
(1987) 06 MP CK 0006

In the Madhya Pradesh High Court

Case No : Civil First Appeal No. 211 of 1986

Ramchandra Mangilal and others

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 22-06-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Madhya Pradesh Shri Mahakaleshwar Mandir Adhiniyam, 1982 — Section 45

Citation : (1987) MPLJ 668

Hon'ble Judges : N.D. Ojha, C.J.; C.P. Sen, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari with K.D. Tiwari, for the Appellant; M.V. Tamaskar, Addl. Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

N. D. Ojha, C.J.

This judgment shall govern the disposal of Miscellaneous Petition No. 2605 of 1983 also. The appellants in Civil First Appeal No. 6 of 1979 renumbered as 211 of 1986 filed M.P. No. 76 of 1957 challenging the constitutional validity of Madhya Bharat Shri Mahakaleshwar Temple Act, 1953 (hereinafter referred to as the Act of 1953) on various grounds asserting that they were the Pujadhikaris or Pujaris from the time of their ancestors of the deity of Shri Mahakaleshwar at Ujjain which was a "Jyotirlinga" and were entitled to the offerings made to the said deity. According to them there were two sects of these Pujaris, one known as Janeu Pati and the other as Khoont Pati, the former were entitled to twelve annas share and the latter four annas share in the offerings. Their case further was that the deity had all along been in the charge of the Pujaris who had been performing its Sewa Puja in accordance with the established custom. The writ petition was contested by the respondents thereto and came up for decision before a Division Bench. There was a difference of opinion between the two Judges and the matter was referred to the Chief Justice who took the view that

since disputed questions of fact were involved, the proper course for the appellants who were the petitioners was to file a suit. The writ petition was accordingly dismissed and the appellants after serving a notice u/s 80, Code of Civil Procedure, instituted Suit No. 5 of 1965 which later on seems to have been numbered as Suit No. 19-A of 1977 in the Court of Additional District Judge, Ujjain. The State of Madhya Pradesh and Shri Mahakaleshwar Mandir Samiti, Ujjain, were arrayed as defendants 1 and 2 respectively in the suit and it was prayed therein that the defendants may be permanently restrained from interfering with the rights of the plaintiffs to manage the affairs of Shri Mahakaleshwar Jyotirlinga, to perform its Sewa Puja and to receive the offerings and funds. A further relief of permanent injunction was sought directing the defendants not to enforce the impugned provisions of the Act of 1953 and not to take over the management of the Mandir.

The suit was contested by the defendants. They denied that the plaintiffs had any right as claimed by them and asserted that the right of the plaintiffs to the cash offerings was only permissive in nature and was in lieu of their services. It was also pleaded in defence that even before the commencement of the Act of 1953 there was a committee of officials and non-official members in the former Gwalior State to look after and manage the affairs of the temple popularly known as the Mahakal Temple, which from time to time used to seek necessary orders from the Ruler of the State. It was also asserted that no provision of the Act of 1953 was ultra vires or violative of any article of the Constitution of India.

After framing necessary issues and hearing the parties, the Second Additional District Judge, Ujjain, dismissed the suit on 30th October 1978. He held that the plaintiffs are not Pujadhikaris in their own right. They perform Puja in lieu of the portion of Charotris allotted to them by the Government. They do not have such exclusive right of performing the worship as claimed by them, nor have they been performing the Puja in lieu of their hereditary right. He also held that the plaintiffs keep the custody of the idol only on behalf of the Government as a safeguard against theft etc. and take out the processions of Shri Mahakaleshwar Deity on behalf of the Government and receive only a portion of offerings made by the people for attending the idol. The plaintiffs and their ancestors were working as servants in the temple and executed an agreement on 17th November 1926 whereby they agreed to receive Charotri in lieu of services rendered by them. The plaintiffs had no right to receive offerings by virtue of their office and consequently had no right to property. In regard to the validity of the Act of 1953 it was held that none of its provisions was ultra vires. Aggrieved by that decree the plaintiffs have preferred First Appeal No. 6 of 1979 aforesaid, now renumbered as 211 of 1986.

During the pendency of this First Appeal the State of Madhya Pradesh enacted the Madhya Pradesh Shri Mahakaleshwar Mandir Adhiniyam, 1982 (hereinafter referred to as the Adhiniyam). By Section 45 of the Adhiniyam, the Act of 1953 has been repealed as from the appointed date. In this view of the matter the

First Appeal in so far as it challenges the Act of 1953 has apparently become infructuous. However, some of the plaintiffs-appellants or their legal representatives have filed Misc. Petition No. 2605 of 1983 challenging the constitutional validity of the Adhiniyam. It is in this view of the matter that Misc. Petition No. 2605 of 1983 and First Appeal No. 6 of 1979 renumbered as 211 of 1986 are both being decided by this common judgment.

The State of Madhya Pradesh, the Collector, Ujjain, the Administrator, Shri Mahakaleshwar Mandir, Ujjain and Shri Mahakaleshwar Mandir, Ujjain, Managing Committee constituted under the provisions of the Adhiniyam have been arrayed as respondents in M. P. No. 2605 of 1983. It has been prayed in the writ petition that the entire or some portions of the Adhiniyam may be declared as ultra vires and ineffective, the respondents be restrained by a writ in the nature of Mandamus or Prohibition from implementing the provisions of the Adhiniyam and from interfering with the rights and possession of the petitioners. A return has been filed on behalf of the respondents wherein the claim of the petitioners has been refuted on grounds almost similar to those on which it was refuted in the earlier writ petition and the suit and it has further been asserted that no provision of the Adhiniyam was ultra vires. According to the respondents the petitioners are not entitled to any relief and the writ petition deserves to be dismissed.

We shall first take up First Appeal No. 211 of 1986. As already pointed out, with the repeal of the Act of 1953 by the Adhiniyam, the appeal in so far as it challenges the validity of the Act of 1953 has become infructuous. Counsel for the appellants, however, urged that the findings of the trial court to the effect that the appellants had no hereditary right to act as Pujaris of Shri Mahakaleshwar and to receive the offerings and consequently no right to property of the appellants was involved and that they were being paid part of the offerings in lieu of services rendered by them are erroneous and on a proper appraisal of the evidence are liable to be set aside. We have been taken through the evidence produced by the parties and after their consideration are inclined to agree with the findings of the trial court. It is settled law that in cases of affirmance of findings of the trial court it is not necessary to restate the effect of the evidence or reiterate the reasons of the trial court. If authority were needed for this proposition, reference may be made to *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, where it has been held by the Supreme Court as hereunder:

It is not the duty of the appellate Court when it agrees with the view of the Trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice.

In this view of the matter, in place of restating the effect of the Trial Court on the evidence either to restate the effect of the evidence or to reiterate the

reasons given by the Trial Courts to indicate as to why we are inclined to agree with the reasons given by the trial Court in support of its conclusions on various issues touching the rights of the appellants. Issues 1, 2, 3 and 4 framed by the trial Court are such issues which fall in this category and which have been decided against the appellants. For the sake of convenience they are being reproduced below :

(1) Whether the plaintiffs are the Pujadhikaris of Mahakaleshwar Temple ?

(2) Whether plaintiffs have the exclusive right of performing the worship and whether they have been performing this Puja in lieu of their hereditary right according to tenets of Hindu scriptures and whether they have been keeping the Idol in their custody and charge from times immemorial ?

3(a) Whether plaintiffs take out the procession of Mahakaleshwar Jyotirlingam and receive and enjoy all the offerings made by the people ?

(b) Whether the plaintiffs are working as servants in Mahakaleshwar Temple before year 1910 ?

(c) Whether the plaintiffs and their ancestors had executed an agreement on 17-11-1926 whereby they had agreed to receive "Charotri" in lieu of services rendered by them ?

(4) Whether the plaintiffs' right to receive offerings at the Mahakaleshwar Temple is a right to property ?

All these issues have been dealt with by the trial Court together. Ram Chandra (P.W. 1) was the main witness produced on behalf of the appellants. His testimony along with various documents has been considered by the trial Court in detail and the said Court has inter alia placed reliance on the admissions made by this witness which militate against the theory of hereditary right of the appellants to act as Pujaris and receive the offerings and support the case of the respondents that the appellants or their ancestors had been receiving part of the offerings in lieu of services rendered by them and that the documents indicated that Maharaja Gwalior all along exercised control over the management of the affairs of Shri Mahakaleshwar Temple. The trial Court has also placed reliance on Ex. P-4 containing an admission on behalf of the appellants that out of the offerings made they were not entitled to the jewellery and the ornaments. Various Sanads on which reliance was placed on behalf of the appellants have been considered by the trial Court along with the testimony of the appellants' next witness Prem Narayan (P.W. 2). In regard to some of them it has been pointed out by the trial Court that the appellants have failed to prove their connection with the persons in whose favour these Sanads purported to have been executed, whereas in regard to others the trial Court has held that they indeed supported the case of respondents about payment being made to the Pujaris in lieu of service. The trial Court has further pointed out that Ex. P-33 to Ex. P-38 indicated that a committee known as Mahakaleshwar Committee had

been constituted before 10th May 1912 which was presided over by the Suba i.e. the Collector of Ujjain and orders used to be passed by the Gwalior Naresh in regard to the management of the temple. The trial Court also relied on Ex. D-11 register maintained by the Sansthan and admissions of Prem Narayan (P.W. 2) in regard to certain entries made therein in support of its findings referred to above.

The trial Court has then considered the testimony of the last witness produced on behalf of the appellants, namely Babulal (P.W. 3) along with some of the documents, namely Ex.P-39 to Ex.P-43 relied on by the appellants. It has held that the testimony of this witness did not establish that the plaintiffs used to perform Puja in their own right as hereditary Pujaris. According to it Ex.P-41, copy of an earlier judgment, on the other hand indicated that the ancestors of the plaintiffs used to work under the authority of one Venkatesh Shastri and get the offerings in lieu of services rendered by them.

After considering the evidence of the plaintiff-appellants the trial Court has considered the oral and documentary evidence produced on behalf of the defendant-respondents and has placed reliance on it in support of its finding. The trial Court has placed emphasis on Ex.D-1, an agreement admittedly executed by the Pujaris on 17th November 1926 specifically agreeing to receive the offerings (charotri) in lieu of services rendered by them. It has also placed emphasis on Ex.D-25, an order of Maharaja Gwalior, Ex.D-26, notice given to the Pujaris, and Ex.D-28, Ex.D-29 and Ex.D-30 relating to certain arrangements made. Reliance on two orders of the Council of Regency Ex.P-2 and Ex.P-3 has also been placed and so has been placed reliance on Ex.D-7 which contained a direction to the effect that the Pujaris shall from 6th December 1926 onwards take only cash and fruit offerings. This evidence has been relied on by the trial Court in support of its findings that the Pujaris had no hereditary rights either to do Puja or receive offerings but the same was regulated by directions issued by the Maharaja Gwalior from time to time and whatever portion of offerings they used to get was in lieu of services rendered by them. In support of its finding that it was not the Pujaris but the Sansthan Mahakaleshwar which used to manage the affairs and bear the expenses of Shri Mahakaleshwar Temple, reliance has been placed by the trial Court on Ex.D-41 and Ex.D-42 relating to budget of expenses for the Temple. The trial Court has in this connection pointed out with reference to certain documents that there was in existence a Mahakaleshwar Committee even during the rule of Maharaja, Gwalior with his implied consent. It has also pointed out that Ex.D-50 and Ex.D-51 indicated that the expenses for taking out the processions of Shri Mahakaleshwar Deity on important festivals were met from the offerings made to the Deity and not by the Pujaris.

According to the trial Court even though it was not clear as to when was Mahakaleshwar Committee actually constituted but it was apparent that by 1910 it was fully in Saddle. The interference with the management of the Temple by the Maharaja of Gwalior has been found to be in the capacity of real Manager and not merely in exercise of police powers. Having gone through the evidence

produced by the parties, we are of the opinion that it has been properly appreciated by the trial Court. The admissions made by the witnesses of the appellants relied on by the trial Court are borne out by the testimony of the witnesses concerned. Likewise, the inferences drawn from the documentary evidence are fully justified from their contents. In our opinion the appreciation of the evidence by the trial Court does not suffer from any such defect which may justify interference in the appeal.

As regards the agreement Ex.D-1 executed on 17th November 1926 by the plaintiffs or their ancestors agreeing to receive offerings in lieu of services rendered by them, it has been urged by counsel for the appellants that the background in which this agreement was executed and the effect of subsequent order by the Maharaja of Gwalior releasing the offerings in favour of the Pujaris have not been properly appreciated by the trial Court. It has been pointed out that on 28th December 1924 a Shalunka had been stolen from the temple and it was on account of this theft that the Pujaris were stopped from receiving the offerings and consequently the Pujaris in order to get the offerings released, had to execute the agreement and since on their Petition the offerings were subsequently released, much emphasis did not deserve to be placed on the said agreement. It has been urged that Condition No. 4 in the order dated 23rd January 1925 (Ex.D-25) in that the budget of the offerings may be prepared and put up so that after deducting the expenses, provision for distribution of the balance among the Pujaris may be made clearly recognised the right of the Pujaris to get the offerings. We find it difficult to agree with this submission. Firstly, the background in which the agreement was executed and the order subsequently passed releasing the same have not been ignored by the trial Court and have been properly considered. Secondly, since the evidence on record indicates as held by the trial Court that a portion of the offerings was paid to the Pujaris in lieu of service the order releasing the offerings and condition No. 4 of Ex.D-25 have to be construed in that light and if so construed they only show that distribution of offerings to the Pujaris was made in lieu of services rendered by them and not in recognition of any hereditary rights.

Counsel for the appellants also urged that even though the trial Court has referred to the documents marked as Ex.P-2 and Ex.P-3, it has not discussed its effect. It has been pointed out that in Ex.P-2 and Ex.P-3 both of the year 1926 the relevant words used mean that the offerings which were in deposit may be given to the Pujaris in the old customary way (Hasb dastur Qadima). It was also pointed out that Ex.P-2 uses the word "Amanat" or security with reference to the offerings which were deposited consequent upon the theft. In our opinion, even these documents do not militate against the finding that a portion of the offerings was being paid to the Pujaris in lieu of service. The expressions referred to above have to be construed in the background that a portion of the offerings was admittedly being paid to the Pujaris since long in lieu of service. Since even that portion was not paid to them and was deposited, the use of the word "Amanat" for the same cannot be over-emphasised. Even the words "Hasb dastur

Qadima" are explained in view of the admitted position that a portion of the offerings was paid to the Pujaris since long and such payment had in that sense become almost customary. So is the position in regard to the use of the word "Haqdaran" or cosharers in Ex.P-13 dated 7-6-1926 on which too emphasis has been placed by counsel for the appellants. It obviously refers to the Pujaris who were being paid a portion of the offerings in the manner stated above. The use of the word "Haqdaran" is apparently in that sense. The trial Court has summed up the effect of the agreement Ex.D-1 and the order of Maharaja Gwalior Ex.D-25 as follows :

Ex. D-1 clearly shows that plaintiffs are not the holders in their own right of the religious office to which the charotris are attached but are the hereditary servants who have undertaken before the Government to perform certain functions in the temple in return for which the Government of erstwhile State of Gwalior allotted a portion of the charotris (cash etc.) minus the jewellery and gold and silver ornaments to them.

Ex. D-25, the order of Maharaja of Gwalior read with Ex.D-1 can also support a theory that the Ruler of Gwalior State, who had sovereign powers, had divested the ancestors of the plaintiffs of their absolute right if any to receive the offerings in their own rights.

In this connection it may be noticed that the Supreme Court after pointing out in *Madhaorao Phalke Vs. The State of Madhya Bharat*, , that the Maharaja of Gwalior was an absolute monarch in whom were vested the supreme power of the legislature, the executive and the judiciary, held:

In dealing with the question as to whether the orders issued by such an absolute monarch amount to a law or regulation having the force of law, or whether they constitute merely administrative orders, it is important to bear in mind that the distinction between executive orders and legislative commands is likely to be merely academic where the Ruler is the source of all power. There was no constitutional limitation upon the authority of the Ruler to act in any capacity he liked; he would be the supreme legislature, the supreme judiciary and the supreme head of the executive, and all his orders, however issued, would have the force of law and would govern and regulate the affairs of the State including the rights of its citizens.

The various orders passed by the Maharaja or the Sansthan Mahakaleshwar or the Mahakaleshwar Committee at the bidding of the Maharaja have to be construed in this light. So construed it is apparent as has been held by the trial Court that the management of the Temple was not with the Pujaris nor did they have hereditary rights to receive the offerings. In view of the foregoing discussion we are of opinion that there is no merit in the First Appeal and it deserves to be dismissed.

Now we take up Misc. Petition No. 2605 of 1983. This petition, as seen above, challenges the validity of the Adhiniyam. It was urged by counsel for the

petitioner that under the Hindu Law, deity is a concept and idol an image and it is not within the competence of the Legislature to enact a law about concept of deity which is a matter of faith. According to him, neither Article 25 nor Article 26 of the Constitution permitted such an enactment. He further urged that likewise neither Entry 10 of List III of the Seventh Schedule to the Constitution dealing with trust and trustees, nor Entry 28 of the said List dealing with charity or charitable institutions, charitable and religious endowments and religious institutions confers any such competence on the State Legislature. A deity, according to him, which is a matter of faith, cannot be said to be an endowment or institution. Before dealing with this submission in the context of relevant provisions of the Adhiniyam, it would be useful to keep in mind the law laid down by the Supreme Court in *Seshammal and Others, Vs. State of Tamil Nadu*, . While dealing with Articles 25 and 26 of the Constitution with reference to Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, a distinction was made in regard to the appointment of Archaka from matters of doctrine or belief. It was pointed out:

It is true that a priest or an Archaka when appointed has to perform some religious functions but the question is by itself a secular function or a religious practice. Mr. Palkhivala gave the illustration of the spiritual head of a math belonging to a denomination of a Hindu sect like the Shankaracharya and expressed horror at the idea that such a spiritual head could be chosen by a method recommended by the State though in conflict with the usage and the traditions of the particular institution. Where, for example, a successor of a Mathadhipati is chosen by the Mathadhipati by giving him mantra-deeksha or where the Mathadhipati is chosen by his immediate disciples, it would be, he contended, extraordinary for the State to interfere and direct that some other mode of appointment should be followed on the ground of social reform. Indeed this may strike one as an intrusion in the matter of religion. But we are afraid such an illustration is inapt when we are considering the appointment of an Archaka of a temple. The Archaka has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The Dharam Karta or the Shebait makes the appointment and the Archaka is a servant of the temple.....

That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebait and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office.....Thus the appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was followed in making the

appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate he appoints the next heir of last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion.

In the aforesaid case, relying on an earlier decision in *Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay*, it was further held that the protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine or belief. They extend also to acts done in pursuance of religion and, therefore, contain a guarantee for rituals and observance of ceremonies and modes of worship which are integral part of religion. What constitutes an essential part of religion or religious practice, has to be decided by the Courts with reference to the doctrine of a particular religion and includes practices which are regarded by the community as a part of its religion.

In view of the law laid down by the Supreme Court in the aforesaid case, such provisions in the *Adhiniyam* which relate to the appointment of Pujari which term as is apparent from paragraph 5.2 of B. K. Mukherjee's *Hindu Law of Religious and Charitable Trusts*, Fifth Edition, is synonymous with Archaka, will have to be considered on a different footing from the provisions which may be dealing with matters of doctrine or belief. In paragraph 5.2 referred to above, it has been stated relying on certain decisions that a Pujari or Archaka is a servant of the Shebait and no part of the rights and obligations of the latter are transferred to him.

In order to bring home the scope of religion and matters of religion, counsel for the petitioners also placed reliance on the *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, where it was held that religion is a matter of faith with individual or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress and that the guarantee under the Constitution of India not only protects the freedom of religious opinion, but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion" in Art. 25. It was further held that what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should

be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these will be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities, will not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Art. 26(b).

The same principles were reiterated in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, and *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*.

We will now consider the relevant provision of the Adhiniyam in the light of the observations made by the Supreme Court in the cases referred to above to find out as to whether any of them is inconsistent with the guarantee contained in Articles 25 and 26 of the Constitution, namely, whether any of the provisions of the Adhiniyam purports to interfere with religion or practice of religion or matters of religious doctrines or belief. The preamble of the Adhiniyam reads as hereunder :

An Act to provide for the better maintenance, preservation, administration and governance of Shri Mahakaleshwar Mandir at Ujjain and its endowments and for other matters ancillary thereto.

Section 1 deals with short title and commencement of the Adhiniyam, whereas Section 2 overrides certain Acts. Section 3 contains definitions of various terms used in the Adhiniyam including endowment, Mandir and Pujari. Section 4 contemplates that notwithstanding anything contained in any decree or order of vesting of any court or any custom or usage or contract, sanad, instrument, deed or property, engagement to the contrary, the ownership of the Mandir and all the endowments which have been or may hereafter be made for the benefit of the Mandir in the name of any person whatsoever or for the convenience, comfort or benefit of the pilgrims and all offerings including "chadhotry" shall vest in the deity of Shri Mahakaleshwar.

Since certain submissions made by counsel for the petitioners are with reference to Sections 5, 6 and 7 of the Adhiniyam, these three sections are reproduced hereinbelow :

(1) Notwithstanding anything contained in any decree or order of any court or any custom or usage or contract, sanad, instrument, deed or engagement, the possession, administration, control and management of the Mandir and its endowments shall vest in Shri Mahakaleshwar Mandir Managing Committee.

(2). Shri Mahakaleshwar Mandir Managing Committee shall be a body corporate having perpetual succession and dispose of property and to contract and may, by the said name, sue and be sued.

(3). The headquarter of the Committee shall be at Ujjain.

(1). The Committee shall consist of : -

(a). The Collector of Ujjain District or if and so long as the Collector is not eligible for membership under sub-section (3), an Additional Collector or a Deputy Collector nominated by the Collector;

(b) two officers to be nominated by the Collector;

(c) Mayor of the Municipal Corporation, Ujjain or a Councillor nominated by him;

(d) the Principal, Sanskrit Mahavidyalaya, Ujjain;

(c) One Pujari to be nominated by the State Government:

(f) two non-officials, one of whom shall be a person having a special knowledge of Hindu religion, rites and custom relating to the form of worship practised in the Mandir, to be nominated by the State Government.

(2) The Collector or the person nominated under clause (a) of subsection (1) shall be the Chairman of the Committee.

(3) No person who does not profess Hindu religion and does not accept the form of worship practised in the Mandir, shall be eligible for membership if the Committee.

(4) The nomination of the members shall be notified in such manner as may be prescribed.

(1). A member nominated under clause (b) or clause (f) of sub-section (1) of Section 6 shall hold office for a period of three years from the date of his nomination and shall be eligible for re-nomination.

(2) A member referred to in sub-section (1) may resign his office by giving notice in writing thereof to the authority nominating him and shall cease to be a member on his resignation being accepted by that authority.

(3) The State Government may, by order, remove a member referred to in sub-section (1) if

(a) he is of unsound mind and stands so declared by a competent court, or

(b) he has applied for being adjudged as insolvent, or is an undischarged insolvent; or

(c) he has been convicted of any offence involving moral turpitude; or

(d) he has been guilty of corruption or misconduct in the administration of the Mandir; or

(e) he has absented himself from more than three consecutive meetings of the Committee and is unable to explain such absence to the satisfaction of the

Committee; or

(f) he, being a legal practitioner, has acted or appeared on behalf of any person against the Committee in any legal proceeding after he has been nominated as a member of the Committee; or

(g) he ceases to profess the Hindu Religion or to believe in temple worship; or

(h) he has committed or abetted the commission of any act in support or furtherance of the practice of untouchability.

(4). A member shall not be removed under sub-section (3) unless he has been given a reasonable opportunity of showing cause against his removal.

(5) A member who is removed under sub-section (3) may, within one month from the date of the receipt by him of the order of removal, institute a suit in the court to set aside the order.

Section 8 deals with filling of vacancies in the Committee, whereas Section 9 provides for meeting of the Committee. Section 10 contemplates that no act or proceedings of the Committee shall be invalid merely by reason of any vacancy etc. ...Section 11 deals with duties of the Committee and reads as hereunder :

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

(1) to arrange for the proper performance of worship, "puja-archana" and the daily and periodical rites of the Mandir;

(2) to provide facilities for the offerings of worship by devotees;

(3) to ensure the safe custody of funds, valuables and jewelleryes and the preservation and management of the properties vested in the Mandir;

(4) to ensure maintenance of order and discipline and proper hygienic conditions in the Mandir and proper standard of cleanliness and purity in the offerings made therein;

(5) to ensure that the funds of the endowments of the Mandir are sent according to the wishes, so far as may be known, of the donors;

(6) to do all such things as may be incidental and conducive to the efficient management of the affairs of the Mandir and the convenience of the worshippers; and

(7) to promote any other religious, educational, cultural or charitable activity.

Section 12 places certain restrictions on the power of the Committee in the matter of alienation of Mandir properties, whereas section 13 limits the borrowing power of the Committee. Section 14 provides that the Committee shall annually submit to the Commissioner and to the State Government a report on

the administration of the affairs of the Mandir containing such particulars and at such time as the Commissioner may specify. Section 15 permits the Committee to delegate any of its functions to its Chairman or Secretary. Section 16 provides for appointment of an Administrator, whereas section 17 provides for appointment of officers and employees.

Since the petitioners in the writ petition claim to be Pujaris and section 18, inter alia deals with control and appointment of Pujaris and some submissions have been made in regard to this section, the same is reproduced hereunder :

18(1). All "Pujaris", "pandas", "sevaks" and servants attached to the Mandir or in receipt of any emoluments or perquisites therefrom and all licences shall be under the control of the Administrator.

(2) Subject to the provisions of this Act and the rules and bye-laws made thereunder, the Administrator may, for breach of trust, incapacity, disobedience of lawful order or neglect of, or wilful absence from duty, disorderly behaviour or conduct derogatory to the discipline or dignity of the Mandir or for any other sufficient cause inflict any of the following punishments, namely : -

(i) removal from office;

(ii) recovery from emoluments or perquisites of the whole or part of any pecuniary loss caused to mandir by negligence or breach of order or disorderly behaviour or conduct:

Provided that no punishment as aforesaid shall be inflicted unless the person concerned is given a reasonable opportunity of being heard.

(3) In case a vacancy on account of a Pujari, panda, sevak or any other person relinquishing his work or on account of death, removal or any other reason whatsoever, the Committee shall, subject to such rules as may be made in this behalf, appoint a Pujari, Panda, Sevak or such other person to fill the vacancy, unless it considers that the filling of the vacancy is not necessary.

Section 19, inter alia, contemplates that any person aggrieved by the order passed by the Administrator u/s 18 may, within 30 days of the date of communication of the order to him, prefer an appeal before the committee. Section 20 deals with the emergency powers of the Administrator. Section 21 provides for constitution of a fund to be called "Mandir Kosh" which shall be vested and be administered by the Committee. It also provides as to what the Mandir Kosh shall consist of as also for utilisation of the kosh. Section 22 casts on the Committee a duty to prepare or cause to be prepared a budget for the succeeding year. Section 23 deals with accounts, whereas section 24 with audit. Section 25 confers power on the State Government or the Commissioner to call for information and accounts and to issue directions. Section 26, on the other hand, deals with the power to depute an officer to make inspection. It further provides that if he considers it necessary so to do, the Commissioner may personally make an inspection. Section 27 deals with the procedure with regard

to unauthorised possession by persons of land or building belonging to the Mandir, whereas section 28 provides for appeals against orders of Tahsildar passed u/s 27.

Chapter VII which contains sections 29 to 36, deals with miscellaneous matters and since no arguments have been addressed to us on the basis of any of these sections, we find it unnecessary to give details about them.

Section 37 deals with offences. One of the offences enumerated therein and as contained in clause (b), reads :

unauthorisedly performs any rituals, "puja archana" to any deity within the premises of the Mandir.

Section 38 deals with cognizance of offences, whereas section 39 with their composition. Section 40 provides that all amounts realised on account of fines upon conviction for offences under this Adhiniyam or as a result of composition, shall be credited to the Mandir Kosh. Section 41 deals with the power of the State Govt. to make rules and section 42 with the power of the Committee to make bye-laws. Section 43, inter alia, contemplates that the committee shall be entitled to take and be in possession of all movable and immovable properties including funds and jewellerys, records, documents and other assets belonging to the Mandir. Section 44 contains provision for removal of difficulty whereas section 45 repeals the Madhya- Bharat Shri Mahakaleshwar Temple Act, Samvat 2009 (No. 3 of 1953).

A conspectus of the various sections of the Adhiniyam makes it clear that none of these sections, in any way, interferes with any of the matters referred to in Articles 25 and 26 of the Constitution. On the other hand, as is clear from section 11 of the Adhiniyam dealing with the duties of the Committee it ensures that matters referred to in Articles 25 and 26 of the Constitution including performance of worship, puja archana and the daily and periodical rites of the Mandir are meticulously followed. In this view that any of the sections of the Adhiniyam is ultra vires of the provisions contained in Articles 25 and 26 of the Constitution.

As regards such of the provisions as deal with the Pujaris of the Temple, we are again of the opinion that in view of the findings in the Civil Suit which have been upheld by us in the earlier part of this judgment while dealing with the civil appeal and in view of the law laid down by the Supreme Court in case of E.R.J. Swami (supra), these provisions cannot be held to be ultra vires.

We shall now deal with the specific submissions made by counsel for the petitioners with regard to some of the sections of the Adhiniyam. It was urged that the term "endowment" as defined in clause (g) of section 3 of the Adhiniyam, includes the idols installed in the Mandir and that an idol cannot be made part of endowment. In our opinion, the words "the idols installed in the Mandir" in section 3(g) of the Adhiniyam, have apparently not been used in the

sense that they are properties of the endowment. The term "endowment" as is apparent from the definition, has been used in the Adhiniyam in a wide sense and it is in this sense that the idols installed in the Mandir have also been included in the term "endowment". Almost similar was the definition of the term "endowment" in section 2(ii) of the Rajasthan Nathdwara Temple Act. As is apparent from para 38 of the decision of the Supreme Court in case of *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, the term "endowment" under that Act also included the idols installed in the temple. The validity of the Act was upheld by the Supreme Court except parts of it as specified in para 79 of the report. The definition of the term "endowment" contained in section 2(ii) was not found to be invalid.

It was next urged by counsel for the petitioners that sections 5 and 6 of the Adhiniyam being almost in pari materia with sections 3 and 4 of the Kerala Act (Kerala Guruvayoor Devaswom Act, 1971) are unconstitutional for the same reasons for which sections 3 and 4 of the Kerala Act were held to be unconstitutional by a Full Bench of the Kerala High Court in *Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others*, we find it difficult to agree with this submission. The grounds on which Sections 3 and 4 of the Kerala Act were held to be unconstitutional are to be found in para 40 of the report. It was pointed out that the provisions in regard to constitution of the Committee under the Kerala Act failed to ensure that only such persons were made members of the Committee who constituted a section of the Hindu Public having faith in temple worship. After referring to clause (i) of sub-section (2) of Section 4 of the Kerala Act which provided that a person who does not profess Hindu religion is disqualified for nomination which meant that persons to be nominated must be persons professing Hindu religion, it was pointed out as under:

We find there is considerable force in the contention of the petitioner that a person who "professes" Hindu religion, need not be believer in temple worship and that on the other hand, he may be completely opposed to the practice of idol worship. It is well known that there are sections of Hindus whose schools of thought and philosophy do not consider idol worship, rituals and ceremonials as necessary or even conducive to the spiritual progress of man. There are also political creeds or social theories which openly condemn such forms of worship as being based on mere superstition and ignorance. Many persons who are born Hindus and who may be said to profess Hinduism solely because they have not openly renounced the Hindu faith by any recognized process, may ardently believe in such political or social ideologies which do not view temple worship with favour. There is nothing in Section 4 which precludes the Government from nominating such persons to be members of the Managing Committee under clause (g) of sub-section (1) of Section 4. Quite apart from the serious prejudice and peril that will be caused to the interests of the institution by reason of such a step, it will not be possible to say that such a Committee constituted with members belonging to the aforementioned types of philosophical or political

persuasion represents the religious denomination consisting of the section of the Hindu public having faith in temple worship.

The provisions of the Adhiniyam, however, in the instant case, are materially different. Sub-section (3) of Section 6 of the Adhiniyam specifically provides that no person who does not profess Hindu religion and does not accept the form of worship practised in Mandir, shall be eligible for membership of the Committee. This subsection, therefore, ensures that for becoming a member of the Committee, a person should not only profess Hindu religion, but should also be one who accepts the form of worship practised in the Mandir. Sub-section (3) of section 7 of the Adhiniyam deals with removal of a member of the Committee. Sub-section (4) of Section 7 provides that a member shall not be removed under sub-section (3) unless he has been given reasonable opportunity of showing cause against his removal. Sub-section (5), on the other hand, authorises a member who has been removed under sub-section (3) to institute a suit in the Court to set aside the order of removal. Sub-section (3) itself lays down sufficient guidelines in the matter of removal of a member referred to in sub-section (i). Consequently it is not possible to take the view that there is any arbitrary power conferred in this behalf on the State Government.

Section 5 of the Adhiniyam provides for vesting of possession, administrative control and management alone of the Mandir and its endowments in the managing committee and not of the ownership of the Mandir and the endowments which along with the offerings, vest in the deity of Shri Mahakaleshwar in view of Section 4 of the Adhiniyam. The same is the position in regard to Section 43 of the Adhiniyam also. Possession to which the Committee is entitled under sub-section (1) of Section 43, is apparently for the purposes of administration of the properties. Use of the word "possession" in sub-section (i) of Section 43 has to be read with Sections 4 and 5 of the Adhiniyam as also with Section 11 of the Adhiniyam which deals with the duties of the Committee. The use of the words "belonging to the Mandir" even in sub-section (1) of Section 43 leads to the same conclusion. The effect of the Adhiniyam, therefore, is that the ownership of the Mandir and of the endowments along with all the offerings including "chadhotry" vest in the deity of Shri Mahakaleshwar and the Committee is empowered only to administer those properties for and on behalf of the deity of Shri Mahakaleshwar. In this connection, it has to be kept in mind that a deity under the Hindu Law is a perpetual minor capable of holding property and its interests have to be looked after by some human agency. Law dealing with this looking after will be a matter in the secular sphere and a provision in this regard can validly be made.

Counsel for the petitioners then urged that the petitioners being hereditary Pujaris of Shri Mahakaleshwar, had a right to property, namely offerings and this right could not be taken away in the manner in which it has been done by the Adhiniyam. In our opinion, this argument is foreclosed by the findings in the suit which have been upheld by us in this appeal in the earlier part of this judgment

to the effect that the petitioners did not have any such right as claimed by them. The said argument also stands foreclosed in view of the decision of the Supreme Court in case of E.R.J. Swami *supra*. Counsel for the petitioners in this connection, however, urged that even on the findings recorded in the civil suit, a portion of the offerings was being given to the Pujaris and that portion certainly constituted their property. Suffice it to say, so far as this submission is concerned, that the finding in the Civil Suit further is that this payment was being made to the Pujaris in lieu of service. In this connection, reference to the relevant documents has already been made while dealing with the Civil Appeal. Some portion of Ex. P-37, a copy of which has been filed along with the writ petition as document No. 8, may specifically be referred to at this place. This document is a copy of an order dated 7-6-1926. Para 12 of this document indicates that such "chadhotri" as was given to the Pujaris, was in lieu of service-"Mauza Khidmat". It is thus not possible to take the view that any right to the property of the petitioners has been infringed by the Adhiniyam.

Counsel for the petitioners cited certain decisions in regard to the legal character of an idol and the rights of a Mathadhipati or head of a Math as well as of a Shebait. He also referred to certain texts, particularly Shri Shiv Puran, to indicate that Shri Mahakaleshwar or reverentially known also as Shri Mahakal is a Swayambhoo, that is, Self-revealed Jyotirlinga, and is being worshipped since time immemorial. However, in view of the fact that there is no controversy in the present writ petition on any of these points, we do not find it necessary to deal with them.

Lastly it was urged by counsel for the petitioners that worshipping deity as Pujari is a profession within the meaning of Article 19(1)(g) of the Constitution and no restrictions except which are reasonable can be placed on this right of the petitioners. It was pointed out by counsel for the petitioners that chadhotry and dakshina are two different concepts. According to him, even though chadhotry being an offering to the deity may vest in the deity, a Pujari is entitled to the dakshina which a devotee may give to him in lieu of services done. Suffice it to say, so far as this submission is concerned, that even if for the sake of argument it may be accepted that rendering of service by a Pujari to a devotee in worshipping a deity in consideration of dakshina paid by the devotee is a profession, it cannot be doubted that a reasonable restriction can be placed on this right. No person can claim a right to carry on the profession of rendering service to a devotee in the matter of worship in a particular religious denomination notwithstanding the rules, custom or practice to the contrary applicable in regard to that particular religious denomination. Since in view of the decision of the Supreme Court in E. R. J. Swami (*supra*) the act of appointment of an Archaka or Pujari is essentially secular and it is within the competence of the State Legislature to enact a law in regard to this secular matter, the right, if any, of a person to render service as a Pujari to a devotee in consideration of dakshina would be subject to the regulations and restrictions provided for in the law enacted by the Legislature. Thus, the right of a citizen to render services to a

devotee in the matter of worship in consideration of dakshina even if it is taken to be a profession within the meaning of Article 19(1)(g) of the Constitution is not an absolute right. In this connection it was urged by counsel for the petitioners that the Adhiniyam confers no specific power on the committee constituted under the Adhiniyam to appoint a Pujari. We find it difficult to agree with this submission. Firstly, sub-section (1) of Section 11 of the Adhiniyam which provides that it shall be the duty of the committee to arrange for the proper performance of worship, Puja-archana and the daily and periodical rites of the Mandir, is wide enough to include the power to appoint a Pujari. Secondly, sub-section (3) of Section 16 of the Adhiniyam provides that the committee shall exercise its powers of administration, control and management of the Mandir through the Administrator. Section 18 of the Adhiniyam deals with control and appointment of Pujaris etc. Sub-section (1) thereof inter alia provides that all Pujaris attached to the Mandir or in receipt of any emoluments or perquisites therefrom shall be under the control of the Administrator. Sub-section (2) of Section 18 inter alia provides for removal from office of any of the persons referred to in sub-section (1). When Pujaris have been placed under the control of the Administrator and are liable to be removed by him, it cannot be said that the Administrator does not have the power to appoint a Pujari.

One thing, however, occurs to us in the matter of appointment of Pujaris which, in our opinion, deserves to be expressed at this place. The word "Pujari" as defined in Section 3(k) of the Adhiniyam means any person who is authorised to perform worship, puja-archana or other rituals or services connected therewith. The word "authorised" has not been defined in the Adhiniyam. In the normal course, of course, the word "authorised" as used u/s 3(k) would mean authorised under the Adhiniyam". Section 6 of the Adhiniyam which deals with the constitution of the Committee, under clause (e) of its sub-section (1) contemplates that the committee shall consist of one Pujari to be nominated by the State Government. At the stage of constitution of the Committee u/s 6 obviously there cannot be a Pujari who can be said to be a person authorised under the Adhiniyam to perform worship, puja-archana etc. as contemplated by Section 3(k) of the Adhiniyam. If one Pujari who is to be nominated by the State Government to be a member of the committee is to be a Pujari authorised under the Adhiniyam. it would apparently be not possible to constitute the Committee because as seen above at the stage of constitution of the Committee it is not possible to conceive of a Pujari authorised under the Adhiniyam to perform worship etc. To us it appears, therefore, that while making appointment of Pujaris under the Adhiniyam the choice has naturally to fall on such persons who have been according to the traditions of the denomination performing the duties of a Pujari. In the instant case, even though it has been found in the earlier part of the judgment that the petitioners do not have a hereditary right to be appointed as Pujaris nor are they entitled to any part of the offering as of right but were being paid a portion of it in lieu of service, there seems to be no doubt that by and large, it is Khoont Patis and Janeu Patis who have been normally

performing the duties of a Pujari. We are conscious of the evidence which indicates that worship was being performed by Nemukadars also but that evidence in our opinion does not militate against the factual position pointed out above that by and large it is Khoont Patis and the Janeu Patis who have normally been working as Pujaris. We are confident that while authorising Pujaris to perform worship, puja-archana etc. the Committee or the Administrator, as the case may be, shall keep this circumstance in mind and except for cogent reasons make appointment of Pujaris as far as possible from the Khoont Patis and the Janeu Patis referred to in the earlier part of this judgment. Even in the matter of preparation of a list of persons fit for appointment as Pujaris as contemplated by Section 42(2)(n) of the Adhiniyam the observations made above shall be kept in mind. We have no doubt that in working out the Adhiniyam the Committee will act reasonably and fairly.

In view of the foregoing discussion, we are of the opinion that no part of the Adhiniyam can be said to be unconstitutional and consequently the writ petition challenging the validity of the Adhiniyam also deserves to be dismissed.

In the result, Civil First Appeal No. 211 of 1986 as well as Misc. Petition No. 2605 of 1983 are dismissed. In the circumstances of the case, however, there shall be no order as to costs.