

(2001) 08 KL CK 0042

In the High Court Of Kerala

Case No : O.P. No's. 19079, 19234, 19974 and 20490 of 1997

M.K. Sanoo

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Constitution of India, 1950 — Article 246(3), 25, 26

Citation : (2002) 1 ILR (Ker) 583

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : T.C. Mohandas, Amicus Curiae, T.R. Govinda Warriar and C.S. Ananthakrishna Iyer, N.D. Premachandran, V.P. Seemandini, N. Nandakumara Menon, Murali Purushothaman, Sasidharan Chempazhanthiyil, K.K. Muhammed Ravuf and Sajan Varghese, for the Appellant; M.K. Damodaran, General, K.K. Raveendranath, Senior Government Pleader, B. Raghunandanan, A.N. Rajan Babu, K. Sudhakaran, K.B. Suresh and P. Gopalakrishnan Nair, for the Respondent

Judgement

K.S. Radhakrishnan, J.—The constitutional validity of Sivagiri Mutt (Emergency Provisions) Ordinance, 1997 replaced by Sivagiri Mutt (Emergency Provisions) Act, 1997 (Act 17 of 1997) is under challenge in all these Writ Petitions. The Sivagiri Mutt (Emergency Provisions) Ordinance, 1997 was promulgated by the Governor of Kerala in exercise of the powers conferred under Clause (1) of Article 213 of the Constitution of India. By the Ordinance, management of Sree Narayana Dharma Sangham Trust having Headquarters at Sivagiri Mutt, Varkala and its assets and properties situate on several parts of the State of Kerala and outside was taken over by the Government and put in the management of an Administrator. Earlier by invoking the provisions of Sections 145 and 146 of the Code of Criminal Procedure, District Magistrate had taken possession of Sree Narayana Dharma Sangham Trust, its place of worship, administering premises and other structures which are situate in the Varkala Village of Chirayinkizh Taluk and was placed under the receivership of Deputy Collector (R.R.) and Executive Magistrate at Trivandrum who was managing the properties as Receiver.

2. President and Secretary respectively of Sree Narayana Dharma Sangham Trust, which was taken over by the aforementioned proceedings, filed O.P. No. 19079 of 1997 challenging the constitutional validity of the Sivagiri Mutt (Emergency Provisions) Ordinance which was replaced by Sivagiri Mutt (Emergency Provisions) Act. The action of the District Magistrate invoking the provisions under Sections 145 and 146 of the Code of Criminal Procedure was also challenged. They also sought for a writ of mandamus directing the Administrator to hand over possession and management of the Trust to the Board which was elected on 26th July 1994.

3. Sree Narayana Dharma Sangham Trust (hereinafter called "the Trust") having its headquarters at Sivagiri Mutt is a public Trust established by Sree Narayana Guru. The objects and activities of the members of the Trust are governed by a Scheme prepared and approved by this Court in A.S. No. 14 of 1956 and C.M.A. No. 3 of 1955, details of which would be dealt with later in the judgment. The object of the Trust is to dissimilate and propagate teachings and principles of Sree Narayana Guru such as "One Caste, One Religion and One God for Man" and to do service to humanity as conceived by Sree Narayana Guru and to perpetuate the monastic order of the members to achieve the objects of the Trust. Administration of the Trust is vested on a Trust Board constituted under the scheme. The Board consists of not less than seven and not more than eleven members and all of them shall be elected by and at a special meeting of the general body. Members of the Sangham are sanyasins who are dedicated themselves to the service of the Sangham for life.

4. Election to the Trust Board was held on 26th July, 1994 at which 11 members were elected to the Board. There were disputes between the members of the Trust with regard to the election conducted to the Trust Board on 26th July, 1994 which resulted in various litigations. It is unnecessary to narrate history of all those disputes. Suffice it to say, dispute mainly centres round between two factions of sanyasins represented by Swamy Prakasananda and Swamy Saswathikananda. There was an attempt to oust the Board which was elected on 26th July, 1994 headed by Swamy Prakasananda and a general body was convened on 25th October, 1994 and a new Board was elected. The question whether election conducted on 25th October, 1994 was a valid election or not was finally considered by this court in CRP No. 2727 of 1994. This court found that the Board elected on 26th July, 1994 was the validly elected Board and consequently directed the Board elected on 25th October, 1994 to hand over the management of the Trust to the Board elected on 26th July, 1994. Direction was also issued to the trial court where O.S. No. 247 of 1994 was pending, to enforce the direction and put the Board in possession forthwith. This court directed the Trust Board elected on 26th July, 1994 to fill up the vacancies in terms of Clause 22 of the Scheme and to Act as per the directions of the trial court during the pendency of the suit in matters involving capital expenditure. Trial court was directed to expedite the disposal of the suit. O.S. No. 247 of 1994 was later decreed on 13th March, 1998 and election held on 26th July, 1994 was held valid.

5. There was some resistance in handing over charge to the Board elected on 26th July, 1994. Ultimately this court's direction was implemented with police aid on 10th November, 1995 and the Board elected on 26th July, 1994 was put in management of the assets of the Trust. The disputes between the two factions of sanyasins however continued and attempts were made to convene general body meetings by the rival faction on the plea that out of remaining members one had resigned on 20th June, 1995 and consequently there was no quorum for the Trust Board elected on 26th July, 1994 to function. Two factions of sanyasins later issued notices convening separate meetings of their own general bodies on 10th November, 1997 at Sivagiri. It was alleged the Board elected on 26 July, 1994 and there was no valid quorum to transact any business. Followers of the two factions took out proceedings in various parts of the State which resulted in serious clashes between the two groups. Third parties also entered the fray and took position on either side. Situation at Sivagiri Mutt was very tense. Large number of police requirements were to be deputed to keep law and order situation. Second petitioner herein also filed a complaint before the Varkala Police alleging serious law and order situation prevailing in the premises of Sivagiri Mutt. Complainant stated that some of the sanyasins had committed criminal trespass. Ext. P-5 is the complaint filed by the second petitioner. On the basis of the various incidents happened in and around Sivagiri, report, dated 24th June 1997 was submitted by the Superintendent of Police, Rural, Trivandrum to the District Magistrate, Trivandrum. On the basis of the said report, preliminary Order was passed and later after hearing Prakasananda the first petitioner herein as well as Swaroopananda he passed a final Order, Ext.P-7, dated 25th June, 1997 attaching the properties of the Trust and were placed under Receivership.

6. The Trust and its properties are situated not only within the jurisdiction of District Magistrate, Trivandrum but on various parts of the State and elsewhere. Government later evaluated the situation and considered it necessary to take over the management of the Trust along with all its institutions for a limited period after having satisfied that delay in taking over the management of the Trust would be detrimental to the management and objects of the Trust. Accordingly, Governor of Kerala in exercise of powers under Clause (1) of Article 213 of the Constitution of India promulgated Sivagiri Mutt (Emergency Provisions) Ordinance, 1997 by which the entire assets and properties of the Trust situate in several parts of Kerala and outside were taken over. The Ordinance was replaced by Act 17 of 1997. Petitioners aggrieved by the abovementioned proceedings have filed these Writ Petitions.

7. When the matter came up for hearing, we heard Senior Counsel for the Varghese in O.P. No. 19079 of 1997, Senior Counsel Sri. T.R. Govinda Warner, and Sri N.D. Premachandran in O.R No. 19234 of 1997 and Sri. G. Sasidharan Chempazhanthiyil in O.R No. 20490 of 1997 and Counsel for additional third respondent in O.P. No. 19079 of 1997 and Counsel for additional fourth respondent in O.P. No. 20490 of 1997 Sri. K. Sudhakaran and Sri. A.N. Rajan

Babu as well as learned Advocate General Sri. M.K. Damodaran and Senior Government Pleader Sri. K.K. Ravindrananth.

8. Counsel for the petitioners submitted that the District Magistrate, Trivandrum has committed a serious error in invoking the provisions of Sections 145 and 146 of the Code of Criminal Procedure in taking over the management as well as the assets of the Trust. Counsel submitted that it is on the basis of the Order passed by this Court in C.R.P. No. 2727 of 1994 which was later confirmed by the Apex Court in SLP (Civil) No. 13667 of 1995 that the management of the Trust was handed over to the Board elected on 26th July, 1994. According to them, there was no reason to exercise the extraordinary powers conferred under Sections 145 and 146 of the Code of Criminal Procedure so as to take over the management and assets of the Sree Narayana Dharma Sangham Trust from an elected Board which was put in office on the basis of the decisions of this court in C.R.P. No. 2727 of 1994. Counsel submitted that without adopting any measures to improve the position and to control the law and order, the elected Board was put out of office by initiating proceedings under Sections 145 and 146 of the Code of Criminal Procedure. Counsel also submitted that there was no circumstance existed so as to promulgate the Ordinance under Article 213(1) of the Constitution of India. Placing reliance on the decision of the Apex Court in *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, . Counsel submitted that power to promulgate Ordinance is essentially a power to be used to meet an extraordinary situation and no extraordinary situation existed at Sivagiri for promulgation of the Ordinance. Counsel submitted that the Ordinance cannot be supported under the legislative entry under List II of VII Schedule to the Constitution. Reference was made to the decision of the Apex Court in *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, . Further it was contended that the Administrator appointed in pursuance of the Ordinance is mismanaging the affairs in the Sivagiri Mutt. Allegations were also raised against the constitution and functioning of the Advisory Committee. Referring to Justice Bhaskaran Nambiar Commission Report, Counsel submitted that even the Mathamahapadasala, i.e., Brahma Vidyalaya is also not functioning now and no steps have been taken by the Administrator for its functioning. Counsel submitted that the Act/Ordinance has the effect of interfering with the functioning of the Brahma Vidyalaya. Counsel also submitted that the proceedings initiated under Sections 145 and 146 of the Code of Criminal Procedure as well as the Ordinance and the Act have the effect of nullifying the order of this court in C.R.P. No. 2727 of 1994 which was affirmed by the Apex Court. Counsel placed reliance on the decision of the Apex Court in *In the Matter of: In the matter of : CAUVERY WATER DISPUTES TRIBUNAL*, and also the Bench decision of this Court in *Sygot Castro v. State of Kerala* 2000 (3) KLT 571 , AIR 1997 3127 (SC) and *I.N. Saksena v. State of M.P.* AIR 1976 SC 2250. Counsel submitted that the binding Judgment and decisions cannot be made ineffective with the aid of any legislative power. The Ordinance and the Act displaced the basis of the order in C.R.P. No. 2727 of 1994.

9. Counsel also submitted that the petitioners and the disciples of Sree Narayana Guru constituted by themselves a religious denomination. Being a religious denomination they have the right to establish and maintain institutions for religious and charitable purposes. Counsel submitted that Sree Narayana Guru's teachings and philosophy are similar to that of Adisankara who propounded Advaitavedanta. Reference was made to the book "The word of Guru" @ "Life and Teachings of Narayana Guru" written by Nataraja Guru, "Sree Narayana Guru", by Murkot Kunhappa. Advaita Philosophy - Gurus views on Dwaita by Professor G. Balakrishnan Nair. Admolpadesataka Vyakhyanam Part I by Professor Balarama Panicker and also to his book in Sanskrit "Sree Narayana Vijayam" Mahakavyam. Reference was also made to book, Sree Narayana Guru and his pursuits and also on Gurus Jeevacharithram by Kumaran Asan. They also placed reliance on "Sayings and Teachings of Bhagavan Sree Narayana Guru" by Kumara Swamy Sanyasi. Reference was also made to "Sree Narayana Guru Viswamanveekathayude Pravachakan" written by P.K. Gopalakrishnan, "Sree Narayana Paramahamsan Jeevacharithram" by Pundit K.K. Panicker, "Narayana Guru, a Prophet of renaissance" by P. Parameswaran and "Sree Narayana Guru, the practical philosopher" by Smt. Sathyabai Sivadas. Reference was also made to book written by Nithyachaithanya Yathi on "Sree Narayana Guru", "Sree Narayana Guruvinte Sahithyavum Darsanavum" by Dr. A. Padmanabha Kurup etc. Lot of other literatures were also referred to by the Counsel, Counsel submitted that the above materials would show that Sree Narayana Guru was a "God Incarnate" and so believed by his followers and therefore his movement has got all traits of a religious denomination.

10. Counsel submitted that the objects of Sree Narayana Dharma Sangham Trust is to hold, administer and develop the properties, movable and immovable, i.e., Mutts, temples and other religious institutions and places of worship, educational, cultural and charitable institutions and all properties appurtenant thereto. Activities of the Trust also include among other things, establishment and maintenance of Mutts, Ashrams, Brahmavidyamandirams etc. Counsel submitted that followers of Sree Narayana Guru are known by distinct name "Sree Narayaneeyans" and have got the common faith and common spiritual organisation.

11. Sri. T.C. Mohandas, Advocate who assisted the court, placed reliance on. Annexures A-1 to A-10 and highlighted unique philosophy of Sree Narayana Guru. According to him, Sree Narayana Guru installed Hindu deities in various temples. Guru installed in some temples mirror and lamps, wherein the word "Om" has been inscribed. Particular reference was made to the word "Om" as we get in Mandakopanishad Vedanta by Professor B.K. Nair. Reference was also made to "Teachings of Sree Narayana Guru" by Nataraja Guru. Counsel submitted installation of mirror is understanding of "advaita philosophy". Counsel also made reference to the decision of the Apex Court in Sastri Yagnapurushadji and Others Vs. Muldas Bhudardas Vaishya and Another, . He submitted that the test laid down by the Apex Court has been satisfied in the instant case. In short,

contention of the Counsel is that Sree Narayana Guru was none other than a Hindu Religious preacher. Counsel submitted petitioners and the followers of Sree Narayana Guru satisfied all the tests laid down by the Apex Court and consequently they constitute a religious denomination entitled to protection under Article 26 of the Constitution of India. Counsel contended that the Act itself is invalid on the ground that it conflicts with freedom of religion and the rights of religious denomination or sect represented by the persons like the petitioners and to manage their own affairs in the matter of religion as guaranteed under Articles 25 and 26 of the Constitution of India.

12. Principal Secretary to the Government, Home Department has filed a detailed counter affidavit. Facts which necessitated the invocation of power under Sections 145 and 146 of the Code of Criminal Procedure was highlighted in the counter affidavit. It was pointed out that rival factions of sanyasins continued to create law and order situation in the various institutions under the Trust. Notices were issued by the rival factions convening separate meetings of their factions at Sivagiri on 11th October, 1997. Reports were received that said opportunity would be used by the rival factions to demonstrate their relative strength to establish their authority and to create law and order problems. It was also noticed that out of seven members one of the member resigned. Consequently the Board which was in power lost quorum. Complaint was also received from the erstwhile Trust Board with regard to the fight between the two factions of sanyasins and also the criminal trespass committed by two sanyasins. Enquiry was conducted on the basis of the complaint dated 24th June, 1997. Report dated 24th June, 1997 was also submitted by the Superintendent of Police, Rural, Trivandrum. It was reported that there was serious law and order situation with regard to the affairs of the Trust due to infights between the two factions of sanyasins. Both of them were staking claim for actual possession and management over the properties of the Trust. District Magistrate therefore found it difficult to decide as to who was in actual possession of the properties. He was also satisfied that there would be breach of peace unless stringent steps were taken. Consequently he passed order under Sections 145 and 146 of the Code of Criminal Procedure. Properties of the Trust were attached and put in possession of the Receiver.

13. Government noticed that Receiver appointed was not in a position to take over the institutions outside Trivandrum District and the State of Kerala so as to administer them effectively since there were also complaints of mal-administration and severe financial irregularities. In order to ensure peace and tranquility at Sivagiri, it was felt that some urgent measures had to be taken. Sree Narayana Trust is a public Trust and the State as *parens patriae* have got the obligation to save the same. Because of the extraordinary situation created by the warring groups of the members supported by their followers Government was compelled to promulgate the Ordinance in order to maintain public order and to save the Trust. It was pointed out that the Act envisages the management of only the secular activities and there is no impediment in the sanyasins in

performing their spiritual and other religious functions. Further it was stated that the Ordinance/Act were promulgated for the maintenance of public order. Counsel appearing for the State submitted that the Order passed by the District Magistrate, Ordinances and the Act were not intended to nullify the judicial pronouncement in the Civil Revision Petition. Reference was also made to the decision of the Apex Court in *Indian Aluminium Co. etc. etc. Vs. State of Kerala and others*, and *Indira Sawhney Vs. Union of India and Others*, .

14. Learned Advocate General submitted that there were sufficient reasons for promulgation of the Ordinance so as to maintain public order. Article 246(3) of the Constitution states that subject to Clauses (1) and (2) therein, the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution. Entry I List II read with Article 246(3) makes it clear that the Legislature of the State is competent to make laws in order to maintain public order. Counsel submitted that the expression "public order" would take in situation which was prevalent at Sivagiri and in order to meet such situation Ordinance was promulgated in accordance with Article 213(1) of the Constitution of India. Ordinance was later replaced by Act 17 of 1997.

15. The contention that the provisions of the Ordinance and the Act interfered with the fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India was refuted. Counsel submitted that the petitioners and followers of Sree Narayana Guru could not be characterised as a religious denomination. Placing reliance on the decisions of the Apex Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, , *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, , *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*, . Counsel submitted that petitioner or the followers of Sree Narayana Guru have not satisfied the tests laid down by the Apex Court in the abovementioned decisions as to what is a religious denomination. It was pointed out that for characterising a particular sect or body as a religious denomination there should be a common faith, common spiritual organisation and there must be distinct name for the denomination. Counsel submitted that teachings of Sree Narayana Guru only represent a philosophy and not religion.

16. On the aforementioned contentions the questions that arise for determination are as follows:

(a) Whether the petitioners and disciples of Sree Narayana Guru constitute a religious denomination within the meaning of Article 26 of the Constitution of India?

(b) Whether the Sivagiri Mutt (Emergency Provisions) Act, 1997 has interfered with or affected the petitioners' fundamental right guaranteed under Article 25

of the Constitution of India?

(c) Whether the State Legislature has the legislative competence to enact the Act?

(d) Whether the orders issued under Sections 145 and 146 of the Code of Criminal Procedure as well as the Ordinance and the Act have the effect of, nullifying the judicial pronouncements of this Court in C.R.P. No. 2727 of 1994 as affirmed by the Apex Court in S.L.P.(Civil)No. 13667of 1995?

(e) Whether proper voters" list had been prepared to conduct election as per the provisions of the Act?

17. Counsel on either side placed before us several text books, literature and writings on Sree Narayana Guru and urged their contentions with considerable ability and skill. We place on record our appreciation for the endeavour made by the Counsel on either sides. Arguments were also centred round the question as to what is Religion and what is "Religious denomination" in the context of teachings of Sree Narayana Guru. It was urged that the uniqueness of Sree Narayana Guru Philosophy and his teachings would constitute a religion as such and its special features were highlighted with reference to several text books and writings on Sree Narayana Guru. On the strength of various text books and other teachings of Sree Narayana Guru petitioners maintained the stand that the petitioners and the followers of Sree Narayana Guru would constitute a religious denomination within the meaning of Article 26 of the Constitution of India and therefore entitled to fundamental rights guaranteed under the Constitution to establish and maintain institutions and to manage its own affairs in matters of religion and also to own and acquire movable and immovable property and to administer such property in accordance with law. Petitioners submit this is a fundamental right guaranteed under the Constitution and that the promulgation of the Sivagiri Mutt (Emergency Provisions) Ordinance as well as the Act has interfered with the fundamental rights guaranteed under the Constitution.

18. Counsel appearing for the contesting respondents submitted that Sree Narayana Guru and his teachings and movement do not as such constitute a religion but only a philosophy for universal brotherhood and for emancipation of caste system in the society. According to them Sree Narayana Guru or his followers as such have not advocated for any particular religion. On the other had his motto was to do away with caste system and religion and to treat human being as single individual. They also submitted that teachings of Sree Narayana Guru and his movement as such would not satisfy the test laid down by the Supreme Court to come within the scope of Articles 25 and 26 of the Constitution of India.

19. We may in this context bestow our attention to the meaning given by the Apex Court to the term "religion" and "religious denomination" in our Constitution. Word "religion" does not occur in the preamble to the Constitution. But our Constitution promised to secure to citizens liberty of thought, expression,

belief, faith and worship. Constitution of India stands for a secular State. State has no official religion. Secularism by various provisions states that all persons are entitled to freedom of conscience and the right freely to profess, practise and propagate religion. The words "Sovereign Socialist Secular Democratic Republic" are cardinal, added to our Constitution by the Constitution (Forty-second) Amendment, 1977 replacing the words Sovereign Democratic Republic. Constitution has re-emphasised that our country is secular and that our Constitution stands for a secular State. Freedom of conscience, right to profess, propagate and practice religion is guaranteed under Article 25. Article 26 states that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes, manage its own affairs in matters of religion, own and acquire movable and immovable property and to administer such property in accordance with law. Article 27 says that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. Article 28 says that no religious instruction shall be provided in any educational institution wholly maintained out of State funds.

20. The Apex Court in *Lily Thomas, Vs. Union of India and Others*, explained the meaning of "religion" as under:

"Religion is a matter of faith stemming from the depth of the heart and mind. Religion is a belief which binds the spiritual nature of man to a supernatural being; it is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense constitutes firm reliance on the truth of religious doctrines in every system of religion. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry."

In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, the Apex Court held that religion means a system of beliefs or doctrines which are regarded by those who profess the religion as conclusive to their spiritual well being. Religion is not merely an opinion, doctrine or belief, it has also outward expression in acts as well. In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, Constitution Bench of the Supreme Court has also explained the meaning of those words "religious denomination". The Apex Court was considering the question of vires of the Madras Hindu Religious and Charitable Endowments Act, 1951 which was sought to be made applicable to the institution known as Shirur Mutt, one of the eight Mutts situated at Udupi established by Shri Madhwacharya the renowned exponent of "dualistic theism" in the Hindu Religion. The question arose whether spiritual fraternity constituted by the followers of Shri Madhwacharya could be said to be a "religious denomination" within the meaning of Article 26 entitling them to manage their

own affairs in matters of religion. The Apex Court noticed that "religion" was a term which was hardly susceptible of any rigid definition and rejected the definition given in *Davis v. Benson*, 67 CLR 116. Mukherjee, J. accepted the observation of Latham, C.J. in *Vide Adelaide Company v. The Commonwealth* as fully applicable to the protection of religion by the Indian Constitution. Justice Mukherjee dealt with various other decisions of American and Australian courts and held as follows:-

"As we have already indicated, freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down. Under Article 26(b), therefore, a religious denomination or organisation enjoys complete 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 in such matters. Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent Legislature; for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under Article 26(d), it is the fundamental right of a religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration from the hands of a religious denomination altogether and vests in it any other authority would amount to a violation of the right guaranteed under Clause (d) of Article 26."

The Constitution Bench in that case considered the question whether followers of Madhawacharya could be considered as religious denomination and whether Shirur Mutt is a section of that religious denomination. The meaning of the word "denomination" was examined in the light of the Oxford Dictionary which stated it as 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. Reference was, also made by the Apex Court to galaxy of religious teachers and philosophers who founded the different sects and sub sects of Hindu religion.

21. Another Constitution Bench also considered similar question in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, where some of the provisions of the Bombay Public Trust Act, 1950 were challenged as offending the rights guaranteed to the petitioners therein under Articles 25 and 26 of the Constitution of India. The Apex Court held as follows:

"Article 25 of the Constitution guarantees to every person and not merely to the citizens of India the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon this right by Clause

(2) of the article. Sub-clause (a) of Clause (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and Sub-clause (b) reserves the State's power to make laws providing for social reform and a social welfare even though they might interfere with religious practices. Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by this Judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. What Sub-clause (a) of Clause (2) of Article 25 contemplates is not State regulation of the religious practices as such" which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.

So far as Article 26 is concerned, it deals with a particular aspect of the subject of religious freedom. Under this article, any religious denomination or a section of it has the guaranteed right to establish and maintain institutions for religious and charitable purposes and to manage in its own way all affairs in matters of religion. Rights are also given to such denomination or a section of it to acquire and own movable and immovable properties and to administer such properties in accordance with law. The language of the two Clauses (b) and (d) of Article 26 would at once bring out the difference between the two. 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. On the other hand, 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. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26(d), it is the religious denomination itself which has been given the right to administer its property in accordance with law which the State may validly impose. A law which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26(d) of the Constitution."

In that case the Apex Court held that Section 44 of the Act to the extent that it related to the appointment of the Charity Commissioner as a trustee of religious public trust by the court as well as some of the other provisions were held to be bad. The principle laid down in the aforementioned decision was later followed by the Apex Court in *The Durgah Committee, Ajmer and Another Vs. Syed Hussain*

Ali and Others, .

22. The Apex Court in *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, was dealing with the question whether certain provisions of the Rajasthan Nathdwara Temple Act, 1959 have interfered with the affairs of Nathdwara temple. The Apex Court allowed the State appeal and struck down the decision of the High Court in relation to the idols of Navnitpriyaji and Madanmohanlalji in so far as it relates to the affairs of the temple. While holding so the Apex Court held as follows:

"In deciding the question as to whether a given religious practice is an integral part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. This formula may in some cases present difficulties in its operation. Take the case of a practice in relation to food or dress. If in a given proceeding one section of the community claims that while performing certain rites white dress is an integral part of the religion itself, whereas another section contends that yellow dress and not the white dress is the essential part of the religion, how is the court going to decide the question? Similar disputes may arise in regard to food. In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the court may not be able to resolve the dispute by a blind application of the formula that the community decides which practice is an integral part of its religion, because the community may speak with more than one voice and the formula would, therefore, break down. This question will always have to be decided by the court and in doing so, the court have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion, and the finding of the court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion. It is in the light of this possible complication which may arise in some cases that this Court struck a note of caution in the case of *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, and observed that in order that the practices in question should be treated as a part of religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Article 26."

In that case the court held that famous Nathdwara Temple was a public temple and held that followers of Vallabha belonging to Pusti-Margy Sampradaya constituted a religious denomination.

23. The Apex Court again considered the question whether "Ananda Marga" is the question whether tandava dance in procession or public place carrying lethal weapons and human skulls was an essential rite and could be prevented by the State u/s 144 of the Code of Criminal Procedure. The matter came up for consideration in *Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another*, . Ananda Marga was founded in

1955 as a socio-spiritual organisation claimed to have been dedicated to the service of humanity in different spheres of life such as physical, mental and spiritual, irrespective of caste, creed or colour. Ananda Margis greet their spiritual preceptor Shri Ananda Murti with a dance to Tandava wherein one or two followers use the skull and the symbolic knife and dance for two or three minutes. At intervals processions are intended to be taken out in public places accompanied by the Tandava dance as a religious practice. Commissioner of Police had been making repetitive orders u/s 144 of the Code of Criminal Procedure from 1979 directing that no member of a procession or assembly of five or more persons should carry any fire-arms, explosives, swords, spears, knives, tridents, lathis or any article which may be used as weapon of offence or any article likely to cause annoyance to the public for example skulls. Petition for permission to take procession was rejected by the High Court which led to filing of petition to Supreme Court under Article 32. The Apex Court following the decision in *Sastri Yagnapurushadji and Others Vs. Muldas Bhudardas Vaishya and Another*, held that Ananda Marga cannot be a separate religion by itself. Following the decision in *S.P. Mittal v. Union of India*, : AIR 1983 SC 1, the court laid down tests to ascertain whether it is a religious denomination or not, i.e., (i) it must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith, (ii) common organisation, and (iii) designation by a distinctive name. The Court held that Ananda Marga can be appropriately treated as religious denomination within Hindu religion, Article 26 of the Constitution provides that subject to public order, morality and health, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion. The Court however rejected the claim that they have fundamental right under Articles 25 and 26 of the Constitution to perform tandava dance in public streets.

24. The Apex Court had also considered the question whether "Dawoodi Bohras" is a religious denomination within the meaning of Article 26, in *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*, . There the Apex Court held that the Bombay Prevention of Excommunication Act, 1949 (Bombay Act XLII of 1949) in so far as it destroys the right of Dai-ul-Mutlaq of \ excommunicating any member of the Dawoodi Bohra Community on religious grounds as void being violative of Article 26(b) of the Constitution. Petitioners contended that just like followers of Ramanuja known by name Vaishnabas Vallabha, followers of Vallabha belonging to Pushtimargi Sambradaya, Ananda Margi, Dawoodi Bohras Community, etc., petitioners and the followers Sree Narayana Guru known as "Sree Narayaneeyans" constitute a religious denomination within the meaning of Article 26 of the Constitution.

25. We may in this connection refer to some of the decisions relied on by the counsel for the State and contesting respondents. Reference was made to the decision of the Apex Court in *Sastri Yagnapurushadji and Others Vs. Muldas Bhudardas Vaishya and Another*, In that case it was urged that Swami

Narayaneeyans who worship at Swami Narayana temple would be Hindus for cultural and social purpose but they are not persons professing Hindu religion and as such they do not form a section, class or sect or denomination of Hindu religion. The Court held that "Swami Sreenarayana Sect" is not a distinct or separate group of Hindu religion and therefore they are not a religious denomination. In *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others*, , the Apex Court held that believers of Shiva form of worship are not denominational sect or a section of Hindus but they are Hindus as such. It was held that they are not entitled to protection particularly under Clauses (b) and (d) of Article 26 in the matter of religious denomination. In *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, , the Apex Court held that on theoretical considerations it may not be easy to hold that followers and devotees of the saint who visit the Durgah and treat it as a place of pilgrimage can be regarded as constituting a religious denomination or any other section. In *Sri Kanyaka Parameswari Anna Satram Committee and Others Vs. Commissioner, Hindu religious Charitable and endowments and Others*, a Bench of three Judges held that Hindu worshipers of God Shiva are not denominational sect and therefore they are not entitled to the protection under Article 26 of the Constitution for management of the temple. The court held that Hindu section of Arya Vysya Community who worship Goddess Mama Kanyakaparameswari are not denominational section for the purpose of Article 26(d) and 26(b) of the Constitution. When we apply the principle laid down by the Apex Court in the above-mentioned decisions, it would be clear that Sree Narayana Guru was a great philosopher and social reformer and could not be characterised as Guru who established a religion; nor his disciples could be characterised as religious denomination.

26. In this connection it would be profitable to refer to some of the text books and passages which dealt with the philosophy and teaching of Sree Narayana Guru. In this connection it would be appropriate to refer to the Will executed by Sree Narayana Guru. Sree Narayana Guru executed a Will in 1101 M.E. Relevant portion of the Will is extracted below:

"This Will is being executed by us so that all religious and charitable institutions such as temples, sannyasi mutts, schools, industrial workshops, etc., which belong to us and which are at present in our full possession and management together with all movable and immovable properties pertaining thereto should be inherited by Bodhananda, chief disciple residing at the Sivagiri Mutt which is the headquarters of all our charitable institutions who has been this year formally ordained with water ritual according to usage on the eleventh day of Kanni (about September). During our lifetime these establishments and properties attached to them shall still be vested in me under my full rights of possession and management and only after my life shall this instrument come into force. If it be deemed necessary in the meanwhile to make partial or wholesale changes in this instrument we reserve full right to do so. After the term of our life the abovementioned religious-charitable foundations and all other establishments

belonging to them together with any future properties that might come into our ownership hereinafter, shall be taken possession of by the above-mentioned Bodhananda and after the term of life of the said Bodhananda the right of succession to these properties and establishments shall vest in a sannyasi chosen by majority from among the disciples who constitute the parampara (vertical hierarchical succession) of disciples, and in this manner this succession right shall continue to be vested always in this parampara way. Further it is laid down here that there should never come about any set back to the purity of the objectives or to the sustained progress of the said religious-charitable establishments whatever even for once, and in case there is noticed any misdirection that might take place, then the remaining members of the said body (or bodies?) of disciples have full power to control the situation in legitimate manner."

27. The Will or the writings, Life History of Sree Narayana Guru written by K. Damodaran, Sree Narayana Darsanam and Sree Naryayana Guruvinte Sampoorana Krithikal by Dr. T. Bhaskaran, writing by Dr. Geevarghese Mar Theodocius, "Avismaraneeyar" by Kainikkara Kumara Pilla, "Thiruvithamkoorile Mahanmar" by Sooranattu Kunjan Pilla, book written by Fred Haas "Mystical Vision of Sree Narayana Guru" (Sree Narayana Dharmam Magazine), book written by Dr. T.K. Raveendran, "Sree Narayana Guruswamikal", and book written by Sree Narayana Guru "Vedanda Sutras" the various poems of Sree Narayana Guru written by Nataraja Guru, writings of Sree Narayana Guru "Sree Narayana Guru Prophet of the New Order", "An Anthology of Poems of Sree Narayana Guru" by Nataraja Guru. We are of the view above factual materials would not indicate or establish that Sree Narayana Guru taught for or advocated for a particular religion or practice. The followers of Guru are not advocating or propagating for any religion or to be characterised as a religious denomination.

28. We are of the view that the mere fact that he had advocated advaita or that he professed Hindu religion does not mean that the movement he advocated or his followers constituted a class or sect of denomination of Hindu religion. The poems of Guru by name "Jati Mimamsa" the book of Sree Narayana Guru by M.K. Sanu, Dialogue between Guru and C.V. Kunhiraman or the book written by Swami on "Swami Sree Narayana Theertham" or the Article written by Mridananda Swamikal on Sree Narayana Guru, the Text written by Swami Saswathikananda on Atmopadesa Sataka the Article under the caption "the Concept of God in Hindu Religion" published in Bhavan's Journal as well as various views expressed by renowned authors would only highlight the fact that Guru had never set up a religion as such nor his followers wanted movement to be known as religious movement or to claim the benefit of religious denomination. Guru's teachings has always got the touch of high royalty of, humanism, his attempt was always to uplift, oppressed and downtrodden and to save them from the ill-effects of caste system.

29. Sree Narayana Guru was born in Chempazhanthi, Trivandrum in the year,

1855. Sree Narayana Guru entered Mahasamadhi on 29th September, 1928. During this period, world has seen a great Saint, Social Reformer, a humanist, a philosopher and above all a great human being. His inspiring message to the humanity, One Caste, One Religion and One God for Man paved the way for a casteless society. His teachings and philosophies had emphasised the need for propagation for the external and internal purity of man, mind and upliftment of downtrodden. Even though Kerala has given birth to many a saints it was Sree Narayana Guru for the first time based on the philosophy of advaita vedanta advocated for the social upliftment of the downtrodden and highlighted the necessity of doing away with the caste system which was prevalent in the Hindu society. During the 19th century when he was born, Hindu society was divided into castes and sub-castes. Non caste Hindus were subjected to untouchability. Though Hinduism preached and declared that all human beings are equal, evils of caste system was prevalent in the Hindu society from time to time immemorial.

30. The Will executed by Sree Narayana Guru would clearly indicate the Trust was settled by him for the benefit of poor and downtrodden. Trustees were appointed only for achieving the above objectives of Guru. Guru never ordained to form a religious denomination as per the Will. Concept of "One Caste, One Religion and One God for Man" was the philosophical outlook and was never intended to form religion among disciples. Message "One Caste, One Religion and One God for Man" is the outcome of re interpretation of Sankara in Advaita. Sree Narayana Guru himself has pronounced that he did not belong to any caste or religion. According to him, God of all religions was the same and there was only one religion. Guru did not want man to be tied down to any particular religion. Guru gave more importance to universal brotherhood and for emancipation of all evils from the society rather than advocating for a particular religion or following any religious traits. Guru stated whatever be one's religion man must be good. Sree Narayana Guru was a great social reformer and tried to uplift people suffering from social and economic oppression so as to achieve unity and equality among men. In Sivagiri there is Sarada Madam. There is an idol of Sarada in her lotus abode. Customary religious rituals however are not performed. There is no nivedya or festival. According to Guru, if industry is built up people would be benefited. Guru's philosophy was that all religion is same and when rivers merge with the ocean there is no difference. Like that there is no difference as far as religion is concerned. Some of the important stanzas of Atmopadesa Satakam would indicate that the ultimate object was self-realisation or knowing oneself as better undertaking. Guru's teachings and message were all of a philosophical context of self-realisation rather than that of adoration of any deity, steering clear of local or traditional colouration. Guru's teachings and message are all universal application benefitting the entire humanity and embodies universal brotherhood of man. Guru wanted to build up a casteless and classless society where there is absolutely no difference between one man and another.

31. The Will executed by Sree Narayana Guru would positively show that the Trust was settled by him for the benefit of the poor and the downtrodden and

that the trustees were appointed by him for properly taking care of the management and administration of the trust properties and the trustees were chosen by Guru in such a way that they are selfless persons dedicated and devoted to their duties for upliftment of the poor and downtrodden who are the beneficiaries of the trust properties. Trustees were appointed from among the monastic order, only for effectuating the above objectives of Guru. The teaching of Guru was mainly for propagating the universal brotherhood of man and for social reformation for the advancement of the lower castes and the poor and to fight against religious fanaticism. The concept of "One Caste, One Religion and One God for Man" which is relied on by the petitioners as an article of religious faith cannot be common religious faith so as to form a religious denomination. The concept of "One Caste, One Religion and One God for Man" is essentially in the realm of sublime philosophy and radical social reformation and Guru had evolved this concept mainly for eradicating the evils of caste is in and religious fanaticism and to foster the idea of universal brotherhood.

32. Guru belonged to Ezhava community which is part and parcel of Hindu religion. Guru advocated to his fellowman for the upliftment of the poor and downtrodden segment through proper education. Guru also wanted to perpetuate the monastic order of the members to achieve the objects of the Sangham. Guru wanted a monastic order of sanyasins following and propagating his teachings who imbibe the philosophy of the Guru and disseminate the same for the transformation of a stagnant society labouring under the monstrous social evils and ludicrous customs and superstitions inherited over the centuries culminating a glorious civilization and a reformation of the social and spiritual order leading to the creation of a society marching towards the bright horizons of a new order where "One Caste, One Religion and One God for Mankind" will be the reverberating motto. Guru was not advocating for creating of a new religion. Guru never insisted that his followers should shun their religious practices and follow a new religious order. Guru welcomed members of all religions to join hands with him to upheld the principle of One Caste, One Religion and One God for Mankind.

33. Sree Narayana Dharma Sangham Trust itself was constituted under the Scheme approved by this court to achieve the above object. The object was to disseminate and propagate the teachings of Sree Narayana Guru such as "One Caste, One Religion and One God for Man" and to do service to humanity as conceived by Guru and to perpetuate the monastic order of the members to achieve the objects of the Sangham. Guru also aimed at establishing Gurudharma Sabhas wherever possible with Sivagiri as centre, to work for the eradication of distinctions of caste and untouchability and religious fanaticism and to propagate the teachings of the Guru and foster universal brotherhood and theism. The above facts would positively show that petitioners or the disciples of Sree Narayana Guru are not a religious denomination so as to claim protection under Articles 25 and 26 of the Constitution of India.

34. We may now examine whether the orders passed by the Magistrate under Sections 145 and 146 of the Code of Criminal Procedure, promulgation of the Ordinance and the enactment of Sivagiri Mutt (Emergency Provisions) Act, 1997 would in any way affect the rights of the Trust. A contention was raised that the above Orders, Ordinance and the Act have the effect of nullifying the various judicial pronouncement which ended in C.R.P. No. 2727 of 1994 as confirmed by the Supreme Court in SLP (Civil) No. 13667 of 1995. We are of the view, this contention will not stand. In C.R.P. No. 2727 of 1994 this court decided that the Board which was elected on 26th July, 1994 was the duly elected Board. On the basis of that declaration made by this Court with police help the Board elected on 26th July, 1994 was put in office. The elected Board had however lost the quorum due to ,the resignation of a member. Since there was no quorum to transact various business, rival factions of sanyasins convened general body of their own and to install their own members in the management of the Trust. This resulted in fights between two factions of sanyasins which were even taken to streets and police had to intervene on several occasions to keep law and order. Since it was out of control of the police, an order was passed under Sections 145 and 146 of the Cr.P.C. to entrust the administration of the properties of the trust under a Receiver. Since there are properties outside the State, necessity of promulgation of the Ordinance was felt and in such circumstances Ordinance was promulgated and consequently administrator was appointed. The said Ordinance was replaced by the Act. The Ordinance was promulgated to maintain peace and tranquility in the public trust. It has got the legislative sanction under Entry 1 in List II of VII Schedule to the Constitution. Because of the extraordinary situation created by the warring group of members Government was compelled to promulgate the Ordinance so as to maintain public order and peace and to save the Trust.

35. The Apex Court in *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, held that public order is synonymous with the public safety and public tranquility. It was further held that between the expressions "in the interest of public order" and "for the maintenance of public order", the expression "in the interest of makes the ambit of protection very wide. In *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, , it has been held that a power to make law with respect to subject matter is a power to a make laws which in reality and substance are laws upon the subject matter. Article 246(3) of the Constitution states that subject to Clauses 1 and 2 therein, Legislature of any State has the exclusive power to make laws for such State with respect to any of the matters enumerated in List II of VII Schedule to the Constitution. Thus Entry 1 of List II read with Article 246(3) makes it clear that the Legislature of the State is competent to frame laws with respect to matters involving public order. The Ordinance and the later Act was therefore published with legislative competence. Therefore the contention that the Ordinance and the Act has the effect of nullifying the judicial pronouncement in C.R.P. No. 2727 of 1994 cannot hold good. When the Legislature has power to enact law it can do so. It will be

possible for the Legislature to re-enact law for removing the obstacles as declared by judicial decision and to validate the Act even retrospectively. This legal position has been settled by the Apex Court in the decisions reported in *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality* (1970) 1 SCR 385 , *Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad* , *Indian Aluminium Co. etc. etc. Vs. State of Kerala and others*, and *Indira Sawhney Vs. Union of India and Others*, and Bench decision of this Court in *Sybol Castro v. State of Kerala* 2000 (3) KLT 571. Therefore the contention of the Counsel for the petitioners that the proceedings initiated by the District Magistrate, the Ordinance and the Act will have the effect of nullifying the judicial pronouncement of this Court cannot hold good. We reject that contention.

36. A contention was raised that Ordinance and the Act will have the effect of nullifying the scheme framed by this Court in A.S. No. 14 of 1956. This Court framed , the scheme in A.S. No. 14 of 1995 so as to uphold the objective of the trust in public interest. The Act and the Ordinance were promulgated only to see that the objectives as enumerated in the Scheme framed by this Court are achieved. To take over the management of the Trust on the basis of the Act is only a temporary measure for maintaining public peace and tranquility and to see that it would act in accordance with the objects and purpose laid down in the Scheme. As per the Act an Advisory Council is to be constituted to do management of the Trust. u/s 6(5) of the Act Council shall render necessary advice to the Government for the preparation of a proper list of members who have voting rights at an election to the Trust Board and give further directions as are necessary to draw up such a list of members with specific direction as to qualification for enrolment of member and give direction for holding fresh election before the expiry of the term. Provisions of Section 6(5) cannot therefore be said to amend or nullify the Scheme framed by this Court but to effectuate proper management. Section 6(5) of the Act reads as follows:

"(5) The Council shall render necessary advice to the Government for the preparation of a proper list of members who have voting rights at an election to the Trust Board, give further directions as are necessary to draw up such a list of members with specific direction as to qualification for enrolment of member from the date of the previous election to the Trust Board and direction for holding a fresh election before the expiry of the term of management by the Administrator so as to enable a newly elected Trust Board to be in place when the Administrator vacates office in accordance with the provisions of this Ordinance. The election so held to the Trust Board under this sub-section shall be under the supervision of the Council and in the event the election is approved by the Advisory Council, it shall declare such approval and publish the same in such manner as it may deem fit, and thereupon such election shall be final and conclusive and shall not be called in question in any court on any ground whatsoever."

We have already found that the Ordinance and the Act do not suffer from any

legal infirmity and the State Legislature has got the jurisdiction to frame Act 17 of 1995. Therefore the provisions of Section 6(5) of the Act do not suffer from any legal infirmity. Section 6(5) has got a purpose to achieve which would enable smooth transfer of management of the Trust to an elected Board. For the said purpose the provision has been incorporated.

37. The Advisory Council constituted u/s 6(5) of the Act has already prepared list of members who have voting rights to the Trust Board. Advisory Council constituted held its first sitting on 19th November, 1997 and took steps and prepared draft voters list and the same was published on 25th March, 1998. It has given wide publicity in various newspapers. Total strength of the members of the Trust as per records was 70. Objections and complaints were received against 45 of them. Advisory Council examined the complaints and decided to afford opportunity to the complainants and objectors to be heard on 20th and 21st of March, 1998. On an assessment of the various complaints and the evidence in support of it, Council at its meeting held on 29th March, 1998 resolved to issue show cause notice to 30 sanyasins seeking their explanation as to why their names should not be excluded from the voters list prepared by the Government u/s 6(5) of the Act. Seventeen sanyasins responded within the stipulated time and some of them sent replies subsequently. Ultimately Council sent recommendation to the Government. Advisory Council received various objections regarding certain members. Ultimately after considering the objections Advisory Council finalised the voters list and it was forwarded to the Government.

38. We notice that there is dispute with regard to the manner in which voters list has been prepared and the action of the Advisory Council and report submitted by the Advisory Council to the Government. We are of the view since objection has been received and the matter was pending before this Court, we feel it just and proper that a direction be given to the Advisory Council to hear all the parties and consider their objections and to take further steps under the Act. We are therefore of the view that the steps taken by the Advisory Council in the preparation of the list is only provisional since the entire matter was sub judice. We may indicate that the term of the ousted Board of Trustee by the Ordinance and Act is over even going by the provisions of the Scheme. Therefore there is no question of putting them back in office. The only alternative is to conduct fresh election.

39. Trust is under the management of the Administrator. The said situation cannot prolong any further. It is highly necessary that a proper election be conducted and the elected Board be entrusted with the management of the Trust and its properties. Consequently direction has to be given to conduct election at the earliest.

40. We therefore direct the Administrator and Advisory Council to take all steps as per the Act to complete the election process. The Council has to take all steps u/s 6(5). We may indicate that the list they have finally prepared be treated as

preliminary list. They will call for the objections and comply with all other formalities and finalise the list within a period of six weeks from today. Government on the basis of the said final list will take further steps in the matter and complete the election process within a period of one month thereafter. Steps should be taken to conduct election in a smooth and orderly manner and put the elected Trust Board in office immediately.

40A. We hope that members of the warring groups will take earnest efforts to uphold the teachings and messages of Sree Narayana Guru. We hope it would be their endeavour to spread Guru's message for the goodness of the mankind. Teachings of Sree Narayana Guru is the very soul of our society which is to pass from one generation to another. Let us preserve it for posterity. Charles Caleb Colton, a British Clergyman and writer in the 18th century said that men would wrangle for religion, write for it, anything but live for it. Disciples of Sree Narayana Guru shall not wrangle for power but propagate his teachings, fight for it and live for it. Let them try to uphold Guru's unique philosophy, i.e., One Caste, One Religion and One God for Man.

41. We therefore dispose of all the Writ Petitions upholding that the action taken by the District Magistrate and also the promulgation of the Ordinance and the Act. The Original Petitions are disposed of with the above directions.