruvayur Devaswom who will be involved and dedicated in his work, act, with all speed and make the machinery effective and workable. The Devaswom Commissioner is an important functionary under the Act. He is part of the administration. He has got a big role to play. We have indicated those aspects in the earlier paragraphs of this judgment. We are sorry to find that the Devaswom Commissioners, who have acted ever since the Guruvayur Devaswom Act, 1978 came into being, have been mere "on-lookers". They were mere "spectators", not involved nor concerned seriously with the administration. The Commissioner addressed a letter to Shri M. Mohankumar, Commissioner and Secretary dated 12-7-1993 with a questionnaire. Shri Mohankumar has replied thereto. The letter, queries and replies are seen at pages 138 to 147 of Part I of the report. A perusal thereof will show how light-heartedly the Commissioner and Secretary to Government has viewed his assignment. The Devaswom Commissioner is a part-time officer. He has only a remote control over the administration. The Commissioner were never effective nor vigilant nor carries out the statutory functions and confidence imposed on them, Their non-functioning will be evident from the non-disposal of audit reports ever since the Act came into being more than fifteen years ago and other acts of abdication of duty, which we have pointed out earlier in this judgment. Pages 138 to 147 of Part I of the report referred to above will be a pointer in this regard, as to how light-heartedly the assignment is viewed. The present Commissioner Shri Mohankumar has also acted only in that way. The various directions given by us and the multitude of matters to be attended to cannot be safely entrusted to such a person, who is ineffective, not involved and a mere onlooker with no involvement in the administration. Moreover, we have got a very anomalous state of affairs. The Commissioner of the Guruvayur Devaswom is a statutory authority. He has got a big role to play in the administration, as per the provisions of the Act. He is an authority subordinate to the Government. Government has got the power of revision u/s 33 of the Act to revise the proceedings of "the Commissioner" or of the Managing Committee. But, ever since the Guruvayur Dewaswom Act, 1978 came into force, the Commissioner and Secretary in charge of Devaswoms in Government, happened to be the same person. In words, the same person

fulfilled two roles --the role of the Commissioner and also his revising authority. This is strange and has led to an ineffective functioning of both the roles. The Commissioner, who does not have enough time as a part-time officer, was remotely looking at things, with no control over the Committee. It has also rendered ineffective and meaningless Section 33 of the Act, the supervisory revisional jurisdiction vested in Government. It is high time that the Government takes appropriate steps to bifurcate these two officers and appoint two dispersers -- one to the post of Commissioner and another to the post of Secretary (Devaswoms) in the Government, so that the different statutory functionaries may play their parts effectively and meaningfully. The Commissioner should be a person who can exercise direct control and supervision and should be located at Guruvayur exercising the statutory and other powers vested in him under the Act. We hereby issue a direction to the Government in that behalf and to take steps towards that end, within six weeks from today.

Even after bifurcation of the office of the Commissioner and the Secretary to Government (Devaswoms), it depends upon the person who acts as the Commissioner to effectively carry out the various orders and directions and implement the various recommendations which we have accepted in this judgment. We have very great doubts whether the present Devaswom Commissioner Shri M. Mohankumar will be able to fulfil the role effectively considering the past functioning. We, therefore, direct the Government to submit a panel of five senior I.A.S. officers (Secretaries to Government) to this Court, so that we can select one of them as the Commissioner of Guruvayur Devaswom for effectively implementing and carrying out the directions contained in the judgment. A direction is issued in that behalf to the Government to file the aforesaid panel of names within six weeks from today.

This is a public interest litigation. Our main endeavour is to construct or build up and not to demolish, to motivate and activate the set up or machinery, which is inactive and suffers from partial paralysis. Our aim is to provide positive answers and directions to cure the ills and not to continue the impasse and stalemate. So, there is necessity to keep vigil and monitor the matter from time to time. It is with that end in view, we have endeavoured to analyse and bestow our anxious thought over a delicate and sensitive matter in great details. We shall now summarise the various recommendations and directions in the following paragraphs.

64. Summary of the findings and recommendations (Interim Report Nos. 1 to 15 of 1993):

A. We repel the plea that the initiation of this public interest litigation was without jurisdiction or in any way unauthorised or improper (paragraph 14). Availability of alternative remedy, is no bar. Even so, it requires a different look or perspective in the case of a public interest litigation (paragraph 15).

B. The Civil Courts have got inherent power to initiate action, probe into the matter and set right the abuses by a remedial action in the case of charitable and religious trusts or deities as guardian of such juridical entities (paragraph 17).

C. The Court, in exercising the powers under Article 226 of the Constitution of India, can appoint a Commission. The report of the Commissioner, prima facie, constitutes evidence which can be acted by a court of law. Interference will be made only in exceptional circumstances, in cases where convincing evidence contra is available before Court (paragraph 19).

D. Prima facie, evidence and various findings entered by the Commissioner are not disproved. They are not demonstrated to be wrong. They should form the basis for passing appropriate orders by this Court except to the limited extent this Court holds that the recommendations are impractical or otherwise cannot be given effect to in law or as a matter of expediency (paragraph 20).

E. " When arbitrariness, maladministration, mismanagement or other unbecoming conduct or act of the Government or a public authority comes to the notice of the Court, the Court is bound to take notice of it and issue appropriate directions in the matter (paragraph 25).

F. No adjudication is called for regarding Interim Report No. 1 of 1993 (paragraph 28).

G. Interim Report No. 2 of 1993 is accepted. Appropriate explanation should be obtained from the Managing Committee for the various lapses pointed out by the Commissioner. Steps should be taken to maintain a "Gokulam" as far as possible near the Guruvayur temple by the Managing Committee (paragraph 29).

H. Interim Report No. 3 of 1993 is accepted. Remedial action suggested by the Commissioner in Part I at page 202 of the final report should be implemented by the Managing Committee. This shall be done at the earliest possible time. The Managing Committee shall file a statement about the steps taken in this regard within three months from today (paragraph 30).

I. Regarding Interim Report No. 4 of 1993, the security arrangements require a thorough overhaul better management and efficient organisation. The Devaswom should have a strong and substantial security force. It should be under the control of a person who should be ranked similar to the District Superintendent of Police. Other details regarding security, bhandarams, administration, maintenance of registers, etc. are contained in paragraph 31 of the judgment. Distribution of prasadam can be in a building adjacent and contiguous to the temple premises or "prakaram"; and so the sale of vazhipadu and distribution of prasadam or even Thulabharam can be arranged in a building which is adjacent and contiguous to the temple, but need not necessarily be inside the temple premises. The Managing Committee shall implement the above suggestions within one year from today. All persons who have occasion to handle the articles

along with the Melasanthi should have joint and several responsibility for the said articles. Steps should be taken by the Managing Committee to ensure this. The temple and its vicinity should be a protected area and all the demonstrations and meetings should be banned in that area. It is highly essential that the serenity, calm and peaceful atmosphere should be maintained, both inside and outside the temple, in the vicinity, at all costs. The Government and the Managing Committee should take steps in this regard within three months from today. There is no reason why trained retired personnel from the Military or from the Police Department should not be recruited. Military personnel may be given preference. Interim Report No. 4 of 1993 is accepted to the above extent and the Managing Committee shall implement the same (paragraph 31).

J. Interim Report No. 5 of 1993 highlights that lot of discord, dissension and dissatisfaction even amongst the members of the Managing Committee, exist and it is further seen that the majority of the members of the Managing Committee are agreed that there is gross mismanagement, inefficiency, etc. which requires revamping of the entire set up, even by resort to legislative amendment (paragraph 32 of the judgment).

K. The recommendations and suggestions of the Commissioner with regard to Interim Report No. 6 of 1993 are accepted and shall be given effect to by the Managing Committee. The allegations regarding the running of the hospital and pilferage of sandalwood amounting to Rs. 4.5 lakhs disclose a sorry state of affairs (paragraph 33).

L. In Interim Report No. 7 of 1993, after referring to the allegations by the Thanthri, the Commissioner has entered a few findings. There is substance in the said allegations. The allegations regarding "Gokulam" is substantially true. The remedial measures and the religious rites as per "Devaprasna" should be performed or conducted in concurrence with the Thanthri at the earliest opportunity, within six months. Regarding the allegations against the Thanthri, like the demand of exorbitant Dakshina, etc., the complaint raised is wholly unauthorised in view of Section 35 of the Act. We have grave doubts whether the power of the Devaswom Commissioner in determining or passing orders in fixing the standard scale of expenditure u/s 20 of the Act will take in, at all, the fixation of dakshina" for the various religious rites or ceremonial matters or their performance, regarding which the decision of the Thanthri shall be final, as per Section 35 of the Act (paragraph 34).

M. We accept Interim Report No. 8 of 1993. We are distressed to find that the amounts admittedly due to the Devaswom were lost by inaction and carelessness and substantial amounts not yet realised, though all concerned were aware that such amounts are due to the Devaswom. Explanation is to be called from Shri Harikrishna Menon, P. A. (Finance), The files were closed unauthorisedly without taking any action. The existing administrative mechanism faltered or failed in its functions. The supervisory machinery, the Devaswom Commissioner or the Government was a mere looker-on. The existing set up, structure and

administration is wholly unsatisfactory. The entire set up requires appropriate modification. Appropriate follow up action should be taken at the earliest time (paragraph 35).

N. Interim Report No. 9 of 1993 deals with the allegations in respect of Panchajanyam Restaurant and misapplication of Devaswom funds for non-religious purposes. We do not accept the finding of the Commissioner in Interim Report No. 9 of 1993 that the Panchajanyam Restaurant is run by a non-Hindu. The licensee, Shri Mohan, was preferred without reasonable cause, causing loss and detriment to the Guruvayur Devaswom. The Managing Committee as trustees acted in an unfair and arbitrary manner. They are responsible for the loss. They should be made liable for the loss.

We accept the finding of the Commissioner that the payments to Matha Sauhardha Sammelan, Chief Minister's Flood Relief Fund, Federation Cup Football Tournament and Saksharatha were not for purposes which are directly connected with Hindu religion nor warranted or permitted by the Guruvayur Devaswom Act, 1978. The payments will not come within the scope of Section 27 of the Guruvayur Devaswom Act. The payments are unauthorised and appropriate steps should be taken to realise the loss that has resulted to the Guruvayur Devaswom by such payments. There is no material to show the misuse of car by the Administrator. The drawing of Rs. 1,000/- as deputation allowance by him is not proved (paragraph 36).

O. Interim Report No. 10 of 1993 relates to three matters-- (a) encroachment in Dwarka Beach, (b) Vengad Beach, and (c) irregularities in the construction of the statue "Guruvayur Kesavan". The Managing Committee has not taken proper steps to evict the en-croachers from Dwarka Beach and Vengad Estate. In the construction of the statue "Guruvayur Kesavan", there have been irregularities and the matter is still at large. We accept the findings of the Commissioner that there have been encroachment both in Dwaraka Beach and Vengad Estate..... The Managing Committee has a duty to protect the properties of the Devaswom and they have failed to discharge their duty. The failure to take appropriate and prompt steps to evict the encroachers in Dwaraka Beach and Vengad Estate is evidence of the inefficient management and maladministration of the Committee. They have no excuse..... The Managing Committee wholly failed to discharge its duty to preserve and manage the properties of the Devaswom. No prompt and timely action has been taken to settle the accounts regarding the construction of the statue "Guruvayur Kesavan". We direct that appropriate explanation should be obtained from the Managing Committee for the above lapses and further action should be taken to protect the Devaswom property and to settle the bill finally regarding the construction of the statue "Guruvayur Kesavan". The findings in Part I page 202 (para 3) and 204 (para 19) are accepted.

P. Interim Report No. 11 of 1993 deals with premature withdrawal of deposits from Dhanalakshmi Bank Limited. We accept the finding of the Commissioner that the action of the Chairman Shri P. T. Mohanakrishnan and the then

Administrator Shri Vellodi has resulted in huge loss to the Devaswom amounting to Rs. 2,12,621.60. We are of the view that appropriate action should be taken in this behalf. The plea of res judicata, in view of the earlier proceeding -- O. P. No. 6906 of 1984 -- has no substance. The matter was not adjudicated then. Moreover, it was not a public interest litigation..... There is no material to hold that the Devaswom was in any way profited; and the plea of res judicata has no substance. There is total inaction and a negative attitude by the supervisory revisional authority to such flagrant acts of mismanagement and maladministration.....The various instances of indiscipline of Devaswom servants and the management's attitude towards discipline dealt with in Interim Report No. 11 of 1993 show the bad effect of politicalisation of administration. Disciplinary proceedings were hushed up without an enquiry and even in cases where punishment was recommended, the Committee declined to act or to impose proper punishment. The attitude taken by the Managing Committee was far from satisfactory and patently unreasonable. The complaints of the worshippers were totally discarded or brushed aside. The above instances expose the ill that has set in the administrative set up and it is high time that a meaningful and better administration is ensured in the interest of the larger worshipping public and to safeguard the Guruvayur Devaswom from disaster. Appropriate remedial action should be taken in this behalf at the earliest possible time to see that such acts are not repeated and steps are taken to ensure safeguards against repetition of such acts. The instances pointed out reflect total inaction, wrong action and careless action, which point out a state of affairs leading to "no management" at all (paragraph 38).

Q. Interim Report No. 12 of 1993 is accepted. We are inclined to hold that the inspection of the Commissioner along with the Chief Engineer and the Deputy Chief Engineer disclosed minor irregularities, variations, etc. which point out lack of proper and effective management and the administrative machinery should be geared and toned up and remedial measures should be taken in the light of the findings of the Commissioner and the Chief Engineer and Deputy Chief Engineer. We direct that appropriate remedial measures may be taken and the entire machinery geared to tone up the administration. The vigilance enquiry suggested by the Commissioner and the explanation to be called for from the Assistant Engineer I may be implemented within a period of six months from today (paragraph 39).

R. We accept Interim Report No. 13 of 1993, which highlights absolute lack of management and supervision regarding Kalanilayam. Registers may be directed to be kept up to date. Appropriate guidelines should be laid down and reasonable and fair procedure should be followed regarding bank deposits of the Guruvayur Devaswom, which are now spread all over Kerala. Similarly, appropriate guidelines should be laid down regarding the filling up of the seats under the management quota in Sree Krishna College (paragraph 40).

S. Regarding Interim Report No. 14 of 1993, we accept the overall reasoning and

findings of the Commissioner and hold that in the interest of the Guruvayur Devaswom and as opined by the Government, the Managing Committee should be directed to negotiate with SILK in the larger public interest (paragraph 41).

T. We accept Interim Report No. 15 of 1993 and concur with the finding of the Commissioner that Shri Harikrishna Menon exhibited callous indifference in his duties and can never escape from the responsibility. Appropriate disciplinary action should be taken against Shri Harikrishna Menon, P. A. (Finance). It is for the Devaswom to consider whether it is in the interest of the Devaswom to continue the said person in the same job. The observations in the matter should be given effect to within six months.

65. Summary of the findings and recommendations (Final Report) :

U. A vigilance enquiry may be ordered against Shri Rajan (Member of the Managing Committee) and his assets so as to determine whether he is holding assets disproportionate to his income. The shooting of the film "Guruvayur Mahathmyam" was a speculative, imprudent and uncalled for venture and the Managing Committee has spent trust funds negligently and imprudently. The recommendation of the Commissioner that audit query is to be answered immediately and explanation be elicited from the Managing Committee and concerned officials and follow up action should be taken to levy the loss from the persons responsible is accepted. We further accept the recommendations of the Commissioner regarding Oottupura and the western Gopuram contained in Chapter XV page 203 (items 11 and 12) and direct that appropriate follow up action should be taken.

Chapter II (Item 19) deals with various purchases for temple needs made from society without proper bills or vouchers, which requires complete investigation and audit and if it is found that any loss is caused to the Devaswom, persons responsible therefore should be surcharged.

Similarly, Part I, Chapter II (Item 22) deals with work at Vengad Estate regarding 142 bags of cement returned to the contractor. The matter requires further probe and appropriate action against concerned persons should be taken. Appropriate explanation should be obtained from the persons concerned for not having obtained return of 4 Kgs. of gold still lying with the Reserve Bank of India (paragraph 44).

V. Part I, Chapter III (final report) is regarding the complaints of the Thanthri and complaints against the Thanthri. We accept the finding of the Commissioner that politicalisation prevails in the nomination of the members of the Managing Committee and in the long run, it is ruinous to the temple and the administration. Wisdom should prevail with the concerned persons to set right matters. The allegations against the Thanthri do not merit further consideration in view of what we have stated regarding Interim Report Nos. 5 and 7 We accept the recommendations of the Commissioner regarding Part I, Chapter III contained in page 204 (item 14). Regarding non-performance of the remedial

measures in the Devaprasnam, explanation should be called for from the Managing Committee and the Administrator and remedial measures performed as directed in the Devaprasnam in concurrence with the Thanthri. We decline to accept the recommendation of the Commissioner (Item No. 16) re-enhancement of Dakshina, etc. (paragraph 45)..

X. Regarding Part I, Chapter IV of the final report dealing with temple, its rites, security and management, we are largely in agreement with the findings and observations of the Commissioner extracted in paragraph 46 of the judgment. There should be quality checking of goods obtained by the temple and appropriate competent machinery should be devised. We are also of the view that the Thanthri's suggestion contained in Part I (pages 112 and 113) extracted in paragraph 46 of the judgment, should be implemented and the Managing Committee has no option in the matter. The recommendation of the Commissioner contained in Part I (pages 206 and 207) extracted again in paragraph 46 of the judgment are accepted and should be implemented. Every day, special arrangements for at least fifteen minutes should be made, whereby old, sick, handicapped and disabled persons can worship without joining the crowd and without difficulty, which should be notified in advance for information. Serious consideration is required regarding the permissibility of plurality of persons performing the Udayasthamana Pooja. The Managing Committee should take steps as suggested in paragraph 46 of the judgment in concurrence with the Thanthri. The Managing Committee should take appropriate steps to promote the bhakthi cult also (paragraph 46).

Y. Definite rules should be made as to who are entitled to free accommodation in the Guest Houses. The recommendations of the Commissioner contained in Part I (page 207) extracted in paragraph 47 of the judgment, should be given effect to. The recommendations of the Commissioner in Part I, Chapter VI (pages 122 and 207) extracted in paragraph 48 of the judgment should be accepted in public interest and the Managing Committee shall take steps to implement the above recommendations expeditiously.

Z. The suggestions and recommendations of the Commissioner dealing with the management of moveable and immovable properties contained in Part I, Chapter VIII, which we have extracted in paragraph 49 of the judgment at pages 220 and 221, should receive the attention of the Managing Committee and steps should be taken to implement the same without delay.

Z(1) Regarding the various recommendations in dealing with the management of finance (Chapter VIII, Part I), the recommendations of the Commissioner made at pages 134 to 137 of Part I and specified as Items 11 to 16 at, pages 208 and 209 and extracted at pages 224 and 225 of this judgment should be implemented except with regard to the deposit of amounts belonging to the Devaswom in the Government Treasury. To that extent, Item 16 extracted page 224 of the judgment is not accepted. All the audit objections ever since the Guruvayur Devaswom Act came into force, are still pending. No action is taken

thereon. The Commissioner as also the Managing Committee abdicated their duties enjoined by the Statute and were thoroughly negligent in the performance of their statutory duties resulting in a stalemate in financial administration. This is a glaring instance which calls for a change in the entire set up of the administration besides the change in the personal of the Devaswom Commissioner The entire amount belonging to the Devaswom should be deposited in banks as envisaged in Chapter VIII of the Guruvayur Devaswom Rules 1980, but it should be only in banks which have a branch in Guruvayur itself. We deprecate the donations made by the Devaswom unauthorisedly and unmindful of its duties and obligations contained in Sections 10 and 27 of the Act. This should be taken note of the appropriate follow up action should be taken in that direction forthwith to recoup the amounts unauthorisedly disbursed by the then Managing Committee (paragraph 50).

Z(2) In dealing with civil engineering works and building contracts (Part I, Chapter IX) and the various illegalities and irregularities, the final recommendations made by the Commissioner are contained in paragraphs 17, 18 and 19, which we have extracted in paragraph 51 (pages 235 and 236) of the judgment. The systems and devices suggested should be followed for proper and efficient execution of engineering works and building contracts. The change in the attitude of the Managing Committee in the construction of Sri Padmam demands an explanation and appropriate action is called for in this behalf. The Managing Committee should be directed to explain regarding the construction of quarters for Government servants in Alathur (Ambadi Estate).

Z(3) In discussing personal management and discipline, the recommendations of the Commissioner contained in Part I, Chapter X-- the recommendations of the Commissioner contained in Part I (pages 210 to 212) as Items 20 to 25, are accepted (paragraph 52 of the judgment).

Z(4) The recommendation regarding the legal affairs and litigation, contained in paragraph 20 at page 210 while considering Chapter X, is accepted. The Commissioner has recommended that a District Judge should be posted on deputation to head the department. He will be invested with powers to take disciplinary proceedings against the Devaswom servants. He will be a Law Officer-in-disciplinary authority (paragraph 53).

Z(5) Regarding the functionaries under the system and their performance and need for change, we are generally in agreement with the various aspects stressed by the Commissioner and which we have summarised in paragraph 54 of the judgment. Many of the recommendations, in our view, will improve the tone and temper of the administration and are commendable and have our approval. But the alterations in the structure of the Committee and the functionaries and the amendment in the Act suggested are normally beyond the purview of a public interest litigation and we refrain from giving any affirmative directions on that aspect.

Z(6) In Part I, Chapter XIII in dealing with politicalisation and administrative disfunction, the various observations made by the Commissioner extracted by us in paragraph 55 of the judgment, are laudable, and those matters which do not require any statutory changes shall be given effect to. With regard to those matters which require statutory changes, it is for the appropriate authorities to consider (paragraph 55 of the judgment). The general recommendations contained in paragraphs 28 to 30 at page 213 (page 251 of the judgment) are acceptable and practical effect may be given to those recommendations by taking appropriate steps (paragraph 57).

Z(7). The suggestion by the fifth respondent that there should be a technical audit every five years regarding Guruvayur Devaswom is a commendable suggestion and has our approval (paragraph 58).

Z(8). Whether the provisions of the Act enabling the Hindu members of the Council of Ministers to nominate their representatives to the Managing Committee are competent and authorised in view of and after the 42nd Amendment of the Constitution, etc. in the context of Article 26 of the Constitution, is not considered and left open to be adjudicated in an appropriate proceeding at the appropriate time (paragraphs 59 and 60).

Z(9). We are of the view that a proper study regarding the existing infrastructure and the improvements necessary for the Guruvayur Temple administration should be undertaken by some recognised organisation like the Institute of Management of Government, Trivandrum so as to bring sweeping reforms to suit the modern needs (paragraph 61).

Z(10). Government should take appropriate steps to bifurcate the two offices and appoint two persons -- one to the post of Commissioner, Guruvayur Devaswom and another to the post of Secretary (Devaswoms) in the Government. Steps in that regard should be taken within six weeks from today (paragraph 63).

Z(11). We direct the Government to submit a panel of five senior I.A.S. Officers (Secretaries to Government) to enable this Court to select one of them as the Commissioner of Guruvayur Devaswom for effectively implementing and carrying out the directions contained in the judgment. This shall be done within six weeks from today (paragraph 63).

66. Before concluding, we are bound to acknowledge with thanks, the meritorious services and contributions made by several persons in connection with this litigation without accepting any remuneration. Our thanks are due to the following persons: (i) Shri S. Krishnan Unni, District Judge and Director of Training, for the enormous trouble and care taken by him in submitting a monumental Commission report, within the time indicated by the Hon'ble Supreme Court of India; (ii) Shri T. P. Kelu Nambiar, Senior Advocate, who spared no pains and assisted this Court, with lucid arguments, to arrive at proper findings and conclusions; (iii) Shri S. Sankara Subban and Shri K. C. Sankaran, Advocates, who assisted the Commissioner from time to time; (iv) M/s. Menon

and Menon, Chartered Accountants, S/Shri M. Rajasekharan Nair, retired D.G.P., Madras, C.P. Neelakanta Iyer, Professor, A. Manickam, Chief Engineer, Namboodiri, Deputy Chief Engineer and Dr. Gopalakrishnan. The above persons assisted the Commissioner with various technical missions to enable him to conduct the enquiry properly and in record time.

Our thanks are due to the following Advocates, who appeared in the case and extended their co-operation by offering useful suggestions and in discussing various aspects in the case: S/Shri T.R.G. Warriar, Senior Advocate, V. R. Venkitakrishnan, K. P. Dandapani, P. G. Parameswara Panicker, V. Divakaran Potti, N. Sankara Menon, Senior Government Pleader, Govind Bharathan, N. Premachandran and Madhu Namboodiri-pad.

We should say that it would have been much more difficult and a more time consuming process if this Court had not received the active assistance and help of the aforesaid persons. We place on record our grateful thanks to the above persons who illuminated many aspects to render this judgment. We should, in particular, state that the fourth respondent (Administrator, Guruvayur Devaswom) was very helpful, co-operative and responsible in the entire enquiry and, but for his active co-operation, it would not have been possible either for the Commissioner or for this Court to go through the entire gamut and close this enquiry in a record time as directed by their Lordships of the Supreme Court. We place on record our appreciation of the services rendered by Shri K. Raghavan, Administrator, and hope that the selfless services rendered by him may receive recognition.

67. The case will stand further posted to 7-3-1994. Respondents 1 to 3 shall file statements on or before 5-3-1994 regarding the various steps taken in accordance with the observations and directions contained in this judgment.

68. Before parting with the case, we would highlight the greatness of this temple of Lord Krishna, which is hailed as "Bhooloka Vaikundam", the abode of Lord on earth. One of the greatest philosophers and seers of the modern age, Shri Melppathur Narayana Bhattathiripad, has stated in his immortal Sthothra Kavya "Narayaneeyam" sung in praise of the Lord of Guruvayur, in the very first sloka, thus:

lkUVkuUnkocks/kkRed euqifera dkyns"kkof/kE;ka fueqZRda fuR;eqDra
fuxe"krIgL=s.k fuHkkZL;ekueA

vLi""Va n`Vek=s iqu::iq:"kkFkkZReda cEgkrRoa rRrkonekfr lk{kknxq:iouiqjs gUr
HkkX;a tukukeAA

"Oh! the luck of mankind that there shines visible to all eyes in Guruvayur, that very verity of Brahman; the embodied Supreme, of the nature of bliss entire and knowledge, the incomparable, untrammelled by the limits of time and space, the ever-free; that shines through a hundred thousand scriptures and (still) is indistinct, but that, (to the pure), the very moment when seen, is of the nature

of the highest goal of human life realised " (Translation -- Narayaneeyam by Shri P. N. Menon).

The temple and the idol of Guruvaryur is the very Brahman itself, so easily obtained, which can, in the ordinary course, be obtained only after undergoing all trials and tribulations. That is the greatness of this Lord of Guruvayur (Sree Krishna), the temple sought by millions all over and about which every Hindu holds a candle, but alas its administration has sunk to low levels, to be ashamed of. We hope and pray that this litigation will give a turning point for the improvement and better administration of the Devaswom.