

**(1972) 07 MAD CK 0026**

**In the Madras High Court**

**Case No : Writ Petition No. 3066 of 1970**

Kalyan Dass

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

**Date of Decision : 05-07-1972**

**Acts Referred:**

Constitution of India, 1950 — Article 25, 25(2), 26  
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —  
Section 21  
Tamil Nadu Temple Entry Authorization Act, 1947 — Section 8

**Citation : AIR 1973 Mad 264**

**Hon'ble Judges : Ramaprasada Rao, J**

**Bench : Single Bench**

## Judgement

1. A question of general importance has arisen in this writ petition. The petitioner is challenging the vires of Rule 4-A of the Rules framed by the

Government of Tamil Nadu in exercise of their power u/s 8 of the Tamil Nadu Temple Entry Authorization Act (Act V of 1947) hereinafter called

the Temple Entry Act. The petitioner as a Hindu claims that the Hindu temples in the State are maintained in accordance with certain norms as set

out in the Agamas and in strict conformity with the ancient customs and practices. He is a permanent resident of Tulasi Babu Mutt at Rameswaram

and he is a Matadipati, besides being a regular worshipper of Sri Ramanathaswami temple at Rameshwaram. He is aggrieved by the induction of

Rule 4-A by the State Government which was published in the Fort St. George Gazette dated 28-1-1970. Until January, 1970, the Rules did not

contemplate non-Hindus to enter or offer worship in a temple or use the waters of any sacred tank, well, spring or any sacred places including a hill

or hillock, street, or pathway, which is requisite for obtaining access to the

temple. This is contained in the old Rule 3(a) of the Rules framed under the Temple Entry Act. By the impugned notification a right is given to non-Hindus also, to enter into the Hindu temple precincts, which is prohibited under the ancient and accepted customs annexed to all Hindu temples. The rule violates Articles 25 and 26 of the Constitution of India and is said to be discriminatory as well, as the mode and manner of worship at Hindu temples are all matters of religion which are guaranteed by the provisions of the Constitution of India. The present rule enabling non-Hindus to enter Hindu temples not for the purpose of worship but for other purposes, does not further the object or the purpose of the Temple Entry Act. Several supporting affidavits are filed by devout Hindus to exemplify the importance of a temple, its Gopurams, its Mandapams etc. A Reference is also made to the purificatory ceremonies undertaken by the temple authorities if any defilement is caused and if anybody dies in the vicinity of the temple. A reference is also made to several Agamas which prescribe that any transgression or pollution, even in the matter of place of worship inside the temple would result in the reconsecration of the deity. Mr. R. Raghava Battar of Srirangam, who is an authority on Parameswara Samhita (Pancharathra Agama) explains what is Artha Mandapam. Mahamandapam and Garbagraha and says that if Myleshas (non-Hindus) enter the temple, it is derogatory to the other devotees who worship the Lord. If for some reason, they enter the temple, Maha Samprokshanam and Shanthi have to be performed. This view is also fortified by another devout Hindu well versed in Saiva Agamas. In the counter affidavit it is sought to be maintained that, as at present, in several temples the trustees allow non-Hindus such as foreigners to go round the Vimanam every day without any objection from anybody and that, as temples like the Rameswaram Temple and the Brahadiswarar Temple are all places of tourists' attraction, there is nothing either in the Constitution or in the accepted practice or Agamas which can prevent the rule-making authority under the Temple Entry Act to make the challenged rule. It is also submitted that the sanctity of the temple is in no way affected by allowing non-Hindus into certain portions of the temple and that too under certain guidelines as contained in Rule 4-A, which is impugned in these proceedings. The rule is said to be a laudable measure and

that it would not in any way conflict or interfere with the freedom of pious and religious Hindus worshipping in the temples. To show as to what portion of the temple is meant by Garbagraham Arthamandapa and Mahamandapa several sketches have been filed. One of the Gurukkals of Sri Ramanathaswami temple has come forward to state that the worshippers whoever they may be, are allowed by custom and practice to stand near the entrance to the Arthamantapa and have darshan of the deity. Therefore, the deponent says that it cannot also be said that by non-Hindus entering upto Mahamantapam the right of worship of any person is in any manner interfered with.

2. The main ground of attack against the rule, 4-A, is that the said rule is beyond the legislative competence of the Subordinate Legislature, under its rule-making power. This is because the Act itself only deals with Hindus and the rule extends to non-Hindus. It is said that the rights of Hindus guaranteed under Article 26 of the Constitution are violated and the rule is not saved by Article 25(2)(b) of the Constitution. On the other hand the learned Government Pleader contends that the rule is enabling, and does not in any way interfere with the accepted tenets of the Hindu Religion and there cannot be any provocation for complaint at all because it is intended to subserve the ideal of secularism without violating the fundamentals of Hindu religion or any practices connected with it.

3. Before considering the question involved, it is necessary to understand what is religion, Hindu Religion and a Hindu temple is, and what are its ceremonial precepts. The substratum of any religion lies in the rocky foundation of its ancient beliefs, rituals and practices. Religion is ordinarily referable to the expression of man's belief in and reverence for a superior human power recognized as creator and governor of the universe. Sanctimoniousness is not a necessary creed annexed to a firm religious tenet. But Hindu religion, whose origin is so ancient has maintained throughout, its ethics, practices and mandates, that they have lived to every changing times, but maintaining at all times its pristine usefulness and its inhered capacity to demand respect and reverence to such tenets. The varied facets of such respectable practices is demonstrated in our Puranas, which continue even now as divine guidelines for emancipation. But what was achieved by meditation in Kritayuga, by various sacrifices in

Tretayuga, by personal service in Dwaparyuga, can be obtained in Kaliyuga by constant worship and strict adherence to immemorial religious practices. One such accredited practice in Hindu religion is worship in temples and that too in a prescribed manner. If there are certain well-laid practices regarding the mode of worship in a Hindu temple and if such ordainments are backed up by Agamas and therefore, are matters connected with the religion, it is not for law courts to lightly ignore such deep-rooted and venerable tenets on the only ground that progressive secularism demands it or logic frowns at it or modern rationalistic enlightenment or civilization does not accept it. I am bound to quote in extenso passages from the dicta of the Supreme Court to support the view that religious practices are reflective of matters concerning religion and if religion is to be venerated, then the practices annexed thereto are equally respectable and they demand compliance, even under our Constitution.

4. The first aspect which highlights the discussion is what is religion. The Supreme Court in *The Commissioner, Hindu Religious Endowments,*

*Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, says:

Religion is a matter of faith with individuals or communities and it is not necessarily theistic. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

The guarantee under the Constitution of India not only protects the freedom of religious opinion but it protects also acts done in pursuance of a

religion and this is made clear by the use of the expression "practice of religion" in Article 25.

What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any

religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, the periodical ceremonies

should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred

fire, all these will be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants

or the use of marketable commodities will not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b).

The language of Article 25 and 26 is sufficiently clear to enable the Court to determine as to what matters come within the purview of religion and what do not. Freedom of religion in the Constitution of India is not confined to religious beliefs only. It extends to religious practices as well as subject to the restrictions which the Constitution itself has laid down.

Under Article 26(b), therefore, as religious denomination or organization enjoys composite autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters.

5. I would like to respectfully add that if in the Hindu religion a place of worship is also prescribed, then the entire temple precincts from any part of which a devotee can usefully worship has always to be held sacrosanct.

6. The Supreme Court again in *Seshammal and Others, Vs. State of Tamil Nadu*, re-stated the position by quoting the summarized portion of law,

as was done in *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*, :

The content of Articles 25 and 26 of the Constitution came up for consideration before this Court in *The Commissioner, Hindu Religious*

*Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, ; *Mahant Sri Jagannath Ramanuj Das and Another Vs. The State*

*of Orissa and Another*, ; *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, and several other cases and the main

principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is

not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and

observances, ceremonies and modes of worship which are integral parts of religion. The second is that what constitutes an essential part of a

religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are

regarded by the community as a part of its religion.

7. The second aspect is what is a temple and the ceremonious laws relating to it and its importance (Agamas).

8. The temples are popularly understood as the sole repository of "Divine power", to which supreme entity, a sincere worshipper having a belief in

such theology approaches with fervor and faith. They are of very ancient origin and the ceremonious law relating to the temples are generally stated

in what are accepted as Agamas. As the Supreme Court said in Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, .

With the growth in importance of temples and of worship therein, more and more attention came to be devoted to the ceremonial law relating to

the construction of temples, installation of idols therein and conduct of worship of the deity, and numerous are the treatises that came to be written

for its exposition. These are known as Agamas..... These Agamas contain elaborate rules as to how the temple is to be consecrated

and where the other Devatas are to be installed and where the several classes of worshippers are to stand and worship. The following passage

from the judgment of Sadavisa Aiyar, J., in Gopala Mooppanar v. Darmakarta Subramania Aiyar, 27 MLJ 253 AIR 1915 Mad 363 gives a

summary of the prescription contained in one of the Agamas.

In the Nirvachanapaddhati it is said that Sivadwijas should worship in the Garbhagraham, Brahmins from the ante chamber of Sabah Mantapam,

Kshatriyas, Vysias and Sudras for Mahamantabham, the dancer and the musicians from the Nrithamantabham east of the Mahamantabham and

that castes yet lower in scale should content themselves with the sight of the Gopuram.

9. Again Palekar, J., in a recent case in Seshammal and Others, Vs. State of Tamil Nadu, dealt with the aspect classically as follows:--

The Agamas contain elaborate rules as to how the temple is to be constructed, where the principle deity is to be consecrated and where the other

Devatas are to be installed and where the several classes of worshippers are to stand and worship. Where the temple was constructed as per

directions of the Agamas the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting of

mantras and devotional songs appropriate to the deity. On the consecration of the image in the temple the Hindu worshippers believe that the

divine spirit has descended into the image and from then on the image of the deity is fit to be worshipped. Rules with regard to daily and periodical

worship have been laid down for securing the continuance of the Divine Spirit. The rituals have a twofold object. One is to attract the lay

worshipper to participate in the worship carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in

the worship a particular attitude or aspiration and devotion is developed and confers great spiritual benefit. The second object is to preserve the

image from pollution, defilement or desecration. It is part of the religious beliefs of a Hindu worshipper that when the image is polluted or defiled

the Divine Spirit in the image diminishes or even vanishes. That is a situation which every devotee or worshipper looks upon with horror. Pollution

or defilement may take place in a variety of ways. According to the Agamas, an image becomes defiled, if there is any departure or violation of any

of the rules relating to worship. In fact, purificatory ceremonies have to be performed for restoring the sanctity of the shrine Sri Venkataramana

Devaru and Others Vs. The State of Mysore and Others, . Worshippers lay great store by the rituals and whatever other people, not of the faith,

may think about these rituals and ceremonies, may think about these rituals and ceremonies, they are a part of the Hindu Religious faith and cannot

be dismissed as either irrational or superstitious.

Dealing with a case where there was a dispute between Vadagalais and Thengalais of South India which was taken up to the Privy Council, the

learned Law Lords said that this gives the measure of the importance attached by the worshippers to certain modes of worship.

10. We have noticed myriad karmakandas of variegated varieties preached and practiced within the temple precincts and that too solidly backed

up by Agamas. Inter alia it is for consideration in this case whether exclusion of persons was also treated as an Agamaic precept and if so, what

are the dicta therein.

11. The doctrine of exclusion no doubt has suffered various inroads due again to the march of law and advanced socialistic principles at one time

based on base sanctimoniousness. Our Constitution itself has abolished untouchability in all forms. Even prior to the induction of Article 17 in our

Constitution, our law makers, particularly, in the State of Tamil Nadu, removed

certain caste disabilities amongst certain classes of Hindus by enacting the Malabar Temple Entry Act and the present Temple Entry Act. Prior to these enactment's a social evil pervaded the Hindu community which excluded certain classes of Hindus from enjoying certain privileges which included the rights of entry of such depressed classes into the temple. This ban was removed by legislation. But it is to be noted that the ban was lifted in so far as it affected a part of the Hindu Community and no non-Hindus. It is in this light that the observations of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, become relevant. There the Supreme Court was considering the vires of Section 21 of the Madras Hindu Religious and Charitable Endowments Act (Act 19 of 1951). That section empowered the Commissioner and his subordinate officers and also persons authorized by them to enter the premises of any religious institution or place of worship for the purpose of exercising any power conferred or any duty imposed by or under the Act.

The Supreme Court observed:

It is well-known that there could be no such thing as an unregulated and unrestricted right of entry in a public temple or other religious institution, for persons who are not connected with the spiritual functions thereof. It is a traditional custom universally observed not to allow access to any outsider to the particularly sacred parts of a temple as for example, the place where the deity is located. There are also fixed hours of worship and rest for the idol when no disturbance by any member of the public is allowed.

Section 21, it is to be noted, does not confine the right of entry to the outer portion of the premises; it does not even exclude, the inner sanctuary,

"The Holy of Holies" as it is said, the sanctity of which is zealously preserved. It does not say that the entry may be made after due notice to the

head of the institution and at such hours which would not interfere with the due observance of the rites and ceremonies in the institution. We think

that as the section stands it interferes with the fundamental rights of the Mathadhipathi and the denomination of which he is head guaranteed under

Article 25 and 26 of the Constitution.

12. Even in *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, the Supreme Court reiterated the same principle, while

considering the scope of the power of a denominational temple. The Supreme Court said:

There is, it should be noted, a fundamental distinction between excluding persons from temples open for purposes of worship to the Hindu public

in general on the ground that they belong to the excluded communities and excluding persons from denominational temples on the ground that they

are not objects within the benefit of the foundation. The former will be hit by Article 17 and the latter protected by Article 26..... We

must therefore hold that denominational institutions are within Article 25(2)(b).

13. While on this aspect, the main contention of Government pleader can be noticed. His case is that under the rule several safeguards are

contemplated by way of guidelines. There is no likelihood of any pollution of the Supreme power nor is there any cause for the apprehension or

anxiety entertained by the petitioner. For this purpose the relative statutory provisions have to be set out in detail.

14. The title to the Temple Entry Act (Act V of 1947) and its preamble lays emphasis on the discriminatory and unreasonable treatment meted out

to certain classes of Hindus. The Act underwent certain changes in 1949. In the title clause the Act of 1947 referred to ""certain classes of Hindus"" ,

who by custom or usage are excluded from such ""entry and worship"". This expansion was omitted by the amending Madras Act 13 of 1949. The

present title reads as follows :--

An Act to authorize entry into the Hindu temples in the Province of Madras and the offer of worship therein by all classes of Hindus. The

preamble to the Temple Entry Act refers to the accredited policy of the State Government. It reads as follows :--

Whereas it is the policy of Provincial Government to remove the disabilities imposed on certain classes of Hindus against entry into Hindu temples

in the Province;

And whereas the Provincial Government are satisfied, from the rapidity with which, under pressure of Hindu public opinion, a number of temples

have been thrown open to certain classes of Hindus in recent months, under the provisions of the Madras Temple Entry Authorization and

Indemnity Act, 1939, that the time has now arrived for (throwing open to all classes of Hindus every Hindu temple in the Province).

And whereas the Provincial Government consider that the provisions of the said Act are inadequate for the early and complete implementation of the policy of the Provincial Government aforesaid.

15. The basic intention was to remove certain disabilities thrust on certain classes of Hindus. We have no reference whatsoever to non-Hindus in this Act.

16. Section 2(1) of the Temple Entry Act defines a temple.

(1) "Temple" means a place, by whatever name known which is dedicated to, or for the benefit of, or used as of right by the Hindu Community or

any section thereof as a place of public religious worship, and includes subsidiary shrines and mandapams attached to such place.

Here again the emphasis is on the Hindu Community. One more conspicuous content of the definition is that the temple precincts include

Mandapams attached to the place. Such Mandapams take into its fold the extreme Prakaram as well. Section 2(2) defines "worship" as meaning

any religious service as the bulk of the worshippers may offer, or participate in, in accordance with such rules and regulations as may be made

under the Act. Section 4 reads as follows :--

The Trustee or other authority in charge of a temple shall have power, subject to the control of the (State) Government and to any rules which

may be made by them, to make regulations for the maintenance of order and decorum in the temple and the due observance of the religious rites

and ceremonies performed in the temple but such regulations shall not discriminate in any way against any Hindu on the ground that he belongs to a particular caste or sect.

The last portion of the above section lays emphasis once again on the policy of the State and the intention of the Legislature not to discriminate in

any way amongst Hindus. Section 7 is a penal provision and says that whoever prevents a Hindu from exercising any right conferred by this Act

shall be punishable etc. Here again there is no mention about a non-Hindu. It is in the above context that the rule making power of the challenged

authority, namely, the State Government appears. Such rules shall be for the purpose of carrying into effect the provisions of the Act in respect of

temples.

17. In exercise of such powers u/s 8 rules have been framed. Rule(3) was one such rule formulated. It reads as follows :--

3. The classes of persons mentioned hereunder shall not be entitled to enter or offer worship in a temple or bathe in or use the waters of any

sacred tank, well, spring or water-course appurtenant to the temple whether situate within or outside the precincts thereof, or any sacred place

including a hill or hillock, or a road, street, or pathway which is requisite for obtaining access to the temple:--

(a) Persons who are not Hindus;

(b) Persons under pollution arising out of birth or death in their families;

(c) Women at such time during which they are not by custom and usage allowed to enter temple;

(d) Drunken or disorderly persons;

(e) Persons suffering from any loathsome or contagious disease;

(f) Persons of unsound mind except when taken for worship under proper control and with the permission of the executive authority of the temple

concerned:

(g) Professional beggars.

18. On 5-1-1970 the above rule was amended by deleting clause (a). Soon thereafter certain guidelines were issued consequent upon the omission

of clause (a) in Rule (3) which were to be followed while allowing non-Hindus into the temple; but as guidelines by themselves may not have the

force of law, the present Rule 4-A has been added. Rule 4-A reads:

Rule 4-A:

Persons who are not Hindus shall be admitted into temples provided:

(i) they are admitted only during the time when pooja is not performed.

(ii) they are permitted to enter into Mahamandapam and not to the Arthamandapam.

(iii) they inform the temple authorities of the object of their visit, obtain a pass and enter into the temple with a temple guide or if there is no guide a

servant of the temple.

(iv) they abide by the customs and usage prevailing in the temple;

(v) they safeguard the general and special sanctity and honor of the temple;

(vi) they do not take photographs of any part of the temple without the permission of the appropriate authority.

19. We have already seen that the Legislature, in order to respect the policy of the Government to avoid discrimination amongst Hindus, tried to

remove the disability of certain classes of Hindus, who were prevented entry into Hindu Temples. But this statutory benefit was always intended

to confer a privilege on "certain classes of Hindus" and not on non-Hindus. But the impugned rule is sought to be justified on the ground of

reasonableness, and it is said that the guidelines referred to already and now incorporated in the rule itself, are sufficient to allay any fears in the

minds of Hindus. It is here, the force of practice in the temple, already referred to, and which are to be treated as matters of religion within the

meaning of Articles 25 and 26 of the Constitution of India looms large. It is nobody's case that non-Hindus ever had a right to enter Hindu temples

not for worship but for sight-seeing and as tourists-Hindus temples are always treated as places of worship and such veneration to the temples, its

place, rituals, and practices connected thereto have become part of the Karmakanda of Hindu theology. By way of analogy, it is well known that

near a Muslim mosque no band or music or amusement could pass by so as to disturb the peace of the precincts of the mosque, no matter whether

it is Namaz time or not. It is also the practice in mosques not to allow non-Muslims at a particular place of worship inside the mosque. These rules

of propriety, being a matter of Islamic religion are promptly respected by all citizens of India embracing other religions. There is positive indicia to

hold that if a Hindu temple is intended for the spiritual benefit of all classes of Hindus and the temple as a whole starting from the Gopuram and

leading to the Dwajasthambam, Arthamandapam, Mahamantapam and Garpagraham is to be kept undefiled and unpolluted, no non-Hindu can for

pleasure and social evaluation seek entry into such temples. The purpose of such entry is totally unconnected with any matter of religion known to

Hinduism and to Hindus. Such entry would negate the very object and avowed purpose of the temple entry itself which says that entry into temples

is available to all classes of Hindus.

20. It is not as if the intention of the Agamas and the accepted practice prevailing in Hindu temples is to be intolerant as alleged in the counter-

affidavit; such attitude only reflects the innate religious consciousness of all classes of Hindu worshippers that they are protecting the ancient sanctions and that they are permitted to do, under the provisions of the Constitution of India. This attitude is not uncommon in other Religion as well. The comparison to places of worship amongst Christians is solely inappropriate as they never pleaded at any time any ritualistic sanction to their Churches preventing from entering the temple on the ground of pollution etc. Again the mere fact that in certain temples including the Brihadeeswarar temple in Thanjavur certain unholy but unauthorized privileges are encouraged does not make any difference in principles. I may usefully refer at this stage to the rigor of Hindu ritual practice as regards the mode and place of worship. In *Sankaralinga Nadan v. Raja Rajaswara Dorai*, 35 Ind App 176 it was held by the Privy Council affirming the judgment of the Madras High Court that a trustee who agreed to admit into the temple persons who were not entitled to worship therein, according to the Agamas and the custom of the temple was guilty of breach of trust. This has been quoted with approval by the Supreme Court in *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, . Even in the recent 1972 case the Supreme Court laid stress on the importance of modes of worship and I add with respect that the place of worship also has to be understood in accordance with the prescription in the Agamas. If, therefore, it is not unreasonable to assume that non-Hindus desiring to enter the temple or any portion thereof not for worship and not because of their subservience to Hindu theology but to view certain paintings or architectural expositions in the temple or to study the excellence of Hindu Art inside the temple, Courts and even our legislation cannot convert our temples into archaic objects of visual importance intended for public exhibition.

21. Even viewing the subject from the prescription of the policy of the Act. I am unable to appreciate how Rule 4-A which is challenged in this Writ Petition serves any of the purposes of the Act or furthers the accredited policy of the Act. The policy is set out in the title and in the preamble. The purpose is to remove the ban on a class of Hindu who were denied the rights which other Hindus enjoyed. A non-Hindu is not a Hindu. He belongs to a different class. He cannot on mundane and social considerations claim the same privileges or right as a Hindu regarding entry into a

Hindu Temple. The Legislature also cannot, in exercise of its rule making power, treat the non-Hindu in the abstract as a Hindu, by ignoring the policy and intendment of the temple entry Act. This is a well-known proposition of law.

22. Though by necessity the media of subordinate legislation is thought of so that "the child may dwarf the parent", yet such rules made by the rule making body by virtue of specific statutory authority are always subject to the test whether they fall within the periphery of the power conferred.

As is often said, the author of the power is the Legislature; the wielder of it is the Government. Whether the Government has exceeded the

statutory mandate is a question of ultra or intra vires. The learned Government Pleader says that as Rule 3(a) has been omitted and as that rule has

been accepted by the Legislature the later Rule 4-A, which is consequential has to be upheld. It is accepted law that even though the effect of a

rule is made conditional upon ratification by the appropriate Legislature and may have received such a ratification, it is still open to Courts to find

out whether it falls within the true content and purport of the enactment, under which the rule making authority purports to derive its own power.

Here, the policy of the Act is in one way. It removed certain social disabilities on certain classes of Hindus. This is the essential feature of the

Temple Entry Act. This cannot be given the go-by by the subordinate Legislature by assuming a power to legislate and apply the Act almost as a

matter of course, though subject to certain formal restrictions, to non-Hindus. It is accepted law that changing the essential characteristics of an Act

is a legislative function and this power cannot be delegated as that would mean abdication. A subordinate legislative authority cannot under the

guise of making rules transpose themselves as the legislature itself and by laying guidelines, legislate on a purpose not contemplated by the parent

Act itself. Old Rule 3(a) might have been omitted. The Legislature might have ratified it. That would not enable the State Government as delegated

authority to make Rule 4-A which runs contrary to the policy and intendment of the parent Act.

23. In the light of the discussion as above, I am of the view that Rule 4-A is ultra vires of the powers of the rule making authority and that rule,

which is challenged herein and said to have been made under the powers conferred on the State u/s 8 of the Temple Entry Act, is struck down on

the ground that it is ultra vires the statute and beyond the scope of the delegated authority conferred by the statute.

24. The writ petition is, therefore, allowed. But there will be no order as to costs.

25. Petition allowed.