

(1999) 10 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 16192 of 1999

Gopalakrishnan Nair and Another	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 164, 19, 19(1)(f), 19(5)

Citation : (1999) 2 KLJ 724

Hon'ble Judges : S. Sankarasubban, J;P.K. Balasubramanyan, J;K.K. Usha, J;C.S. Rajan, J;AR. Lakshmanan, J

Bench : Full Bench

Advocate : Govind K. Bharathan, for the Appellant; Asok H. Desai, Pallav Shishodia, M.K. Damodaran (Advocate General), K.K. Ravindranath, Alexander Thomas (Govt. Pleader), U.K. Ramakrishnan and K. Radhakrishnan (SC Guruvayoor Devaswom), for the Respondent

Final Decision : Dismissed

Judgement

AR. Lakshmanan

1. The petitioners in the Original Petition challenge the procedure for the election of members to the Managing Committee of the Guruvayoor Devaswom, which, according to Sec.4 of the Guruvayur Devaswom Act, 1978, is to be done by Hindus among the Council of Ministers of the State of Kerala. When the Original Petition came up before the Division Bench comprising of AR. Lakshmanan, Ag. C.J. (As he then was) and S. Sankarasubban, J. on 9th July, 1999 a detailed order was passed in C.M.P.No. 26343 of 1999 recording the undertaking given by the learned Advocate General and also of the Government Pleader that the Hindus among the Council of Ministers will not elect or nominate any member to the Managing Committee of the Guruvayur Devaswom without obtaining permission from this Court. A separate order of reference was also passed by the said Bench on the same day referring the matter to a larger bench of five Judges. Since the field is covered by the decision of a larger bench and three Full

benches of this Court, the Division Bench felt that this matter requires consideration by a larger bench, preferably by a Bench comprising of five Judges. That is how this matter came up before this larger Bench. The first petitioner is the President of the Kerala Kshethra Samrakshana Samithi, a body registered under the Societies Registration Act, having its headquarters at Kozhikode. According to the petitioners, the said Samithi is specifically formed and registered for the purpose of protection of the devotees of various temples in Kerala and for protection of temples, their properties, their rights, etc. The 2nd petitioner is the General Secretary of Vishva Hindu Parishad, the office of which is situated in the Pavakkulam temple premises. The petitioners, it is stated, have filed this Original Petition on their own behalf as ardent believers in God and temple worship and ardent devotees of Lord Guruvayoorappa. It is stated that they worship regularly at Sri Guruvayoor Temple and thus constitute its denomination. It is also stated that the Original Petition is filed on behalf of their respective organisations and countless millions of devotees of Lord Guruvayoorappan, who are unable to come to this Court for reasons of financial constraint and lack of organisation and facilities.

2. Section 4 of the Guruvayoor Devaswom Act, 1978, with which we are concerned reads as follows:

4. Composition of Committee:--(1) The Committee shall consist of the following members, namely:--

(a) the Zamorin Raja;

(b) the Karanavan for the time being of Mallisseri Illom at Guruvayoor;

(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;

(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.

(2) A person shall be disqualified for being nominated under clause (e) of sub-section (1), if-

(i) he believes in the practice of untouchability or does not profess the Hindu Religion or believe in temple worship; or

(ii) he is an employee under the Government or the Devaswom; or

(iii) he is below thirty years of age; or

(iv) he is engaged in any subsisting contract with the Devaswom, or

(v) he is subject to any of the disqualification mentioned in clauses (a), (b) and (c) of sub-section (3) of Sec. 5 .

(3) The members of the Committee shall, at its first meeting, elect one of its members as its Chairman.

(4) Every member of the Committee shall, before entering upon his office, make and subscribe in the presence of the Commissioner an oath in the following form, that is to say--

I, AB, do swear in the name of God that I profess the Hindu Religion and believe in temple worship and that I do not believe in the practice of untouchability.

The Managing Committee of Guruvayoor Devaswom consists of nine members as provided in clauses (a) to (e) of sub-section (1) one of Sec.4 of the Guruvayoor Devaswom Act, 1978.

3. According to the petitioners, the administration of the temple, which is the Holy of Holies for the denomination of the Temple, has become a battle field for personal political bickering and bargaining by the constituents of the leftist Democratic Front, who are avowed disbelievers in God and Temple worship and who choose to deride faith in God as a mental aberration. According to the petitioners, there is not one person in the list of Ministers given in the petition who believes in God and Temple worship. Therefore, according to them, Hindus among the Council of Ministers have no manner of right to nominate any of the members of the Guruvayoor Devaswom Managing Committee. Petitioners submitted that the move to nominate members to the Managing Committee of Guruvayoor Devaswom by Hindus among the Council of Ministers who have no faith in God and Temple worship and who are proclaimed non-believers in God, is clearly violative of the series of decisions of this Court and of the fundamental rights of the petitioners under Articles 14, 25 and 26 of the Constitution of India. In support of the above contention reliance was placed on the various decisions reported in *Manavikrama v. Thattamangalath* (AIR 1931 Mad. 328), *Namboodiripad v. C.D. Board* (AIR 1956 T.C. 19), *Kunhettan Thampuran v. State of Kerala* (1973 KLT 106(FB)), *Krishnan v. Guruvayur Devaswom Managing Committee* (1979 KLT 350 (FB)), *Krishnankutty v. State of Kerala* (1985 KLT 289 (FB)), *Narayanan Namboodiri v. State of Kerala* (1985 KLT 629(FB) and *Muraleedharan Nair v. State of Kerala* (1990 (1) KLT 874). The petitioners have thus filed the Original Petition for the following reliefs:

i) declare that the Hindus in the Council of Ministers of the leftist Democratic Front, respondents 4 to 14 herein, have no manner of authority to nominate members to the Guruvayoor Devaswom Managing Committee in the light of the pronouncement of this Honourable Court in 1985 KLT 629 and other ruling of the Kerala High Court and that any move initiated by them to so nominate and constitute the Managing Committee will be illegal and unconstitutional and violative of the petitioners Fundamental Rights under Articles 14, 21, 25 & 26 of the Constitution of India;

ii) issue a writ of mandamus or any other appropriate writ, order or direction directing respondents 4 to 14 to refrain from nominating any members to the

Guruvayoor Devaswom Managing committee in pursuance of the provisions of Section 4 of the Guruvayoor Devaswom Act 1978;

iii) issue an interim order of stay of all steps initiated by respondents 1 & 4 to 14 to nominate any member/members to the Guruvayoor Devaswom Managing Committee pending disposal of the above original petition before this Honourable Court;

The Deputy Secretary, Revenue Department, Government of Kerala filed a counter affidavit on 10th August, 1999 through the Government Pleader. According to him, the administration, control and management of the Devaswom is vested in a committee constituted as per Section 4 of the Guruvayur Devaswom Act and as per Section 4(4), every member of the committee shall, before entering upon his office, has to make and subscribe an oath as prescribed therein in the presence of the Commissioner. It is further submitted that as per the provisions contained in the Act, members of the Council of Ministers who nominate the members of the Guruvayur Devaswom Managing Committee need only be a Hindu without any insistence on their being believers in Temple Worship. According to the State of Kerala, the provisions in the Act ensures that persons who have faith in temple worship alone are nominated to the Managing Committee. It is further submitted that freedom of thought and toleration is the hall-mark of Hindu Religion and that a hindu can either be a believer in God and Temple worship or not, but that cannot be a reason or consideration to deny him the right to choose the persons for administering the temple and other religious institutions: It is stated on behalf of the State of Kerala that the duties of the members of the Devaswom Committee are purely administrative in character and their duties do not in any way touch upon the traditions religious rites in respect of any temple, which are decided by the "Thanthri" of that particular temple, and the Committee is bound to implement the directions of the "Thanthri" in those matters. In support of their contention the State has relied on the decision reported in Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, wherein the Supreme Court has held that the right to manage the property is purely secular and cannot be regarded as religious practice so as to fall under Article 25(1) or as amounting to the affairs in the matter of religion. The Full Bench decision of this Court reported in Krishnankutty v. State of Kerala (1985 KLT 289) was also relied on for the same purpose. The State has also relied on a critique titled "who is a Hindu" authored by Mr. Justice V.R. Krishna Iyer on the judgment in Muraleedharan's case (1990 (1) KLT 874) wherein a Division Bench of this Court declared that only those Hindus who believe in God and Temple worship can get nominated or vote at the election of the Devaswom Board. It was then argued on behalf of the State that by no stretch of imagination can it be said or visualised that the Hindu Ministers, even if they are not believers in Temple worship, will not, in exercise of their right, nominate a fit and proper person, capable of performing the task entrusted to them as members of the Managing Committee. According to the State, the Guruvayoor Devaswom Act provides for the secular side of the administration, control and

management of the Devaswom and that the Ministers can participate in the nomination of members to the Managing Committee without declaring themselves to be believers in Temple worship. It is further submitted that the creation of another denomination among the Hindus believing in Temple worship within the Hindu denomination for the purpose of the Act is without any legal basis, and that it is equally baseless the contention raised by the petitioners that the nomination to the Committee by the Hindus among the Council of Ministers is violative of their fundamental rights guaranteed under Articles 14, 25 and 26 of the Constitution of India and that the statutory provisions regarding the management and administration of the Devaswom or the temple properties cannot be said to contravene the fundamental rights guaranteed under Articles 25 and 26 of the Constitution and is likely to cause danger to Hindus" cause by breaking the constitutional safeguards. It is also submitted that there is no challenge to the constitutional validity of the Act.

4. An additional counter affidavit was filed at the time of hearing on 24th September, 1999, sworn to by Mr. G. Sachidanandan, Deputy Secretary, Revenue Department, in continuation of the earlier counter affidavit. Paragraph 3, 4, 5 and 6 (paragraphs 5 & 6 are numbered wrongly as 6 & 7) reads thus:

3. I respectfully say and submit that on reconsideration of entire matter, it appears that an erroneous submission/concession was made on behalf of respondent State before this Hon'ble Court in the case of Narayanan Namboodiri & Others v. State of Kerala & Others reported in 1985 KLT 641 (Paragraph 13) that the said provisions may be so construed as to mean that Hindus among the Council of Ministers should also be persons having belief in temple worship.

4. I respectfully say and submit that in the said provisions, the expression used for persons who nominate is Hindus among the Council of Ministers whereas Sections 4(4) and 5(3)(g) provide for profession of Hindu religion and belief in temple worship in respect of persons nominated. Thus, the qualifications prescribed for persons who nominate and the nominees are totally different. I therefore respectfully say and submit that on full consideration of the matter, more appropriate and correct construction of the said provision would be that Hindus among the Council of Ministers would only mean Hindus in general and not the Hindus who believe in temple worship.

6. I respectfully say and submit that concession/submission by State do not and cannot be attributed to Legislative Assembly. In matters of interpretation of Statutes, after being passed by the Legislature, only the Court can say what Legislature meant to say and none else. The State cannot retrace or even resile from a concession once made in Court on a legal proposition, first because the party concerned, on a reconsideration of the proposition could comprehend a different construction as more appropriate. Secondly, the construction of statutory provision cannot rest entirely on the stand adopted by any party in the list. Thirdly, the parties must be left free to aid the Court in reaching the correct construction to be placed on a statutory provision. They cannot be nailed to a

position on the legal interpretation which they adopted at a particular point of time because saner thoughts can throw more light on the same subject at later stage.

7. I therefore respectfully submit that this Hon''ble Court to pleased to reconsider the aforesaid judgment, especially conclusion (a) therein and declare correct law that expression Hindus in the said provision means Hindus in general and not the temple worshippers only.

In support of the above conventions now taken in the additional counter affidavit, Mr. Ashok Desai has also relied on two decisions of the Supreme Court reported in Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, and P. Nallammal v. State rep. by Inspector of Police (J.T. 1999 (5) SC 410). It was also cited for the purpose of the question whether an admission can only be on fact and not on law.

5. Mr. K. Radhakrishnan, the then counsel for the Guruvayoor Devaswom has also filed a verified statement highlighting the provisions of the Act. It is stated in the verified statement that the same has been filed for an effective disposal of the Original Petition. The council of Ministers, respondents 4 to 14, have not filed any counter affidavit denying the allegations. M. M.K. Damodaran, learned Advocate General, appeared for them and he adopted the arguments of Senior Advocate Mr. Ashok Desai, who appeared on behalf of the State of Kerala.

6. We heard Mr. Govind K. Bharathan for the petitioners and Mr. Ashok Desai for the State of Kerala. On the pleadings as above, two questions arise for determination in this Original Petition. They are:

(i) whether the Hindu Ministers in the Council of Ministers should have faith in God and Temple worship while nominating the members to the Managing Committee of the Guruvayoor Devaswom u/s 4 of the Guruvayoor Devaswom Act? and (2) whether Hindu Ministers who are not believers in God and Temple Worship can, by reason of their not having faith in Hindu God and Temple worship, are disqualified from nominating the members of the Managing Committee of the Guruvayoor Devaswom, who should have faith in God and Temple worship, and must also make and subscribe an oath affirming their faith in God and Hindu Religion and believe in Temple worship.

7. Before considering the above two questions it is worthwhile to relate the passage of events leading to the Guruvayoor Devaswom Act, 1978 (Act 14 of 1978) (hereinafter referred to the Act). The Sri Krishna Temple at Guruvayoor is one of the most famous Krishna Temples in the world. The history and legends of the Temple are intimately linked with great saints like Villwanangalam Swamiyar, Melpathur, the author of Narayaneeyam Poonthanam and Kururamma. The Temple attracts millions of devotees from all over the world. The idol installed in the temple is made of Pathalam Anjanam. The Zamorin Raja and the Karanavan of the Mallissery Illom were the hereditary trustees of the Sri Guruvayoorappan Temple (hereinafter referred to as "the Temple"). Several disputes arose

between the Zamorin Raja and the Karanavan of the Illom mainly about Orrayma rights. The matter was ultimately settled by a judgment of the Madras High Court in A.S. No.35/1887 on 1-11-880. When the Madras Hindu Religious and Charitable Endowments Act, 1926 came into force, a scheme for the administration of the Temple and its properties was settled and as per the scheme, the Zamorin Raja was entrusted with the management of the Temple under the supervision of the officers of the Board. The Karanavan of the Mallissery Illom thereupon filed O.S.No.1 of 1929 before the District Court of South Malabar and the worshippers of the Temple also filed O.S.No.2 of 1929 in the same court praying for a proper scheme which would give appropriate representation for three non-hereditary trustees from among the devotees, the District Court in its judgment dated 25-10-1929 upheld the claim of the Karanavan of the Mallissery Illom to be made a joint trustee along with Zamorin Raja and the scheme was amended accordingly. The Zamorin Raja challenged the judgment in A.S.No.211 and 212 of 1930 before the High Court of Madras. The High Court of Madras disposed of the appeals by a common judgment dated 21-11-1930 confirming the decision of the District Court recognising the right of the karavan of the Mallissery Illom to function as a joint hereditary trustees and rejected the prayer for appointment of non-hereditary trustees. Another group of devotees filed O.S. No. 1 of 1933 before the District Court of South Malabar seeking modification of the scheme and some modifications were made to the original scheme when the Constitution came into force. When the Madras Hindu Religious and Charitable Endowment Act came into force, another modification was brought into the scheme when the Commissioner Hindu Religious and Charitable Endowment Act, filed O.P. No.3 of 1965 in the Court of the Subordinate Judge of Thrissur seeking modification of the scheme. The Guruvayoor Devaswom Act, 1971, Act 6 of 1971 was framed after the Government established a Commission to enquire into the cause of the fire, which destroyed the temple in 1970. The validity of the Act was challenged before this Court by the hereditary trustees in O.P. No.812 of 1971, claiming violation of their fundamental rights under Articles 19, 25 and 26 of the Constitution. A Full Bench of this Court dismissed the writ petition by the decision reported in 1973 KLT 106. The Act was thereupon amended by Act 12 of 1972, which was again challenged in O.P. No.314 of 1973 on behalf of the denomination of the temple. A Bench of five Judges of this Court struck down the Act by the decision reported in Krishnan v. Guruvayoor Devaswom (1979 KLT 350). The Governor, thereupon, promulgated the Guruvayur Devaswom Ordinance, No.25 of 1977, which was later replaced by Act 14 of 1978. This Act was again challenged as violative of the fundamental rights of the denomination under the above three articles of the Constitution. Another Full Bench, relying upon a similar provision in the Travancore Cochin Hindu Religious Institutions Act (Act 15 of 1950) upheld the clause relating to the electoral college consisting of Hindus among the Council of Ministers. In an earlier decision of this Court, a Full Bench had construed Sections 4 and 5 of the Travancore Cochin Hindu Religious institutions Act, 1950 as vesting the right to administer the temple in Hindus who

believe in God and Temple worship. According to Mr. Govind K. Bharathan, the consistent view taken by all the Benches which have dealt with the subject is that inspite of the word "Hindu" not being defined either in the Guruvayoor Devaswom Act or the Travancore Cochin Hindu Religious Institutions Act, the word Hindu is to be construed as a Hindu who believes in God and Temple worship and profess Hindu faith and it is all the more so since the Hindu religion itself is so vast in its ambit that it encompass many faiths and many creeds. According to Mr. Govind K. Bharathan, to call a person as belonging to the denomination in relation to a temple, such a person must not only be entitled to attend at the performance of the worship or service, but also is in the habit of attending such performance and it is submitted that to the knowledge of the petitioners, the majority, if not all, of the Hindus among the council of Ministers do not satisfy the aforesaid requirement, but, on the other hand, they are positively against any such religious practice and such persons can be expected to nominate as members of the Committee only persons owing allegiance to their faith.

8. We shall now consider the arguments advanced by Mr. Ashok Desai, learned counsel appearing on behalf of the State of Kerala. According to Mr. Desai it is for the petitioners to establish that there was a religious practice which was existing as on the date of the Constitution that the denomination of temple worshippers had a right to be on the management committee and further that such management committee could only be appointed by an electoral body consisting exclusively of members of such denomination. He would further submit that the temple or a religious endowment is a secular aspect and that the management and administration of a temple is a secular matter and the State can always control the administration and management of a temple. In the case of the Guruvayur temple Mr. Desai stated that there can be no claim that there was any right in the denomination to have a person on the managing committee and further that such a person had to be nominated by the denomination. Replying to the arguments of Mr. Bharathan, Mr. Desai submitted that the State cannot have the power of nomination was rejected by the Larger Bench in *Krishnan v. Guruvayoor Devaswom*, 1979 KLT 359 (F.B.) at para 41. He also invited our attention to the decision of the Full Bench in *K. Krishnan Kutty v. State of Kerala*, 1985 KLT 289 and the analogous Travancore Cochin Act which lays down the following:--

- a) The right to manage Devaswom fund and temple property is a purely secular matter outside the purview of Articles 25 and 26(b).
- b) The right under Article 26(d) can be taken away by statutory law.
- c) Classification as to who should do the nomination is not the matter of Article 14.
- d) The right to elect a member to a Board is a right conferred by the statute and is a matter of policy.

9. Mr. Desai submitted that the right of administration does not include the right to a particular form of election, which is entirely a statutory right. The manner of election of the restriction which may be made in a matter of election or regarding the exercise of vote are not matter of religion. Mr. Desai said that Courts have approved a number of schemes regarding Committees of management. According to him the broad features discernible is that the appointments or nomination is made by the Government and not by the denomination. But normally the persons nominated or most of them belong to the denomination or are ex-officio members. Mr. Ashok Desai cited the following decisions in support of his above contention. They are: AIR 1959 SC 360, *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, , *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, , *Raja Birakishore Vs. The State of Orissa*, , *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others*, , *Bhuri Nath and Others Vs. State of Jammu & Kashmir and Others*, . According to Mr. Ashok Desai the 1970 Act in fact carries out the directions in Krishnan's case namely:

- (a) All those who are nominated will be temple worshippers.
- (b) A smaller Committee is formed.
- (c) the nomination/election is made by only the Hindu members of the Cabinet.
- (d) Section 35 is expressly added to ensure that all religious, spiritual, ritual and ceremonial matters are decided by the Thanthri.

10. So far as the Travancore Cochin Act is concerned Mr. Desai pointed out the following features:

(a) At the time of commencement of the Constitution there was no religious practice as claimed. What was in force was the Hindu Religious Institutions Ordinance 1124 (1949), which expressly provided for a ban in Section 4 under which section 3 and 4 (Travancore) and Sections 59 and 60 (Cochin). The Board consists of three Hindu members including one will be nominated by the Ruler, one nominated by the Hindus among the Ministers and one elected by the Hindus among the MLAs. and in fact the same scheme had been adopted with minor modifications in the 1950 Act and by successive ordinance. The covenants transfers the Travancore and Cochin Devaswom as a new Board.

(b) The Act deals with all the temples of Cochin and Travancore and there can be no specific type of temple worship in the various temples as it clearly shown by the decision of the Court in *A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others*, .

(c) The Act includes endowments which will have even more secular activities than temple. The whole Act was challenged and upheld by a Full Bench in *Bramadathan's case*, AIR 1956 TC 19.

(d) The Act in its amended form was upheld by the Full Bench in *Krishnankutty's*

case, 1985 KLT 289. The right to stand as a candidate and contest the election and condition imposed therefore are statutory rights and cannot be challenged as violation of fundamental rights.

(e) It is in the context of the propositions set out above in relation to Guruvayoor Act, it is submitted that the decision of the two learned Judges in Muraleedharan Nair's case, 1990 (1) KLT 874 is erroneous and does not appreciate the Full Bench in Krishnan's case, 1979 KLT 350.

11. We shall now consider the main contentions raised by Mr. Bharathan that the persons nominating or electing the members of the managing committee or Board should also be persons having faith in God and temple worship. It was submitted that a Hindu need not necessarily be a person believing in temple worship and God. According to Mr. Bharathan it is only if the persons who are electing or nominating should also believe in temple worship and in God they will be able to exercise their choice for the proper management and administration of the temple. Mr. Govind Bharathan further contended that the judgment of the five Judges Bench of this court reported in 1979 KLT 350 has in fact held that not only the members of the managing committee but also the persons electing or nominating them should also be believers in God and temple worship. Mr. Bharathan cited various portions of the above judgment to drive home the points stressed by him. He further submitted that the five Judges decision has been understood by the latter two Full Bench decisions in K. Krishnan Kutty v. State of Kerala, 1985 KLT 289 and Narayanan Namboothiri v. State of Kerala, 1985 KLT 629 and these decisions have held that 1979 KLT 350 has held that the nominating body also should consist of persons believing in God and temple worship. According to the learned counsel in the five Judges decision it was held that the management should be in the hands of the representatives of the religious denomination and hence the nominating persons also should represent the denomination.

12. We have carefully went through the five Judges judgment. According to us that judgment does not lay down the proposition of law as stated by counsel for the petitioners. The validity of the 1971 Guruvayoor Devaswom Act was the subject matter in 1979 KLT 350. Among the sections, validity, which was attacked were sections 3 and 4 of the 1971 Act. Section 3 stated that the administration and management of the Guruvayoor Devaswom will vest in the managing committee and section 4 deals with the constitution of the managing committee. It will be useful to extract certain portions of the judgment. In paragraph 28 of the judgment it was stated thus:

Elaborating this contention it is pointed out that though under the Act the administration of the Temple and all its properties is nominally to vest in a managing committee, in the context of the provisions contained in the Act conferring arbitrary powers on the government to nominate all except three out of the seventeen members constituting the Committee, and to remove at the Government's pleasure any of the members so nominated or even to supersede

the entire Committee, the said Committee can never be expected to function in an independent manner but only as an agency subservient to the Government. It is further urged on behalf of the petitioner that since the Section does not provide any guidelines as to the manner in which the persons are to be chosen by Government for nomination to the Committee the government, which in the present democratic set up will necessarily be that of the political party that is in power for the time being is left free to arbitrarily nominate as members of the Committee even persons whose political creed or personal belief may be such as is completely opposed to temple worship or even faith in God. It is pointed out that even amongst Hindus there are sections who have no faith in rituals and idol worship and who regard rituals and temple worship as based only on mere superstition and ignorance and as constituting an obstacle in the path of true spiritual progress. The petitioner urges that under S.4 of the Act it is open to the Government to fill up the Committee with persons belonging to either of the aforementioned two categories and that nothing can be more dangerous and fatal for the continued existence of the institution itself. Another point taken by the petitioners is that the denomination which is vitally concerned with the maintenance and administration of the Temple and its properties is completely left out of account in the matter of constituting the Managing Committee as no provision whatever is made for ascertaining the wishes of the denomination in regard to the choice of the members to be nominated to the Committee. Unlike in the case of other similar temples in the State governed by the provisions of the Madras Hindu Religious and Charitable Endowments Act 1951 or by the Travancore-Cochin Hindu Religious Institutions Act which contain adequate provisions enabling the members of the worshipping public to take prompt action by suit, appeal or application to check and correct any act of maladministration on the part of the persons in management, the denomination is completely deprived of the said valuable right which it had all along possessed in relation to the Guruvayoor Temple until the passing of the impugned Act. The Committee is not answerable in any manner to the denomination and none of its acts can be called in question by members of the denomination by any process either before a civil court or before any other authority. According to the petitioner it is therefore futile to contend that the Committee is a body representing the denomination.

13. In paragraph 32 of the above judgment the learned Judges discussed the right under Articles 25 and 26 of the Constitution of India and held as follows:--

The scope and extent of the rights conferred by Arts. 25 and 26 of the Constitution are now well settled by the decisions of the Supreme Court. Art.25, as its language indicates, securesto every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate and disseminate his ideas for the edification of others. Sub-clause (a) of clause (2), however, saves the power of the state to make laws regulating or restricting any economic, financial,

political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. The fundamental right conferred by this Article is subject only to the above restrictions which the Article itself has imposed.

In paragraph 39 of the above judgment the learned Judges considered the question Whether the denomination will retain the right with regard to the administration and management of the temple and held as follows:--

It cannot therefore be said on the facts of this case that the denomination had either surrendered or lost its rights in relation to the administration of the temple and its properties by any process known to law prior to the commencement of the Constitution.

In paragraph 40 the learned Judges then considered the constitution of the Committee and it was held as follows:--

We find there is considerable force in the contention of the petitioner that a person who "professes" Hindu Religion need not be a believer in temple worship and that on the other hand he may be completely opposed to the practice of idol worship. It is well known that there are sections of Hindus whose schools of thought and philosophy do not consider idol worship, rituals and ceremonials as necessary or even conducive to the spiritual progress of man. There are also political creeds or social theories which openly condemn such forms of worship as being based on mere superstition and ignorance. Many persons, who are born Hindus and who may be said to profess Hinduism solely because they have not openly renounced the Hindu faith by any recognised process, may ardently believe in such political or social ideologies which do not view temple worship with favour. There is nothing in S. 4 which precludes the Government from nominating such persons to be members of the Managing Committee under clause (g) of sub-section (1) of S.4. Quite apart from the serious prejudice and peril that will be caused to the interests of the institution by reason of such a step, it will not be possible to say that such a Committee constituted with members belonging to the aforementioned type of philosophical or political persuasion represents the religious denomination consisting of the section of the Hindu public having faith in temple worship. We have already referred to the definition of the expression "person having interest" contained in S. 9(9) of the Madras Hindu Religious Endowments Act, 1926. The identical definition is also contained in S. 6(ii) of the Madras Hindu Religious and Charitable Endowments Act, 1951 and it furnishes a useful guideline as to who alone can be considered as a member of the religious denomination in relation to a temple.

14. Before the Larger Bench a contention was raised by the petitioners that the nomination of the committee members should not be vested in the executive Government. Rejecting this contention in paragraph 41 it was observed thus:

Though it was contended by the petitioner that the power of nomination of the

members of the Managing Committee who will virtually be functioning as the trustees of the Temple should not be vested in the executive government we are not prepared to go to the extent of holding that the conferment of the power of nomination on the Government is by itself illegal. We may, however, observe that in the light of the recent amendment of the preamble to the Constitution emphasising the secular character of the State it is desirable that the legislature should consider whether the power to nominate the members of the Committee should not be conferred on an independent statutory body other than the State Government with sufficient guidelines furnished to it for ensuring that the nominations will be effected in such a way as to be truly representative of the denomination consisting of the worshipping public.

Thus the Bench directed for the consideration of the Government whether the nomination could be given to a statutory body other than the State Government with sufficient guidelines furnished to it for ensuring that the nominations will be effected in such a way as to be truly representative of the denomination consisting of the worshipping public. In paragraph 42 the Court held that Section 4(1) was invalid on the following ground:

We are of the opinion that the provisions of S.4(1) of the Act must be held to be bad for the reason that the power of nomination conferred on the Government is naked and arbitrary without any safeguard being provided for ensuring that the Committee will be a body representing the denomination. The right to administer the Temple being vested in the denomination any statutory provision which completely ignores the denomination in the matter of setting up the Committee to administer the religious institution belonging to the denomination will necessarily be violative of Article 26 of the Constitution.

Sri. Govind Bharathan contended that the observation in paragraph 42 of the judgment that the denomination should not be ignored in the matter of setting up of the Committee means that their representative should also be there in constituting the Committee. According to us the contention is not well-founded. The paragraphs mentioned above clearly show that this court held that section 4(1) was invalid as it did not lay down any guidelines for ensuring that the Committee will be a body representing the denomination. It was in this context that the words "setting up" are used in the next sentence.

15. Sri. Bharathan next contended that in the decision in 1985 KLT 289 the Full Bench of this court understood the decision in 1979 KLT 350 as laying down the proposition that persons nominating should also be formed part of the denomination. He also brought to our notice the observations in paragraphs 11 and 12 of the above judgment. The question for consideration in the above case was whether the Guruvayoor Devaswom Act, 1978, that is, the present Act, was promulgated taking into consideration the directions in 1979 KLT 350. After the decision in 1979 KLT 350, a new Act was promulgated as Guruvayoor Devaswom Act, 1978. This Act contains various provisions and according to the Government this was enacted following the directions in the judgment in 1979 KLT 350. Sri.

Bharathan contended that the present section 4(1) was attacked and this court found that the person nominating should also belong to the denomination. Since this interpretation was accepted by the Additional Advocate General and the Senior counsel appearing for the Devaswom Board, the Court did not strike down this section but read down this section. He invited our attention to paragraph 11 and certain portions in paragraph 13 of the decision in 1985 KLT 629, which read as follows:--

S. 4 of the old Act was declared unconstitutional for the reason that the Committee constituted thereunder need not necessarily be representative of the denomination and hence it was a serious infringement of the right of the denomination to administer the temple and its properties and was found to be in clear violation of Article 26(d) of the Constitution. It was also in the context of Art. 26(d) that the Full Bench considered the question as to the validity of the power vested in the Government to nominate members to the Committee. Even though the provision vesting such a power on the Government need not be held to be invalid, it was, nevertheless, felt advisable to have an independent statutory body invested with power to nominate members to the Committee with sufficient guidelines furnished for ensuring that the nominees are truly representatives of the denomination.

It was in view of such conflicting ideologies that the Full Bench of this Court in the passage quoted above thought it desirable to have an independent statutory body for the purpose of effecting nominations to constitute the Committee of Management of the Devaswom with such guidelines as to ensure that the members nominated truly represent the denomination. Even though the power of nomination vested in the Hindu members among the Council of Ministers cannot be held to be invalid as opposed to Art.14 of the Constitution as held by the Full Bench of the Travancore-Cochin High Court, it cannot be said that the purpose of an independent body envisaged in the decision of the Full Bench in Krishna's case had been fully achieved. If the statutory body empowered to effect nominations to the Committee consists of members who do not have belief in temple worship and may be even opposed to it cannot be entrusted with the task of nominating members representing the denomination of Hindus having belief in temple worship. The requirements of Art. 26(d) will be satisfied only if those in charge of administration of the Devaswom represent the denomination. It is therefore necessary to ensure that the Hindus among the Council of Ministers empowered to nominate members to the Committee are also persons having belief in temple worship. Shri T.R.G.Warrier, Advocate, appearing on behalf of the State of Kerala and the Additional Advocate General appearing on notice issued by this Court submit that clauses (d) and (e) of S. 4(1) may be so construed as to mean that the Hindus among the Council of Ministers should also be persons having belief in temple worship. We record this submission made on behalf of the respondents and construe clauses (d) and (e) of S.(1) as entrusting the power of nomination of members to the Committee to the Hindu members among the Council of Ministers having belief in temple worship.

16. According to us these observations are not in consonance with the observations of the Larger Bench in 1979 KLT 350. Further we are also of the view that what is necessary is that the Managing Committee should be the representative of the religious denomination and it is not necessary that the person nominating should form part of it. So far as the decision in 1985 KLT 289 is concerned, that decision stands on a separate footing. Paragraph 34 reads thus:

Article 26(d) guarantees to the religious denomination or any section thereof, the right to administer the property and institutions for religious and charitable purposes in accordance with law. The Ordinance as a legislative exercise by the Governor under Article 213 of the Constitution is law. This law has provided for the constitution of a Board to manage and supervise the temples and their properties. There is no case that the Ordinance has taken away the right of administration altogether from the religious denomination and vested it in any other secular authority. There is thus no violation of Article 26(d). But the law so made is amenable to challenge as violating any other provision in Part III of the Constitution. If it offends Article 14, as is contended in this case, that law is liable to be struck down on that ground. We shall therefore proceed to consider the next challenge made under Article 14.

No doubt in paragraph 35 Their Lordships referred to the Full Bench decision and held as follows:

The Full Bench therefore continued "that serious prejudice and peril" would be caused if the management of temple is entrusted to persons who have no faith in temple worship; and constitution of a committee with those unbelievers in God and temple worship will not be a representative of the denomination "consisting of the section of the Hindu public having faith in temple worship".

17. The Full Bench was only considering whether there was any violation of Article 14. We do not find anything in the judgment in holding that the persons nominating or electing should also be believers in God. We find it is a case where the legislature itself provided that the persons nominating should be the persons who believe in God. The court held that the right of election is a statutory right and the legislature is free to fix the condition for being elected. We do not find anything supporting the petitioners in the above decision, namely 1985 KLT 289. However, we are of the view that the observation in 1985 KLT 629 in paragraph 12 to the effect that the requirement in Art. 26 will be satisfied only if the Hindu Ministers among the Council of Ministers should also have belief in God and temple worship does not lay down the correct proposition of law. Learned counsel for the petitioners then cited the Division Bench decision of this court in *Muraleedharan Nair v. State of Kerala* 1990 (1) KLT 874. That decision was also given under the Travancore Cochin Hindu Religious Institutions Act.

18. The short question which arose for consideration before the Bench was whether the Hindu M.L. As had to give declaration that they believe in God and

temple worship before exercising their right of electing a person to the Travancore Cochin Devaswom Board and further whether a Hindu has to declare that he believes in God and temple worship before getting nominated to the Devaswom Board. Some of the judgments relied on by both sides and referred to in paragraphs supra have also been cited before this Bench. The Hon"ble Judges of the Division Bench held that only persons who have faith in God or in temple worship will be taken in by the word "Hindu" occurring in Act XV of 1950 and only such of those who have faith in God and in temple worship will be aware of its efficacy, necessity and importance and can be entrusted with the administration, supervision and control of the Devaswom and other Hindu Religious Endowments. It is held that only those Hindus who believe in God and in temple worship, will fulfill the requirement of the word "Hindu" occurring in the Act and the said conclusion necessarily flows from the title and preamble of the Act as also the definition contained in Section 2(b) of the Act and that if these powers are to be exercised by a Board consisting of Hindus having no faith in God and temple worship over the institutions that will be detrimental to the interests of the institution and that such a board also should be a representative of the denomination. Hence the board members should necessarily be Hindus having faith in God and temple worship and only those Hindus who believe in God and temple worship can get nominated or vote at the election of the Devaswom Board.

19. With respect we do not agree with the reasoning given by the Hon"ble Judges that the nominating body should also be Hindus who believe in God and temple worship.

20. On the other hand there are many decisions which say that the nominating committee need not be a representative of the denomination. In the light of the above we are of the view that there is no force in the contention that u/s 4(1) of the Act, Hindu Ministers should also be believers in God and temple worship. We shall now consider some of the judgments cited by Mr. Desai in support of his contention that nomination of persons to the board by the Hindu Ministers among the council of Ministers is not a matter of religion and that it is only a secular Act.

21. In *Sardar Sarup Singh v. State of Punjab* (AIR 1959 SC 860) the main argument was that Art. 26(b) of the Constitution of India gives to every religious denomination or any section thereof, the right to manage its own affairs in matters of religion and the right is subject only to public order, morality and health and that the said right is given to all members of the Sikh denomination and not to any particular members thereof to manage Sikh gurdwaras. Therefore the right must be exercised by all Sikhs and they alone must elect their representatives to manage Sikh gurdwaras and to the extent that Section 148-B departs from the aforesaid principle, it constitutes an infringement of the right guaranteed to the petitioners under Art. 26(b) of the Constitution of India. The Supreme Court rejected the said argument and observed that the inclusion of Sikh Sarpanches and Naya Pardhans who are in the service of the government as

members of the electorate violates the right of the Sikhs under Art. 26(b) of the Constitution.

22. In *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, the respondents before the Supreme Court who are Khadims of the tomb of Khawaja Mom-ud-din Chisti of Ajmer challenging the vires of the Durgah Khawaja Saheb Act XXXVI of 1955 alleging that the provisions specified in the petition in particular are ultra vires and they claimed a direction restraining the appellants the Durgah Committee and the Nasim of the said committee from enforcing any of its provisions. According to the respondents shrine of Nasrat Khawaja Moin-ud-din Chishti which is generally known as the Durgah Khawaja Saheb situated at Ajmer is one of the most important place of the pilgrimage for the muslims of India and since persons following other religions also hold the saint in great veneration, a large number of non-Muslims visit the tomb every year. According to them the right of Khadims to the offerings and Nazars made by pilgrims before the tomb and at the Durgah had been the subject matter of several judicial decisions and the same had been finally decided by the Privy Council and that the decisions in respect of their rights amount to their fundamental rights to property and their fundamental right to manage the said property. The Supreme Court, after examining the scheme of the Act and the material provisions observed that the challenge to the vires of the Act rests broadly on two principal grounds, viz., impugned provisions are inconsistent with Art. 26(b)(c)(d) of the Constitution and thereby violate the right to freedom of religion and to manage denominational institutions guaranteed by the said article and that the provisions are violative of the respondents' fundamental rights guaranteed under Art. 19(1)(f) and (g). It is obvious that Art. 26(c) and (d) do not create rights in any denomination or its section which it never had and that they merely safeguard and guarantee the continuance of rights which such denomination or its section had. In other words, if the denomination never had the right to manage the properties endowed in favour of a denominational institution as for instance by reason of the terms on which the endowment was created it cannot be heard to say that it has acquired the said rights as a result of Art. 26(c) and (d) and that the practice and custom prevailing in that behalf which obviously is consistent with the terms of endowment should be ignored or treated as invalid and the administration and management should now be given to the denomination. Such a claim is plainly inconsistent with the provisions of Art. 26. If the right to administer the properties never vested in the denomination or had been validly surrendered by it or has otherwise or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it, Art. 26 cannot be successfully invoked.

23. In *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, the validity of the Nathdwara Temple Act 1959 had been challenged. The petition attacked the validity of the Act on behalf of the denomination of the followers of Vallabha. Another writ petition was filed by a direct descendant of Vallabha who had set up an interest in regard to the Nathdwara Temple and as a person having

interest in the said temple. He challenged the validity of the Act. The High Court upheld the validity of the Act but has struck down as ultra vires a part of the definition of "temple" in Section 2 (viii), a part of Section 16 which refers to the affairs of the temple. Section 28(2) & (3), Section 30(2)(a) Sections 36 and 37. Both the aggrieved parties filed appeals and cross appeals. The Supreme Court in paragraphs 59, 60 and 61 observed as follows:--

59. In this connection, it cannot be ignored that what is protected under Arts. 25(1) and 26(b) respectively are the religious practices and right to manage affairs in matters of religion. If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Art. 25(1) or Art. 26(b) has been contravened. The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion. Therefore, whenever a claim is made on behalf of an individual citizen that the impugned statute contravenes his fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, it is necessary to consider whether the practice in question is religious or the affairs in respect of which the right of management is alleged to have been contravened are affairs in matters of religion. If the practice is a religious practice or the affairs are the affairs in matters of religion, then, of course, the right guaranteed by Art. 25(1) and Art. 26(b) cannot be contravened.

60. It is true that the decision of the question as to whether a certain practice is a religious practice or not, as well as the question as to whether an affair in question is an affair in matters of religion or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because as is well known, under the provisions of ancient Smritis, all human actions from birth to death and most of the individual actions from day to day are regarded as religious in character. As an illustration, we may refer to the fact that the Smritis regard marriage as a sacrament and not a contract. Though the task of disengaging the secular from the religious may not be easy, it must nevertheless be attempted in dealing with the claims for protection under Arts. 25(1) and 26(v). If the practice which is protected under the former is a religious practice, and if the right which is protected under the latter is the right to manage affairs in matters of religion, it is necessary that in judging about the merits of the claim made in that behalf the Court must be satisfied that the practice is religious and the affair is in regard to a matter of religion. In dealing with this problem, under Arts. 25(1) and 26(b) Latham C.J.'s observation in *Adelaide Co. of Jehovah's Witnesses v. Commonwealth*, 1943-67 Com WLR 116 at p.123 that "what is religion to one is superstition to another", on which Mr. Pathak relies, is of no relevance. If an obviously secular matter is claimed to be matter of religion, or if an obviously secular practice is alleged to be a religious practice, the Court would be justified in rejecting the claim because the protection guaranteed by Art. 25(1) and Art. 26(b) cannot be extended to secular practices and affairs in regard to denominational matters which are not matters of religion, and a claim made by a

citizen that a purely secular matter amounts to a religious practice, or a similar claim made on behalf of the denomination that a purely secular matter is an affair in matters of religion, may have to be rejected on the ground that it is based on irrational considerations and cannot attract the provisions of Art. 25(1) or Art. 26(b). This aspect of the matter must be borne in mind in dealing with the true scope and effect of Art. 25(1) and Art. 26(b).

61. Let us then enquire what is the right which has been contravened by the relevant provisions of the Act. The only right which, according to the denomination, has been contravened is the right of the Tilkayat to manage the property belonging to the temple. It is urged that throughout the history of this temple, its properties have been managed by the Tilkayat and so, such management by the Tilkayat amounts to a religious practice under Art. 25(1) and constitutes the denomination's right to manage the affairs of its religion under Art. 26(b). We have no hesitation in rejecting this argument. The right to manage the properties of the temple is a purely secular matter and it cannot, in our opinion, be regarded as a religious practice so as to fall under Art. 25(1) or as amounting to affairs in matters of religion. It is true that the Tilkayats have been respected by the followers of the denomination and it is also true that the management has remained with the Tilkayats, except on occasions like the minority of the Tilkayat when the court of wards stepped in. If the temple had been private and the properties of the temple had belonged to the Tilkayat, it was another matter. But once it is held that the temple is a public temple, it is difficult to accede to the argument that the tenets of the Vallabha cult require as a matter of religion that the properties must be managed by the Tilkayat. In fact, no such tenet has been adduced before us. So long as the denomination believed that the property belonged to the Tilkayat like the temple, there was no occasion to consider whether the management of the property should be in the hands of anybody else. The course of conduct of the denomination and the Tilkayat based on that belief may have spread for many years, but, in our opinion, such a course of conduct cannot be regarded as giving rise to a religious practice under Art. 25(1). A distinction must always be made between a practice which is religious and a practice in regard to a matter which is purely secular and has no element of religion associated with it. Therefore, we are satisfied that the claim made by the denomination that the Act impinges on the rights guaranteed to it by Arts. 25(1) and 26(b) must be rejected.

It was argued before the Supreme Court that the Board in which the administration of the property now vests is not a denomination and since the administration is now left to the Board, the denomination has been wholly deprived of its right to administer the property. The Supreme Court answered the above contention as follows:--

It is remarkable that this plea should be made by the representatives of the denomination who in their writ petition were prepared to support the Tilkayat in his case that the temple and the properties of the temple were his private

property. That apart, we think that the constitution of the board has been deliberately so prescribed by the legislature as to ensure that the denomination should be adequately and fairly represented on the Board. We have already construed S.5 and we have held that S.5(2)(g) requires that the members of the Board other than the Collector of Udaipur District should not only profess Hindu religion but must also belong to the Pushti-Margiya Vallabhi Sampradaya. It is true that these members are nominated by the State Government, but we have not been told how else this could have been effectively arranged in the interests of the temple itself. The number of the devotees visiting the temple runs into lacs; there is no organisation which comprehensively represents the devotees as a class; there is no register of the devotees as a class; there is no register of the devotees and in the very nature of things, it is impossible to keep such a register. Therefore, the very large mass of Vallabh's followers who constitute the denomination can be represented on the Board of management only by a proper nomination made by the State Government and so, we are not impressed by the plea that the management by the Board constituted under the Act will not be the management of the denomination.

24. In *Raja Birakishore Vs. The State of Orissa*, , the question of constitutionalists of Shri Jagannath Temple Act 1954 was raised. The case put forward in the petition was that Shri. Jagannath Temple was the private property of the petitioner Raja of Puri and the Act, which deprived him of his property was unconstitutional in view of Art. 19 of the Constitution. In the alternative, it was submitted that the appellant had the sole right of superintendence and management of the Temple and that right could not be taken away without payment of the compensation and the Act in as much as it took away the right without any compensation was hit by Art. 31 of the Constitution. It was further pleaded that the right of superintendence was property within the meaning of Art. 19(1) (f) and inasmuch as the appellant had been deprived of that property by the Act, it was unreasonable provision which was not saved under Art. 19(5). The Act was further attacked on the ground that it was discriminatory and was therefore hit by Art. 14 of the Constitution, as the Temple had been singled out for special legislation. It was also urged that the utilisation of the temple funds for purposes alien to the interest of the deity as proposed under the Act was illegal and ultra vires. The scheme of the Act provides with respect to the management of the temple. Sec. 5 vests the administration and the governance of the Temple and its endowments in a committee called the Shri Jagannath Temple Managing Committee, which shall be a body corporate, having perpetual succession and a common seal. Sec. 6 provides for the constitution of the committee with the Raja of Puri as its Chairman. No person who does not profess the Hindu religion shall be eligible for membership besides providing for some ex officio members, the other members of the committee are all nominated by the State Government, one from among the persons entitled to sit on the mukti-mandap, three from the sevaks of the Temple recorded as such in the record of rights, and seven from among those who do not belong to the above two classes.

The Collector of the district of Puri is an ex officio member and is designated as the Vice-Chairman of the Committee.

25. The Supreme Court, on a review of the provisions of the Act held that the Act provides for the management of the secular affairs of the temple and does not interfere with the religious affairs thereof, which have to be performed according to the record of rights prepared under the Act of 1952 and where there is no such record of rights in accordance with the custom and usage obtaining in the Temple. It is in this background the Supreme Court in paragraph 5 held that the Act cannot be struck down under Art. 14 because the Temple in the present case holds a unique position amongst the Hindu Temples in the State of Orissa and no other temple can be regarded as comparable with it. On the attack of constitutionality of the Act on the ground that it has taken away the sole management of the temple which had so far been vested with appellant or its ancestors. The Supreme Court held that if the secular management of the Temple was taken away from the sole control of the appellant and vested in a committee of which he still remains the Chairman, it cannot be said that the provisions contained in the Act for that purpose are hit either by Art. 31 (2) or by Art. 19(1)(f). The Supreme Court has further held that the office of one functionary is brought to an end and another functionary has come into existence in its place and such a process cannot be said to constitute the acquisition of the extinguished office or the vesting of the rights in the person holding that office. The Supreme Court also held in para.9 that the provisions of Sec. 15 of the Act provides that it shall be the duty of the committee to arrange for the proper performance of sevapuja and of the daily and periodical nitis of the temple in accordance with the record of rights and to arrange for the proper performance of the sevapuja etc. and provision of materials for the purpose of the sevapuja etc. is a secular function.

26. In *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others*, the primary question is as to the constitutionality of the Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983 made for the management of the temple of renowned Lord Vishwanath. In the Act there is a definition between religious and secular function of the temple. It entrusted to the Board only secular functions of administration and management of the temple and the temple fund which are not essential or integral part of religion. It is argued that the Act merely changed the management from pandas to the Board and that the legislature is competent to regulate such secular functions. The Supreme Court held that the Act has merely changed the management from Pandas to the Board and only the right of management in the pandas has been extinguished from the appointed day and placed in the board for better and proper management. It is not vested in the State nor the State acquired it for itself. In other words, the affairs of Lord Sri.Vishwanath Temple by pandas have become extinct and the Board has assumed the management and the entrustment of the management cannot be said to constitute acquisition of the property or extinguishment of right to property. The Supreme Court held that the State is required under the Act to

protect the religious practice of the Hindu form of worship in accordance with Hindu customs or usages in the temple and it is not restricted to any particular denomination or sect. The Supreme Court held that they are not entitled to the protection of clauses (b) and (d) of Art. 26 of religious denomination in the matter of management, administration and governance of the temples under the Act. It was contended that in the constitution of the committees or the Board of trustees the appellants are entitled to be nominated as members of the Board and the absence of any provision in the Act in that behalf is violative of their right to be the members of the Board. Rejecting the contention the Supreme Court has observed that the provisions of the Act deal with nomination of eminent Hindu Scholars or local eminent persons having good knowledge and experience in the management and administration of the affairs of the temple and in worship, service, rituals or observance, these persons are therefore made eligible and it is for the appropriate Government to consider whether or not any of them would be eligible to be considered for nomination as one of the eight non-official members of the Board at the relevant time. The Supreme Court has also observed in para.41 that the ratio in *Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others*, has no application to the facts in the case before it and that in *Krishnan's* case the constitution of the committee was found to be inconsistent with the scheme of management guaranteed by the Constitution and therefore it was declared to be ultra vires.

27. In *State of Rajasthan and Others Vs. Shri Sajjanlal Panjawat and Others*, , the Supreme Court examined the relevant provisions of Secs. 52 and 53 of Chap.X of the Act. Sec.53 provides that the State Government may appoint a committee of management which shall consist of a Chairman and such even number of members not exceeding ten and not less than two as the State Government may determine and that the Chairman and members of a committee of management shall be appointed by the State Government by notification in the official gazette from amongst the trustees of public trusts representing the same religion and from persons interested in such public trusts or in the endowments thereof or belonging to the denomination. The Supreme Court in para.37 held that merely because of the provisions of sub-section (5) of Sec.53 enables the Government to appoint a committee from the two categories specified in that clause, it does not mean that the Government will appoint or can appoint persons who are not constitutionally entitled to be appointed to that particular trust. It is held that the provision furnishes a safeguard against the appointment of the Chairman and members of the Committee to manage the trusts and do not subscribe or adhere to the tenants of a particular religion or denomination to which the trust belongs and to such appointment can be made which contravenes the fundamental rights guaranteed under Arts. 25 and 26 of the Constitution and if any such appointment is made, those who have a right to challenge it can do so and have the appointment struck down. In this view clause (e) of sub-section (1) of Sec. 52 read with sub-sec. (5) of Sec. 53 was held to be valid.

28. In Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another, , the writ petitions were filed at the behest of trustees of Hindu religious and charitable institutions and endowments challenging the constitutionality of certain provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. The main thrust of the argument was that Arts.25 and 26 guarantee freedom to manage religious affairs and right to freely profess, practise and propagate religion to all citizens. The Supreme Court in para.20 held thus:-

20. It would thus be clear that the right to establish a religious institution or endowment is a part of religious belief or faith, but its administration is a secular part which would be regulated by law appropriately made by the legislature. The regulation is only in respect of the administration of the secular part of the religious institution or endowment, and not of beliefs, tenets, usages and practices, which are an integral part of that religious belief or faith.

29. In Bhuri Nath and Others Vs. State of Jammu & Kashmir and Others, , the appellant challenged the constitutionality of the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988. The Governor, exercising the power under Sec. 92 of the Constitution of Jammu and Kashmir, promulgated ordinance No. 1 of 1986, which got transformed into the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1986, which was replaced by the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988. The preamble of the Act contains the object of the Act, that is, to provide for the better management, administration and governance of Shri Mata Vaishno Devi Shrine and its endowments including the land and buildings attached, or appurtenant to the Shrine, currently under the management of Dharmarth Trust. The Board got constituted under Sec. 5 of the said Act. Sub-section (1) of the said section provides that the administration, management and governance of the Shrine and its fund shall vest in the Board comprising of a Chairman and not more than 10 members and that if the Governor is not a Hindu, than an eminent person professing Hindu religion and qualified to be a member to be nominated by the Governor, shall be the ex-officio Chairman of the Board. The Supreme Court held that the preamble of the act makes it clear that the Act regulate only the better management, administration and governance of the Shrine and its endowments and the ownership of the Shrine fund is vested in the Board.

30. In A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, the abolition of hereditary rights of archakas and other officeholders was challenged. The Supreme Court held that rendering of religious service by archaka is secular part of religion, separate from performance of religious service, which is an integral part of religion and that the authority to appoint and terminate archakas by the erstwhile King being a secular function, the legislature is equally competent to abolish the hereditary right to succession of archaka, who is only a holder of office in temple and is subject to discipline and control. It was further held that hereditary succession of archaka is not a religious usage and hence,

not covered by Art. 25(1)(b).

31. The above decisions cited by Mr.Ashok Desai, would clearly show that the management and administration of a temple is a secular matter and that the State can always control the administration and management of a temple.

32. We shall now further refer to the argument of Mr.Govind K. Bharathan. He submitted that the present Sec.4(1) of the Act was attacked earlier and this court found that the persons nominating the members to the managing committee should also belong to the denomination and since this interpretation was accepted by the Additional Advocate General and the Special Counsel appearing for the Devasworn, this court did not strike down the said section, but read down the Section and the present Government is bound by the representation/concession made by the Additional Advocate General and Special Counsel appearing on behalf of the Stated. He invited our attention to paragraph No. 11 and certain portions of para 12 of the decision in Narayanan Namboodiri's case (1985 KLT (sic) which have already been dealt with in the foregoing paragraphs.

33. Mr.Ashok Desai, in reply to the above argument, submitted that the concession/submission made by the State cannot be attributed to the Legislative Assembly and the State can retrace or even resile from a concession once given on a legal proposition. He would further submit that the State can always reconsider the earlier proposition and comprehend a different construction as more proper and that the State cannot be nailed to a position on the legal interpretation, which they adopted at an earlier point of time. In support of this contention Mr.Desai relied on two decisions of the Supreme Court reported in Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, and P. Nallammal v. State rep. by Inspector of Police (JT 1999 (5) SC 410). In the first case the counsel drew the attention of the court to the earlier affidavit filed on behalf of the respondent before the Supreme Court and commended severally on the alleged contradictory reasons given therein for the exclusion of certain coke oven plants from the Coking Coal Mines (Nationalisation) Act. The Supreme Court, considering the said contentions, held that the validity of the legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the Court may ultimately find and more especially by what may be gathered from what the legislature has itself said. The Supreme Court held in para.26 thus:

But, in the ultimate analysis, we are not really to concern ourselves with the hollowness or the self-condemnatory nature of the statements made in the affidavits filed by the respondents to justify and sustain the legislation. The deponents of the affidavits filed into the court may speak for the parties on whose behalf they swear to the statements. They do not speak for the Parliament. No one may speak for the Parliament and Parliament is never before the Court. After Parliament has said what it intends to say, only the court may say what the Parliament meant to say. None else. Once a statute leaves

Parliament House, the Court is the only authentic voice, which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the court their understanding of what Parliament has said or intended to say or what they think was Parliament's object and all the facts and circumstances which in their view led to the legislation. When they do so, they do not speak for the Parliament. No Act of the Parliament may be struck down because of the understanding or misunderstanding of Parliamentary intention by the executive government or because their (the Government's) spokesman do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the court may ultimately find and more especially by what may be gathered from what the legislature has itself said. We have mentioned the facts as found by us and we do not think that there has been any infringement of the right guaranteed by Art. 14.

In Nallammal's case (supra) a counter affidavit was filed by one Under Secretary to Government of India before the Madras High Court conceding the legal position espoused by the appellants. This concession was made by the previous counsel appearing for the Union of India. But the Senior Counsel who appeared for the Union of India at a later stage, strongly supported the stand adopted by the State of Tamil Nadu. K.T.Thomas, J. speaking for the Bench observed as follows:

The volte-face of the Union of India cannot be frowned at, for, it is open to the State or Union of India or even a private party to retrace or even resile from a concession once made in the court on a legal proposition. Firstly, because the party concerned, on a reconsideration of the proposition could comprehend a different construction as more appropriate. Secondly, the construction of statutory provision cannot rest entirely on the stand adopted by any party in the lis. Thirdly, the parties must be left free to aid the court in reaching the correct construction to be placed on a statutory provision. They cannot be nailed to a position on the legal interpretation which they adopted at a particular point of time because saner thoughts can throw more light on the same subject at later stage.

In view of the additional counter affidavit now filed on behalf of the State of Kerala resiling from a concession made earlier in this court on a legal position and in the light of the two rulings referred to above, the contention raised by Mr.Govind K. Bharathan regarding the concession earlier made by the State has necessarily to be rejected.

34. In our opinion, the freedom of religion guaranteed by Art. 25 of the Constitution of India is not an uncontrolled freedom. The religious freedom which has been safeguarded by this Article is religious freedom in the background of a secular State. Articles 25 and 26 clearly makes a distinction between matters of

religion and holding and management of properties by religious institutions. In this case, the provision of law is challenged as violative of Arts. 14, 21, 25 and 26 of the Constitution. When any provision of law is challenged as violative of the above articles, the question which the court has to decide is whether or not as a result of this provision, the administration of the institutions in question has been taken from the hands of the religious denomination and vested in another body. Courts have held that the administration of the property of a religious institution is not a matter of religion. The State can control or regulate the administration of the secular affairs of a temple by suitable measures.

35. Art. 164 of the Constitution of India deals with other provisions as to Ministers. Sub-clause (3) thereof is extracted hereunder:

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

The third schedule of the Constitution of India contains the form of oath of office for a Minister for a State, which is extracted below:

I, AB, do swear in the name of God/solemnly affirm that I will bear true faith

allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the State of and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will.

The concept of secularism and tolerance find a reflection and in fact, are embodied into the aforementioned form of oath of office for Ministers of State.

36. The petitioners have not, in our opinion, established that there was a religious practice which was subsisting as on the date of the Constitution, that the denomination of temple worshipers had a right to be on the management committee and further, the members of such a committee can be elected/nominated by an electoral college consisting exclusively of members of such denomination. We are of the opinion that the management and administration of the properties of a temple is purely a secular matter and the State can always control the administration and management of the temple subject to sections 3 and 4 of the Act. We have already noticed several judgments cited to the effect that the right to management of Devaswom funds and Temple properties is purely secular matters, outside the purview of Arts. 25 and 26 of the Constitution of India.

37. On an anxious consideration of the entire materials placed before us and the arguments advanced by the learned counsel appearing on either side, as also the rulings cited and the provisions of the Guruvayoor Devaswom Act, 1978, we are of the considered opinion that the Hindu members of the Council of Ministers, who nominate the members of the Managing Committee of Guruvayoor

Devaswom need only be Hindus, without any insistence on their being believers in temple worship. Section 4 of the Act itself ensures that persons who have faith in God and Temple worship and profess Hindu religion alone are qualified to be nominated to the Managing Committee and the members shall, before entering upon their office, make and subscribe an oath in the form prescribed. The reference is answered accordingly.

38. Before parting with this case, we want to make it clear that it is a very important function or duty that is assigned to the nominating persons, namely, the duty of constituting a committee for the efficient management and administration of Guruvayoor Temple. It is true that the Act prescribes that persons who are elected as members of the Managing Committee should be persons who have faith in Temple Worship and they have also to give a declaration to that effect. But, every man who believes in God and Temple worship may not be a good or efficient administrator or may not be aware of the formalities of temple management. It is our earnest hope and desire that the persons nominated by the Hindu Ministers should be of high integrity and honesty and should discharge the functions of management and administer with care, sincerity and in the interests of the religious denomination and in public interest. With a view to avoid politics among the members of the Committee, it is desirable that no politician from any party should be nominated to the committee. Before parting with this case, we wish to place on record our appreciation of the valuable assistance that we have derived from the exhaustive and learned arguments advanced before us by the learned counsel appearing on both sides.

In the result, the Original Petition fails and is hereby dismissed. However, we order no costs.