

(1999) 10 KL CK 0024

In the High Court Of Kerala

Case No : O.P. No's. 2587, 16650 and 26396 of 1999

Travancore Cochin Devaswom Board Staff Association and
Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Constitution of India, 1950 — Article 238(10), 25, 26

Hindu Religious Endowment Regulations — Section 3

Travancore-Cochin Hindu Religious Institutions Act, 1950 — Section 103 , 11, 2, 24, 29

Citation : (1999) 2 KLJ 1114

Hon'ble Judges : S. Sankarasubban, J;P.K. Balasubramanyan, J;K.K. Usha, J;C.S. Rajan, J;A.R. Lakshmanan, J

Bench : Full Bench

Advocate : K.P. Kylasanatha Pillay, P. Sreekumar, B. Prabhat Kumar and Sreedevi Kylasanath, in O.P. 25875/98, T.R. Ramachandran Nair, in O.P. 26396/98 and Govind K. Bharathan, K.S. Balakrishnan, M. Hemakatha and Usha Sai, in O.P. 16650/99, for the Appellant; M.K. Damodaran, General, K.K. Ravindranath, Govt. Pleader, Ashok H. Desai and Pallav Shishodia, for Respondent No. 2, P.G. Parameswara Panicker and P. Gopal, for Respondent No. 3, P. Kesavan Nair and K.G. Cleetus, for the Respondent

Final Decision : Dismissed

Judgement

S. Sankarasubban, J.—All the above three Original Petitions are filed challenging the validity of the Travancore-Cochin Hindu Religious Institutions (Amendment) Act, 1999 (Act 9 of 1999) and the Ordinances which preceded it and for a declaration that only Hindus having faith in God and temple worship and who unequivocally affirm the same by filing a declaration to that effect as provided in the unamended main Act are eligible to vote in the election to elect members of the Travancore and Cochin Devaswom Boards.

2. Petitioner in O.P. No. 26396/98 has described himself as a Hindu and a staunch believer in God having absolute faith in temple worship. He is the

President of Thuravoor Maha Kshethra Bhaktha Jana Samithi, an Association registered under the Travancore-Cochin Literary and Charitable Societies Act. He was the general convenor of the 15th All India Bhagavatha Sathram held at Thuravoor Maha Kshethram in April, 1998. He is the Executive Committee Member of All India Bhagavatha Sathra Samithi. It is stated in the petition that the Travancore-Cochin Hindu Religious Institutions Act, 1950 (hereinafter referred to as "the Principal Act") was enacted since it was found necessary to make provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and other Hindu Religious Endowments and Funds.

3. The involvement of the persons, who administer or supervise or control the temple is contemplated under the Principal Act. The persons bestowed with duty to administer must have faith in God and in temple worship. It is only in such of those, who believe in God and temple worship that the administration can be vested. The Principal Act does not contemplate vesting of powers with a Board consisting of Hindus having no faith in God and temple worship. Thus, only those Hindus who believe in God and temple worship can get nominated or elected or vote at the election of the Devaswom Board. The Petitioner then describes the powers of the Boards for the purpose of stressing the point that faith in God and temple worship are absolutely necessary to be a member of the Board as also to be a member of the electoral college. It is further stated that the term "Hindu" occurring in the Principal Act cannot be interpreted to take any person who is a Hindu by birth but not a believer in God and temple worship. According to the Petitioner, any other interpretation to the term "Hindu" will violate the guarantee given to the religious denomination under Article 25 and 26 of the Constitution of India. The Petitioner also relies on the Division Bench decision of this Court in *Muraleedharan Nair v. State of Kerala* 1990 (1) KLT 874 to fortify these submissions.

4. According to the Petitioner, the first Respondent, viz., the State of Kerala promulgated Ordinance No. 18/98, true copy of which is produced as Ext. P-1 in the Original Petition. Ext. P-1 amends Sections 2, 4, 5, 61, 63 and 64 of the Principal Act. The effect of the amendment is that the administration can be vested with Hindus, who are not believers in God and temple worship. Ext. P-1 poses a real and grave danger to the smooth administration of the religious institutions. The amendment is politically motivated and is promulgated with the malicious intention to fill in the existing vacancies of the Travancore Devaswom Board with persons from the ruling coalition who are not believers in God and temple worship. Ext. P-1 Ordinance has been repealed by Ext. P-2, which is the Travancore-Cochin Hindu Religious Institutions (Amendment) Act, 1999 (Act 9 of 1999). The Petitioner has also produced Ext. P-3, which is Act 3 of 1994. Under this Act, the term "Hindu" is defined as a person who is a Hindu by birth or conversion into Hindu religion and professes Hindu religion and believes in God and temple worship. Under Ext. P-3 every Hindu member of the Legislative Assembly of the State of Kerala and every Hindu among the Council of Ministers

have to give a declaration signed by them to the effect that they profess the Hindu religion and believe in God and temple worship before exercising their right to vote in the election for electing the members of the Devaswom Board. This condition in Ext. P-3 is taken away by the amendment in Ext. P-2. According to the Petitioner. Exts. P-1 and P-2 are unreasonable and perverse and against the intention of the Principal Act. The Petitioner has also cited the decision reported in *K. Krishnan Kutty v. State of Kerala* 1985 KLT 289 for driving home the point that the members nominating should also have faith in God and temple worship.

5. O.P. No. 16650/1999 is filed by five persons. The first Petitioner is the President of Kerala Kshethra Samrakshna Samithi, second Petitioner is the General Secretary of Vishva Hindu Parishad, third Petitioner is the State General Convenor of Hindu Aikya Vedi, fourth Petitioner is the General Secretary of All Kerala Pulayar Mahasabha and the fifth Petitioner is Swamy Sathyananda Saraswathy, Sree Rama Dasa Mission, Thiruvananthapuram. This Original Petition also attacks the Amendment Act, viz., Act 9 of 1999. In the Original Petition, the Petitioners traced the various developments in the amendment of the Principal Act and have also focused the point that the persons who are nominated as members of the Committee should be believers in God and temple worship. The Petitioners rely on the decisions reported in *Muraleedharan Nair v. State of Kerala* 1990 (1) KLT 874 and *K. Krishnan Kutty v. State of Kerala* 1985 KLT 289 in support of their contentions. It is further contended that all the Hindu Ministers in the Cabinet do not believe in God and temple worship and the Petitioners will have no objection, if they file a declaration that they believe in God and temple worship.

6. O.P. No. 25875/98 is also filed for the same relief. It is filed by the Travancore Devaswom Board Staff Association represented by its State President and Anr. person. A counter affidavit has been filed by the State in O.P. No. 25875/98 and it has been adopted in all the three cases. In paragraph 5 of the counter-affidavit, it is stated that the amendments brought to the Act makes the term "Hindu" to fall in line with the great tenets and teachings and the true principles and virtues of Hindu religion. It is not in consonance with the principles of Hindu religion to insist that a person who is a Hindu by birth or by conversion into Hindu religion and professes Hindu religion should also be a believer in God and temple worship. In paragraph 6 of the counter-affidavit, it is stated that the administrations of the Travancore-Cochin Devaswom Boards are carried out as per the provisions of the Principal Act. As per the Principal Act, the Board consists of three members each. Two members are nominated by the Hindu members in the Council of Ministers and one member is to be elected by the Hindu M.L.As. in the Legislative Assembly. The member appointed by nomination or election has to take an oath that he is a believer in God and temple worship. This ensures that persons who have faith in God and temple worship alone are nominated/elected to the Board. In Schedule II of the Act, it has been specified that the member elected has to be a person who believes in God and temple

worship. The change brought about by the Act 9/1999 is that those Hindu Ministers or M.L.As. who participate in election or nomination can do so without declaring themselves that they believe in God and temple worship. In paragraph 8 of the counter-affidavit, it is stated that the duties of the members of the Devaswom Board are purely administrative in character and their duties do not in any way touch upon the traditional religious rites in respect of any temple. The religious aspects of any temple are decided by the Thanthri of that particular temple and the Board is bound to implement the directions of the Thanthri. The Principal Act has been conceived only as a law which governs the purely administrative aspects of the temples in the Devaswom Boards and is not meant to govern any aspect of religious worship in the temples. The members of the Devaswom Board have no powers to interfere in religious matters. It is then stated in the counter-affidavit that the meaning of the word "Hindu" is not defined in the Act and refers to various decisions to show that the definition of the word "Hindu" is not confined to only those who believe in God and temple worship. In paragraph 10 of the counter-affidavit, it is stated that at the time when the Principal Act was enacted the legislative intent was against the making of any classification among Hindus. It was not intended to give a narrow meaning and interpretation to the expression "Hindu". The counter-affidavit refers to a speech by Sri T.K. Narayana Pillai, who was the Chief Minister at the time when the Principal Act was enacted, wherein he had stated thus: "The Legislature did not think it necessary to exclude any person who was born as a Hindu from the category of "Hindu members" merely for the reason of variations of personal faith". The counter-affidavit further states that there is no justification for imagining that the Hindu Ministers and Hindu members of the Legislature merely because they are not believers in God and temple worship will not exercise their right of electing or nominating the fit and proper persons capable of performing the task entrusted with them as members of the Devaswom Board. The counter-affidavit also states that there is no violation of any fundamental rights including the rights under Articles 25 and 26 of the Constitution of India. Further, classification or fragmentation of the Hindu community on the basis of faith is not permissible.

7. We heard Advocates M/s T.R. Ramachandran Nair, Govind Bharathan and Kailasa Nath Pillai on behalf of the Petitioners and Shri Ashok Desai, Senior Counsel, Shri Ravindranath, Senior Government Pleader, Shri Pallav Shishodia and Shri P.G. Parameswara Panicker for the Respondents. The Petitioners mainly contended that the Principal Act was enacted for the purpose of the administration and maintenance of temples in the erstwhile Travancore and Cochin States. They contended that even though the Principal Act includes religious endowments other than temples and shrines, a major part of the administration of the Devaswom Boards is with regard to the temples. Unless the persons in management of the administration are believers in God and faith in temple worship, there will not be effective management; on the contrary, according to them, it will result in destructive activities, even though provisions

are contained in the Principal Act to see that the members elected or nominated in the Travancore and Cochin Devaswom Boards have to declare that they believe in God and have faith in temple worship. By the impugned amendment of the Act, this requirement was taken away so far as the persons who nominate or elect the Board members. The point highlighted was that it is the Hindu members of the Kerala Legislature and the Hindu Ministers of the Cabinet who make the selection or nomination process. Unless the persons nominating or selecting have faith in God and temple worship, there would not be effective selection or nomination with regard to the members of the Board. It is further contended that a Five Judges Bench of this Court in *Krishnan v. Guruvayoor Devaswom Managing Committee* 1979 KLT 350 had held that the power of nomination or selection of the Board members should be given to a statutory body with regard to Guruvayoor Devaswom and also contended that the same principles apply to the Travancore and Cochin Devaswom Boards. According to them, it is the religious denomination that has to be represented in the management and unless the persons nominating or selecting also form part of the denomination, the power of selection or nomination will become useless. The Petitioners also relied on the Full Bench decision of this Court in *K. Krishnankutty and Ors. v. State of Kerala* 1985 KLT 289 wherein this Court upheld the amendment made to the Principal Act by an Ordinance which necessitated the persons voting or nominating to give a declaration that they believe in God and temple worship. The Petitioners also cited in support of their arguments, *Anr. Full Bench decision in Narayanan Namboodiri and Ors. v. State of Kerala* 1985 KLT 629. Finally, the Petitioners relied on the Division Bench decision of this Court in *Muraleedharan Nair v. State of Kerala* 1990 (1) KLT 874. According to them, the latter decision has finally held that so far as the definition of the word "Hindu" with respect to the Principal Act is concerned, that person should be a person having belief in God and temple worship. It was further contended that the present amendment was made only to see that the non-believers in God and temple worship exercise their rights over temple management much to the chagrin of the ordinary temple worshipers. According to the Petitioners, if the power of nomination is given to persons who do not believe in God and temple worship, that will give way for the deterioration or mismanagement of the institutions.

8. Shri Ramachandran Nair appearing for the Petitioners traced to us the history of the temple management in the State of Travancore. He also brought to our notice the opinion of Sir C.P. Ramaswamy Iyer on the question whether the State is the absolute owner of the temples and whether the entire income obtained from the temples can be appropriated by the State. According to him, even though the temples were managed by the Rulers of the State of Travancore they were managed as trustees and the right of denomination was never lost. When the country became independent and the erstwhile States were abolished, the Rulers handed over the management by means of an Ordinance in favour of Board. It was further contended that the Board is exercising the same function as was done by the Ruler previously, viz., he was managing the temples as Trustee.

Counsel further submitted that the Rulers of Travancore were believers in God and also they ruled the country as "Dasa" of Sri. Padmanabha. Hence, according to him, no circumstance arose previously for nominating a person or selecting a person, who did not believe either in God or temple worship. He further contended that the amendment was made with the mala fide intention of introducing atheists in the management of temples. Counsel also cited various decisions of the Supreme Court with regard to the word "Hindu".

9. Counsel for the Respondents in reply submitted that there was no right for the Petitioners to challenge the present amendment made in 1999 to the Principal Act. According to them, no right of the Petitioners under Article 25 or Article 26 of the Constitution of India has been violated. There is no case that either the Travancore Devaswom Board or the Cochin Devaswom Board trespassed into the religious or spiritual rights of any person. On the other hand, the purpose of the Constitution of the Board is only for the effective management of the Hindu temples and other institutions, so as to avoid mismanagement and misappropriation. It is the duty of the State to see that such properties are administered according to law and without any arbitrariness. They further contended that the Petitioners can only contend that the right under Article 26(d) is violated. But here in this case, even that right is not available to the Petitioners. Under Article 26(d), the State can administer the temples in accordance with law. There is no case that the Travancore-Cochin Hindu Religious Institutions Act is not a valid legislation. The Respondents cited a number of decisions to show that what was necessary was that the people, who were managing the temple, had faith in God and temple worship. This is adequately protected by the provisions of the Act. Once the management shows such belief, the Petitioners cannot have any complaint against the selection or nomination of the same by persons who do not believe in God and temple worship. Their further contention was that the word "Hindu" cannot be limited to the Hindu, who believes in God and temple worship. There are many facets of Hindu religion. There are sections of people in the Hindu religion itself, who would not believe in God and temple worship. The Principal Act is enacted for the management of all religious endowments, which not only include temples but other endowments. They also brought to our notice the various provisions of the Principal Act to show how they apply to Hindu community. Counsel further contended that it is not correct to say that the five Judges judgment in 1979 KLT 350 has held that the members selecting or nominating should also be believers in God and temple worship. What was held in that case was that the persons in management should be the members having faith in God and temple worship. According to the counsel, the decision in 1985 KLT 629 is not correct when the five Judges Bench had not held that even the persons nominating or electing the Committee should be believers in God and temple worship.

10. Counsel also relied on the decision in 1985 KLT 289, wherein it was held that no right of denomination regarding the administration of temples had been affected by the Act. Counsel for the Respondents also traced the history of the

temples in Travancore and Cochin States and highlighted the fact that always the management of the temples was in the hands of the Rulers and separate Department was created as Devaswom Department. This shows that the denomination did not have any part in the management of the temples in the erstwhile Travancore State. At the time of commencement of the Constitution, the denomination did not have any right for management. Counsel also brought to our notice various provisions of the Principal Act including the provision that at the time of covenant an amount was contributed to the Travancore Devaswom Board for which a charge was created over the consolidated fund of India. It was further contended that there is no right for a person for being elected or nominated. It is a right created by the Statute and hence it has to be said that the Legislature can fix the conditions for election or nomination. Counsel contended that there are adequate provisions in the Act to see that only persons having faith in God and temple worship can be members of the Board for management. When this power of selection or nomination is vested in the Constitutional dignitaries, as a Member of Legislative Assembly or the Ministers, it cannot be presumed that that power will be exercised arbitrarily or against provisions of the Act. Moreover, the mere possibility of irregular exercise of power is not relevant to hold that the provisions of the amended Act are invalid. If a power is exercised irregularly or illegally, then that power can be set at naught by extending the arms of the Court. Counsel also brought to our notice various provisions of the Act, which stand as a protection against the arbitrary exercise of power by the members of the Board.

11. After hearing both parties, the following points arise for consideration:

(1) Whether the Petitioners have any right to challenge the Travancore-Cochin Hindu Religious Institutions (Amendment) Act, 1999 (Act 9 of 1999)?

(2) Whether any right of the Petitioners are infringed by the change in the definition of the word "Hindus" in Act 9/1999?

12. Point No. 1.-For the purpose of determining this question, it is necessary to find out whether the Petitioners had any right when the Travancore-Cachin Hindu Religious Institutions Act, 1950 came into force. The Travancore-Cochin Hindu Religious Institutions Act, 1950 was preceded by the Hindu Religious Institutions Ordinance 1/1950 and the Hindu Religious Institutions Ordinance 1124 M.E. Ordinance 11/1124 M.E. The Principal Act is divided into three parts. Part I applies to the Travancore area, Part II applies to the Cochin area and Part III applies to the entire areas comprising of Travancore and Cochin.

13. Section 3 of Chapter II states that the administration of incorporated and unincorporated Devaswoms and of Hindu Religious Endowments and all their properties and funds constituted under the Devaswom Proclamation, 1097 M.E. and the surplus funds constituted under the Devaswom (Amendment) Proclamation, 1122 M.E. which were under the management of the Ruler of Travancore prior to the first day of July, 1949, except the Sree

Padmanabhaswamy Temple, Sree Pandaravaga properties and all other properties and funds of the said temple, and the management of all institutions which were under the Devaswom Department shall vest in the Travancore Devaswom Board. Section 4 deals with the Constitution of Travancore Devaswom Board and Section 5 deals with the procedure for the election of member to the Board. While Section 6 deals with the qualification for membership in the Board, Section 7 deals with disqualification for membership. Section 8 states that if a person elected as a member of the Board is or subsequently becomes subject to any of the disabilities mentioned in Clauses (i), (ii), (iv), and (v) of Section 7, and is declared by a Court to be under such disability or becomes subject to the disability or ceases to profess the Hindu Religion he shall cease to be a member. Section 8(2) gives a right to any person interested to apply to the District Court, Trivandrum for an order that a member of the Board has become subject to any of the disabilities mentioned in Section 7 and the Court can determine that question. Under Sub-section (3) of Section 8, an appeal is provided to the High Court against an order of disqualification and such appeal shall be heard and disposed of by a Division Bench. Section 9 gives power to the High Court to remove a member of the Board on the ground of proved misbehaviour or incapacity on an application made to the High Court. The term of the Board u/s 10(1) is four years. Section 11 deals with the President of the Board.

14. Chapter IV deals with incorporated Devaswoms. Incorporated Devaswoms are those Devaswoms, which are mentioned in Schedule I to the Act. These Devaswoms were under the direct management of the Ruler in Travancore. Section 24 states that the Board shall, out of the Devaswom fund constituted u/s 25, maintain the incorporated Devaswoms and keep them in a state of good repair and administer the said Devaswoms in accordance with the recognised usages, etc. Section 25 speaks of the Devaswom fund. The Devaswom fund constituted in incorporated Devaswoms shall consist of (1) a sum of fifty one lakhs of rupees mentioned in Article 238(10) of the Constitution of India as payable to the Devaswom fund (2) the moneys realised from time to time by the sale of movable properties belonging to the said Devaswoms (3) all voluntary contributions and offerings made by devotees (4) profits and interest received from investments of funds belonging to the said Devaswoms and (5) all other moneys belonging to or other income received by the said Devaswoms. Out of fifty one lakhs of rupees mentioned in Clause (1), a sum of six lakhs has to be contributed towards the expenditure in the Sree Padmanabhaswamy Temple. Section 27 states that immovable properties entered or classed in the revenue records as Devaswom Vaga or Devaswom poramboke and such other Pandaravaga lands are in the possession or enjoyment of the Devaswoms mentioned in Schedule I shall be dealt with as Devaswom properties. u/s 29, the Devaswom Department constituted in 1097 shall continue. Section 31 is an important section. It states that subject to the provisions of this Part and the rules made thereunder the Board shall manage the properties and affairs of the Devaswoms, both incorporated and unincorporated and arrange for the conduct

of the daily worship and ceremonies and. the festivals in every temple according to its usage. Section 32 deals with audit. Under this section, the auditor has to send a report to the High Court after completing the audit for every year. Chapter V deals with assumption of Hindu Religious Endowments in certain cases. Section 36 enables the Devaswom Commissioner to call upon the trustees or managers of any Endowments to submit periodical accounts of income and expenditure. Section 37 deals with assumption of management of Hindu Religious Endowments by Board and Section 38 deals with the procedure. Section 40 states that in cases where the Board assumes the management, the institution shall be managed in the same manner as institutions of the same class.

15. Part II deals with Cochin Devaswom. Section 62 deals with vesting of administration in the Board. Under this section, the administration of incorporated and unincorporated Devaswoms and Hindu Religious Institutions which were under the management of the Ruler of Cochin immediately prior to the first day of July, 1949 and all their properties and funds and of the estates and all institutions under the management of the Devaswom Department of Cochin shall vest in the Cochin Devaswom Board. An exception is made with regard to Sree Poornathrayeesa Temple at Tripunithura and Pazhayannur Bhagavathy Temple in connection with the rituals and ceremonies which shall continue to be exercised by the Ruler of Cochin. Sections 63 to 65 speak of the membership of Devasom Board and election thereof. Like the Travancore Devaswom Board, Section 67 gives power to any person interested to apply to the District Court, Trichur for the removal of a member and appeal against that order lies to the High Court. Section 68 states that the Board is bound to administer the affairs of the incorporated and unincorporated Devaswoms and institutions under its management in accordance with the objects of the trust. Chapter X deals with assumption of management. It states that the Board may assume the management of an institution on certain conditions. Section 99 deals with the enquiry prior to assumption. Chapter XI deals with audit and budget. Section 103 deals with submission of audit report to the High Court.

16. We shall also refer to the Devaswom Proclamation 1097 M.E. Section 3 of the Principal Act refers to the Devaswom Proclamation 1097 M.E. of Travancore. Section 3 of the Regulation states that out of the Devaswom Fund constituted u/s 4, the Government shall maintain the Devaswoms mentioned in the Schedule keeping them in a state of good repair and to the extent they consider necessary, the temples, buildings and other appurtenances thereto and to administer the Devaswoms in accordance with such usage and custom as may be recognised by the Government. Section 4 deals with Devaswom Fund. It includes allotment made in the State Budget, the moneys realised by the sale of movable properties belonging to the Devaswoms, all voluntary contributions and offerings made by the devotees, interest on investments of funds and all other moneys belonging to or other income received by the Devaswoms. Section 6 states that all immovable properties belonging to the Devaswoms mentioned in the Schedule and now

shown in the Revenue accounts as "Devaswomvaga" shall hereafter be deemed to be Pandaravaga (Pandaravaga means belonging to Sirkar). Section 7 Contemplates organisation of Devaswom Department. Similarly, u/s 62, the provisions of the Cochin Hindu Religious Act 1 of 1981 are mentioned. That Act deals with the power of supervision and assumption of management over the Devaswoms.

17. It is also necessary to look into the circumstances under which the Proclamation of 1097 M.E. was brought into force. This is clear from the Press Communique of the Devaswom Proclamation. According to the Press Communique, prior to the days of Col. Munro, who was the Dewan-Resident, Hindu temples in the State, were mostly under the management of private bodies called "Ooralars" or "Karakars". As these bodies were found to mismanage the institutions committed to their charge, Col. Munro decided in 987 M.E. (1811-1812 A.D.) that the State should assume control over them and accordingly the Government assumed the management of these temples with their properties, movable and immovable. It is stated that about 348 major and 1123 minor Devaswoms were to be maintained or aided by the Government. Subsequent to 987 M.E. some more Devaswoms were assumed. It is further stated that in the case of the remaining Devaswoms, which form the large majority, the income and the expenditure were merged in those of the State and no separate account of such income and expenditure were maintained except for a few years immediately following the assumption. With a view to secure better efficiency in the management and control of the Devaswoms, Chempakaraman Pillai and N. Rajaram Rao were deputed in July 1905 to investigate the question of regulating their expenditure. As the information collected by these officers was merely of a preliminary character Mr. M.K. Ramachandra Rao, a Puisne Judge of the High Court, was in May 1907 placed on special duty to make a more detailed investigation into the affairs of the Devaswoms and to formulate proposals which would enable Government to secure their more efficient management and control. Mr. Ramachandra Rao submitted his report. The report contemplated the separation of the Devaswom lands from Pandaravaga lands and the Devaswom revenues from the general revenues. In the course of their proceedings, the Government observed that:

it is not now their intention to make any change either in the tenure or in the assessment of the Devaswom lands. They recognise that the settlement of the Devaswom lands already made cannot be disturbed for the balance of the settlement period... The attempt at a complete identification of the Devaswom lands failed for reasons already set forth and in G.O.D. 952, dated 3rd April 1920, Government appointed a mixed Committee of Hindus and non-Hindus to consider and report upon the exact character of the assumption of these Devaswoms, the feasibility of separating their administration from the Land Revenue Department...With regard to the relationship that subsists between the State and the Devaswoms, the Committee is unanimously of the opinion that the Devaswoms were not confiscated by Col. Munro, but that the object aimed at by

him was their better management and maintenance, and that the Government have incurred an obligation to maintain the Devaswoms efficiently for all time to come... While the majority holds that the State being a Sovereign Proprietor is legally accountable to none for their management, the dissenting member is of the opinion that the assumption extended only to management, thereby (sic)stituting the State a trustee of the Devaswoms and that, as the (sic) has mixed up the trust property with its own, the entire (sic)penditure in connection with the Devaswoms, however large, is a (sic)egitimate charge upon its general revenues. The Government of His (sic)hness the Maharaja have taken the necessary legal opinion and have come to the conclusion that the State's assumption of these Hindu Religious Institutions in the days of Col. Munro was an act done in the exercise of the traditional right of 'Melkoima' inherent in the Hindu Severigns of the State and that it was not an act of confiscation. The Government are accordingly under an undoubted obligation to maintain the Devaswoms for all time properly and efficiently, especially in view of the circumstance that, had all the properties of these Devaswoms been kept separate, the Progressive income derivable therefrom might have been more or less sufficient management. Government have also come to the conclusion that for the proper discharge of this obligation, the creation of a separate department, which will devote its attention exclusively to the administration of Devaswoms, is necessary.

In the report of the Committee, it is stated thus:

Coming to the question of the position of Government towards the Devaswoms, the whole thing has to be traced from the very fountain, viz., the orders of Col. Munro. In introducing the Hindu Religious Endowment Regulation as a Government measure, Mr. Nagam Aiyah said that The object of the bill is to afford Legislative protection to be numerous (Non-Sirkar) Hindu Religious and Charitable endowments in Travancore by giving Legislative sanction to the undoubted right which Government at present possess for interfering in the affairs of these institutions. Government is not anxious to increase its own already heavy responsibilities by adding to them the management of a large number of Religious and Charitable Endowments in the State. The better management of the institutions is the only object now aimed at"... The State clearly undertook the responsibility for the proper and (sic) efficient upkeep of these institutions and it never swerved from the policy.

There was also an opinion in support of the theory that the Government is a trustee to those institutions. But ultimately, the Committee held thus:

we are inclined to hold that the position of the State with reference to these Devaswom lands is more that of a Sovereign proprietor legally accountable to none for their management, than that of a trustee.

It is further stated thus:

This, it will be observed, is the view held by the Cochin Government with regard

to the Devaswoms in that (sic) assumed by Col. Munro.

It is also stated as follows:

However, it is unnecessary for us to pursue this point further, as in any case, whether as a trustee or otherwise, the Government have undertaken, by their public pronouncements made from time to time, the responsibility to maintain these institutions efficiently, thus realising their obligation towards Devaswom, which the act of incorporation entailed on them.

18. Thus, on a perusal of the Principal Act and the previous Proclamations and Acts, it can be seen that two Boards were constituted with regard to administration of the incorporated and unincorporated Devaswoms, which were in the management of the Rulers of Travancore and Cochin before the appointed day. In short, the Boards were constituted to manage the institutions which were managed by the Rulers prior to the coming into force of the Principal Act. This has some importance when we deal with the right of the Petitioners under Articles 25 and 26 of the Constitution of India. Further, the Principal Act did not define "Hindu". It defines "Hindu Religious Endowment" as every Hindu Temple or Shrine or other religious endowments dedicated, to, or used as of right by the Hindu community or any section thereof; and every other Hindu endowment or foundation, by whatever local designation, known and property, endowments and offerings connected therewith, whether applied wholly to religious purposes or partly to religious and partly to charitable or other purposes. The words "person interested" are defined as in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple or who is entitled to partake and in the case of a specific endowment or institution a person who is entitled to attend in the habit of attending the performance of the service of charity. These provisions do not show that the religious denomination had any say in the management of the temples or their representatives were there in the management. However, provisions are made to see that any person interested can approach the Courts for the removal of a member, if it is found that he is mismanaging or is otherwise disqualified. Another important aspect in the Principal Act is that Section 6 of the Act with regard to Travancore Devaswom Board and Section 65 with regard to Cochin Devaswom Board lay down that a person shall not be qualified for nomination or election, unless he is a permanent resident of the State of Travancore-Cochin and professes the Hindu religion. The 1097 Proclamation does not give any indication to the effect that the Government Acts as a trustee. It only states that the revenue for the Devaswom should be kept separate. But one thing is clear that the denomination was not in the management of these institutions when the Constitution came into force.

19. Before we proceed further, we would like to survey the amendments made to the Principal Act which has relevancy on the question under consideration. Ordinance 72 of 1984 amended Section 4 of the Principal Act. By this amendment, the persons selected or nominated to the Board should be believers

in God and profess Hindu religion. It also amended Section 5 by which the members of the Legislative Assembly were directed to give a declaration to the effect that they believe in God and profess Hindu religion. Next amendment was Act 20 of 1990. By this amendment, the Hindu member nominated or elected to the Board should be a person who believes in God and temple worship and who shall make an oath before the Secretary of the Board to that effect before he enters upon his office. By Act 3 of 1994 the Hindus among the Council of Ministers were compelled to deliver a declaration signed by them to the effect that they profess Hindu religion and believe in God and temple worship. Similarly, the Hindu member of the Legislative Assembly was directed to give a declaration signed by him to the effect that he professes the Hindu religion and believes in God and temple worship. By the impugned Act, the amendment compelling the Hindu Ministers and Hindu Legislatures to give a declaration that they profess Hindu religion and believe, in God and temple worship has been deleted. Learned Counsel for the Respondents submitted that the religious denomination has lost its right under Article 26 of the Constitution of India not because of the proposed amendment. Counsel contended that the religious denomination had been represented in the management of the temples by allowing persons, who have belief either in God or temple worship. Their rights under Article 26(d) are not violated. In this context, it was pointed out that the Act is not confined to temples, but also endowments. The Original Petitions do not disclose or give details regarding the denomination.

20. The word "denomination" is defined to mean a collection of individuals classed together under the same name; a religious sector body having a common faith and organisation and designated by a distinctive name. In order to constitute a religious denomination, three conditions are insisted; they are:

- (a) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, i.e., a common faith;
- (b) A common organisation;
- (c) Designation by a distinct name.

The schedule of the Principal Act shows that a number of temples are being managed by the Board. The Original Petitions do not disclose as to the temple to which the denomination belongs.

21. To exercise the right under Article 26, the denominations should have the right of management. At the time of commencement of the Constitution if the right of management was not there in the denomination, then the denomination cannot claim the right to manage. In *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, a Seven Judges Bench of the Supreme Court held as follows:

Article 26(c) and (d) do not create rights in any denomination or its section

which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had. If the right to administer properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it Article 26 cannot be successfully invoked.

It was also held in that case as follows:

We have already seen how the history of the administration of the Durgah Endowment from the time the first endowment was made down to the date of the Act clearly shows that the endowments have always been made on such terms as it did not confer on the denomination the right to manage the properties endowed. The management of the properties endowed was always in the hands of officers appointed by the State who were answerable to the State and who were removable by the State at the State's pleasure. We have already seen that until Akbar made his endowment in favour of the Durgah the position of the Durgah and its properties was very modest and there was hardly any property to manage or administer... It is obvious that Article 26(c) and (d) do not create rights in any denomination or its section which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had.

In the decision reported in *State of Rajasthan and Others Vs. Shri Sajjanlal Panjawat and Others*, the Supreme Court observed as follows:

If the right to administer the properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it, Article 26 cannot be successfully invoked. To the contention that the right to manage the temple and its properties falls under Article 26(b) and not under Article 26(d), the answer may be two-fold; (1) the Jains, whether, Swetamber or Digamber, had lost the right before the Constitution and Article 26 would not re-invest the right in them; (2) the administration of property, being dealt with in Article 26(d), should be deemed to be excluded from the purview of Article 26(b).

So far as the Travancore-Cochin Act is concerned, we have already perused the Act and also the previous proclamation. This shows that regarding the temples mentioned in the Act, the denomination did not have any right in the management. The management was in the Ruler or the officers deputed by the Government for managing it. When the new Act was passed instead of the Ruler, a Board was constituted containing three members. The Petitioners could not point out any fact to show that the denomination was in management. It is for the Petitioners to establish that there is a practice which was subsisting on the date of the Constitution that the denomination of temple worshipers had a right to be on the management committee and that the management could be appointed only by an electoral college consisting exclusively of members of such denomination. Thus, we find that the denomination did not have any say in the

nomination or election of the managing committee. Since the Petitioners did not have right at the time when the Constitution of India came into force, a fresh right cannot be created under Article 26 of the Constitution of India.

Hence, we are of the view that no right of the Petitioners has been infringed by the amendment of Act 9/99. The point is found against the Petitioners.

22. Point No. 2 : The next point to be considered is whether any rights of the Petitioners are infringed by the change of definition of the word "Hindu" in Act 9/1999. Since we have decided the first point against the Petitioners, it is not necessary to decide on the question. But since the matter was argued before us, we have considered the same. So far as the definition of the word "Hindu" is concerned, there is strong criticism by the Petitioners on the ground that it brings many people who do not believe in God and temple worship. According to the Petitioners, for the proper administration of the temple or endowments, the electoral college or the nominating body also should represent persons, who believe in God and temple worship. Learned Counsel brought to our notice the judgment in *Narayanan Namboodiri v. State of Kerala* 1985 KLT 629 where a Full Bench of this Court laid down the law that a person electing or nominating to the Board also should be believer in God and temple worship. Learned Counsel also brought to our notice the decision reported in *Muraleedhran Nair v. State of Kerala* 1990 (1) KLT 874.

Learned Counsel for the Respondents brought to our notice the decisions in *Sardar Sarup Singh v. State of Punjab* AIR 1959 S.C. 860 *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, , *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan* AIR 1963 S.C. 1938, *Raja Birakishore Vs. The State of Orissa*, , *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others*, , *Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another*, , *Bhuri Nath and Others Vs. State of Jammu & Kashmir and Others*, and *A.S. Narayana Deekshitulu v. State of Andhra Pradesh* (1996) 6 S.C.C. 543. The main thrust of the arguments of the Petitioners was that in the decision reported in *Krishnan v. Guruvayoor Devaswom Managing Committee* 1979 KLT 350, the five Judges Bench had that the nominating body should also consist of persons held having belief in God and temple worship. The present petitions were heard along with the Original Petitions with regard to Guruvayoor Devaswoms wherein also the same contentions were raised. By judgment in O.P. No. 16192/99, the contention that the persons nominating or electing should also believe in God and temple worship was rejected. On the same reasoning, we reject the contentions raised by the Petitioners. Accordingly, the second point is found against the Petitioners.

24. In the result, the Original Petitions are dismissed. But we wish to point out that the electoral college or the nominating body should take great care in nominating members to the Travancore and Cochin Devaswom Boards. A great responsibility is thrust upon such members and it is the duty of the electoral college or nominating body to see that only persons of integrity and efficiency

and having absolute faith in temple worship and belief in God should be nominated. In order to see that the Managing Committee is free from politics, it will be in the fitness of things, if no politician is nominated or elected as a member of the Board. It may also be useful to refer to the following extract from the report of the Devaswom Separation Committee in Travancore:

the success attendant on the management of the Devaswom Department and its administration depends solely upon the piety and the disinterested zeal and attention which the officers as a whole and the superior officers specially bring to bear upon their work.