

(1971) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1827 of 1969

Sri Archakam Peddinti Srinivasamurthy Dikshitulu

APPELLANT

Vs

The Commissioner, Charitable and Hindu Religious
Institutions and Endowments in Andhra Pradesh at
Hyderabad and Another

RESPONDENT

Date of Decision : 08-09-1971

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966
— Section 23
Constitution of India, 1950 — Article 19(1), 25, 25(1), 26

Citation : AIR 1973 AP 325

Hon'ble Judges : Vaidya, J;Sriramulu, J

Bench : Division Bench

Advocate : S.V.K.S. Ramaswamy Aiyangar, for the Appellant; Ranga Reddy, for Government Pleader, G. Suryanarayana Murthy, General and E. Kalyan Rao, for the Respondent

Judgement

Vaidya, J.—The petitioner is a hereditary Archakam Mirasidar of the Thirumalai Tirupati Devasthanams at Tirupati rendering Archakatwam service in the holy shrine of Lord Sri Venkateswaraswami Varu situate at Tirumalai Hills and all the shrines attached thereto and other temples situate at Tirupati and attached to the said Devasthanam. There are various rights, honours, emoluments and perquisites attached and due to the said hereditary Archaka Mirasidars, which they are entitled to as per long established custom and usage. The Archakatwam service in Sri Venkateswara Swami Temple is rendered by four families who belong to the Vaikhanasa school of Srivaishnavites. It is averred by the petitioner that the worship in the abovesaid temple is according to the Vaikhanasa Agamas and can be rendered only by four families, the petitioner belonging to one of such families. The Archakatwam service is rendered by turns and the petitioner's turn commenced on 24th September, 1968 and continued for one full year. The main contention of the petitioner is that the religious rites especially those of worship of the diety, are according to the Vaikhanasa Agamas and in those

Agamas, the Neivedyam that has to be offered to the diety at various times of worship and also at the various Utsavams of the diety have been specified in very great detail. Not only the kind of Neivedyam that has to be offered at the time of each worship and in each Utsavam has been specified but also the quantity of such Neivedyam and the quantity of ingredients of each of the item that is offered as Neivedyam has also been specified in Vaikhanasa Agama Sastras. According to the petitioner, the quantity of food offerings and also what are known as Pannyarams i.e., the fried offerings to Lord Venkateswara, have been offered according to the Vaikhanasa Agamas from time immemorial since the worship at the temple was first started. All these centuries the quantities of food offerings or the Pannyarams have not been reduced in quantity at any time though the prices which a Grahastha has to pay at the time of such worship or the performance of various Utsavams and Arjitha Sevas have been increased from time to time. The Archaka Mirasidars along with other Mirasidars of the temple are entitled to a particular share in these food offerings and Pannyarams. The food offerings and Pannyarams are of two kinds; one offered by the Grahasthas who worship at the temple, perform the various Utsavams. The other food offerings and Pannyarams are by the Devasthanam itself. As already stated, the Archaka Mirasidars have a share in these food offerings and Pannyarams ; and in addition to that, they get certain cash benefits also at the time of the various Utsavams. The Archakas have to render service not only to the " Moolavar diety " but also to the " Utsavar diety " and also in the temples attached to the main shrine of Lord Venkateswara. About 10 or 12 years back, the duties of these Archakas were from 6-00 A. M. To 12-00 noon and from 6-00 P. M. To 9-00 P. M. But of late, their duties have vastly increased because of the duration the temple of Lord Venkateswara is kept open. The Darshan of Lord Venkateswara is given to those who perform the various Arjitha Sevas and Utsavams and also to those who do not pay anything. The second kind of Darshan is called " Dharma Darshan " and upto a few years back, the time for " Dharma Darshan " is about 14 hours in a day without in any manner reducing the time earlier fixed for Arjitha Sevas. The result is that the temple remains closed hardly for about an hour or two during the 24 hours. The Archakas have to be present all the time during the hours the temple is open offering service to the pilgrims who attend the temple. In addition to this, they are given custody of the various jewels and vessels (Upkarnas) necessary for the pooja of the diety. All these jewels and vessels, the value of which sometimes runs into several thousands of rupees, have to be returned by the Archakas to the temple authorities after a particular Pooja for which they have been issued is performed. These services have to be rendered by the Archakas not only at the shrine of Lord Venkateswara but also at the shrines situated at Tirumalai, Tirupati and also at the shrine of Padmavathi Ammavaru at Tiruchannur. To render the services effectively, the Archakas have to engage and appoint a number of Gumasthas, who are well versed in the Vaikhanasa Agamas, to offer worship and also to perform the various Arjitha Sevas and Utsavams. Day by day it has become very difficult to find suitable Gumasthas especially those well-versed in Vaikhanasa

Agamas to perform the service and unless these Gumasthas are paid handsome remuneration, they are not available. Thus they have to maintain a large establishment the expenditure of which is increasing day by day because of the present conditions obtaining in the country. The Archakas, therefore, in the year 1963 had made a representation to the temple authorities seeking enhancement in their emoluments and perquisites in view of the changed circumstances and high cost of living. It may be stated here that these Archakas Mirasidars had been granted inam lands for the performance of Archakatwam Service, but with the enforcement of the Inams Abolition Act, these inam lands were taken away and they were paid only a very meagre compensation. The Commissioner of Hindu Religious and Charitable Endowments by his order in Rc. No. 3670/64 dated 27th October, 1966, taking into consideration the view of the Board of Trustees of the Tirumalai Tirupati Devasthanams dated 20th September, 1966 accorded sanction for the increase of the cash emoluments to all the mirasidars by 50 per cent. By another order dated 11th December, 1966, the said Commissioner permitted the Executive Officer of the Tirumalai Tirupati Devasthanams to give effect to the enhancement of the emoluments from the date on which the Trust Board passed the resolution i.e., 22nd October, 1963. In spite of this, the increase has not been effectuated and the Mirasidars have not been paid the enhanced cash emoluments for the past six years.

2. In addition to the non-payment of the above said increased cash emoluments the Commissioner for Charitable and Hindu Religious Institutions and Endowments (1st respondent herein) passed an order dated 25th February, 1969 accepting the proposal of the Executive Officer to reduce the size of " Prokthupadi Laddu " intended for sale to pilgrims to half the present size and sell the same at Re. 1 /- each instead of Rs. 2 /-. It may be stated here that the " Prokthupadi Laddu " is one of the offerings made on behalf of the Devasthanams to Lord Venkateswara. The 1st respondent passed another order dated 5th April 1969 approving the proposal of the Executive Officer of the Devasthanam to reduce the quantities of the offerings by 50 per cent in respect of the following items :

Sevas :-- 1. Kalyanotsavam. 2. Tiruppavada. 3. Dadhyodhanam. 4. Pulithora. 5. Pongal. 6. Chakkara Pongal. 7. Sakar Bath. 8. Payasam. 9. Seera. 10. Kesari Bath.

Padis :-- 1. Laddu Padi. 2. Vada. 3. Poli. 4. Tentola. 5. Appam. 6. Zilebi. 7. Dosai.

The Executive Officer was further informed in this order that it was not necessary to reduce the quantities in respect of (1) Sahasra Kalasabhisekam (2) Vasanthotsavam and (3) Sukheelu, since the institution did not incur any loss in respect of items (1) and (3) and the difference between the schedule rates and the present cost in respect of item (2) was not much. It is necessary to note that in both the aforesaid orders, the Executive Officer was directed to make necessary alterations in the Dittam Register accordingly.

3. As regards the order dated 25th February, 1969, the petitioner having come to know of the proposal made by the Executive Officer, filed his objections before the Commissioner. As regards the second order dated 5th April, 1969, the contention of the petitioner is that the said order was not given any publicity as stipulated in the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Andhra Pradesh Act No. 17 of 1966), hereinafter referred to as " the Act " and the rules made thereunder. It is the aforesaid two orders that are impugned in this writ petition and the relief the petitioner seeks is to quash the said orders and maintain the status quo ante.

4. The following contentions were raised by the learned counsel for the petitioner before us :

(1) Section 23 of the Act empowering the Commissioner to alter the " Dittam " of religious rites infringes Articles 25 and 26 of the Constitution and is therefore void.

(2) The two orders made by the Commissioner affect the fundamental rights guaranteed under Articles 25 and 26 of the Constitution and are therefore void.

(3) While issuing the two orders, the Commissioner has not complied with the provisions of Section 23 of the Act and therefore the orders are bad in law.

(4) The two orders are contrary to Section 102 of the Act and therefore bad.

(5) The emoluments to which the petitioner is entitled are in the nature of a right to property and Section 23 of the Act which affects those rights infringes Article 19(1)(f) of the Constitution and so also the orders.

(6) While passing the aforesaid orders, the principles of natural justice have been violated as no opportunity was given to the petitioner who is a person affected by the said orders to make his representatives.

(7) From the order and the record, it is evident that the Commissioner did not apply his mind before passing the said orders. The Board of Trustees of the Devasthanam also did not apply their minds. Both the 1st and 2nd respondents merely accepted the proposals made by the Executive Officer without applying their mind to the said proposals.

5. The Executive Officer has filed a counter-affidavit on behalf of the Board of Trustees. He has referred to a book called " The History of Tirupati " by Sri T. K. T. Veeraraghavacharya and relied upon the same for the following ;

(i) What is prescribed by " Agamas " for food offering to the dieties in temple is not proportion of food that has to be offered for each diety in the shrine and not either a particular quantity or contents other than rice and jaggery.

(ii) There have never been any prescribed types and quantities of offerings. Various types and quantities of offering were in vogue in Tirumalai Tirupati Devasthanams at various times some of which are not now current.

(iii) In the Tirumalai temple, there has not been any strict observance of the prescribed form of worship prescribed in the " Vaikhanasa Agama ".

(iv) The increase of food offerings occurred only between 1454 and 1494 A. D.

(v) At no time the expenditure on offerings did exceed what was earned.

(vi) The temple inscriptions show that there were various kinds of offerings at various periods of time and various quantities were offered and many of them are not in vogue. It is therefore said that there can be no usage fixing either the type or the quantity or the contents of an offering having the force of law.

(vii) Even the duration of and type of offerings at Arjitham Utsavams were changing from time to time. Kalyanotsavam was earlier performed for five days and various types of food and other Panniyarams which are not known now-a-days were being offered to the diety.

All these instances have been cited to show that there is no uniform practice or usage in the matter of offerings. It is further averred if the ingredients for the offerings happened to be obtainable at only very high prices or not obtainable like almonds, nobody can insist on their being supplied for the offering. It would be an unreasonable usage to recognise such a right. The case of the Devasthanam, therefore, is, that the paramount consideration for the trustees is to facilitate worship and enable pilgrims to offer such services as could be done. The trustees have a right even to totally give up one item of offering if it entails in a loss to the Devasthanam since no trustee has any right to accept and receive onerous contributions, endowments or offers or services which entail loss. Acceptance of such services has always been held to be had and in reach of the main trust.

6. The allegations in para (1) of the petitioner's affidavit have been admitted to be specifically correct, but the Devasthanam has not accepted that the Archaka families have the right to perform duties by turns and they have been permitted to do so only as a matter of accommodation while it is always understood that the responsibility of the Archaka families is joint and several.

7. The 2nd respondent also has not accepted that the duties of the Archakas are very heavy and have increased by many times. They aver that the duties are the same. They further state that the Arjitha Sevas have increased ten-fold returns and they are not paying the corresponding increase to their Gumasthas. Reference has been made to the judgment in A. S. No. 41 of 1961 on the file of the Additional District Judge, Chittoor, to show the correct position in regard to the duties performed by the Archakas and their income. It is admitted that the Archakas are entitled to a specified fraction of an offering that is made to the diety but is not entitled to any specific quantity as such. " There is no established usage and custom that the offering should be of a particular size and content or of any measure or weight and that the Archaka is entitled to a quantum therein as distinct from a share. " The shares due to the Archakas have not been

disputed, but they have no legal right to a particular quantity. The Devasthanam had been incurring heavy losses even at the increased rates on the Arjitha Sevas and Utsavams and therefore the quantity of food offerings had to be reduced. A trustee cannot accept to perform onerous services at the expense of the main trust ; nor can he cast the burden on the worshipper by enhancing the fees over and over again. There is no religious custom or usage in the temple requiring any particular quantity to be offered. As regards the procedure prescribed u/s 23 of the Act, it is averred in the counter-affidavit that the said procedure is strictly followed and notices were served and published. As regards the application of Section 102 of the Act, it is stated that clause (a) of the said section comes into play only when there is an established right. The right claimed by the Archaka has not been established but has yet to be proved and established. The Sthanacharyas were consulted and objections were invited by publication in the notice board and the petitioner has to thank himself for his failure to read them. A plea has also been taken that there are equally efficacious and alternative remedies by way of an appeal from an order of the Commissioner to the Government u/s 80 of the Act; and also a revision to the High Court u/s 81 of the Act against an order made by the Government in appeal. The petitioner, therefore, cannot invoke the writ jurisdiction of this Court.

8. A very detailed reply affidavit has been filed by the petitioner to the counter-affidavit of the 2nd respondent. The main contention in the reply affidavit is that subsequent to the filing of the Writ Petition, the 2nd respondent increased the various rates from 1-8-1970 for several Arjithams including the Prasada Pannyarams to make up the loss said to have been incurred by the 2nd respondent. The Executive Officer has given the rates prevailing before 1st August, 1970, the actual cost and the revised rates for the various Arjithams. It is stated by the Devasthanam that the Grihasthas and devotees who perform the various sevas etc. Have expressed their view and strong desire that the payment of amounts by them less than the actual cost of sevas etc., would affect the sanctity though the Devasthanam is able to meet the balance of the cost and that the vows of the pilgrims would not be fulfilled if they perform the said sevas with insufficient amount leaving the balance to be borne by the Devasthanam. It is manifestly clear from the above statement that on account of the revised rates, the 2nd respondent admittedly suffers absolutely no loss whatsoever, but receives something more than the actual cost. Even after the reduction of 50 per cent in the quantity of provision, the amount as per the scheduled rates prevailed, thereby resulting in a profit to the 2nd respondent. It is, therefore, submitted by the petitioner that in view of the enhanced rates in vogue from 1st August, 1970, the impugned order have outlived their purpose and have become superfluous and unnecessary. The reply affidavit specifically refers to how the idol in the temple was established and how the worship is in accordance with Vaikhanasa Agamas. By reference to various Sastric Authorities, the petitioner has submitted that the food offerings made to several disties as well as their quantity, quality variety, nature and occasion, manner of preparation and offering

are all well ordained in great and minute detail in the Vaikhanasa Agama Sastras and the same constitutes an integral and inseparable part of the religious rituals, practices and rites and these are bound to be followed to the letter and spirit of the said Sastras. The original " Dittam " was fixed duly complying with these Sastras and taking them into consideration at not less than the bare minimum required under them. The quantity was only getting increased at times and at any rate, in the annals of the temple were never attempted to be drastically reduced till the impugned orders were passed. The worship, ritual and religious practice existing from times immemorial as per the Vaikhanasa Agama Sastras cannot and does not brook any interference whatsoever under the colour of the exercise of administrative powers by the secular authorities. The Archakas not only office-holders but also have a personal interest of a beneficial character which has obtained the sanction by long custom and usage and are thus fundamental rights for the said religious denomination. Any departure or deviation from the Vaikhanasa Agama Sastra which is purely religious in character or any manner of interference in any part thereof or violation of any religious practices in pursuance of it would render the temple as well as the diety therein sacrilegious apart from resulting in evil effects. The various portions relied upon by the 2nd respondent from the volumes of " History of Tirupati " are not wholly correct and those portions are neither authentic nor conclusive and are only fragmentary. In fact, a complete and full reading of the various paragraphs referred to in the counter-affidavit from the book called " History of Tirupati " would establish that there is nothing contrary in any manner to the performance of all the rituals stated in the affidavit and reply affidavit ; and in any event ; there is nothing in derogation of the Vaikhanasa Agama Sastras nor its application to the said temple. The petitioner has stated in his reply affidavit that as far as his knowledge goes, the procedure envisaged in Section 23 of the Act has not been complied with and there was no consultation with any Sthanacharya, much less any publication as contemplated in law.

9. The Commissioner, the 1st respondent herein, has filed a counter-affidavit stating that no valid grounds have been made out for the grant of any reliefs. The order passed is valid, proper and lawful and has been passed after taking into consideration all the relevant factors in the interests of all concerned. None of the specific averments and allegations made in the petitioner's affidavit have either been referred to or specifically denied or admitted.

10. Section 23 of the Act the validity of which is impugned reads :--

" (1) " Fixation of dittam (1) The trustee of a religious institution or endowment other than a math or specific endowment attached thereto ; shall within a period of ninety days from the date of commencement of this Act or the date of founding of the religious institution or endowment, other than a math or specific endowment attached thereto and after consultation with the Sthanacharya or where there is no such Sthanacharya, the archaka or archakas concerned, submit proposals, for taking the dittam in the institution or endowment and the

amounts to be spent therefore to the Commissioner. Deputy Commissioner or Assistant-Commissioner, as the case may be, having jurisdiction over such institution or endowment ;

Provided that the Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, may extend the time for the submission of such proposals ;

Provided further that this sub-section shall not apply to any institution or endowment in respect of which proposals were submitted to the Commissioner under the Andhra Pradesh (Andhra Area) Hindu Religious and Charitable Endowments Act, 1951 before the date of commencement of this Act.

(2) The trustee shall, while submitting his proposals under sub-section (1), have due regard to the established usage, if any, the performance of the ceremonies and services and the observance of festivals, worships and the like, appropriate to the religious denomination to which the religious institution or endowment belongs and to the financial position thereof.

(3) The trustee shall, at the time of submission of proposals under the sub-section (1) publish the proposals at the premises of the institution or endowment and in such manner as may be prescribed, together with a notice stating that within a period of thirty days from the date of such publication any person having interest may submit his objections or suggestions to the Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be.

(4) After expiry of the period specified in sub-section (3), the Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, shall, after considering any objections and suggestions received, pass such order as he may think fit on such proposals having regard to the matters specified in sub-section (2). A copy of the order shall be communicated to the trustee and shall be published in the prescribed manner.

(5) The trustee shall scrutinise the particulars of dittam every three years and submit to the Commissioner, Deputy Commissioner or Asst. Commissioner, as the case may be, having jurisdiction, proposals for altering the dittam together with the reasons therefor.

(6) Save as aforesaid, the dittam for the time being, in force in an institution or endowment shall not be altered by the trustee.

(7) The procedure for alteration of the dittam shall be the same as laid down in sub-sections (2), (3) and (4). " This section prescribes the procedure for fixation and alteration of Dittam. Sub-section (1) refers to cases where the Dittam has to be fixed for the first time in regard to religious institutions or endowments other than a math or specific endowment attached thereto. The procedure prescribed under sub-section (1) is that the trustees have to submit proposals after consultation with the Sthanacharya or where there is no such Sthanacharya, the archaka or archakas concerned, for fixing the Dittam in the institution or

endowment and the amounts to be spent therefore to the Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be. While submitting the proposals under sub-section (1), the trustees shall have due regard to the established usage, if any, the performance of the ceremonies and services and the observance of festivals, worships and the like, appropriate to the religious institution or endowment belongs and to the financial position thereof. The trustees also have to publish the proposals at the time of their submission, at the premises of the institution or endowment calling for objections. The Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, has to consider the objections and suggestions received and pass such order as he may think fit on such proposals having regard to the matters specified in sub-section (2). It has been made obligatory on the trustees by virtue of sub-section (5) to scrutinise the particulars of Dittam every three years and submit to the Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, proposals for altering the Dittam together with the reasons therefor. By virtue of sub-section(6) the Dittam for the time being in force in an institution or endowment shall continue and will not be altered save as provided for in sub-section (5). By sub-section (7), the procedure for altering the Dittam shall be the same as laid down in sub-sections (2), (3) and (4).

11. The word " Dittam " has been defined in Section 2 (10) and reads :

" " Dittam " means the schedule of articles and other requirements of worship or offering in connection with the daily dhupa, deepa, naivedyam, pachikam, paricharikam and other general, special or periodical services, ceremonies or observances in the institution, endowment, math or specific endowment, as the case may be."

A reading of this definition shows that in addition to the other matters enumerated in the definition, it includes the schedule of articles and other requirements of worship or offering in connection with the daily dhupa, deepa, naivedyam and other general or special or periodical services, ceremonies or observances in a religious institution. The effect of Section 23, therefore, is that the authorities mentioned in that section have been empowered to fix or alter the Dittam in regard to the schedule of articles and other requirements of worship or offerings in connection with the daily dhupa, deepa, naivedyam etc. It is argued by the learned counsel for the petitioner that Section 23 infringes Articles 25 and 26 of the Constitution of India when it empowers the authorities mentioned therein to fix or alter the Dittam in regard to religious rites and religious ceremonies. The provisions of Art. 25 relied upon by the learned counsel are contained in sub-article (1) which guarantees to all persons the freedom of conscience and the right freely to profess, practice and propagate religion subject to public order, morality and health and other provisions of Part III of the Constitution. The provision relied upon under Article 26 of the Constitution is the fundamental right guaranteed to every religious denomination

or any section thereof, under clause (b) of that Article to manage its own affairs in matters of religion. This right again has been made subject to public order, morality and health. It is argued that, under the aforesaid provisions of Article 25 and 26 the legislature has the competence to interfere in matters of religion only if such interference is necessary in the interests of public order, morality and health. The fixation and alteration of Dittam has, on the face of it, nothing to do with public order, morality and health. Section 23 of the Act does not, in so many terms say that the fixation and alteration of Dittam will be subject to the provisions of Articles 25 and 26 of the Constitution and will not be effected in a manner to infringe the fundamental rights guaranteed under the aforesaid Articles. It is, therefore, contended that inasmuch as that section empowers the authorities concerned to interfere with the fundamental rights guaranteed under Articles 25 and 26 and as such interference is not in the interest of public order, morality and health, the whole of the section is void.

12. The learned counsel for the 1st respondent contends that Section 23 does not, in so many words, authorise the authorities mentioned therein to ignore the provisions of Articles 25 and 26 of the Constitution and therefore the whole of the section cannot be struck down. The section as it is, refers to secular and/or religious matters concerning religion and as far as secular matters are concerned, no infringement of fundamental rights is involved. That being the case, the whole of the section, even assuming that the authorities concerned can fix or alter the Dittam connected with religious rites and ceremonies cannot be struck down as void. The application of the section will have to be seen in each and every individual case where it is brought to the notice of the Court ; and if it is found that in such a case the fundamental rights guaranteed under Articles 25 and 26 of the Constitution are infringed, the particular fixation or alteration of Dittam will have to be struck down and not the whole of the section.

13. In the instant case what we are concerned with is the food offerings and the Pannyarams that are offered to the diety at the time of various poojas, Arjitha Sevas and Utsavams. The first question, therefore, which falls for determination is whether such food offerings and Pannyarams attract the provisions of Articles 25 and 26 of the Constitution. It is now well-settled that the word " religion " in Art. 25 of the Constitution not only includes the system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but also includes a code of ethical rules for its followers to accept. It also includes 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. In view of the Supreme Court decisions to which we will presently refer, it can longer be said that matters of food do not form part of religion if such food offerings are prescribed at particular rituals and observances, ceremonies and modes of worship and form an integral part of such rituals, observances, worship etc.

14. The leading decision on the subject is the judgment of B. K. Mukherjea, J.

(as he then was) in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., . The following passage at page 290 is oft quoted in later decisions.

" Religion is certainly a matter of faith with individuals 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 are fess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress. "

Their Lordships have also laid down in paragraph 19 (at page 290) :

" What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, the periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire all these would 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 would not make them secular activities partaking of a commercial or economic character ; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b). "

15. The same view was reiterated in Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, where Venkatarama Aiyar, J., speaking for the Court referred to the passage in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., wherein it was observed that matters of religion embraced not merely matters of doctrine and belief pertaining to the religion, but also the practise of it or " to put it in terms of Hindu theology, not merely its Gnana but also its Bhakti and Karma Kandas. " The learned Judge then referring to the exclusion of a person from entering into a temple for worship as a matter of religion according to the Hindu Ceremonial Law observed in Paragraph 17 :

" Gods have distinct forms ascribed to them in temples is ordained as certain means of attaining salvation. These injunctions have such a powerful hold over the minds of the people that daily worship of the deity in temple came to be regarded as one of the obligatory duties of all Hindus. It was during this period that temples were constructed all over the country dedicated to Vishnu, Rudra, Devi, Skanda, Ganesha and so forth, and worship in the temple can be said to have become the practical religion of all sections of the Hindus ever since. With

the growth in importance of temples and of worship therein, more and more attention came to be devoted to the ceremonial law relating to the construction of temples, installation of idols therein and conduct of worship of the diety, and numerous are the treatises that came to be written for its exposition. These are known as Agamas and there are as many as 28 of them relating of them being the Kamikagama the karanagama and the Suprabhedagama while the Vaikhanasa and the Pancharatra are the chief Agamas of the Vaishnavas. These Agamas, contain elaborate rules as to how the temple is to be constructed where the principal diety is to be consecrated, and where the other Devatas are to be installed and where the several classes of worshippers are to stand and worship.....

According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship, and purificatory ceremonies (known as Samprokshana) have to be performed for restoring the sanctity of the shrine....."

16. In *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, Gajendragadkar.J. (as he then was) after referring to the observations of Mukherjea, J. In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, and of Venkatarama Aiiyar. J. In *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, struck a note of caution and observed that:

"In order that the practices in question should be treated as a part of religion they must be regarded by the saod 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. Similarly even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claimfor the protection under Article 25 may have to be carefully scrutinised, in other words, the protection must be confined to such religioous practices as are an essential and an integral part of it and no other." (Vide P. 1415)

17. Gajendragadkar. J. (As he then was) reiterated the sameviewin *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, and observed:

"It cannot be ignored that what is protected under Arts 25 (1) and 26 (b) respectively are the religious practices and the right to manage affairs in matters of religion. If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Art 25 (1) or Article 26(b) has been contravened. The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion. Therefore, whenever a claim

ismade on behalf of an individual citizen that the impugned statute contravenes his fundamental right to practice religion or a claim is made on behalf of the denominaation that the fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, itis necessary to consider whether the practice in question is religious or the affairs in respect of which the right of management is alleged to have been contravened are affairs in matters of religion. If the practice is a religious practice or the affairs are the affairs in matter of religion, then of course, the right guaranteed by Article 25(1) and Article 26(b) cannot be contravened."

The learned Judge went on to observe that in regard in hindu religion, sometimes practices religious and secular, are inextricably mixed up. But the task of disengaging the secular from the religious, though not easy, has nevertheless to be attempted in dealing with the claims for protection under Articles 25(1) and 26(b).

18. The question whether a food offering or Bhog is a matter concerning religion came up for consideration before the Patna High Court in Acharaj Singh Vs. State of Bihar and Another, . The learned Judges after referring to the decision of the Supreme Court in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., observed at page 117:-

"If it could be established that in a particular religious institution. Whether math or temple. A certain quantity of food should be offered as Bhag to the deity or feeding the Athithis and Abhyagats as a part of the well established ritual of the institurion. This practice should be held to be part of the relegion guaranteed under Article 26(b) and if there is any provision in the order which materially impairs the continuance of that proactice that provision will be unconstitutional to that extent."

These observations were made in the context of an order made under the Defence of India Rules imposing compulsory levy on foodgrains.

19. The decisions regerred to above clearly show that offerings of food or Pannyarams made at the time of various poojas, Arjitha Sevas and Utsavams are matters concerning religion and any interference with them would infringe Articles 25(1) and 26(b) of the Constitution if such interference is not in the interest of public order, morality and health.

20. The question then is whether Section 23 of the Act as it empowers the authorities mentioned therein to fix or alter the Dittam which includes the reduction of Dittam is void as in certain cases of reduction religious rites are likely to be affected. Section 23 says that while fixing or altering the Dittam, due regard will be had to the established usage if any the performance of the ceremonies and services and the observance of festivals, worships and the like appropriate to the religious istitution or endowment belongs and to the financial position thereof. The reference to the established usage and the performance of the ceremonies and services and the observance of festivals, worships and the

like, clearly refers that due regard will be paid to the religious aspect of these ceremonies, services, observance of festivals and worship etc., It does not empower the authority concerned to fix or alter the Dittam without regard to the religious aspect of the same. Section 23 enjoins upon the authorities to fix the Dittam in such a manner that it does not in any way affect matters of religion and thus infringe Articles 25 and 26 of the Constitution. We interpret the provisions of Section 23 to mean that the authorities concerned. While acting under that section will act in a manner so as not to interfere with matters of religion. The question therefore of striking down the section does not arise. Every individual case of fixation or alteration of Dittam will have to be taken into consideration and if it is found that such fixation or alteration infringes Articles 25 and 26 of the Constitution, therefore. Of the learned counsel for the petitioner that Section 23 of the Act is void as it infringes Articles 25 and 26 of the Constitution fails.

21. We may also make a reference to the argument that Section 23 also infringes Article 19(1)(f) of the Constitution. It is argued that in cases of Archakas who hold office and have some beneficial interest in the Dittam, any reduction in the Dittam will affect their rights to property and thus infringes Article 19 (1)(f) of the Constitution. As already stated. Section 23 of the Act enjoins upon the authorities concerned to pay due regard to the established usage which would also include cases where persons holding the office of Archakas have a beneficial interest in the Dittam. The authorities concerned cannot, while acting under the provisions of Section 23 of the Act. Act in a manner so as to affect the property right of interfere only in cases where it is brought to its notice that a particular order issued u/s 23 has affected the property rights of the Archakas. Section 23 of the Act cannot be struck down. But it is only an order affecting the property rights of an Archaka that can be struck down.

22. There is yet another aspect which also has to be considered . Dittam may concern secular as well as matters of religion. As far as secular matters are concerned, any interference in the Dittam will not in any manner infringe Articles 25 and 26 of the Constitution. In cases where the applicability of a section can be so separated, the whole of the section need not be struck down because of the reason that in particular cases action under the section may infringe any of the fundamental rights guaranteed under the Constitution. It is only individual cases which have to be considered and if it is found that in such individual cases the fundamental rights guaranteed under the Constitution have been infringed orders may be passed giving relief in those individual cases either by granting a declaration or by quashing the orders or issuing directions. The principle of severability has been extended to include separability in enforcement in cases divisible in its nature : Vide State of Bombay v. United Motors Ltd. (AIR 1953 SC 253)

23 There is also the well-recognised principle that in cases where two

interpretations of a section are possible, the Court should accept that interpretation which will validate a section rather than invalidate it. Section 23 as we have shown is capable of two interpretations. One is while passing orders under that section, the authorities have to act in a manner which would not infringe Articles 25 and 26 or Article 19 of the Constitution. Another interpretation is that Section 23 gives power to the authorities concerned to pass orders affecting the aforesaid fundamental rights. As the first interpretation validates the section, we accept the same. This principle has been laid down by the Supreme Court in a number of decisions. It is sufficient to refer to *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*,

24. We now consider the next contention that the two orders of the 1st respondent dated 25th February, 1969 and 5th April, 1969 infringe Articles 25 and 26 of the Constitution. By the first order the Commissioner reduced the size of Prokthupadi Laddu intended for sale to pilgrims to half the present size and sell the same at Re.1/- Laddu is one of the offerings made by the Devasthanam at the time of the various poojas and worships and Division of this Prokthupadi Laddu has also been laid down according to which the Archakas have a specified share in it. Prokthupadi consist of 51 Pannyarams out of which 35 Pannyarams are credited to Prokthu account; 5 to Vagapadi account and the balance of 11 are distributed to Mirasi servants as per mamool. The petitioner as an Archaka, therefore has a share in these 11 Pannyarams. The learned counsel for the petitioner stated before us that if the order dated 25th February, 1969 relates only to the 35 Pannyarams out of 51 which are credited to the Prokthu account and does not in any manner affect the 11 Pannyarams which are to be distributed amongst the Mirasi servants as per mamool his client has nothing to complain. After the Pannyarams are offered to the deity in the manner prescribed, the Devasthanam is entitled to deal with its share of the Pannyaram in any manner it likes and such a dealing would in no way affect either the religious rite or the offering of Pannyarams to the deity or the right of the Archakas to receive their share in the Pannyarams. On behalf of respondents 1 and 2 it is stated that the order itself makes it clear that the size of the Prokthupadi Laddu intended for sale to Pilgrims has been reduced and not the size of the Laddu which is offered by way of Pannyaram to the deity. The order does not specifically exclude the offerings of Laddus by the Devasthanam to the deity, but the use of the words "Laddu intended for sale to pilgrims" may limit this order to the share of the Devasthanam in the offerings. The order in so far as it relates to the sale of Laddus to the pilgrms out of the share of the Devasthanam, no objection can be taken and the order is valid. In so far as the order relates to the offering of the Devasthanam to Lord Venkateswara is concerned the question of applicability of Articles 25, 26, 19(1)(f) of the Constitution and Section 23 of the Act will arise.

25. The order dated 5th April, 1969 specifically reduces the quantities of offerings by 50 pec cent in respect of 10 Sevas and 7 Padis mentioned in that order. That order further says that the quantities of offerings in respect of (1)

Sahasrakalasabhishekam, (2) Vasanthotsavam and (3) Sukheelu need not be reduced as the institution was not incurring any loss in respect of items (1) and (3); and in regard to item (2) there was not much difference between the schedule rates and the present cost. A reading of this order clearly shows that the quantities of offerings have been reduced by 50 per cent as the cost of food offerings at the various Sevas and Padis the Grihasthas at the time of such offerings. At this stage, it has to be noted that there is no question of any loss being suffered by the Devasthanam for offerings at the sevas or Padis as the Devasthanam itself has admitted the same. In the editorial of "Sapthagiri", a monthly journal issued by the Devasthanam, for the month the August 1970, it is stated that the rates for the various Sevas were fixed long back and with the increase in the cost of commodities from year to year the expenditure to be incurred by the temple on these items has gone up resulting in actual loss to the Devasthanam which the management is able to meet from other sources of income like the Hundi. But the Grihasthas who were performing such Sevas have expressed the view by and large that their Sevas may not be of any value if they are subjecting the Devasthanam to incur loss on account of their Sevas. The order therefore, as far as the offerings by the Devasthanam are concerned is not at all justified.

26. It was sought to be argued by the 2nd respondent that the order dated 5th April, 1969 does not refer to the offerings made by the Devasthanam and is only concerned with the offerings made by the Grihasthas. We do not agree with this contention. There is nothing in the order dated 5th April, 1969 to show that the order does not in any manner affect the offerings made by the Devasthanam. The order, as it reads, refers to all the offerings irrespective of whether they are made by the Grihasthas or by the Devasthanam.

27. The petitioner in support of his contention that the worship in the above temple is according to the Vaikhanasa Sastra which is denied by respondents 1 and 2 has relied upon an extract from a Tamil book by name "Thirumalai Olugu". T.T.D. Edition of the year 1953. In page 8 of the introduction, the author has stated that the new practices introduced by Sri Ramanuja at Thirumalai are many, Among them are:

"(1) The wearing of Shanka and Chakra (Conch and discus) by Sri Thiruvengadamudaiayan (Lord Sri Venkateswara); (2) the installation of Varaha, Narasimha. Venkatesa Devathas in the "Vimanam" which is inside the temple tower or Gopuram, as ordained in the Vaikhanasa Agama; (3) the performance of Samprokshana accordingly to proclaim to the world that the temple belongs to that deity alone; the installation of the image of his consort with two hands on his chest on an auspicious day; and the recitation of "Natchiyar Thirumazhi" (A special Tamil Prabhandham relating to the consort) during "Thirumanjanma" or Abisheka when the said consort is on his chest or Vakshashtala."

Then again at page 4. It has been stated that

"Sri Ramanuja made all the world know that the deity existing at Thirumalai only is no other than "Sri Mahavishnu" who is "Shriyahpathi" and "Sri Vaikuntanatha" and got Samprokshana also performed according to Sri Vaikhanasa Agama Shastra; and established for the daily pooja accordingly and the said founder of Sri Vaishanava Philosophy, in addition to the installation of the extraordinary Shanka and Chakra to the Lord, also got performed "Prathistha" for the grand existing "Vimanam" by installing in it Varaha. Narasimha Vaikuntanatha and Sri Venkateswara varas such as Sesha, Seshaasana, Garunda. Dwarapalakas etc.. in their appropriate places as ordained in the Vaikhanasa Agama Shastra." He further ordained and established that:

"Before Sri Alarmel Mangai, the consort adorning the chest of the Lord is offered Abhishekam on Friday, as contained in the Ananda Samhita of Sri Vaikhanasa Agama Shastra viz., the Lord Sri Venkateswara shall be offered the "Thirumanjanam" or "Abhishekam" and the Lord shall be adorned the extraordinary "Thirumankappu" (Namam-caste mark) in the shape of two lines from the beginning of the nose as sanctioned in Sri Vaikhanasa Agama Shastra which is as follows:

In the forehead of the Lord the Urdhwa Pundra (Vertical Namam) shall be adorned beginning from the origin of the nose in two lines."

While denying that the worship etc., in the temple of Lord Venkateswara is according to Sri Vaikhsnasa Agama Shastra, reliance is placed in the counter affidavit to the following statement occurring at page 303 of the first volume of "History of Tirupati" by T.K.T, Viraraghavacharya.

"Although the Vaikhanasa form of worship has been in vogue from ancient times there has not been in practice strict observance of the procedure laid down therefor."

We have pointed out infra that the statements made in the said book have not been accepted by the Tirumalai Tirupati Devasthanam. Further, at pages 39 and 40 of the book, it has been stated that the deity in this temple is worshipped according to Sri Vaikhanasa Agama Sastra. The statement referred to in the book relied upon by the Devasathanam also does not show that the worship is not according to Vaikhanasa Agama Shastra, but says that it is not in strict observance with the form of worship prescribed in the said Agama Sastra. The 2nd respondent has not come forward with the statement as to the Agama Shastra according to which the worship performed to Lord Venkateswara. On the material on record, we reach the conclusion that the worship in the temple is according to the Vaikhanasa Agama Shastra.

28. The question that arises for consideration is whether any quantity of food offerings has been prescribed by the Agama Shastras for performance of worship of the deity and if any such quantity has been fixed, whether the fixing of such quantity forms an integral part of the religious rite or worship. The learned counsel for the petitioner brought to our notice various extracts from the Agama

Shastras to show that these Shastras not only ordain the manner of performing the worship but also lay down the quantities in which the Naivedyam has to be offered. Jaimini in his Poorvameemansa states that which is offered to God is "Havis" In "Sri Vaikhanasa Prathishtaana Kramanikayam," it is stated at page 33 of the 1953 edition that "Prabhootham" begins with two dronams and ends with six dronams; whereas "Mahahavis" begins with hundred prasthas and ends with thousand prasthas. The two being two kinds of "Havis". Rice and side dishes beginning with two dronams and ending with hundred prasthas is called "Prabhutha." Rice with several kinds of side dishes combined with ghee, jaggery, curds, fruits etc., beginning from two hundred Prasthas and ending with thousand Prasthas each (each variety) is "Maha Havis" which is of nine kinds of varieties. For "Visesha Poojas" or special poojas "Prabhutham" should be offered and for Kamyaka Pooja, "Maha Havis" should be offered. What are "side dishes" or "Upadamshaha" is also stated at page 116 of the said book. The sixth sloka in "Samurtharahanadhikarana" (T.T.D. Edition 1943) Chapter 47 at page 253 states that "God must be offered either "Maha Havis" or Prabhutham". Even if one is unable in these days one must take his bath and prostrate before God." The measure of "Havis" as has been given in "Vimanarchana Kalpa Mareechi Samhita - Vaikhanasa" at page 294 shows that four prasthams are equal to one Aadakam and four Aadakams are equal to one Dronam, that is to say, 16 prasthams are equal to one Dronam. The Shastras also lay down the quantity of offerings to be made to the other deities other than the principal deity. At page 294 of "Vimanarchana Kapa Mareechi-Vaikhanasa Agama". It has been stated that for the two consorts of the Lord, one Aadakam or one half of it; and for the Parivara Devas two Prasthas or more than one Prastha of rice. The Shastras also say the number of garlands to be offered to the deity and also the flowers which each garland should contain. The "Kashyapa Jnanakanda" (at page 116) shows that "Havis" who have no capacity is "Avaram", lower or deprecatory kind. It is of three kinds viz., Dronam, Half Dronam and Aadakam, Men with capacity have to offer rice and side dishes (Upadamsha) like mango, plantain, Jack, Pumpkin etc. The offerings made by men having capacity to offer are of nine kinds viz., Adhama, Madhyama and Utthama and they begin with one Dronam and raise to nine Dronams with increase of one Dronam at each stage. The manner in which the food offerings to the deity have to be cooked is also laid down in Chapter 22 of "Khiladhikara" at page 334, stanzas 87 to 90. The same book at page 333 also gives the descriptions of the "Harvis". In sloka 73 five kinds of "Harvis" for Vishnu have been stated. They are according to sloka 74 Rice simple, Payasam gingelly rice or molahora or Chitrannam, Pongal Yavakam (some other superior rice) (Half rice, half wheat of superior variety. 1/4th jaggery and 1/4th ghee) If none of the above mentioned five kinds of rice are available rice simple at least must be offered. In sloka 77 it is stated that for one Drona of rice, there shall be five vegetables each of five palams in weight and jaggery of one palam. Chapter 75 of "Kashyapa Jnanakanda" also speaks of the five kinds of Havis to be cooked for God viz., rice simple, Pongal, Payasam, Krisaram, Chitrannam, Gowlyam, Yavakam. At page 33 of Sri Vaidhanasa Prathishtanu Kramanika" the manner in

which the various kinds of rice have to be prepared is stated. At pages 79 and 80 how the Appam to be offered to God has to be prepared is mentioned Page 81 speaks of the measures of side dishes. In "Bhrighu Samhita Prakeernadhikara" three kinds of Utsavams have been mentioned viz., "Kaala" "Shraddha" and "Nimittha", Kaala Utsavam" is to be performed in a year in any month; "Shraddhotsava" to be performed for certain purposes like "Shanthi" or to avert drought or danger. The same three kinds of Utsavas have been mentioned in "Vimanarchana Kalpa" and "Khiladhikara". The benefit of "Havis" has also been mentioned. In "Vimaanarchana Kalpa" at page 412, the evils arising if Havis is not properly offered have also been mentioned. In "Bhrighu Samhitha Vaikhanasa Kriyadhikaara" at page 269, it is stated that failure to offer the prescribed Dhakshina (or offering lesser than the prescribed Dakshina) or offering lesser quantity of provisions and Rithwiks, the person at whose instance it is performed (Yajamana) will obtain less benefit or phalam.

29. The aforesaid extracts show that the "Havis" to be offered to God at the various poojas. Utsavams and Sevas have been stated in great detail even giving details of the ingredients each "Havis" should contain. By a reading of the aforesaid extracts, it becomes clear that the ingredients of the "Havis" are not secular matters but matters connected with religion. It is ordained by the Agama Shastras that if poojas have to be offered the "Havis" should be offered in a particular manner consisting of particular quantities of the ingredients so that the person who performs the pooja may be benefited thereby. The learned counsel for the 2nd respondent laid stress on a statement in the aforesaid extracts that if "Havis" as ordained cannot be offered prostration before God is sufficient or a simple offering of rice is also sufficient. These statements have been made in the context of persons who are not in a position to offer the various Naivedyams or the "Havis" as ordained by the Shastras. But that does not mean that the offering of the "Havis" or the Naivedyam in the manner prescribed is not a matter of religion. The Devasthanam with its huge income cannot say that it is not in a position to make the food offerings or the quantities ordained by the Shastras. The Devasthanam, as we have already referred increased the fees for the various Utsavams and Padis from 1st August, 1970. No statistics have been laid before us to show that the increase in these fees has in any manner reduced the number of Grahasthas who perform the Utsavams or offer the various Arjitha sevas to the deity. It cannot, therefore, be said that by making an offering as ordained, the Grahasthas are in any manner affected. Those Grahasthas who are not in a position to spend the necessary amount for the offering as ordained will satisfy themselves with performing the pooja without offerings. The Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, (observations already extracted) has held that 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 those would be regarded as matters of religion.

30. The question that arises for consideration is whether any specific quantity

has been ordained for the performance of the various poojas. Utsavams and Arjitha Sevas in the temple of Lord Venkateswara. It is the case of the petitioner that these quantities have been fixed from times immemorial and at no stage these quantities have been reduced. It is contended on behalf of the 2nd respondent that there have been no fixed quantities for the various food offerings and Pannyarams to Lord Venkateswara and they have been undergoing a change from time to time. The 2nd respondent has denied that there were any fixed quantities of food offerings and Pannyarams to Lord Venkateswara. The Petitioner, in paragraph 8 of his affidavit, has relied upon "Savaljavab Patti" of Fasli 1227 and "Kainkarya Pattis" of Faslis 1211 and 1230 and also the 2Dittam governing the Tirumala Tripati Devasthanams, Specific reference has been made to a book published by the Devasthanam in the year 1964 called "the Tirumala Thirupathi Devasthanam Manual for Tirumala Temple" (part I) wherein reference is made to Tirumala Thirupathi Devasthanams Paditharam Dittam Scales for Daily and Special Occasions and for Arjitha Sevas etc. in Sri Venkateswaraswami vari temple at Tirumala. The Dittam mentioned in the aforesaid manual was approved and sanctioned by the Tirumala Thirupathi Devasthanams Committee in its Resolutions Nos. 192 dated 17th September, 1950 and 141 dated 6th September, 1951. The Devasthanams has also published another Telugu printed book called "Tirumala Thirupathi Devasthanam's Dittam" (from Faslis 1200 to 1250) This book was printed in the year 1957. All the aforesaid books published by the Devasthanam in very great extenso specifically state the various scales of provisions for the various food offerings. Paditharamsas and Pannyarams etc., existing from ancient times as per the custom and usage prevailing in the Devasthanam. The 2nd respondent in his counter-affidavit, stated that the "Savaljavab Patti" of Fasli 1227 and the "Kainkarya Pattis" of Faslis 1211 and 1230 and the Dittam book for Faslis 1200 to 1250 are only documents which set out the procedure that was followed during those Faslis and only serve as a guidance for the future in regard to the matters they deal with and are not "Record of Rights". The Devasthanam Manual was prepared for observance in the conditions and circumstances which existed when they were published and like all manuals they are liable to modification to suit the needs of society at any particular period of time. The two resolutions of the Devasthanam Committee cited in the petitioner's affidavit themselves prove that the Dittam was changed to suit the necessities of the times. No material has been placed before us in support of the aforesaid statement. In the book called "Tirumala Thirupati Devasthanams Paditharam Dittam scales for Daily and Special Occassions and for Arjitham Sevas" the names of the various Naivedyams have been stated at page 8. One of these Naivedyams is "Sugar Laddu Padi". This Sugar Laddu Padi consists of about nine items and the weight of each of the items has been given in viss palams and tolas. For example, it is stated Bengal gram dhal flour 6 viss ghee 6 viss, Boora sugar 12 viss, almond nuts 16 palams; sugar candy 10 palams; cardamom 5 palams; and saffron 1 tola. Similarly the ingredients of Jilebi Padi. Manoharam Padi, Vada Padi and Tentola Padi have been mentioned in great detail. The details of provisions for Annal Naivedyams which are known as

"Cherupulu" also have been mentioned in great detail. The Padis which are to be offered as Naivedyam to the Lord at the Kalyanotsavam viz. Thiru Pavada Seva, Thiru Pavada Prasadam and half Thirupavada Seva have also been mentioned in very great detail. For Example for Thiru Pavada prasadam, the quantity of rice, Bengal Gram Dal, Blackgram dhal, salt, mustard, ghee etc. which the particular Prasadam should contain have been mentioned by measures. The petitioner has placed before us sufficient evidence of the Dittam that was offered to Lord Venkateswara during the Fasli 1200 to 1250 and also the Dittam fixed by the Devasthanam Committee in 1950 and 1951. It is stated that this Dittam is in accordance with the Sastras and in addition to that, it has been the customs and usage of the Devasthanam to offer the Dittam in that particular scale. Except making a bare denial, the Devasthanam material to controvert the abovesaid statements.

31. It is argued by the learned counsel for the 2nd respondent that it is for the petitioner to prove that the food offerings and Pannyarams were made in a particular quantity and as the petitioner has not done the same no burden is cast on the 2nd respondent to controvert the statement made by the petitioner. We do not agree with this contention. Whatever evidence the petitioner had in his possession has been placed before us and it is in the shape of various books which the Devasthanam itself has published from time to time. The material to rebut the statements made by the petitioner and also the contents of the various documents produced before us were with the Devasthanam which it has not cared to produce before us. The only book relied upon by the 2nd respondent for its conclusion that the quantity of food offerings and Pannyarams varied from time to time is "History of Tirupati" (Vol. I) by Sri T.K.T.Veeraraghava Charya. This book was got published no doubt by the Tirumala Tirupati Devasthanams but the Devasthanam has taken care to print at the end of the first volume the following:

"The Devasthanam authorities do not undertake any responsibilities for the opinions and statements expressed and conclusions arrived at by the author in this book"

From the aforesaid statement, it is very clear that the Devasthanam has not vouched for the correctness of the statements made and the conclusions arrived at by the author in this book and has not owned any responsibility for the same. It is strange that the Devasthanam now because it finds that some of the statements made in the said book are in their favour, rely upon those statements. The best evidence was in possession of the Devasthanam and when the same has not been produced, an adverse inference can be drawn against the 2nd respondent that if those documents had been produced, if they would have supported the case of the petitioner.

32. It is also argued by the learned counsel for the 2nd respondent that the proper method to establish the quantity of Dittam is a properly brought civil suit and not a petition under Article 226 of the Constitution. But that does not in any

manner absolve the 2nd respondent from producing the written records before us. On the material before us we hold that the petitioner has established the quantity in which the food offerings and Pannyarams have to be offered and as it is a matter of religion any reduction of those food offerings would infringe Articles 25 and 26 of the Constitution of India.

33. It is argued by the learned counsel for the 1st and 2nd respondents that the quantity cannot be considered as a matter of religion and is purely a secular matter. This argument cannot be accepted in view of the observation of their Lordships of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, (already extracted) which says that "the mere fact that offerings of food involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partakings of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b)" We therefore, find no substance in the argument of the learned counsel in this behalf.

34. We, therefore, hold that the two orders of the 1st respondent inasmuch as they reduce the quantities of food offerings and Pannyarams which are matters of religion are bad in law as they contravene the provisions of Articles 25 and 26 of the Constitution.

35. At this stage, we may also consider whether the aforesaid orders infringe Article 19(1)(f) of the Constitution of India. The case of the petitioner is that he has a specific share in all these food offerings and Pannyarams. That the petitioner has a share in these food offerings and Pannyarams has not been denied by the 1st or 2nd respondent. It is not necessary for us to refer to the exact share of the petitioner; but suffice to say that he had a share in these food offerings and Pannyarams. It is also not denied that the petitioner is a hereditary Archaka and holds the office of an Archaka. The question then for consideration is whether in a case in which the Archaka holds an office and also has a share in the various offerings made to the deity, it can be said that he has a right in property. The latest decision of the Supreme Court in order to determine whether a person who holds an office has any right in property is *Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others*, The question there for consideration was whether a hereditary trustee of an institution has got a right in property. The Supreme Court observed:

"Hereditary trustees of the institutions generally have only a bare right to manage and administer the secular estate of the institution or the endowment and they do not have proprietary or beneficial interest either in the corpus or the usufruct of the estate. "

Referring to the case of a Mahant or a Shebait of the religious institution or a Mathadhipathi, it was observed by the Supreme Court that " these functionaries

have a much higher right with larger power of disposal and administration and they have a personal interest of beneficial character. " The criterion thus laid down by the Supreme Court is that persons holding an office and having a beneficial interest have a right in property within the meaning of Article 19(1)(f) of the Constitution. The earlier authorities of the Supreme Court have been referred to in *Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others*, and therefore we do not think it necessary to consider those authorities or refer to them.

36. The learned counsel for the respondents relied upon *Bhogaraju Venkata Janakirama Rao Vs. The Board of Commissioners for Hindu Religious Endowment Andhra Pradesh*, and argued that the office of the Archaka is not property. The question for consideration before their Lordships was whether a share of Dibbi Collections (Hundi Collections) and other items which have been fixed by custom and usage was a right to property. In that case it was not disputed by the Archakas that the share in Dibbi Collections and other items of perquisites which had been fixed by custom and usage was a remuneration due for the service performed by the Archakas. It was therefore held that it was not a right to property. Obviously the decision turned on the concession of the Archakas that the share they claimed was only a remuneration and not a beneficial interest in the office. This decision, therefore, does not in any manner help the respondents. Our conclusion applying the principle laid down by the Supreme Court in *Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others*, is that the Archakas have a beneficial interest in the office and therefore the office of an Archaka is property. The first order in so far as it relates to the offerings to the diety and the second order affect the petitioner's right to property and thereby infringe Article 19(1) (f) of the Constitution. The two orders to the extent indicated above are void.

37. The third contention raised by the petitioner is that while passing the orders dated 25th February, 1969 and 5th April, 1969, the 1st respondent did not comply with the provisions of Section 23 of the Act. As regards the publication of the first order reducing the size of Laddus, the petitioner had submitted his objections. It cannot, therefore, be said that before making the first order, the proposal was not published as required by Section 23 of the Act. As regards the second order dated 5th April, 1969, it is contended by the petitioner that it was never published. Two circumstances have been brought to our notice in support of the contention that the proposals were not published (i) if they had published, the petitioner who had objected to the first proposal would also have objected the second proposal especially when the second proposal drastically affected his property rights. (ii) the evidence relied upon by the 1st respondent for publication of the proposal has not been produced by him but has been produced by the 2nd respondent. It is also argued that an application was made for copies of the documents now produced, but the said copies were not furnished to the petitioner by the 1st respondent. We do not see any substance in both the arguments advanced. Merely because the petitioner did not file any objection to

the second proposal does not mean that the proposal was not published. It is also incorrect to say that the documents produced by the 2nd respondent should have been produced by the 1st respondent. There is sufficient material before us to show that the second proposal was properly published as provided for in Section 23 of the Act.

38. It is also contended that prior to the publication of the proposals, the Sthanacharyas were not consulted. The 2nd respondent, in his counter-affidavit has stated that before forwarding the proposal to the 1st respondent, the Sthanacharyas have been consulted. It is argued by the learned counsel for the petitioner that this is a very bad statement and not even the name of single Sthanacharya who had been consulted has been mentioned. There are more than one Sthanacharya for this temple and also there are two Sanyasis who rank higher than the Sthanacharyas. The failure of the Devasthanam Trustees to make mention of the names of the Sthanacharyas who had been consulted should result in the rejection of the 2nd respondent's contention that the Sthanacharyas were consulted. Except the statement made by the Executive Officer on behalf of the 2nd respondent that the Sthanacharya was consulted no other material has been placed before us. The petitioner also has not produced any affidavits of the Sthanacharyas to show that they have not been consulted at the time of making the proposals. It is therefore a case of oath against oath and we do not see any reason why we should not accept the statement of the Executive Officer that the Sthanacharyas were consulted.

39. The third objection raised is that the first respondent, before passing the orders, did not take into consideration the religious aspect of the reduction of Dittam. A reading of the first order shows that the 1st respondent passed the order in the circumstances explained by the Executive Officer of the T. T. Devasthanams in his communication Roc. No. G5/14868/68 dated 26th November, 1968. A copy of that communication has been made available to us. Along with this communication a copy of the objection petition filed by the petitioner was also enclosed. In regard to the objection, the Executive Officer has stated :--

"I have to state in this connection that this is a change in Prokthu Luddus (i.e.,) intended for sale to pilgrims. The Archakam (Vanthudar) Mirasidar is in no way affected of his emoluments. He pleads that the reduction in size of laddus will reduce the sanctity attached to it. In this connection I have to state that prasadam is sold in the temple premises and it cannot be said that it loses the sanctity. Since the rate is also reduced by 50% it will be within the reach of the middle class pilgrims also. Only with that view, the size and the rate is reduced to 50% without increasing the rate and to make available to more number of pilgrims. "

This statement clearly shows that it is only the secular aspect of the matter that has been taken into consideration and the religious aspect has not been adverted to at all. The second order makes reference to the communication of the

Executive Officer in Roc. No. G3/27291/66 dated 3rd December, 1968, a copy of which has not been available to us. But a reading of the last portion of the order itself shows that what was considered at the time of making reduction in the quantities of food offerings or the offerings at the time of the 10 sevas and 7 padis mentioned in that order is whether the existing rate for these Sevas and Padis was causing loss to the Devasthanam. It is also the case of the Devasthanam that as the Sevas and Padis mentioned in that order were resulting in loss to the Devasthanam a decision was taken to reduce the quantities of offerings at these Sevas and Padis. This clearly shows that it is only the secular aspect of the matter that was taken into consideration and the religious aspect was not at all adverted to. While dealing with the provisions of Section 23 of the Act, we have held that it is not only the secular aspect but the religious aspect of Dittam that has also been taken into consideration. Inasmuch as there has been a failure to consider this aspect, it cannot be said that there has been compliance with Section 23 of the Act. Sub-section (3) of Section 23 also says that the financial position of the institution also has been taken into consideration. As far as the Prokthupadi Laddus are concerned, the reduction in size is not at all justified having regard to the financial position of the institution as the Devasthanam itself has stated that it is in a position to bear the expenditure of the Sevas and Padis. As regards the Sevas and Padis mentioned in the second order also, the quantities have been reduced as the Devasthanam was suffering a loss with respect to those Sevas and Padis. But there is nothing to show that by virtue thereof the Devasthanam would have suffered an overall loss considering its income. One of the reasons given for reduction of the quantities is that Grahasthas expressed their view that when they perform the various Sevas and offer the Padis no cost of such Sevas and Padis should be borne by the Devasthanam as in such a case they would not get the full benefit or Phalam of the Seva or the Padi. This view could have been very easily met by enhancing the contribution payable by the Grahasthas for the various Sevas and Padis as has now been done by the Devasthanam from 1st August, 1970. We are, therefore, of the opinion that the financial position of the Devasthanam does not warrant any reduction in the quantity of the offerings to be made in the various Sevas and Padis. We, therefore, hold that while passing both the orders, the provision of Section 23 of the Act have not been complied with and the orders are therefore bad. In this context, we may also refer to the fact that by reducing the quantities to be offered by the various Sevas and Padis at the rate of then existing for offering those Sevas and Padis, the Devasthanam stood to gain. Our attention was specifically drawn to Enclosure No. 11 filed with counter-affidavit of the 2nd respondent. This enclosure supports the aforesaid contention.

40. The petitioner relied upon Section 102 of the Act and argued that the orders are contrary to the provisions of that section. That section specifically states that unless otherwise expressly provided in the Act nothing in the Act shall affect any emoluments or perquisites to which any person is entitled by custom or otherwise in any charitable or religious institution or endowment. The manner in

which the perquisites can be affected has been laid down in Section 23 of the Act. If an order is within the ambit of Section 23, Section 102 of the Act will not help the petitioner. As we have held that the orders are void, we need not discuss this aspect of the case any further.

41. It was also argued that the principles of natural justice demanded that before making an order u/s 23, the persons affected should have been given an opportunity and a hearing to make their representations. Section 23 provides for persons affected to file their objections before the Commissioner; and the Commissioner; before passing an order, has to pay due regard to those objections. The law does not lay down that an enquiry as such has to be given to the persons concerned. It would be better if persons interested are given a personal hearing, but that cannot be laid down as a condition precedent for passing an order provided for u/s 23.

42. The last contention that remains for consideration is that the Commissioner and the Board of Trustees of the Devasthanam did not apply their mind before passing the orders or before making the proposals. While dealing with the question of non-compliance with the provisions of Section 23, we have held that the Commissioner, while passing the orders, did not at all advert to the religious aspect of the Dittam. The same has been done by the Board of Trustees also. It would be another instance of non-compliance with the provisions of Section 23 on which we have already expressed our opinion.

43. Our conclusions are :

(1) The order dated 25th February, 1968 in so far as it relates to the offerings of Porkthupadi Laddus by the Devasthanam to Lord Venkateswara is void as it infringes Articles 25, 26 and 19(1)(f) of the Constitution.

(2) The order dated 5th April, 1969 is void as it infringes Articles 25, 26 and 19(1)(f) of the Constitution.

(3) The order dated 25th February, 1969 in so far as it relates to the offering of Prokthupadi Laddu by the Devasthanam to Lord Venkateswara is bad as Section 23 of the Act has not been complied with.

(4) While making the order dated 5th April, 1969, the provisions of Section 23 of the Act have not been complied with and the order therefore is bad.

44. In the result, we allow the writ petition with costs and quash the order of the 1st respondent viz.D. Dis. A-1/92975/68 dated 25th February, 1968 to the extent mentioned above and the order of the 1st respondent D. Dis. A-1/94407/69 dated 5th April, 1969. Advocate's fee Rs. 150 /- (Rupees one hundred and fifty only.).

45. Petition allowed.