
(1972) 07 KL CK 0010

In the High Court Of Kerala

Case No : Original Petition No. 812 of 1971

Manavedan and Others

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 14-07-1972

Acts Referred:

Constitution of India, 1950 — Article 26
Guruvayoor Devaswom Act, 1971 — Section 10 , 27(2)

Citation : AIR 1973 Ker 106

Hon'ble Judges : T.C. Raghavan, C.J.;Viswanatha Iyer, J;Gopalan Nambiyar, J

Bench : Full Bench

Advocate : V.K.K. Menon, M. Ramachandran, C.J. Balakrishnan and U.K. Ramakrishnan, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Raghavan, C.J.—The two petitioners are the hereditary trustees of the Sree Krishna Temple at Guruvayoor, the first petitioner being the managing trustee and the second petitioner the co-trustee. They challenge the validity of some of the provisions of the Guruvayoor Devaswom Act (Act 6) of 1971, which was preceded by the Guruvayoor Devaswom Ordinance (Ordinance No. 12) of 1971. The main attack is directed against Clauses (a), (b) and (g) of Section 10 and Clause (b) of Section 27(2); the attack is that these provisions offend Clauses (b) and (d) of Article 26 of the Constitution. (We may point out that there are other pleas also raised in the petition, but Shri V. K. K. Menon, the counsel of the petitioners, has stated before us that the attack is confined to these clauses alone.)

2. Now, the more important provisions of the Act may be noted. Section 2 is the definition section; and Section 3, which we may have to consider specifically, vests the administration, control and management of the Devaswom, which is defined to mean the Temple, the Sree Krishna Temple at Guruvayoor, including its properties and endowments and the subordinate temples attached to it, in the

Guruvayoor Devaswom Managing Committee, The said Committee is constituted a body corporate having perpetual succession and a common seal; and it shall, by the said name, sue and be sued by the Administrator, Section 4 provides for the composition of the Committee : the first petitioner is the Chairman, the karanavan for the time being of the second petitioner's illom, the Vice-Chairman, the Administrator, an ex-officio member, the Chairman of the Guruvayoor Township Committee, if he is a person professing the Hindu religion, also an ex-officio member, the Thantri of the Temple, another ex-officio member, and a representative of the employees of the Devaswom, nominated by the Government, and not more than 11 persons professing the Hindu religion, of whom one shall be a Harijan, again nominated by the Government, the other members. Section 5 deals with the term of office of the non-official members and their resignation, removal, etc.; and Clause (e) of Sub-section (3) of this section provides that the Government may remove a member, if, in the opinion of the Government, his presence in the Committee is prejudicial to the interests of the Devaswom. Section 6 deals with the dissolution and supersession of the Committee : if, in the opinion of the Government, the Committee is not competent to perform, or makes default in performing, the duties imposed on it, etc., the Government may, after such enquiry as may be necessary, supersede the Committee by notification in the Gazette for such period not exceeding six months : there is, of course, provision for considering the explanations and objections of the Committee before issuing the notification. And when the Committee is superseded, the Government has power to appoint a person from their service and professing the Hindu religion to exercise the powers and perform the functions of the Committee during the period of supersession.

3. Now we come to Section 10, one of the sections specifically attacked by the petitioners. This section deals with the duties of the Committee; and the relevant portion of the section reads :

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

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

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

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(g) to do all such things as may be incidental and conducive to the efficient management of the affairs of the Devaswom and the convenience of the worshippers." Section 11 imposes certain restrictions on the powers of the Committee in alienating movable and immovable properties of the Devaswom; and Section 12 imposes certain limitations on the power of borrowing and

lending by the Committee. Section 13 provides for the submission of annual reports by the Committee on the administration of the affairs of the Devaswom to the Government.

4. u/s 14, the Government has to appoint an Administrator, an officer not below the rank of a Deputy Collector or Deputy Commissioner appointed under the Madras Hindu Religious and Charitable Endowments Act of 1951 and professing the Hindu religion. u/s 16 the Government has power to appoint another officer to be in additional charge of the office of the Administrator when the Administrator's office is temporarily vacant. Section 17 enumerates the powers and duties of the Administrator; and certain extraordinary powers in cases of emergency are conferred on the Administrator u/s 18. u/s 19, the Administrator has power to prepare an establishment schedule and submit to the Committee; and the Committee shall forward the schedule to the Commissioner functioning under the Madras Hindu Religious and Charitable Endowments Act. The Commissioner has power to approve such schedule with or without modifications as he deems necessary. Section 20 provides for the appointment of all officers and employees of the temple by a Board consisting of the Commissioner as the Chairman and the Administrator, an officer professing the Hindu religion authorised by the District Collector, Trichur and two other persons elected by the Committee from among its members as members. Then there is provision for the preparation of the budget, revised or supplementary budget, etc. and also for audit under Sections 21 to 23. u/s 24, a Temple Fund called the Sree Guruvayoor Temple Fund is constituted and is vested in the Committee to be administered by them. The Fund consists of certain enumerated heads of income; and the fund may be utilised for the maintenance, management and administration of the temple, etc., for the training of archa-kas, for medical relief, etc. u/s 25, power is conferred on the Government to call for and examine the records of the Administrator or of the Committee or of the Commissioner to satisfy themselves of the regularity, correctness, legality or propriety of such proceedings. And Section 26 confers rule-making power on the Government; and Sub-section (2) (c) of the section enacts that such rules may provide for "the performance of duties by the Committee u/s 10 and the mode and extent of expenditure u/s 24." And the rules so made have to be laid before the Legislative Assembly.

5. Section 27 confers power on the Committee to make regulations, subject to the approval of the Government, not inconsistent with the provisions of the Act and the rules made thereunder, to provide for the manner in which the duties imposed on the Committee under the Act and its functions thereunder shall be discharged. Sub-section (2) of this section enacts in Clause (c) thereof that such regulations may provide for "any other matter for which Regulations are required to be made for the purposes of this Act". u/s 28, the Committee is entitled to take possession, and to be in possession, of all the movable and immovable properties of the Devaswom. Section 32 constitutes a Renovation Executive Committee; and the Renovation Executive Committee shall constitute a fund to be called the "Sri Guruvayoor Renovation Fund" to be administered by the said

Committee subject to such directions as the Government may from time to time issue for the purpose of renovation and improvement of the temple.

6. Taking power u/s 26 of the Act, the Government have framed the Guruvayoor Devaswom Rules; and Rule 4 thereof reads :

"4. Administrator to carry out the de-cision of the Committee:--

The Administrator shall take steps to implement the decisions of the Committee and in the event of failure without adequate reasons, the Committee may bring the matter to the notice of the Government and the Government shall take such action as it deems necessary against the Administrator."

A few other rules have also been brought to our notice; but we do not think that we need recapitulate them.

7. Article 26 of the Constitution reads :

"Freedom to manage religious affairs -

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

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(b) to manage its own affairs in matters of religion;

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(d) to administer such property in accordance with law."

7A. The counsel of the petitioners has argued that the hereditary trustees, the petitioners, are the representatives of the denomination to whom the temple and the Devaswom belong and the vesting of the administration, control and management oi the Devaswom in the Committee by Section 3 deprives the denomination (its representatives) of the right to administer, control and manage the Devaswom. It has been argued further that the functions of the Committee include "matters of religion" too as contemplated by Clause (b) of Article 26.

8. Our attention has been drawn to the decision of the Supreme Court in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., where the Supreme Court has observed that, in the concept of Mahantship or She-baitship, both the elements of office and property, of duties and personal interest, are blended together : however, the Supreme Court has observed, Mahantship is not heritable like ordinary property. The Supreme Court has also considered in that case the meaning of the word "denomination--a collection of individual classed together under the same name; a religious sect or body having a common faith and organization and designated by a distinctive name". The decision has further indicated as to what. constitutes the essentials of a religion: a religion is a matter of faith with individuals or communities; a religion has its basis in a system of beliefs or doctrines which are

regarded by those who profess that religion as conducive to their spiritual well-being; a religion may not only lay down a code of ethical rules for its followers, but 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 said decision was approved and followed by the Supreme Court in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, . In this decision, it has been laid down that, in regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away, but, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property, but only in accordance with law, which means that the State can regulate the administration of trust properties by laws validly enacted. The decision has also pointed out that the distinction between matters of religion and those of secular administration of religious properties may, at times, appear to be a thin one and in such cases the court should take a common sense, view and be actuated by considerations of practical necessity. Yet another decision brought to our notice is again a decision of the Supreme Court, the decision in *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, . In this decision also, the expression "matters of religion" in Article 26(b) has been explained as to embrace not merely matters of doctrine and belief pertaining to the religion but also the practice of it, that is, in terms of Hindu theology, not merely its Gnana but also its Bhakti and Karma Kandas.

9. Half a dozen other decisions of the Supreme Court brought to our notice are *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, ; *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*, ; *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, ; *Raja Birakishore Vs. The State of Orissa*, ; *Sri Digyadarsan Rajendra Ramdassjivaru Vs. The State of Andhra Pradesh*, and *Kaki-nada Annadana Samajam v. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad*, (1971) 1 SCWR 22 = *Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others*, . In the first of these decisions, it is observed that, though matters of religion in Article 26(b) include even practices which are regarded by the community as part of its religion, still, unless they are regarded as essential or integral parts of the religion, they will not come within the said clause: purely secular practices which are not essential or integral parts of the religion are not protected: in other words, the protection must be confined to such religious practices as are essential and integral parts of it and no other. In the second decision, it is laid down (inter alia) that the right given under Article 26(b) has not been made subject to preservation of civil rights.

In *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, , a statute almost similar to the one before us relating to the Nathdwara Temple in Rajasthan came before the Supreme Court for consideration; and the Supreme

Court has held that the Tilkayat was not a Mahant or a Shebait since he claimed only a right to manage the properties of the temple, in other words, since he did not claim ownership of the properties. In that case, the claim was under Articles 19(1)(f) and 31(2) of the Constitution. A plea under Article 26 as well was attempted, but that plea was not properly made out. Still, the Supreme Court had to consider as to what was protected under Articles 25(1) and 26(b); and the Supreme Court has observed that what was protected under these Articles respectively were the religious practices and the right to manage the affairs in matters of religion : if the practice in question is purely secular or the affairs controlled by the impugned statute are essentially and absolutely secular in character, it cannot be urged that Article 25(1) or Article 26(b) has been contravened, though the task of disengaging the secular from the religious may not be easy. In *Raja Birakishore Vs. The State of Orissa*, the temple concerned was the Shri Jagannath Temple at Puri; and in that case, also, the statute considered by the Supreme Court was almost similar to the statute before us. The Supreme Court has held that the rights of the Raja of Puri consisted of his rights as Adya Sevak (chief servant) and also as the sole manager of the temple. The Supreme Court has also pointed out that, in the latter capacity, the Raja was only functioning in a secular capacity and as Adya Sevak he had some religious functions too. Even as Adya Sevak, the Supreme Court has pointed out, the Raja had to supply some materials for the Poojas in the temple and, in relation to that, the Raja's functions were only secular in nature, but when he took part in the Poojas, his function was religious. The Supreme Court has further pointed out that only in that part of the function where the Raja took part in the religious aspect of the Seva Pooja, he had the protection of Article 26(b) of the Constitution.

In *Sri Digyadarsan Rajendra Ramdassjivaru Vs. The State of Andhra Pradesh*, the Supreme Court has reiterated that the freedom of religion in the Constitution is not confined to religious beliefs only, but extends to religious practices; that under Article 26(b), a religious denomination or organisation enjoys complete autonomy in the matter of deciding what rites and ceremonies are essential according to the tenets of the religion and no outside authority has any jurisdiction to interfere with its decision in such matters; that, under Article 26(d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and that a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to violation of Clause (d) of Article 26. And the last decision has pointed out that the position of a hereditary trustee is not much different from that of a Dharmakarta or a mere manager; that he cannot be equated to a Shebait, Mahant or Madhathipathi; and that the office of a hereditary trustee is not property within Article 19(1)(f).

18. In the case before us, the allegation in the petition is that the Sree Krishna Temple at Guruvayoor "is a famous Hindu Temple attracting pilgrims from all over

India". The petitioners then claim that they have certain functions in matters of religion in the temple. For instance, the first petitioner has to hand over the key of the temple to the Mcsanti when the latter takes charge; and the function takes place in the Mandapam. Similarly, the second petitionel claims that, before the flag is hoisted for utsayam, he has to perform Ganapathi Pooja and hand over koorra and pavitram to the Thanthri, etc. He also claims that he has to give permission after performing Ganapathi Fooja before the kalasam, etc. A few other similar rights are also claimed by the second petitioner. We need not consider whether these are matters of religion or not, for, even if they are, the provisions specifically attacked before us do not touch matters of religion. Section 10 (a) starts with the expression "subject to the custom and usage in the Temple", so that the rights of the Committee under this section are only subject to the custom and usage in the temple. The other clauses, viz. (b) and (g), of Section 10, which are attacked, do not also touch matters of religion.

Section 27 (2) (b) conferring power on the Committee to make Regulations to provide for the observance of the rites and usages in the Sree Krishna Temple and the temples subordinate thereto does not also touch matters of religion, because Sub-section (1) of the section specifically provides that the Regulations should not be inconsistent with the provisions of the Act and the Rules made thereunder. None of the other provisions (they are not specifically attacked either) also indicate that the Committee has any power to deal with matters of religion : the Committee's powers are all outside matters of religion -- relate only to managing or administering the properties of the Devaswom, to providing facilities for the proper performance of worship by tha worshippers, etc. : in matters of religion, the Committee's powers are all subject to the custom and usage in the temple. Therefore, it cannot be contended that the Committee's powers of administration, control and management relate to matters of religion. We may also add that the petitioners are free to exercise all their religious functions, if any, like the Raja of Puri was free to exercise his religious functions as Adya Sevak in the Seva Pooja in the Shri Jagannath Temple case.

11. In this connection, our attention has been drawn to the composition of the Committee u/s 4. The first petitioner is the Chairman, and the second petitioner the Vice-Chairman, of the Committee. The Government has power to nominate not more than 11 persons professing the Hindu religion, of whom one should be a Harijan. The Government has also power to nominate a representative of the employees of the Devaswom. And the Administrator is an ex-officio member. From these, it is argued that the power of the Committee is vested in the nominees of the Government, they being in majority, and the Government can thus control the administration, control and management of the Devaswom. Reliance is also placed on Rule 4 already extracted. The counsel has argued that, under the rule, the Administrator, who has to be the Secretary of the Committee, shall take steps to implement the decisions of the Committee, and if the Administrator fails to so implement without adequate reason, the power of the Committee is only to bring that fact to the notice of the Government and it is the

Government that has the power to take such action as they deem necessary against the Administrator. It is therefore argued that the Committee has no control over the Administrator and the only thing the Committee can do is to report the failure of the Administrator to implement the decisions of the Committee to the Government. This, according to the counsel of the petitioners, is a farce. This appears to be so. But, the Government Pleader has rightly pointed out that the validity of the provisions of the Act cannot be tested or judged in the light of the Rules framed under the Act. He has even conceded that Rule 4 may be beyond the rule-making power of the Government and, for that reason, may be ultra vires. Still, the Government Pleader has contended, the provisions of the Act cannot be held to be unconstitutional because a rule is ultra vires. We agree with this contention; but we point out that the Government will do well to change Rule 4 and also be careful in making only such rules which are within the scope of the Act.

12. The counsel of the petitioners has drawn our attention, ultimately, to the decision of the Supreme Court in *State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc.*, which confirmed the decision of this Court in *V. Rev. Mother Provincial, Congregation of Mother of Carmel, Carmelite Provincial House, Kovilvattam Road, Ernakulam, Cochin and Others Vs. State of Kerala and Others*, . In that case, the powers of the educational agency, a corporate management, were taken away and were vested in a governing body or a managing council; and the Supreme Court has said that that was unconstitutional, since the founders of the educational institutions lost their power of management and administration. On the basis of this, the counsel has argued that the constitution of the Committee and the vesting of the administration, management and control of the Devaswom in the Committee is deprivation of the powers of the hereditary trustees, the petitioners. This analogy is inapt, because the petitioners, the hereditary trustees, are at best only representatives of the denomination to whom the Devaswom and the Temple belong and the Committee constituted with these representatives as Chairman and the Vice-Chairman along with other members nominated by the Government from among the members of the denomination is nothing but a representative of the denomination. This was what happened in the *Nathdwara Temple* and the *Shri Jagannath Temple* cases. As we have indicated already, the provision in the Act before us relating to the vesting of the administration, management and control in the Committee is exactly similar to the provision in the two Acts which were considered by the Supreme Court in the above two cases : in fact, the present Act appears to have been modelled on the Acts considered by the Supreme Court in the two cases mentioned above.

13. It is thus apparent that the provisions attacked by the petitioners exclude matters of religion, and therefore, the petitioners are not entitled to get protection under Article 26(b). It is equally apparent that all the provisions of the Act regulate only the administration, management and control of the properties of the Devaswom as contemplated by Article 26(d) in accordance with law. We

also reiterate that there is no divesting of the administration, management and control from the denomination and vesting the same in some other authority.

14. For the reasons mentioned above, we dismiss the writ petition, but without costs.

Gopalan Nambiyar, J.

15. I agree with the judgment delivered on behalf of the Bench, by the learned Chief Justice. But in view of the importance of the question involved and of the institution dealt with by the impugned Act, namely the Guruvayoor Temple, I wish to add a few words of my own.

16. Denominational character is claimed for the temple on the ground that it is one meant to serve the Hindu public in general; and representative status is claimed for the petitioners on the ground that, they, as hereditary trustees of the temple, are the representatives of the denomination. I shall assume, without deciding, that these have been established, following the pattern adopted by the Supreme Court in the *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, where, the Court assumed that the petitioners had the requisite representative capacity on behalf of the Chishtis, and that the Chishtis constitute a section of a religious denomination.

17. The grounds on which the provisions of the Guruvayoor Devaswom Act 1971 are attacked are that certain sections therein offend Article 26(b) of the Constitution, and that the Act as a whole offends Article 26(d). The relevant clauses of the Article read :

"26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) *****

(b) to manage its own affairs in matters of religion;

(c) *****

(d) to administer such property in accordance with law."

While Article 26(b) deals with "affairs in matters of religion", Clause (d) deals with the secular aspects of the administration of a religious institution. The latter is subject to regulation by law, which must be a valid law, and therefore liable to be tested in the light of Part III of the Constitution. It is claimed that Sections 10 (a), (b) and (g) and Section 27(2)(b) of the Act offend the autonomy in matters of religion guaranteed by Article 26(b). Section 10 opens with the words "Subject to the provisions of this Act, and the Rules made thereunder" and Clause (a) sufficiently safeguards the custom and usage of the temple, subject to which alone the rites and ceremonies are to be arranged. Clause (b) of Section 10 which authorises the Committee to provide facilities for the proper performance of worship by the worshippers does not interfere with the religious autonomy of

the denomination. I would remind myself of the note of caution sounded in the *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, which was made the rule of decision in *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, that it is only matters which are regarded by the religion as its essential and integral parts that would receive the protection under Article 26(b). Clause fg) of Section 10 only authorises the doing of all things as may be incidental and conducive to the efficient management of the affairs of the Dcvaswom and the convenience of the worshippers. It does not contravene Article 26(b). Section 27 (2) (b) of the Act was said to be directly violative of matters of religion. I do not think it is. Regulations, the framing of which, is authorised by the section, are not to be inconsistent with the provisions of the Act or the Rules; and Section 27 (2) (b) itself authorises the framing of regulations to provide for observance of the rites and ceremonies and other usages in the temple. The section contains sufficient indication that the rites and ceremonies which are Thus regulated should themselves be part of the usages of the temple.

18. Argument regarding the violation of Article 26(d) was based on the ground that there has been a complete substitution or effacement of the religious denomination and its representatives, and a taking over the administration of the secular affairs of the temple by the Government. But the Act does no such thing. It provides only for a different mode of association of the denomination or its representatives with the governance of the temple. The petitioners have also been assigned their due place in the Committee, as President and Vice-President. Similar provisions contained in the decision in *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, at page 1662 were upheld by the Supreme Court with the following observations:

"It is urged that the right of the denomination to administer its property has virtually been taken away by the Act, and so, it is invalid. It would be noticed that Article 26(d) recognises the denomination's right to administer its property, but it clearly provides that the said right to administer the property must be in accordance with law. Mr. Sastri for the denomination suggested that law in the context is the law prescribed by the religious tenets of the denomination and not a legislative enactment passed by a competent legislature. In our opinion, this argument is wholly untenable. In the context, the law means a law passed by a competent legislature and Article 26(d) provides that though the denomination has the right to administer its property, it must administer the property in accordance with law. In other words, this clause emphatically brings out the competence of the legislature to make a law in regard to the administration of the property belonging to the denomination. It is true that under the guise of regulating the administration of the property by the denomination, the denomination's right must not be extinguished or altogether destroyed. That is what this court has held in the case of *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, = *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra*

Thirtha Swamiar of Sri Shirur Mutt., and 1954 SCR 1055 -- Ratilal Panachand Gandhi Vs. The State of Bombay and Others, "

Dealing further with the argument that the Constitution of a Board to deal with the administration of the property amounts to a divesting of the denomination, the Court observed:

"It is, however, argued that by the constitution of the Board in which the administration of the property now vests is not the denomination, and since the administration is now left to the Board, the denomination has been wholly deprived of its right to administer the property. 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 Section 5 and we have held that Section 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 Vallabi 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 organization which comprehensively represents 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."

The same considerations apply proprio vigore to the present case.

19. While I am thus prepared to pass the provisions of the Act as passing the test of Article 26, Clauses (b) and (d), I must sound a note of caution against Rules 4 and 10 framed under the provisions of the Act, to which our attention was drawn by counsel for the petitioner. These rules appear to have introduced the thin end of the wedge, and whittled down the provision of the Act. Rule 4 presents the Committee as an imbecile body, looking to the Chief Executive Officer, viz., the Administrator, to implement its decisions, and contenting and having perforce to be content, with a report to the Government and abiding by such action as they may deem fit, in case of the Administrator's default or disobedience. Under the ostensible facade of the Committee, the Government's controlling hand emerges. Rule 10 enables the Committee not only to fix the rates of Vazhivadus but even to determine the proportion to be given to the Devaswom. These Rules do require a close look; and the Government Pleader was frank enough to own that he was not sanguine about their validity. But the

Rules have not been specifically attacked, and it would not be fair or proper to consider their validity In the absence of specific pleading. And I would only add that it would be sad indeed if the Rules inject their poison into the parent Act itself. On the arguments advanced, no case has been made out to strike down the Act as violative of Articles 26(b) and (d).