

(1990) 04 KL CK 0011
In the High Court Of Kerala
Case No : O.P. 5445 of 1989-W

M. Muraleedharan Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-04-1990

Acts Referred:

Citation : AIR 1991 Ker 25 : (1990) 3 ILR (Ker) 970

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : K.S. Rajamony, for the Appellant; Govt. Pleader, T.K. Chandrasekhara Das and U.K. Ramakrishnan, for the Respondent

Final Decision : Allowed

Judgement

K.A. Nayar, J.—The short question arises for consideration in this Original Petition is whether the Hindu M. L. As. had to give a declaration that they believe in God and temple worship before exercising their right of electing a person to the Travancore-Cochin Devaswom Boards and further whether a Hindu has to declare that he believes in God and temple worship before getting nominated to the Devaswom Boards.

2. Vacancies having arisen in Cochin and Travancore Devaswom Boards, the second respondent, Shri. K. K. Sunkara Gunakan, a retired District Judge, as authorised person under Sections 5 and 64 of the Travancore-Cochin Hindu Religious Institutions Act issued a notice dated 13-6-1.989 to all Hindu M. L. As. of the State of Kerala to attend a meeting to be held between 9.30 a.m. and 12 hours on 6-7-1989 at the Durbar Hall, Government Secretariat, Trivandrum for the purpose of electing a member each to the Travancore and Cochin Deveswom Boards, it is mentioned in that notice that if there be a contest, pulling shall be held immediately thereafter and results declared on the same day. Nomination papers had to be presented to him between 10 a. m. and 12 hours at the Durbar Hall on 4-7-1989 and the same will be scrutinised at 3 p. m. on the same day. The election, if required, it is stated, will be held according to Rules mentioned in

Schedule II copy of which was also unnexed. In the Schedule annexed R. 3(b) is given as follows:

"3(b) The person nominated shall affix his signature to the nomination paper before it is delivered to the Chairman, stating that he believes in God and professes the Hindu Religion and believes in temple worship and that he is willing to serve as a member of the Board, if elected."

It is stated that Rule 3 (b) as extracted above was a mistake crept in because the Rules amended by Ordinance No. 86 of 1984 was wrongly adopted. The amendment had not taken effect as the Ordinance was lapsed and as soon as the mistake was found out the same was rectified by Circular dated 28-6-1989 and the correct rules were enclosed as revised Schedule 11. To that effect an affidavit was filed in C. M. P. 16283 of 1989. The correct Rule 3 (b) is contained in the revised Schedule II annexed to the letter dated 28-6-1989 which reads as under:

"3(b) Any Hindu member of the Legislative Assembly of the State of Kerala may nominate a duly qualified person who is not subject to any disqualification for election as the member of the Board by delivering to the chairman between the hours fixed by the Chairman for the receipt of nomination papers, a nomination paper signed by the proposer and another Hindu member of the legislative Assembly of the State of Kerala as seconder and stating the name of the person nominated. The person nominated shall affix his signature to the nomination paper before it is delivered to the Chairman stating that he is willing to serve as a member of the Board, if elected."

The revised rule does not require persons submitting nomination papers to declare that he believes in God and professes the Hindu religion and believes in temple worship. Section 6 of the Act provided only that a person shall not be qualified for nomination or election as a member of the Board unless he is a permanent resident of the Travancore-Cochin area and professes Hindu religion and has attained 35 years of age.

3. The petitioner had sent a memorandum on 15-4-1989 to the Governor of Kerala requesting that only those Hindu M. L. As. who give declaration that they believe in God and temple worship should be given the right to participate in election either by getting nominated or by voting and further stating that by the term "Hindu members" it was meant only persons who profess Hindu religion and believe in God and temple worship. The memorandum pointed out that Smt. Saraswathy Kunjukrishnuds term expires on 22-4-1989 and a member has to be elected in her place by Hindu member of the Assembly. It is apprehended that non-believers may also be permitted to participate in the election and therefore the Governor was requested to fill up the vacancy of the member of Travancore Devaswam Board by the Hindu members of the Kerala Legislative Assembly in which only those Hindu members who gave a declaration that they believe in God and temple worship should be given the right to participate and vote for election to the Board. The authorised representative commissioner by the Governor who

is to conduct the election was requested to be given necessary instruction in this regard. Since this request has not been fully carried out in issuing the notice by the second respondent for election and it is apprehended that election will take place on 6-7-1989, the petitioner filed the Original Petition praying to quash the notice issued to Hindu M. L. As. to the extent it allows them to vote at the election for electing two members of the Devaswom Board without giving a declaration that they believe in God and temple worship and further to declare that only those Hindus who file a declaration that they believe in God and temple worship alone can get nominated or vote at the election of a member each in the two Devaswom Boards.

4. When the Original Petition came up for admission on 5-7-1989, this Court by order passed on C. M. P. No. 16283 of 1989 permitted the proposed election to the Travancore-Cochin Devaswom Boards by the members of the Legislative Assembly to go on as scheduled on 6-7-1989, but directed that the elected candidate shall not fill up the vacancy until further orders from this Court. The election was held as scheduled on 6-7-1989. Shri V. Akhileswaran was elected without contest to the Cochin Devaswom Board and Shri. K. G. Venugopal was elected to the Travancore-Devaswom Board by a majority of 52 votes to 23. An affidavit in C. M. P. No. 16283 of 1989 was sworn in by the Deputy Secretary to Government on behalf of the first respondent in which it is stated that even though the law does not contemplate belief in God and temple worship the two persons who have been elected would satisfy that conditions also. But this Court on 16-8-1989 passed further orders confining the interim order dated 5-7-1989 to Travancore Devaswom Board alone in the light of the fact that the member to Cochin Devaswom Board was elected unopposed. The 5th respondent, M. L. A. Arunmula was allowed to be impleaded in C. M. P. 16597 of 1989 in a representative capacity. Steps in that regard also have been taken. When the arguments in the original petition were coming to an end Shri K. S. Venugopal who was elected to the Travancore Devaswom Board filed C. M. P. 22296 of 1989 for getting himself impleaded as additional respondent. Even though this Court did not implead the petitioner in the C. M. P., we indicated to the petitioner that he will be permitted to argue the matter and we heard counsel on behalf of Shri. Venugopal also. Shri Venugopal in his affidavit dated 28-8-1989 filed in support of the C. M. P. stated that he is a devoted Hindu and believer in God and temple worship. He also stated that he regularly worships in all the important temples in and around the state of Kerala.

5. Smt. Saraswathy Kunjukrishnan whose term of office was over on 22-4-1989 was continuing even after the expiry of her term. u/s 10(3) of the Act a member of the Board shall, on the expiration of the term of office, continue in office until the vacancy caused by expiration of his term of office is filled up. Even though the petitioner originally challenged the election to both the Cochin and Travancore-Devaswom Boards, in view of the fact that the member to the Cochin Devaswom Board was elected unopposed, the argument of the petitioner was confined to Travancore Devaswom Board alone.

6. The contention on behalf of the petitioner was that the legislative intent behind the provisions of Act 15 of 1950 was to confer the right to vote and stand for election for membership of the Board only on Hindus who believe in God and temple worship. If the management and administration are entrusted to a Board consisted of persons who are not believers in God and temple worship the sanctity and the very existence of Hindu temples will be undermined. If the term "Hindu" occurring in the Act is interpreted as any person who is a Hindu by birth irrespective of his belief in God and temple worship, then the purport of the Act will be defeated in that a person who has no belief in temple worship can be nominated and such a person also can be elected by Hindu M. L. As who by themselves do not believe in God or in temple worship. It is contended on behalf of the petitioner that belief in God and temple worship are essential for anyone who professes Hindu religion and only those who believe in God and temple worship can claim to be a Hindu member, entitled to participated in the election and nomination process for voting as well as membership of the Devaswom Board. To remove doubt an Ordinance called the Travancore-Cochin Hindu Religious Institutions (Amendment) Ordinance, 1984 (72 of 1984) was promulgated by Governor which came into force with effect from 10-10-1984. The purport of the ordinance was to define Hindu as a person who believed in God and temple worship and Hindu religion. But the ordinance lapsed and it was not substituted by an Amending Act. The contention of the petitioner is that notwithstanding the lapse of the Ordinance only the Hindu members of the Assembly who believed in God and temple worship can participate in the election. According to the petitioner Full Bench of this Court in Tharmel Krishnan v. Guruvayoor Devaswom, 1979 Ker LT 350 : (AIR 1978 Kerala 68) affirmed in S. P. Mittal v. Union of India, : AIR 1983 SC 1 laid down that persons who do not have faith in God and temple worship should not be allowed to choose a member to manage the affairs of the Board. Any other interpretation to the term Hindu, according to the petitioner, will violate the guarantee given to the religious denomination under Articles 25 and 26 of the Constitution. The petitioner further contended that large number of Hindu members belonging to the ruling party (Marxists) do not believe in God and temple worship and therefore the interest of the temples in the State should not be entrusted to a Board elected by them. Even though it is not relevant in this case, the petitioner contended that the same principle should apply to the nomination made by Hindu among the Council of Ministers. If the administration of temple and the right to elect members of the Board are entrusted to non-believers that will destroy the institution itself. The argument of the petitioner is supported by Shri. Govind Bhurathan, counsel appearing on behalf of two petitioners in C. M. P. No. 20962 of 1989, a petition filed to get themselves impleaded. Even though we did not implead the petitioners in the C. M. P. we heard arguments of counsel on their behalf. Similarly C. M. P. No. 19467 of 1989 was filed by another devotee who wanted himself to be impleaded. In that also we did not implead the petitioner but heard argument of Shri. C. K. Sivasunkara Punicker who supports the petitioner in the Original Petition.

7. On behalf of the first respondent it is submitted that the duties and functions of the Devaswom Board are purely administrative in character, the religious aspects are decided by the thanthricks, that the Hindu Religious Institutions Act 1950 was not intended to touch matters of religion and therefore belief in God and temple worship are not essential to be a member of the Devuswam Board. It is not correct to any that the legislative intent behind the provisions of the Act was to limit the participation in the election to the Devaswom Board only to Hindus and if it is construed that such a Hindu must be a person who believes in temple worship it will not advance the purpose of the Act. In fact such an interpretation will make the Act unworkable in view of the divorce philosophy, touching and belief held by the Hindus. According to the Advocate General this aspect has been considered at the time when the legislature enacted the law. An amendment was suggested to define the term "Hindu" so as to exclude those who do not believe in temple worship but when the motion was put to vote the same was defeated by a huge majority as it will precipitate a cleavage in Hinduism. The then Chief Minister Shri. T. K. Narayana Pillai in his speech opposing the amendment stated that there are several Hindus who may not believe in temple worship and therefore the legislature thought it unnecessary to exclude any person born as a Hindu from the category of "Hindu members" on the basis of their personal faith. According to him the amendment was an attempt to narrow down the definition of Hindu. The legislature once again made an attempt in 1984 to define the term "Hindu" which also did not fructify into an Act of legislation. Thus it is argued that the legislative intent was not to compel anyone to declare his faith in God and temple worship and not to exclude any one from the term "Hindu" by reason of any such peculiarity of faith.

8. Now the function of this Court is only to apply the law as it stands. The duties and responsibilities of this Court is to declare the right vested in the parties. It would be injudicial for a Court as in *Reg. v. Botcler* (1864) 4B, & S. 959 to refuse to apply the substantive law on the ground that the court regarded that law as unfair or wrong. If we find any substantive law is wanting in justice it is not for us to pass a qualitative judgment on the existing law even though we would be justified in pointing out the injustice of the situation calling for an immediate legislative remedy (See *Reginu v. Walsall Justices Ex. P.W.* (1989) 3 WLR 1311). Further, how a Board should be constituted and how it should be manned etc. are policy decision and the Court will not normally interfere with legislative wisdom in this regard. (See *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, *I.K. Soni v. State of Gujarat*, 1989 Lab IC 1446 (Guj), *Hindi Hitrakshak Samiti and others Vs. Union of India and others*, and *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*,

9. The Hindu temples in the State of Travancore were mostly under private management called Coralars or Karakars. When those bodies were found mismanaging the institutions, Col. Munro decided in 987 ME (1811-1812 AD) that the State should assume control over them and therefore the Government assumed the management of those temples with their properties moveables and

immovables. With a view to secure better efficiency in the management and control of the Devaswoms, M/s. Chempakuraman Pillai and N. Rajarum Rao were deputed in July 1905 to investigate the question of regulating their expenditure both as regards puthivus and as regards the purificatory ceremonies. As the information collected by these officers was merely of a preliminary character, Mr. M. K. Ramachandra Rao, a Puisne Judge of the High Court was, in May 1907, placed on special duty to make a more detailed investigation into the affairs of the Devaswoms and to formulate proposals which would enable the Government to secure a more efficient management and control. Thereafter the Government appointed a mixed committee of Hindus and non-Hindus to consider and report upon the exact character of the assumptions of those Devaswoms, the feasibility of separating their administration from the Land Revenue Department and the nature and cost of the additional staff that might be necessary if the organisation of a separate department be deemed desirable. The Committee, in their report recommended that the administration of the Devaswom should be separated from the Land Revenue Department and entrusted to a distinct agency. The members of the Committee differed in one respect. While the majority held the view that the State being a Sovereign Proprietor is legally accountable to none for their management the dissenting member was of the opinion that the assumption extended only to management, thereby constituting the State a trustee of the Devaswoms and that as the State has mixed up the trust property with its own, the entire expenditure in connexion with the Devaswoms, however large, is a legitimate charge upon its general revenue.

The Government of Travancore after taking necessary legal opinion came to the conclusion that the State's assumption of these Hindu Religious Institutions in the days of Col. Munro was an act done in the exercise of the traditional right of "Malkoimn" inherent in the Hindu Sovereigns of the State and that it was not an act of confiscation. The Government therefore were under the undoubted obligation to maintain the Devaswoms for all time properly and efficiently. The Government also came to the conclusion that for the proper discharge of this obligation the creation of a separate department which will devote its attention exclusively to the administration of Devaswoms is necessary. Considering that it is the solemn right and duty of the Government to maintain efficiently and in good condition the Hindu Religious Institutions in the State of Travancore irrespective of the income from such institution or the cost of such maintenance and in pursuance of such right and duty of the State the Travancore Government issued the Devaswom Proclamation on 12th April, 1922 corresponding to 30th Meenom, 1097. It also constituted a Devaswom fund for the Devaswoms mentioned in the schedule to the proclamation. Section 7 of the Proclamation provided for creation of a Department for better and more efficient management and more effective control over the Devaswoms, Clause 7 is as under:

"7.(1) Our Government may for the better and more efficient management and more effective control of the Devaswoms mentioned in the schedule organised a Devaswom Department of the State consisting of such number of officers and

other servants as they think fit.

2. The expenditure in connection with the said Department shall, notwithstanding any thing contained in Sections 3 and 4, be not out of the general revenue of the State."

The Devaswom under the proclamation is managed by a Devaswom Department of the State consisting of such number of officers and other servants. The Government had power u/s 8 to define the powers and duties of the officers of the Devaswom Department to regulate the scale of expenditure of the Devaswoms and to make rules generally for carrying out the purpose of the proclamation. The Devaswom Department has become a part of the Government Department. The Maharaja did not want to leave the administration of the Devaswoms to the State Government in the new set up. Therefore on 10-8-1123 (23-3-1948), yet another proclamation was issued by which the Maharaja assumed control and management of Devaswoms and Devaswom Department of the Government. A material change also made in respect of funds from which expenditure was to be made. It was also provided that expenditure to be made not from general revenue but only from Devuswom fund. Thereafter when Travancore-Cochin States were integrated it was provided by Section 8(c) of the Covenant that the administration of the Devaswoms, Hindu Religious Institutions and Endowments and their properties and funds would vest with effect from 1-8-1949 in a Board known as Travancore Devaswom Board. The Hindu Religious Institutions Ordinance 10 of 1124 was promulgated which came into force on 1-8-1949. Before expiry of the period of Ordinance, Act 15 of 1950, namely the Travancore-Cochin Hindu Religious Institutions Act, 1950 was enacted. Section 3 of the Act provided that the administration of incorporated and unincorporated Devaswoms and of Hindu Religious Endowments and all their properties and funds as well as the fund constituted under the Devaswom Proclamation which were under the management of the Ruler of Travancore prior to the first day of July, 1949 except the Sree Padmanubhaswamy Temple shall be vested in the Travancore Devaswom Board. Section 4 of the Act provided the constitution of the Travancore Devaswom Board. It shall consist of three Hindu members, and of whom shall be nominated by the Ruler of Travancore, one by the Hindus among the Council of Ministers and one elected by the Hindus among the members of the Legislative Assembly of the State of Travancore-Cochin. Section 5 provided that a meeting of the Hindus among the members of the Legislative Assembly of the State of Travancore-Cochin shall be summoned under the authority of His Highness the Raj Pramukh by any person authorised in this behalf by the Raj Pramukh to meet at such time and place and on such date as may be fixed by him in this behalf for the election of a member to the Board. The election had to be held in accordance with the rule specified in Schedule II by the person commissioned by the Raj Pramukh to preside over the meeting. u/s 6 a person shall not be qualified for nomination or election as a member of the Board unless he is a permanent resident of the State of Travancore-Cochin and professes the Hindu Religion and has attained thirtyfive years of age. Thus it will be soon that

the Devaswom Board has, by the Act, broad based giving it a representative status, for the Hindu Ruler of the State of Travancore, Hindu among the Council of Ministers and the Hindu among the members of the Legislative Assembly. The power of nomination given to the Ruler of Travancore was taken away and was given to the Council of Ministers by Travancore-Cochin Hindu Religious Institutions (Amendment) Act 70 of 1974. Thereafter, of the three Hindu members of the Board, two will have to be nominated by the Hindus among the Council of Minister. The power given to Rajpramukh was subsequently vested in the Governor.

10. The question whether the provision for confining the vote to the Hindus among the Council of Ministers and the Legislative Assembly violates the fundamental rights under Articles 14, 15(1), 19(i)(f) and (g) and 26 of the Constitution came up for consideration before a Full Bench of the Travancore-Cochin High Court in *Bramadathan Numboodiripad v. C. D. Board* AIR 1956 ker 19. While considering the like provision for the constitution of the Cochin Devaswom Board, namely, Section 63 of the Act, the Full Bench, speaking through M. S. Menon J., as he then was, observed that Section 63 of the Act only creates two electoral colleges, and consisting of the Hindu us from among the Council of Ministers and the other from among the Hindu members of the Legislative Assembly and considering the nature and functions of the Board the restriction of the membership of the electoral colleges to members of the Hindu faith appears to be eminently reasonable. The Court held (at p. 22 of AIR):

"Whether the voting should be by all the adults professing the Hindu faith or by an electoral college is but a matter of policy. So also are the qualifications which the members of an electoral college should possess and there is apparently nothing wrong in saying that the members of the college shall be not merely Hindus but also members of the Cabinet or of the Legislative Assembly thus emphasising the ability and uptitudes implicit in the membership of such democratic institutions.

In imposing such a qualification, no wedge is being driven between the Hindu members of the Council of Ministers and the legislative Assembly, and those who do not follow the Hindu faith. The special needs of a situation will always demand a special treatment and so far as we can see there is no violation of the right to equality guaranteed by Article 14 of the Constitution."

After considering the contention whether the like provision in the Constitution of the Cochin Devaswom Board violates Articles 14, 15(1), 19(1)(f) and (g) and 26 of the Constitution, the Full Bench held :

There is nothing in Sections 63 and 64 which can be considered as an interference with the right of the Hindus to manage their own affairs in the matters of religion."

The Full Bench also was "not prepared to say that the provision violates the right of the Hindus to administer according to law the property of their religious

institution". Ultimately it held that the restriction imposed by the Act in the choice of members of the Devaswom Board do not violate the provisions of any of the Articles. Therefore it has to be held that Sections 4 and 5 are not, prima facie, violative of Articles 14, 15(i), 19(1)(f) and (g) and 26 of the Constitution of India.

11. The entire controversy in this case centres round the meaning and scope of the word "Hindu" occurring in Travancore Cochin Hindu Religious Institutions Act, 1950. What is meant by the term "Hindu" occurring in the Act? The said word is not defined in the Act. Will it take in any person, who is a Hindu by birth, irrespective of his belief in God and temple worship? In order to come within the term "Hindu" occurring in the Act, should a person besides being a born Hindu, also have belief in God and in temple worship? Two rival pleas are put forward before us. According to the petitioners, a person though a Hindu by birth, should also have belief in God and have faith in temple worship, for the purpose of Act XV of 1950. The respondents would contend that it is not necessary. The petitioner would contend that their plea is based on a fair and proper reading of the Act itself. It is also stated that the plea is reinforced on constitutional provisions and the words should be understood in consonance with Articles 25 and 26(a) and 26(b) of the Constitution of India and as interpreted by the Courts.

12. Let us have a look to the main provisions of Act XV of 1950. The Act is titled as "The Travancore-Cochin Hindu Religious Institutions Act, 1950". The preamble runs as follows:

"WHEREAS it is necessary to make provision for the administration, supervision and control of incorporated and unincorporated Devaswom and of other Hindu Religious Endowments and Funds;"

Section 2(b) defines "Hindu Religious Endowment":

"(i) every Hindu temple or shrine or other religious endowment dedicated to, or used as of right by the Hindu community or any section thereof; and

(ii) every other Hindu endowment or foundation, by whatever local designation, known, and property, endowments and offerings connected therewith, whether applied wholly to religious purposes or partly to religious and partly to charitable or other purposes and every express or constructive trust by which property or money is vested in the hands of any person or persons by virtue of hereditary succession or otherwise for such purposes".

Under Section 3, the administration of incorporated and unincorporated Devaswoms and of Hindu Religious Endowments and all their properties and funds etc. vest in the Devaswom Board. u/s 4, the Board shall consist of three Hindu members, one of whom shall be nominated by the "Hindus" among the Council of Ministers and one elected by the "Hindus" among the members of the Legislative Assembly. Section 5 deals with the procedure for the election of member to the Board. Section 6 requires that a person shall not be qualified for

nomination or election as a member of the Board unless he "professes" the Hindu Religion. The entire administration, supervision and control of incorporated and unincorporated Devaswoms and all other Hindu Religious Endowments and funds, vest in the Devaswom Board. Under the Act, "Hindu Religious Endowments" means every temple or shrine or other religious endowment dedicated to or used as of right by the Hindu community or any section thereof. So, the administration, supervision and control of every Hindu Temple or shrine vest in the statutory body (Devaswom Board). The Act visualises that every Hindu Temple or shrine and its administration should be vested in the Board. All such Temple and shrines are subject to the administration, supervision and control of the Board. Since the main purpose and policy discernible from the Act is for the administration, supervision and control of Hindu Religious Endowments and funds, which means every Hindu Temple or Shrine or other Religious Endowment, it is implicit, that persons who administer or supervise or control the temple or shrine or other religious endowments should be involved in it. They should have faith in "the temple or shrine" which they administer. A temple is a place dedicated to the service or worship of a deity or deities. The Webster's New World Dictionary at p. 1500, "temple" is stated to be "a building for the worship of a God or Gods". In Webster's Third New International Dictionary temple is stated to be "an edifice dedicated to the worship of a deity; an edifice held to be a residing place of a deity; place in which the divine presence specifically resides". So 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. It is implicit that 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 Deva-swoms and other Hindu Religious Endowments. However wide the meaning of the word "Hindu" may be under the general law, under Act XV of 1950, only those Hindus who believe in God and in temple worship, will fulfil the requirement of the word "Hindu" occurring in the Act. Our conclusion aforesaid necessarily flows from the title and preamble of the Act as also the definition contained in Section 2(b) of the Act. In coming to the above conclusion, we have borne in mind the following principles laid down by the Supreme Court in the interpretation of statutes. A construction which would promote or advance the purpose or object of the Act, even if not expressed, should be preferred. *Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others*, at p. 1504), paras 15 and 16. In determining the meaning of any word in the Act, we should pose the question as to what is the natural or ordinary meaning of that word in the context of the statute. The construction placed should not render the provisions of the Act impotent or ineffective. Again, the Supreme Court in *Nyadar Singh Vs. Union of India (UOI) and Others*, stated as follows (at pp. 1984 and 1985 of AIR):

"22. The meaning to be given to a particular statutory language depends on the evaluation of a member of interpretative criteria. Shorn of the context, the words by themselves are "slippery customers". The general presumption is that these

criteria do not detract or stand apart from, but are to be harmonised with, the well accepted legal principles. In a difficult case, the member of relevant interpretative criteria may be so high that the task of the court in assessing their effect is, correspondingly, difficult. Even the statutory language apparently free from the sins of semantic ambiguity might not, in the context of the purpose, connote or convey its lexicographic trust; but would acquire a different shade or colour imparted to it by the variations of the interpretation criteria. The ambiguity need not necessarily be a grammatical ambiguity, but one of appropriateness of the meaning in a particular context.

XX XX XX 23. It is true that where statutory language should be given its most obvious meaning --"to accord with how a man in the street might answer the problems posed by the words" --the statute must be taken as one finds it....."

Referring to the decisions of the Supreme Court, a Bench of this Court held in *Safari Sales (P) Ltd. v. State of Kerala* (1988) 2 KLT 423 as follows :

".....In *re The Kerala Education Bill*, 1957 AIR 1958 SC 956, the Court held that in view of the long title of the bill, the Court should approach the substantive provisions of the Bill in the light of the policy and purpose deducible from the terms of the aforesaid long title and preamble and so construe the clauses of the said bill as will subserve the said policy and purpose. Where the language of the Act is clear, resort should not be made to the preamble. But it is settled law that when the meaning of particular words or sections of the Act are not clear or are ambiguous, preamble may be resorted to explain the terms of the Statute (see *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, at p. 956). Though the preamble may not control or qualify precise or unambiguous language of the enactment, it is always permissible to look into it, since it is a key to open the mind of the Legislature, (see *Tribhuban Parkash Nayyar Vs. The Union of India (UOI)*,). More recently in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, the Supreme Court held that the preamble can be resorted to, to resolve the "interpretational doubts" arising out of defective drafting of the statute.

8. We are of the view that preamble is a "key" or "pointer" to understand the scope and ambit of the Act. It can be looked into to illumine or resolve ambiguous or defective phraseology in the enacting part of the statute or to remove the doubts. It can also play its part in controlling or limiting the apparently wide and unambiguous enacted words, when doubts about the meaning of those words arise, by reference to the other provisions of the statute."

The Courts are not seeking what the Legislature meant, but the true meaning of what they have said (See *Doypack Systems Pvt. Ltd. v. Union of India*, AIR 1968 SC 782 at p. 797). In *Atma Ram Mittal Vs. Ishwar Singh Punia*, the Supreme Court held as follows (at p. 2034 of AIR):

"Judicial time and energy is more often than not consumed in fining what is the

intention of the Parliament or in other words, the will of the people, Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law. (underlined by the Court). (See Commentaries on the Laws of England (Facsimile of 1st edition of 1765, University of Chicago Press, 1979) Vol.I.p.59). Mukherjea, J. as the learned Chief Justice then was, in *In Re: Hira Lal Dixit and Others*, said that each word, phrase or sentence was to be construed in the light of purpose of the Act itself. But words must be construed with imagination of purpose behind them said learned Judge Hand, long time ago. It appears, therefore, that though we are concerned with seeking of intention, we are rather looking to the meaning of the words that the legislator has used and the true meaning of the words as was said by Lord Reid in *Black-Claws International Ltd. v. Papierwerke Waldhof-Aschaffenburg A. G.*, 1975 AC 591 at p. 613).

As also in *State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others*, at page 602 : (AIR 1989 SC 682 at p. 690), para 15, the Supreme Court held as follows :

". . . . It is job of the court to interpret the intention of the legislature by the words used. The fairest and the most rational method to interpret the will of the legislature is by exploring its intentions at the time when the law was made by signs, the most natural and probable, says Blackstone in his Commentaries on the Laws of England (Facsimile of 1st Edn. of 1765, University of Chicago Press, 1979 Vol. 1 page 59). And these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law. The words have to be understood in their usual and most known signification.".

The words used in a statute should be read in a meaningful way and regard should be had to the context. (See *Hameedia Hardware Stores*, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, at p 1067 para 10). In the light of the preamble, and the definition of the words "Hindu Religious Endowment" in Act XV of 1950 and construed bearing in mind the principles laid down by the Supreme Court in the decisions aforesaid is it possible to visualise or say, that the "man in the street" (reasonable or common man) posed with the question as to who is a "Hindu" in the context of the Travancore-Cochin Hindu Religious Endowments Act, will understand the word, as anything other than a person, who believes in God and in temple worship? In our opinion, the answer can only be, in the negative and that both are essential.

13. In interpreting the enactment, we also have to bear in mind how the Section was understood at the relevant time. The Act is of 1950 and it has worked smoothly all these years. Therefore the principle of *contemporanea expositio est optima et fortissimu lege* as laid down in *State of Tamil Nadu Vs. Mahi Traders*

and Others,), will have to be applied. Contemporanea expositio is a useful guide in interpreting an Act of the legislature. We also have to bear in mind while interpreting the statute the legislative intent as soon from the Act. (See Commissioner of Sales Tax, U.P., Lucknow Vs. Super Cotton Bowl Refilling Works,). The interpretation should necessarily conform to the legislative intent, (Union of India v. Mr. Filip Tiago De Gama of Vedem Vasco De Gama (1989) 4 JT 529 : AIR 1990 SC 981 and must subserve justice (See Owners & Parties interested in Owners and Parties interested in M.V. "ValiPero" Vs. Fernando Lopez and Others, . The interpretation will not expand the meaning of the Section but only explain. If the Section is susceptible of two views then the one which would promote its constitutionality will be preferred (See W. T. Commr. v. Hashmatunnisa Begum AIR 1989 SC 1024). The learned Advocate General referred to the decisions reported in Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram, ; Kehar Singh and Others Vs. State (Delhi Administration), , Sri Ram Ram Narain Medhi Vs. The State of Bombay, , R.G. Jacob Vs. Union of India (UOI), and Ibrahim Bachu Bafan Vs. State of Gujarat and Ors, , to show that literal construction should be preferred and that ordinary meaning should be given to the words in the statute and that the court should not add to the statute if the meaning is clear. These are wellknown canons of construction and we need not dwell on that elaborately.

14. The Act functioned smoothly until 1984 when for the first time an amendment was sought by Ordinance 72 of 1984. That Ordinance required that the members of the Board shall be persons who believe in God, professes Hindu Religion and believe in temple worship. The Ordinance was challenged by some Hindu members of the Kerala Legislative Assembly on the ground that it required the Hindu members of the Assembly to file a declaration signed by him to the effect that he believes in God and professes the Hindu Religion. In the decision in K. Krishnankutty, M.L.A. and Others Vs. State of Kerala, the Full Bench considered that for the purpose of Art. 26(d) of the Constitution Hindu public having belief in God and faith in temple worship is a religious denomination. It took note of the observation of the earlier Full Bench decision in Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others, to the effect that a person who professes Hindu religion need not be a believer in temple worship and may even be opposed to the practice of idol worship. Such a person cannot be considered a representative of the denomination of Hindu public having belief in God and faith in temple worship. Therefore 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 representation of the denomination "consisting of the Section of the Hindu public having faith in temple worship". Following the said observation of the earlier Full Bench ruling of Five Judges, the Full Bench further held that the denomination is the Hindu public having belief in God and faith in temple worship. Therefore, the representative of this denomination in the Legislative Assembly can elect one member to the Board

and that member also has to fulfil these qualifications, namely, belief in God and belief in temple worship. The Full Bench further held (at p. 159 of AIR):

"The earlier Full Bench decision in Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others, has in unmistakable term held that the administration of a temple cannot be entrusted to non-believers in God who have no faith in temple worship. They may destroy the institution from within and pose a real and grave danger to the smooth administration of the religious institution."

Therefore the Full Bench dismissed the Original Petition challenging the Constitutional validity of Travancore-Cochin Hindu Religious Institutions (Amendment) Ordinance, 1984.

15. On the facts of that case, it may be stated that the Full Bench considered only the validity of the Amendment provision and in that decision the Full Bench only upheld the validity. But being a Full Bench decision we are unable to ignore the implication of the decision in that way. Our personal philosophy has no part to play in appreciating the Full Bench decision. That Full Bench felt bound by the earlier Full Bench ruling of five Judges in Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others, and held that the Board members should be Hindus who believe in God and temple worship and the members of the electoral body who has to elect also should be persons who believe in God and temple worship. In short, the Full Bench made no distinction between the Hindu as a member of the Board and a Hindu in the electoral college. In fact, the Full Bench, even though it was not necessary in that case, was inclined to take the view that Hindus among the Council of Ministers who are to nominate two members to the Board shall also be believers in God and profess the Hindu religion answering the description of a Hindu believing in God and temple worship. The Full Bench also noted the said observation of the Full Bench ruling of five Judges in Guruvayoor Devaswom case that serious prejudice and peril would be caused if the management of temple is entrusted to persons who have no faith in temple worship. The observation of the Full Bench in this regard contained in paragraph 40 of the judgment reads as under:

"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 worships 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 Section 4 which precludes the Government from

nominating such persons to be members of the Managing Committee under Clause (g) of Sub-section (i) of Section 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 types of philosophical or political persuasion represents the religious denomination consisting of the section of the Hindu public having faith in temple worship."

The Full Bench proceeded to say that the purpose of ensuring efficient and proper administration of the Devaswom would be better served by a Committee consisting of persons having faith in deity and real interest in the affairs of the institution. The Full Bench concluded:

"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."

Therefore the term Hindu must bear a meaning to make the law meaningful and constitutional. The term Hindu stood for a religious denomination in the Act. The words "religious denomination" have been explained in *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, (at p. 1415) as under :

"What the expression "religious denomination" means has been considered by this Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, . Mukherjea, J. as he then was, who spoke for the Court has quoted with approval the dictionary meaning of the word "denomination" which says that a "denomination" is "a collection of individuals classed together under the same name, a religious sect or body having a common faith and organisation and designated by a distinctive name". The learned Judge has added that Article 26 contemplates not merely a religious denomination but also a section thereof. Dealing with the questions as to what are the matters of religion, the learned Judge observed that the word "religion" has not been defined in the Constitution, and it is a term which is hardly susceptible of any rigid definition. Religion, according to him, is a matter of faith with individuals or committees and it is not necessarily theistic. It undoubtedly has its basis in a system of pleas or doctrines which are regarded by those who profess that religious as conducive to their spiritual well-being, but it is not correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

16. If the purpose of Sections 4 and 6 of the Act was only to see that the Committee is consisted of Hindus who profess Hindu religion, the exclusion of non-Hindus among the Council of Ministers and members of the Legislative

Assembly from participation nomination and election process to the Board will not have been there. We would have also expected the sections differently couched. It would have made no difference whether Hindu M.L. A.s or Hindu Ministers made the choice if the purpose was only to elect or nominate a person who professes Hinduism. Therefore the intent of the legislature as could be seen from the Act itself is to confer that right of election and nomination to Hindus among the M.L.As and Council of Ministers representing the denomination. The qualification to be a member of the Board and to be a member of the electoral college is intended to be one and the same, namely, faith in God and temple worship. This will be clear if we examine the constitution and powers and duties of the Board. Under the Act the administration of incorporated and un-incorporated Devaswoms and of Hindu Religious Endowments and all their properties and funds with certain exceptions and the management of all institutions which were under Devaswom Department shall vest in the Travancore Devaswom Board. The Devaswom Board exercised all rights, authority jurisdiction belonging to and exercised by the Ruler of Travancore prior to its take over. The Board exercises supervision and control over acts and proceedings of officers and servants of the Board and Devaswom Department. It has power to borrow money and invest funds. It is the duty of the Board to maintain the Devasom and keep the temple in good repair, administer the Devaswom in accordance with recognised usages, made contributions to Devaswoms, meet the expenditure of the customary, religious ceremonies etc. The Devaswom fund shall consist mostly voluntary contributions and offerings made by devotees. Board has absolute control over holders of karaima service. The Board determines the staff strength of the Devaswom Department and appointments in the administrative service of the Devaswom Department is also made by the Board. The Board manages the properties, affairs of the Devaswom and arranges for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage. Expenditure and recruitments are also controlled by the Board. In certain cases the Board can assume management of the Hindu Religious Endowments and even remove the trustees and appoint committees for effective supervision of the endowments. They also have power to divest funds of the Endowments and even amend the schedule containing the list of Devaswoms. If these powers are to be exercised by a Board consisting of Hindus having no faith in God and temple worship over the institutions it will be detrimental to the interest of the institution. Such a Board also will not be representative of the denomination. Hence the Board members should necessarily be Hindus having faith in God and temple worship. This is the view of the Full Bench of this Court and we respectfully follow the same.

17. Much of the arguments turned on the question as to who is a Hindu. The question whether temple worship is part of the Hindu philosophy was also canvassed and various texts were referred to. Rival arguments were placed before us to show that religion of Vedas knows of no idol and the worship of idols in India is a late/ secondary formation. We are not concerned nor competent to

pronounce on the correctness or otherwise of the rival schools of thought. Especially, in the matter of faith, there are bound to be different approaches and schools of thought. But, we cannot shut our eyes to the realities of life and what has been and is going on, around us. In the normal, practical and meaningful sense, idol worship forms the core of prevalent Hindu religion and philosophy and it appears to be so, ever since human memory and such faith is embedded on its own, and if it is too late in the day to be questioned or doubted.

18. For and against the proposition several texts were referred to. In *Sastri Yagnapurushadji and Others Vs. Muldas Bhudardas Vaishya and Another*, Gajendragadkar, C.J. examined the broad features of Hindu religion, After tracing the historical and etymological genesis of the word "Hindu" to river Sindhu otherwise known Indus, his Lordship observed (at p. 1128 of AIR):

"When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional feature of any religion or creed. It may broadly be described as a way of life and nothing more.

Confronted by this difficulty, Dr. Radhakrishnan realised that "to many Hinduism seems to be a name without any content. Is it a museum of beliefs, a medley of rites, or a mere map, a geographical expression?" Having posed these questions which disturbed foreigners when they think of Hinduism, Dr. Radhakrishnan has explained how Hinduism has steadily absorbed the customs and ideas of peoples with whom it has come into contact and has thus been able to maintain its supremacy and its youth. The term "Hindu", according to Dr. Radhakrishnan, had originally a territorial and not a creedal significance. It implied residence in a well-defined geographical area. Aboriginal tribes, savage and half-civilised people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshipped different Gods, and practised different rites."

While the ultimate goal of the Hindu Religion is the attainment of moksha or nirvana, the means of attaining the end can be different. In a sense Hindu religion is a sign post to lead its followers to moksha. The Supreme Court described the Hindu religion as a way of life based on certain basic concepts in the judgment referred to. Tilak has described the distinguishing feature of Hindu Religion as "acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are divine and realisation of the truth that the number of Gods to be worshiped is large".

19. The word "Hindu" takes its meaning from the context and it cannot be

defined in terms of absolute. Like the word "trick" getting different meaning in the context of a magic show and a game of bridge, the word "Hindu" also gets different meaning in the context. The meaning of words and expressions used in an Act must take their colour from the context in which they appear. (Pandit Ram Narain Vs. The State of Uttar Pradesh and Others,). We have seen that in the context in which the word used in the Constitution of the Devaswom Boards in Section 4 of the Act, it has necessarily the meaning of a Hindu, who believes in God and temple worship. It was also interpreted and justified under Article 26(2) by the Full Bench decision of this Court. Any other interpretation will make the Section impotent and also unconstitutional being violative of Article 26. It is on the rock of faith and belief the Hindu temples of the State is founded. The temple fund and the temple property came into existence and flourished on the donation and charitable disposition of the believers in God and temple worship. They made endowments, donated and filled the Hundies of the temple, while giving expressions to their religious worship and practising rituals and other ceremonies, customarily performed by them. By the Devaswom proclamation of 1097 the Devaswom properties have not been confiscated. The temple properties were taken over and became vested in the Government for efficient management of the temple. The Rule of Travancore himself is a devoted Hindu believed in temple worship and ruled the Travancore State as Sree Padmanabha Dasa, meaning the servant of the Presiding deity of Sree Padmanabha temple. All the Devaswom properties were vested in the Ruler not by way of confiscation but as a trustee for efficient management and administration of the temple. When the Travancore-Cochin Hindu Religious Institutions Act, 15 of 1950 came into force on 16th April, 1950 the Board was to consist of three Hindu members, one of whom shall be nominated by the Ruler of Travancore, one by the Hindus among the Council of Ministers and one elected by the Hindus among the members of the Legislative Assembly of the State of Travancore-Cochin. The Board is made to represent the sovereign will at different levels as three-in-one. The concept of trusteeship has not given a go-bye. The temple and the property flourished because of the unabated faith and will of the denomination which comprise the temple going Hindus and the interest of the temple and rights of the denomination consisting Hindus with faith in god and temple worship will not be intended to be destroyed by the Act.

20. It is argued that from the very inception election and nomination were conducted and made smoothly under the Act and the controversy relating to the requirement of Hindu members in the electoral college possessing the qualification, belief in God and temple worship, became necessary only because of the fact that the Ruling party happened to be Marxist party. It is also emphasised that a person will not cease to be a Hindu, Christian or Muslim on the joining the Marxist party. That may be so. We also echo the sentiments expressed by Lord Mansfield and Lord Denning that the laws of our land know of no colour bar; whether it be the colour of skin or the colour of politics. But the question is not who is a Hindu but only what exactly the term Hindu means in

the context of Section 4 of the Act. The law we have to administer is the statutory law as enunciated by judicial decisions. The Full Bench of this court has already explained that the term "Hindu" in the context of the constitution of Devaswom Boards to mean only a Hindu who believes in God and temple worship, as otherwise, the temple administration will be in peril as putting the temple administration in the hands of non-believers will ruin the atmosphere and result in disaster.

21. In the light of the above, we allow the Original Petition and declare that only those Hindus who believe in God and temple worship can get nominated or vote at the election of the Devaswom Board. The election conducted to Travancore Devaswom Board pursuant to Ext.P2 notice is quashed. In the light of the above, we direct the respondents to conduct fresh election to the Travancore Devaswom Board according to law. There will be no order as to costs.