

(1986) 10 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 1244 of 1984, 6915, 6916 of 1983 and 1792 of 1986

Trivikram Narain Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-10-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 26, 300A

Uttar Pradesh Sri Kashi Vishwanatha Temple Act, 1983 — Section 15, 16, 23, 24, 25

Citation : AIR 1987 All 362

Hon'ble Judges : R.M. Sahai, J;J.N. Dubey, J

Bench : Division Bench

Advocate : Ravi Kant, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—Worshippers of Hindu religion, eminent citizens of Varanasi having faith in Hinduism and Lord Shiva, Pujaris of Kashi Vishwanth temple and Shri Aadi Visheshwar, the idol himself, approached this court, by separate petitions filed under Article 226 of the Constitution against take over of management of the temple by the State Government, first by Ordinances, replaced later by Act 29 of 1983, as ultra vires and invalid as it hurt not only their religious feelings and sentiments but of Hindus in general and was violative of constitutional guarantee of religion under Articles 25 and 26 of the Constitution. Although initially petitions were directed against Ordinances and it was claimed that they had been issued without any emergency or necessity as contemplated under Art 213, but after their replacement by Act, it became academic and petitioners were permitted to challenge provisions of Act, and amend the petition. As arguments proceeded, challenge founded on freedom to practice, profess and propagate religion protected under Article 25 was given up. Thrust was confined to infringement of right of religious denomination to manage its religious affairs and administer its property in accordance with law. Attempt was also made on behalf of mahant, entitled to receive offerings and" utilize it as

personal property that Act was invalid as it amounted to deprivation of property without paying compensation, which was contrary to Article 300A of the Constitution.

2. Since it was stressed vehemently that the temple was neither a natural nor juristic person, therefore, it could not claim to be religious denomination, nor could mahant, pujaris or devotees advance the claim as none of them satisfied the test laid down in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, (better known as *Shirur Math case*) of being collection of individuals under same name having organisation and distinctive name, therefore, it is necessary to clear the mist in this regard at the outset. But before doing so it appears appropriate to narrate in brief about the temple itself. From times immemorial there is temple of Lord Vishwanath in the city of Varanasi, presiding deity of which is known as Shri Aadi Visheshwar commanding great respect amongst Hindus all over the country. "Kashi is said to be city of Shiva founded at the dawn of creation". According to "Puranik" stories Shiva the ascetic of mountains after marrying Parvati daughter of Himalayas was fascinated with Kashi, city of light, green with gardens and shifted from Kailash Parvat to reside here which became place of Gods, where living became bliss and death attainment of eternal peace. There are many myths about origin of Linga worship. One of them is that long ago the world was tormented by famine which lasted for years. Since existence of earth and its people was threatened Brahma, the creator, requested Mritunjaya a pious and sage king who had retired from kingdom and was practising Tap (austerity) in the city of Varanasi to assume kingship on earth to restore the order. It is said Mritunjaya accepted the responsibility with great reluctance but upon condition that Gods should retire from earth and return to their place in heaven. Lord Shiva left his beloved seat in order to please his devotees and to keep Brahma's pledge to Mritunjaya. But before leaving Kashi he established Linga as emblem of himself and it is this Linga which is said to be the first Linga to have been established on earth. Another myth but most prominent in Shiva theology and most significant in the context of Kashi is the great myth of the fiery appearance of the Linga of light the "Jyotirlinga" which pierced the three worlds as brilliant shaft of light and was witnessed by Brahma and Vishnu long ago. Diana L. Eck in her book "Banaras City of Light", she further writes that in "Kashi Kand" it is stated that this Linga was established by Shiva himself when he left Kashi for mountain Mandara during reign of king Divodasa Linga, thus, left became known as "Avimukteshwar", that is "Lord of Avimukta" as Kashi or Varanasi was known in early times by name of Avimukta. Whether "Avimukteshwar" is the first Linga by which Lord Vishwanath was known (Ram Shanker Tripathi, the chequered history of golden temple of Kashi Vishwanath) or they were two different idols Avimukteshwar and Visheshwar (Pt. Kuber Nath Shukla in Varanasi Vaibhav) but for at least thousands of years Vishwanath has been pre-eminent Shiva Linga in Kashi "it was a popular temple as temple of the common folk as the name "Lord of All" suggests" (Diana). Its popularity, religious or otherwise must have been

widespread as it attracted wrath of famous plunderer Mohammed Ghorī. "Perhaps the strongest, if ironic, indication of Visheshwar importance in the twelfth century is that it was singled out for destruction by Mohammed Ghorī's Captain Qutub-ud-din Aibak in 1194"(Diana). Since then the story of temple is story of construction and desecration till it was demolished by Aurangzeb, the intolerant Moghal begot. But the idol was removed by Pujaris, who saved it from being defiled by hiding it in famous Janevapi well. When peace was restored it was again installed on platform in nearby place, round which the present temple was constructed by Rani Ahilyabai Holkar, a Hindu devotee. Later on Raja Ranjit Singli of Punjab covered the temple with gold and it became known as famous golden temple of Varanasi. An inscription engraved on entrance reads, "Arya Dharmam Tarnam". That is those who are not Aryans are prohibited. When temple was constructed in 1777 by AhUyabai at the place where said symbol of Lord Shiva has been installed earlier it was donated to the presiding deity under care of Mahanl Jai Ram Sharma, as is clear from the engraving on stone, "Tadagyapat Daaptin Jairam Susharmda Vishweshwarajya Ramdaup Taram Sumandir", Since then Sewa, Puja, Bhog, etc., of the Shri Adivisheshwar was carried on by him and after him by his descendants who by usage became entitled to offerings both cash and kind, spend it towards expenses and management of temple, carry on. "Bhandara", etc., that is feasting of pilgrims and Sadhus and utilize the balance for personal use." This custom of offerings going to Shebait, an exception to general rule of law that offerings vest in idol, appears to have been accepted by this court in F. A. No. 381 of 1960 decided on 13th August, 1964. It is also claimed to have been recognised in a "firman" granted by Dara Shikoh the Mogal ruler.

3. Having narrated history of temple it may not be out of place to mention that Shaivism is itself considered to be religion although it is part of Hinduism, which is diverse conglomeration of doctrines. In Encyclopaedia Britannica Hinduism has been described thus, "As a religion Hinduism is an utterly diverse conglomeration of doctrines, cults and way of life. In principle Hinduism incorporates all forms of beliefs and worship without necessitating the selection or elimination of any". It was approved by the Supreme Court in C. W. T. v. Shridhar (1974) 104 ITR 436. Robindra Kumar Sidhanti Shastree in his book Shaivism Through the Ages has written, "Hinduism is distinctly different from other religions because of holding an incomparable form of Monism in accompaniment with the idea of other deities subordinate to the non-dual supreme spirit. Every cult of the Hindus gives a particular name to this supreme spirit, holding all other Gods and Goddesses as His or Her agents. Shaivism is the religion of such a cult of which Lord Shiva is the supreme spirit, pervading the entire universe with His bigger form and at the same time residing within the body of every living being with His minutest form popularly called Jivatman (soul in a body)". He has described in detail about popularity of Shiva worship in North India, South India and Kashmir and various schools of Shiva Philosophy. Ishwer Chand Tyagi in his book Shaivism in Ancient India has written. "Shaivism one of the ancient religions of orient, is known as

the Chief religious cult of India". Dr. Radhakrishnan in his book History of Philosophy, Eastern and Western has discussed in detail about Shaiva Sidhanta its sources its exposition by famous teachers Meykandadeva, Arunandi, Maroiynama and Umapati and its rise "as a monistic system of thought as distinct from ritualistic religion in Kashmir.

4. Therefore, the temple of Shri Kashi Vishwanath was and is a public Hindu temple of common people the presiding deity of which Lord Vishwanath is Lord of all. It is a common man's temple at the behest of which there was no Raja or Maharaja but Shevait or Panda, who or whose descendants have been responsible not only for installation of the deity after saving it from Aurangzeb but by custom and usage became entitled to offerings and use the surplus even for their personal use. It is not denied that these Pandas by their personal effort were responsible for collection of donations, developments and growth of temple in the present form. One of the questions on which parties joined issue was if this right was a religious affair of denomination so as to attract Article 26(b). It shall be adverted to after comprehending meaning of expression religious denomination. What exactly this expression denotes can better be appreciated if the meanings of words "religious" and "denomination" are understood. Word "religious" is adjective of word "religion" which according to Dr. Radhakrishnan, the famous Philosopher comprises of specific attitude of self. In words and phrases Permanent Edition its various facets have been noticed. It has been extracted in extenso in S. P. Mittal v. Union of India, : [1983]1SCR729 . In The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., it was held that religion is certainly the matter of faith with individual or community. In Ratilal Panachand Gandhi Vs. The State of Bombay and Others, it was held, "a religion undoubtedly has its basis in system of beliefs and doctrines which/ are regarded by those who profess that religion to be conducive to their spiritual well being". These meanings and expositions indicate wide expanse of concept of religion which by its very nature cannot be rigid. For instance by tradition rituals are essential part of Hinduism. Even lasting or pilgrimage or bathing in Ganges or holy rivers is religion. Dharma in Hindu Philosophy is mixture of ethics, morality and rituals. The word religious is still wider. According to Webster's dictionary it means "relating to that which is acknowledged as ultimate reality; Pious, Godly; committed dedicated; concerned with religion". It is descriptive of characteristic. For instance religious place, behaviour, habits, etc. Therefore, any individual, institution, sect or body having those characteristic may be religious. It may be collection of individuals classed together with one common faith for instance Hindus, Mohammedans, Christians, Zorastrians or their sects such as Shaivites or Vacsnavits etc. or it may be a math, a temple or a sect or body.

5. As regards denomination it generated much debate. But all this was founded on its judicial exposition in various decisions. Therefore, it is necessary to advert to them. In The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., dictionary meaning of

denomination in Oxford was approved. It reads as under : --

"A collection of individuals classed together under the same name, a religious sect or body having a common faith and organisation and designated by a distinctive name."

It has obviously two meanings one in relation to individual or collection of individuals and other in relation to religious sect or body. It has been brought out more fully in Webster's third New International Dictionary, "a class or society of individuals called by same name, especially a religious group or community of believers called by the same name. The ambit of former is very wide, extending to all such groups or class which have same name. If the collection of individuals is believer in same religion or faith then the denomination becomes religious denomination. It includes Hindus or Christians or Parsis. It applies equally to followers of smaller cults. For instance Shaivites that is followers and believers of Shaivism or Vaishnavas. In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, it was understood and applied in this sense. "There being several religions in India such as Islam, Christianity, Zoroastrianism and Hinduism it may not be wrong to take Hinduism and the members of that religion as constituting a religious denomination in a larger sense or if it should be taken in a limited sense, Advaita, Dvaita, Vishishtadvaita and Sevaita may be another classification and the members of each faith may be treated as members of one denomination". Similarly in *Ram Chandra v. State of Orissa* AIR 1959 SC 5 the argument of learned Advocate General that followers of Hinduism will not form a separate religious denomination was rejected and it was held, "In a country like India where there are several religious faiths the followers of each religion may also be called a religious denomination". The emphasis of learned Advocate General, therefore, on organisation appears to proceed on misconception. His insistence that even if worshippers of Lord Shiva having common faith and belief could be considered to be collection of individuals classed together under same name they could not claim protection under Article 26 since primary or basic requirement or organisation was lacking does not appear to be sound. Inspiration of it was drawn from *Shirur Math* case forgetting that the necessity of organisation was in respect of religious sect or body. Further the High Court of Madras had decided two petitions one filed by Mathadipathi of Shirur Math and other trustees of Guruvayar and Chedambaran temples. But the Hon'ble Supreme Court was concerned only with Shirur Math which was a religious body and satisfied all the requirements of second part of definition of denomination. The occasion to consider if collection of individuals being believers of one faith or religion or cult, having same name without anything more constituted religious denomination or not never arose. The right or protection guaranteed under these articles being basic philosophy of secularism attempt should be made to give full play to it. Its construction cannot be narrowed because of apprehension of its extension to any and every temple, the followers of which may claim it to be religious denomination. The wide sweep of the word, every religious denomination or

section thereof cannot be lost sight of.

6. Even in respect of religious body the Hon''ble Court does not appear to have rejected any petition or claim advanced on behalf of temple of it not being a religious denomination because it had no organisation. The constitutional protection granted to religious sect or bodies shall be nullified if such artificial construction is accepted. Religion being an essential part of the society the framers of the Constitution were anxious to grant complete freedom and autonomy both individual and denominational. The meaning of word denomination has to be understood in our country's backgrounds where religious Philosophy, education, teaching and practice has been of standard and the temples established by king or people played dominant part in it. It was all organised. It always had a system. Even in those temples where no written deed existed arrangement, etc., were methodical. Organisation means systematic arrangement. It should be regulated. It may have rules. These may be written or otherwise. A public Hindu temple may not have a written document primarily because it may have been established in hoary past but that does not mean that it is not organised. Or it has no system. Most of the temples were and are centres of learning. Even their religious activities are governed by rules may be unwritten. To say, therefore, that a temple does not have organisation, or it is not denominational is not correct. In *Ratilal v. State of Bombay*, AIR 1952 SC 388 the Hon''ble Court was faced with claims of manager of a public Jain temple and trustees of Parsi Panchayat Funds against Bombay Public Trusts Act, 1950, applied to temple, Maths and trust. The Hon''ble Court upheld the plea advanced on behalf of petitioners that Section 44 of the Act relating to appointment of Charity Commissioner as a trustee of public religious trusts and certain other provisions were encroachment on right of religious denomination under Article 26. The controversy appears to have been put beyond doubt by the Supreme Court in *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, . It was a case of temple of Sri Venkataramana established by Gowdha Saraswat Brahmin for their benefit. The Hon''ble Court rejected claim of petitioners that it was private temple. It was further held, to be religious denomination because persons other than Gowdha Saraswat Brahmins were excluded from some of the ceremonies even though all classes of Hindus took part freely in worship. In *Ram Chandra's case* AIR 1959 SC 5 (supra) the Orissa High Court observed : "To accept the argument of the Advocate General would be to hold that though an institution belonging to a sect or sub-sect of Hindus would get the protection of Article 26, an institution which belongs to the Hindu people in general and not to a particular sect or sub-sect would not get the protection of that Article". In *Seshammal and Others, Vs. State of Tamil Nadu*, validity of Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1970, was challenged by Archaks and Mathadhipattis of Savita and Vasishnavite temples. The Hon''ble Court after noticing rules in respect of Archaks, etc., held that these general rules applied to all sectarian denominational temples. In other words Savite temples were treated as religious

denomination. The argument, therefore, that a public Hindu temple cannot be religious denomination because it is not a natural, artificial or juristic person is not convincing. The assistance sought to be drawn from Sub-clause (d) of Article 26 is not of any help. Normally property can be held by a person natural or juristic, but the Constitution, the supreme law of the land, protects the right of religious denomination to administer its property in accordance with law. If a body or sect is a religious denomination then the right cannot be denied because it is not a person. To import concept of natural or juristic person would be adding another condition namely a religious sect or body should further be a legal person. Even in the famous Nathdwara temple Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, on which great reliance was placed by the learned Advocate General the Hon''ble Court did not reject claim because the temple was not a religious denomination. There is thus no decision which supports the argument of learned Advocate General that a temple cannot be religious denomination.

7. Reliance was placed on Raja Birakishore Vs. The State of Orissa, better known as Jagannath temple case, but in that case the dispute if temple was a religious denomination was never examined or decided. In fact the claim advanced was under Article 19. It was repelled both by the High Court and Supreme Court. As regards Article 26 the High Court assumed worshippers of Lord Jagannath as religious denomination but did not find any violation of constitutional guarantee because the management under the Act was entrusted to Hindus. The Supreme Court did not adjudicate upon it because of defect in pleadings. The other decision which has been pressed in service is the decision in Aurobindo Ashram case, (S. P. Mittal v. Union of India, : [1983]1SCR729). The Hon''ble Court after referring to the principle enunciated in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., followed in The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others, held :

"The words "religious denomination, in Article 26 of the Constitution must take their colour from the word "religion" and if this be so, the expression religious denomination" must also satisfy three conditions;

- (1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well being, that is a common faith;
- (2) Common organisation; and
- (3) Designation by a distinctive name."

It was urged that this decision is an authority for the proposition that before a sect or body or even collection of individuals could be held to be religious denomination it must satisfy three things namely common faith, common organisation and designation by a distinctive name. Put it differently the learned Advocate General's argument amounted to restricting the constitutional

guarantee under Article 26 to these limited class which satisfied these tests. It was urged that denomination may have larger meaning but the Hon''ble Court restricted the meaning of religious denomination to only those which could satisfy these tests. Therefore, a temple having no organisation or collection of individuals having common faith even if denomination could not be religious denomination. The argument appears to proceed on misconception. The Hon''ble Court was examining if Aurobindo Ashram founded by Sri Aurobindo was a religious sect or body so as to claim protection under Article 26. That is it was concerned with the second part of definition of denomination as it was in Shirur Math''s case. The Hon''ble Court, therefore, held that a religious sect or body could claim to be denomination only if it satisfied the three conditions mentioned therein. It only reiterated what had been said in Shirur Math''s case. The Hon''ble Court did not modify or alter the law developed on the first part of definition of denomination including Hindus, Zorastrians, Christians, etc., in ambit of religious denomination provided they were collection of individuals having a common faith. Nor the principles laid down in it directly or indirectly deny the constitutional protection to a public Hindu temple. Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another, popularly known as Anand Margis case is yet another decision where the three tests pointed out in Aurobindo Ashram''s case : [1983]1SCR729 were reiterated. But it again was concerned with religious sect or body. Neither of the decisions was concerned with collection of individuals having common faith only or religious body like a temple having no organisation. As explained earlier a public Hindu temple whether it has organisation in the strict sense or not and collection of individuals having common faith in a religion are protected under Article 26. Therefore, to say that a temple which did not have organisation could not be considered to be religious denomination is not correct. Even otherwise, whether Hinduism is taken as general or Shaivism in particular the right of management of religious affairs or administering of property could not be denied to the religious denomination. Famous temple like Vishwanath temple has collection of individuals having common faith. It has distinctive name that is Adivisheshwar. It has organisation as well as it is regulated and has systematic arrangement. It does not appear to have a trust deed, etc. But that hardly makes any difference. It, therefore, satisfies the test laid down in Aurobindo Ashram and Anand Margi''s cases as well.

8. Initial obstacle, more in nature of preliminary objection, having been dealt with the claim of petitioners that their constitutional right to manage their religious affairs and administer the property protected by Clauses (b) and (d) of Article 26 have been infringed by various provisions of the Act may now be examined. Prior to adverting to scheme of the Act and noticing various provisions an argument of legislative competence may be disposed of. Relying on the restrictions imposed by Article 26 itself, namely, the right could be exercised subject to public order, morality and health, it was urged that no legislature could legislate in respect of a religious denomination unless it was for one of those

reasons. Various decisions were cited on construction of public order as used in other Articles of the Constitution. And it was urged that in absence of any public order as explained in these decisions the occasion to bring out the legislation was non est. Learned counsel submitted that preamble of the Act was silent in this regard. And better administration of the temple and its endowments could not empower the legislature to bring out impugned legislation. The argument appears to be devoid of any merit. Public order is a word of wide impact. It cannot have any static or fixed meaning. Its concept has to vary with improvement or deterioration in social, economic and political conditions of society. Therefore, while making religious freedom as the basis of secular democracy, a recognition of Indian culture and civilization, provision was made for State interference if freedom was abused either because it got mixed with politics or because it became necessary in the interest of society. It was with this objective that the words public order was used. It has to be given a liberal and wide interpretation. While maintaining absolute freedom of religion both individual and denominational the social necessity and political abuse of religious protection may require the legislature to restrict and regulate it. When it should be done can be judged best by the legislature. The court should be reluctant to interfere with this wisdom. In *Ramji Lal Modi Vs. The State of U.P.*, it was held, "it could not be predicated that freedom of religion could have no effect whatsoever on maintenance of public order". Off and on theft in Kashi Vishwanath temple had become scandal. Litigation between Pujaris and Shebaites was bringing down their image in public eye. Rumours of Pujaris association with thieves were voiced through press media. Public of Varanasi felt worked up as Lord Vishwanath in which they had faith and unflinching belief was being lowered in esteem. Unhealthy arrangement of pilgrims and unhygienic conditions prevailing inside the temple its poor upkeep. etc., were well known if in these circumstances and backgrounds the Government decided to interfere it cannot be said that the legislature went beyond its competence.

9. Another submission general in nature was that "law" used in Clause (d) of Article 26 should be construed to mean personal law by which the denomination was governed. It was submitted that Kashi-Vishwanath temple being a Hindu public temple the administration of property could be carried on as provided in Hindu law. Therefore, it was the Sheviat and Shebait alone who could manage the property and perform religious duties. Since the legislature interfered with this right it was invalid. Similar argument was advanced in *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, but it was rejected. It was held by the Hon'ble Court. "Mr. Sastri for the denomination suggested that law in the context is the law prescribed by the religious tenets of the denomination and not a legislative enactment passed by a competent, legislature. In our opinion, this argument is wholly untenable. In the context, the law means a law passed by a competent legislature and Article 26(d) provides that though the denomination has the right to administer its property, it must administer the property in accordance with law. In other words, this clause

emphatically brings out the competence of the legislature to make a law in regard to the administration of the property belonging to the denomination."

10. Coming to the scheme of the Act entire property moveable and immovable stands vested u/s 5 in the deity Shn Kashi Vishwanath the administration and management of which has been entrusted to a Board established u/s 6 comprising of one life member Dr. Vibhuti Narain Singh (Ex-Maharaja of Banaras popularly known as Kashi Naresh) Jagadguru Shankaracharya of Sringeri, Secretaries to Government in Cultural Affairs, Finance, Harijan and Social Welfare and Law Secretary, Director of Cultural Affairs, Commissioner and Collector of Varanasi, Vice-Chancellor of Sampurnanand Sanskrit Vishwavidyalaya, all as ex-officio members and five nominated members, two local eminent persons having good knowledge and experience in the management and administration of the affairs of the temple and any worship, service, ritual or religious observance made therein to be nominated by the State Government, three eminent Hindu scholars well versed in Hindu theology to be nominated by the State Government. The Board is entitled to take possession, custody and control of all property, cash, jewelleryes u/s 13 and its duties u/s 14 amongst others include the duty of arranging due and proper performance of worship, service, rituals, daily or periodical, general or special of Sri Kashi Vishwanath and other deities in the temple, ceremonies and other religious observances in accordance with the Hindu Shastras and scriptures and usage; to provide facilities for the proper performances of worship by the pilgrims and worshippers. Section 15 empowers the Board to exercise all such powers as are necessary or incidental to performance of its duties and functions with power to fix fees for worship, to call for informations and accounts of temple and endowments and to prohibit within the premises of the temple or within such area belonging to temple as may be specified by it, sale, possession, preparation or consumption of any intoxicating liquor or drug; slaughtering of animals, sale of meat, gaming etc. Section 16 empowers State Government to appoint a Chief Executive Officer for the temple who u/s 17 has been made responsible for management of secular affairs of temple and its endowments. His duties under Sub-section (2) including carrying out the decision and orders of the Board and Executive Committee established u/s 19, arrange for proper collection, maintenance and disposal of religious offerings in the temple and to keep proper and full account, to exercise control over employees take disciplinary action, etc. And in emergency the Chief Executive Officer has been empowered by Section 18 to direct execution of any work or get anything done not provided for in the budget or which in his opinion is necessary and unavoidable for preservation of the endowments or for the health safety or convenience of the worship, ritual, etc. Section 19 establishes an Executive Committee to be responsible for superintendence, direction and control of affairs of temple. Sections 20, 21 and 22 provide for preparation by Chief Executive Officer of a schedule of existing employees, appoint temple staff and Archak for service in temple. Section 23 constitutes a fund to be known as "Sri Kashi Vishwanath Temple Fund" and vests it in the Board. Sections 24 to 30 deal

with establishment of "Kashi Vishwanath Temple Board" of income from property, religious offerings, contributions by State Government, donations, gifts or contribution from public, fines and penalties and recoveries; submission of proposal by Chief Executive Officer to Board for expenditure, annual budget, regular accounts, audit and surcharge, etc. Sections 29 and 30 debar transfer borrowing, acquisition for and on behalf of temple of any moveable and Immoveable property except with prior approval of State Government and for necessitating and benefit of temple. Section 32 empowers State Government to cause inspection or inquiry as it deems fit in respect of any matter connected with administration and finance of temple in presence of any person nominated by Board and to issue directions. Section 34 deals with penalty and Sections 36 to 46 are miscellaneous provisions.

11. Principal attack was on Sections 6, 17, 23 and 29. It was urged that the Board was not representative of denomination. It was an official body of which various secretaries of government and other high officials were members. Even the nominated members were to be of government. Therefore, it was a government body rather than a body to look after interest of denomination. It was submitted that active involvement of government was destructive of rights protected by the Constitution. Learned counsel submitted that the provision establishing a fund known as "Shri Kashi Vishwanath Temple Fund" consisting of income derived from property moveable and immovable, religious offerings, contributions, etc., and vesting it in Board amounted to divesting of the Deity of the proprietary right over the income, therefore, it was interference with religious affairs. Learned counsel submitted that appointment of Chief Executive Officer u/s 17 of the Act by the State Government without consulting the Board was invalid. It was urged that the Act does not furnish any guideline if such a person shall not be other than Hindu. According to learned counsel the Chief Executive Officer was responsible u/s 17(1) for secular affairs but Sub-section (2) of the section nullified it as he was expected to arrange for collection and disposal of offerings which were religious in nature. Validity of emergency powers conferred on Chief Executive Officer was challenged as they were not only wide but it was a guise to interfere with right of management. Similarly Section 19 was claimed to be bad. Provision in Sections 21 and 22 for appointment of temple staff and Archak were challenged for lack of guidelines. It was urged that the Act only mentions duties of Archaks but not his qualifications. It is silent as to who shall appoint him. And since he is mainly responsible for Puja, etc., the provision was bad. Sections 24, 25, 29, 30 were challenged because they vested the administration and control over the institution and its funds in government which was contrary to Article 26. It was urged that signing of contract by government violated Clause (d) of Article 26. Power of inspection by State Government u/s 32 was also challenged. It was urged that if provisions of the Act were read in proper perspective then in reality it amounted to laying down religious affairs of temple in the manner considered by the legislature. Reliance was placed on para. 25 of *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri*

Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., and it was urged that Sections 17, 18, 22, 25, 28 and 36 of the present Act encroached on rights of petitioners in similar manner as Section 21 of the Madras Act, which was declared invalid by the Supreme Court. Reliance was placed on last sentence of para 22 of Shirur Math case and it was urged that the ratio laid down was not watered down in Ratilal Panachand Gandhi Vs. The State of Bombay and Others, or Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others, . Validity of Sections 19, 20, 23, 24 and 27 was challenged as it attempted to regulate right of entry in the temple which was covered by Clause (b) of Article 26. It was urged that these provisions violated sanctity of sanctum sanctorum as it permitted persons mentioned in the Act to enter temple. Relying on Sardar Sarup Singh v. State of Punjab, AIR 1959 SC 860 and Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay, it was urged that right to enforce discipline amongst its members was right of religion, therefore, it could not be exercised by the Chief Executive Officer or the Board. Attention was also invited to The State of Andhra Pradesh and Others Vs. U.S.V. Balram, etc., . Comparative study of various sections of the Act was made with provision in Guruvayoor Devaswom Act 1971 enacted by Kerala Legislature and it was urged that analogous provisions of that Act having been struck down by a Bench of five Judges in Tharamel Krishnan Vs. Guruvayoor Devaswom Managing Committee and Others, being violative of Article 26, the provisions of present Act were liable to be struck down.

12. Basis for most of the argument was rationale in Kerala's Full Bench judgment but the learned counsel failed to notice that defects or loopholes pointed out in Kerala Act which resulted in invalidation of many of the provisions are either non-existent or care has been taken to remove such ambiguity or vagueness. All the same since various sections of the Act having been attacked to be in violation of Article 26 it is necessary to examine each of them. In this connection it is necessary to mention that what is protected is right to maintain institution for religious and charitable purpose and manage its own affairs in matters of religion. What is import of this clause has been explained in various decisions by the Supreme Court. It is firmly established that what is protected is matters relating to religion and not secular affairs. But "what constitutes the essential part of a religion is primarily to be ascertained with reference to doctrine of that religion itself". The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., . It is equally well settled that there can be no rigid test for deciding whether a particular ceremony or practice was religious or secular except system of belief and doctrine recognised by the religion itself. In Sardar Syedna Taher Saifuddin Saheb Vs. The State of Bombay, it was held that main provision underlying Articles 25 and 26 have been placed beyond controversy. "The first is that protection of these articles is not limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and, therefore, contain a guarantee for rituals and observances and ceremonies and modes of worship which are integral part of it. The second is that

what constitutes an essential part of religions or religious practices had to be decided by the Courts with reference to particular religion and include practices which are regarded by the community as a part of its religion".

13. Unfortunately in none of the petitions any effort has been made to narrate any religious practice or rituals or ceremony which forms part of religion. Challenge to various provisions as illegal is without any foundation. Vague and general allegations have been made. For instance it is averred in paragraph 47 of Writ Petition No. 6915 of 1983 that unlimited power to enter in religious institution has been given to officials; power to issue directions has been given to official bodies and obligation has been cast on trustees and employees to obey the same; duty has been cast upon trustees and employees to prepare register and submit same and authorities have been power to amend or alter the register; duty has been cast on trustees and employees to furnish returns and reports and other informations relating to institution and funds; power has been given to authorities to inspect moveable and Immovable properties and records and correspondence etc., authorities have been given power to fix remunerations for religious performance; duty has been cast to make annual registers; power to regulate expenses over religious requirements of temple has been given to authorities; in respect of surplus income too which according to custom of institution belongs to Mahant, power has been given to make changes in it. In para. 5 it is averred that offerings to deity under custom are personal property of Mahant, but he is deprived of the same as it apparent from Section 25(8). In paragraphs 42, 43, 47, 48 and 52 of Civil Misc. Writ No. 1244 of 1984 following averments have been made. From Section 23 it is clear, that even these offerings and donations or contributions made by the devotees can be used by the State Government for non-religious or secular purpose. This amounts to grave and direct interference with the right of Hindus to manage their religious affairs; As regards Section 13, it is significant to mention that the jewelleries and other assets forming part of the temple are meant for the Abhishek of the deity. This Abhishek is a religious ceremony. Thus, these jewelleries and other properties of material objects, which are meant for Abhishek cannot be taken over or managed by the Board of Trustees. However, Section 15(a) of the Act empowers the Board to fix fees for the performance of any worship, service, ritual, ceremony or religious observance, in the temple. This power, on the face of it, amounts to denial of the right of Hindus to worship the deity in the Vishwanath temple as a matter of right. It is stated that the devotees while rendering worship do not do so as a matter of grace or charity and the Board when it permits the Hindus to offer worship does not render any service. The element of service is completely absent. Thus, the very idea of fixation or imposition of fee is obnoxious to the idea of worship. It makes the deity and the concept of worship a negotiable commodity. It, therefore, clearly militates against the faith and beliefs of the Hindus. That Section 17(2)(b), (c) and (f) of the Act which authorise collection, maintenance and disposal of the religious offerings in the Temple and to keep a full and proper account thereof and to have custody of and

make suitable arrangement for the preservation and maintenance of all records, jewellerys, valuables, moneys, valuable securities and properties of the Temple and to exercise control over the employees of the Temple, and take appropriate action against them in cases of breach of discipline, amounts to complete denial of the right of the Hindus. If further amounts to gross and wanton interference in the right of Hindus to collect appropriate and utilise the "bhent" and the offerings made to the deities. It is well settled that the "bhent" and the offerings is a part of the religion. u/s 22 even an archaka appointed for the conduct of the worship service, rituals, ceremonies and other religious observances in the temple, is an employee of the Board. He can, therefore, be removed at the sweet will of the Board. As already stated, it has been settled by a string of binding decisions of the Courts that it is the family of late Bishambhar Dayal Tiwari, who alone is entitled to be the Panda or Archaka of the temple. Thus, these provisions amount to removal, substitution or displacement of the petitioners as Archaka and to deprive them of the properties, which is their hereditary right and to appropriation of "bhent"/offerings made to the deity by the petitioners as well as the others. This deprivation of the properties has been made without any provision for compensation, much less just compensation.

14. Therefore, no specific religious practice or ritual has been averred in writ petitions which were being followed prior to the Act which have been eroded or destroyed so as to impinge upon religious protection, under Article 26. Except of course the plea in respect of religious offerings which shall be adverted to later. Taking upon various provisions of the Act no exception could be taken nor it has been taken to Section 5 which vest ownership of all moveable and Immovable properties in the deity. But the attack on the Board constituted u/s 6, as mentioned, was both in respect of its constitution and its powers and duties. It was described as a government body which is envisaged under Act to exercise both secular and religious affairs, therefore, it was violative of Article 26. Neither of the attacks are sustainable. Prior to enforcement of this Act the management of secular and religious affairs was looked after by the priest. He was doing so by custom or usage on behalf of denomination. The management has now been entrusted to Board. Effect in law is not to divest the denomination and vest it in a different body but to substitute one body with another. Since the Board so constituted is representative of denomination, as even ex-officio members have to be Hindus it cannot be said to be in violation of Article 26. Establishment of similar committee in Kerala Act was also held to be unobjectionable. It was struck down because out of seventeen members fourteen members were either government officials or government nominees and the provisions in respect of nomination was bad as it did not furnish any guideline except that he was to be Hindu. None of these defects are in the present Act as out of fifteen members only seven are official members. And the provision regarding nominated members is not vague. It is not left to subjective opinion of government to nominate any Hindu as they have to be well versed in administration of temple and Hindu theology. Therefore apprehension of nominating a Hindu who does not

believe in idol worship is ruled out. The argument that it confers naked or arbitrary power in government to nominate any one has to be rejected. Nor is there any merit in submission that power of removal of a nominated member results in effective control of Government in the Board as unlike Kerala Act, Section 8 empowers the State Government to remove a member on ground of unfitness or misconduct after affording opportunity. The emphasis on the observation made by Hon''ble Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, that, "A law which takes away the right of administration from the hands of a religious denomination altogether and vests it any other authority would amount to a violation of the right guaranteed under Clause (d) of Article 26" does not appear to be of any assistance. Hindus in general or Saivites in particular have been held to be collection of individuals with one common faith, therefore, if they are entrusted with responsibility of administering property vested in Lord Vishwariath it is a right conferred on denomination. What is protected under Article 26 is the right of denomination and not of Pujaris and Shebait. Even if it is accepted that temple was founded by ancestors of present Pandas and Pujaris and by virtue of that they became Shebait as understood in Hindu Law having beneficial interest in the endowed property they did not become denomination. Therefore, when management and administration of temple property was entrusted to Board it was not divesting the denomination of its right of administration. In *Shirur Math* case the administration of religious and charitable institution was vested in the Commissioner who was a Government official. Even then the Hon''ble Court invalidated Section 21 only which empowered the Commissioner to enter even place of worship for exercising power conferred by the Act because it was unregulated and unrestricted. In *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, it was held that Article 26 did not create rights in any denomination or its section which such denomination did not have. Since before 1950 the administration of property vested in priest and not in the denomination the Act by creating a Board did not infringe any right of denomination. In *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, the Hon''ble Court upheld establishment constitution of similar Board with more or less same powers. In fact the impugned Act appears to be mostly based on Rajasthan Act. Provisions of Sections 3 and 16 analogous to Sections 13 and 14(a) were held to be valid because the scheme envisaged protection of religious rites, ceremonies and services rendered in the temple. The claim of petitioners that Section 6 and Section 14 are violative of Article 26(b) has to be rejected as devoid of any substance. It is necessary, however, to mention that the Pujaris of the temple whose ancestors can be said to have been founders of temple and in that sense Shebait, who have been religiously attached to it, were responsible for saving the idol from being defiled, installing it at a place where the present temple was constructed, collecting large donations and administered both religious and secular affairs of temple have not been included in the Board. From various Acts passed by different legislatures which came up for consideration before the Courts it appears that whenever

management of temple or Math was taken over by Government normally the founder members who were usually Kings or trustees were nominated in the Board. It is a common man's temple. Like Tilkayats in Rajasthan and Goswamis in Kerala the Shebais should have been included in the Board. It would be appropriate, therefore, if Government considers of including them also in the Board

15. Section 15 was relied as an illustration of interfering with religious affairs. It was urged that clauses (a) and (c) were invalid as no fee could be fixed for worship nor the devotees could be prohibited from using "bhang", "dhatura" and "ganja", which by tradition are offered to Lord Vishwanath as was clear from quotation of Yajurveda "Vijayam Dhanuh Kapirdin". No text or authority has been quoted to support the argument that charging of fee for worship amounted to interference with religious affairs. Probably there could be none. As regards Clause (c) religious protection and freedom has to be complete but not above public interest. Permitting sale or use of intoxicants is against religious concept. It is shocking to the Indian culture and its ethical outlook. Even otherwise its use in religious ceremonies is not prohibited. It is covered u/s 14.

16. Another major attack was on the appointment and duties of the Chief Executive Officer appointed u/s 16 of the Act. It was urged that the provisions in the Act empowering State Government to appoint Chief Executive Officer for temple without consulting the denomination amounts to interference with the right of management granted under Sub-section (d) of Article 26. Reliance was placed on Ratilal Panachand Gandhi Vs. The State of Bombay and Others, . It was urged that even though Sub-section (2) of Section 16 provides that conditions of service including qualifications for appointment of the Chief Executive Officer shall be determined by, State Government but Act does not provide any safeguard in respect of the person who shall be entitled to be appointed as such. It was urged that Act does not bar even appointment of a person who may be a non-Hindu. Learned counsel further submitted that although under the Act he was responsible for management of the secular affairs but in fact power given to him under Sub-section (2) of Section 17 enlarges his activities and it amounts to interference with religious affairs of the temple. It was also urged that he being a person authorised to appoint temple staff u/s 21 and to take disciplinary proceedings against them it amounted to depriving the denomination of its right. The argument appears to have no substance. Under the Act the Chief Executive Officer is the most important person who is in fact to carry on primary responsibility of administration and management of the Endowment and property vested in the deity. In Clause (d) of Article 25 it is the right of denomination to carry on the administration of the property in accordance with law. As pointed out earlier it was held in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., that a legislature cannot deprive a denomination of this right. In the Kerala Full Bench it was observed that the power to appoint the Administrative Officer is a necessary concomitant of the power of administration, control and

management. It was for this reason that power of Commissioner or any person authorised by him to enter premises of any religious institution for purposes of any duty imposed by the Act was struck down in Shirur Math case yet in Durgah Committee case the power to appoint Nazim by Central Government was not declared invalid nor the appointment of District Magistrate as Chief Executive Officer in Nathdwara temple was struck down. In fact in no case which went up to Supreme Court and where the Chief Executive Officer or any other officer with similar powers and duties was appointed by the State Government the provision was struck down. May be because no challenge was made. Therefore, it is difficult to agree that the provision is invalid. At the same time the right to administer and manage property being fundamental right of denomination such officer should normally be appointed by the Board. Provision should be made for appointing such authority at least after consultation with board. It would not be out of place to mention that in Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, it was observed that even though legislature was competent to make a law in regard to the administration of the properties belonging to the denomination it could not under the guise of regulating it extinguish the interest of the denomination or destroy it altogether.

17. As regards Section 22 it provides that Archak attached to or serving in the temple shall be responsible for proper performance and conduct of worship, service, rituals, ceremonies etc. It shall not be interfered with by the Board or Executive Committee or the Chief Executive Officer. Archak has been defined in Sub-section (2) of Section 4 to mean any person who performs or conducts any service, rituals or other religious observance in the temple and includes a Pujari, Panda, Purohit or Sewak. In other words Archak is the person under the Act who shall perform sewa or Puja of the idol In Hindu Law position of an Archak is of an employee of the temple. The provisions of performance of religious ceremonies by Archak do not prima facie suffer from any infirmity. But provisions should have been made for his appointment by the Board. Care should have been taken to lay down some guideline. Mere expanding meaning of Archak was not sufficient. In Seshammal and Others, Vs. State of Tamil Nadu, it was held that according to Agamas, the authoritative treatise on ceremonial law, "only a devotee of Shiva and that too, one belonging to a particular denomination or group or sub- group is entitled to be Archak". And if appointment is made contrary to it then it interferes with right of religion.

18. Creation of temple fund u/s 23 and its vesting in Board does not appear to suffer from infirmity. Nor do the provisions in Sections 24 and 25 of the Act violate Article 26(b) or (d). Much was argued in respect of Sections 29, 30 and 31. It was attempted to be made out that these provisions amounted to interference with right of managing and administering property as instead of Board it is the Government which has been made final authority. This does not appear to be correct. Power to acquire and transfer by the Board is not affected. It is only made subject to approval of Government. This does not violate Article 26(d). And if sanction is withheld unjustifiably and against interest of the temple

it can always be assailed in Court of law.

19. Deprivation of Mahant's right to offerings made to deity was very vehemently criticised. It was urged that by custom it had become religious practice, therefore, various sections of the Act touching this part were violative of Art, 26(b). For this it is essential to comprehend significance of offerings. It is made to deity of which idol is visual symbol. That which is offered to him cannot belong to anyone. A priest or a Pujari performs worship of the deity, and acts on behalf of devotees. He performs Puja, Sewa etc. and for the services so rendered he is entitled to receive remuneration or to appropriate from surplus of offerings. It may be under endowment or by custom or usage. But appropriation for services rendered cannot mature into right to claim surplus as personal "property". What belongs to Him or is donated or gifted or offered to idol cannot become property of His Sewakor Pujari or Archak. It is revolting to conscience and religion. Even a founder of temple or Shebait may claim that the right of Shebaitship may itself be property and he may have a personal interest of a beneficial character but that should not entitle him to claim offerings as personal property as the idol or deity or temple is not a commercial entity but a religious body. To claim, therefore, that denial of surplus of offerings was violative of Article 26 is misconceived. Nor any claim can be founded on office of Pujari being hereditary. The submission that devotees have more faith in offerings through hereditary priests is without any basis. In *Seshammal and Others, Vs. State of Tamil Nadu*, , it was urged that priest was more important than ritual. Therefore, appointment of a person to office of Archak or Pujari with hereditary principle was itself a religious usage and amounted to religious practice in Article 26. The Hon'ble Court rejected the argument and held that appointment of Archak was a secular and not religious function. Hereditary offices are out-of-date concept. This also disposes of the claim of petitioners that right to offerings was personal property which having been taken away without compensation violated Article 300-A of Constitution. Apart from it the controversy stands concluded by *Raja Birakishore Vs. The State of Orissa*, where similar argument was repelled by the Supreme Court.

20. Before parting with these petitions it may be observed that main thrust of petitioners except in Civil Misc. Writ No. 1244 of 1984 was on personal right of Pandas and Pujaris to manage the temple and appropriate its offerings. Objection therefore, was raised to validity of submissions advanced on behalf of petitioner of violation of Article 26 of the Constitution in absence of any foundation of religious denomination in the petitions. It appears, when these petitions were filed the primary effort was to challenge the Ordinance, for lack of emergency and deprivation of right of Pujaris to receive offerings a right recognised by this Court and Supreme Court. That the challenge founded on personal right of Pujari is beyond purview of Article 26 of the Constitution is well settled. What is protected is right of denomination and not personal right of Pujaris. Therefore, during hearing of petitions the petitioners were granted time to bring on record material which could establish that eminent citizens of Varanasi who had filed

these petitions were collection of individuals with one common faith or name or at least they may establish that they had filed petitions on behalf of some Sampradaya as was done by ten petitioners on behalf of Pushp Margiya Vaishnav in Nathdwara temple case. But unfortunately no effort was made. The petitioners even in supplementary affidavits filed only those documents which could establish personal rights of Pujaris. Even though a public Hindu temple may be a religious denomination but in order to claim the benefit of various sub-clauses of Article 26 the denomination shall have to establish its rights. And there petitioners have miserably failed Although the petitions could have been dismissed on this ground alone but since the matter was argued at length the various legal issues have been decided and it has been held that even though the temple is a religious denomination or Hindus or Shaivits could be religious denomination. Various provisions of the Act do not infringe Article 26.

21. For the reasons stated above these petitions fail and are dismissed. Parties shall bear their own costs.

J.N. Dubey, J.

22. I have the privilege of reading the scholarly judgment of my brother Sahai, J. I agree with him that the writ petitions must fail. But to my own lasting regret I do not agree with him on some aspects of the case and, therefore, it is necessary for me to explain my points of disagreement.

23. The main point for determination in these writ petitions is whether the impugned enactment is hit by Article 26 of the Constitution or not. Article 26 guarantees that every religious denomination or any section thereof shall have the right, subject to public order, morality and health, to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law.

24. Let us first try to know the precise meaning of the expressions "religion" and "religious denomination". The word "religion" has not been defined in the Constitution and : indeed it is a term which is hardly susceptible to any rigid definition. The word "religion" also does not occur in the preamble to the Constitution, but the Preamble does promise to secure to its citizens "liberty of thought, expression, belief, faith and worship". The freedom of conscience and the right to profess, propagate and practice religion flow out of the idea so expressed in the Preamble.

25. Everyone has a religion, or at least, a view or a window on religion, be he a begot or simple believer, philosopher or pedestrian, atheist or agnostic. Religion, like "democracy" and "equality" is an elusive expression, which everyone understands according to his preconceptions. What is religion to some is pure dogma to others and what is religion to others is pure superstition to some others.

26. The expression "religion" has been sought to be defined in the "words and phrases", Permanent Edn. 36A, P. 461. "Religion is morality with a sanction drawn from a future state of rewards and punishments". "The term "religion" and "religious" in ordinary usage are not rigid concepts."

" "Religion" has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character and of obedience to His Will."

"The word "religion" in its primary sense (from "religare", to rebind-bind back), imports, as applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without religion."

" "Religion" is bond uniting man to God, and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things."

" "Religion" has reference to man's relation to divinity; to the moral obligation of reverence and worship. Obedience and submission. It is the recognition of God as an object of worship, love and obedience; right feeling towards God, as highly apprehended."

" "Religion" means the service and adoration of God or a God as expressed in forms of worship; and apprehension, awareness, or conviction of the existence of a Supreme being; any system of faith, doctrine and worship, as the Christian religion, the religions of the orient; a particular system of faith or worship."

"The term "religion", as used in tax exemption law, simply includes : (1) a belief, not necessarily referring to super-natural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organisation within the cult, designed to observe the tenets or belief, the content of such belief being of no moment."

"While "religion" in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and associations, and the term, "a religious purpose, as used in the constitutional provision exempting from taxation property used for religious purposes, means the use of property by a religious society, or body of persons as a place for public worship."

" "Religion" is squaring human life with super-human life. Belief in a super-human power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all "religions". The term "religion" "has reference to one's view on his relations to his Creator, and to the obligations they impose of reverence for His being and character and obedience to His will."

"The term "religion" has reference to one's view of his relations to his Creator, and to the obligations they impose of reverence for His being and character, and of obedience to His will. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

27. In an American case *Davis v. Beason*, (1888)133 US 333, it has been said:

"that the term "religion" has reference to one's view of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His Will. It is often confounded with "cultus" of form or worship of a particular Sect, but is distinguishable from the latter."

28. Karl Marx in his contribution to the Critique of Hegel's Philosophy of Law described religion as the "Opium of the People". He said further "Basically religion is a very convenient sanctuary for bourgeois thought to flee to in times of stress."

29. Bertrand Russel, in his essay "Why I am not a Christian", said "Religion is based, I think, primarily and mainly upon fear. It is partly the terror of the unknown and partly, as I have said, the wish to feel that you have a kind of elder brother, who will stand by you in all your troubles and disputes. Fear is the basis of the whole thing--fear of mysterious, fear of defeat, fear of death. Fear is the parent of cruelty and, therefore, it is no wonder if cruelty and religion have gone hand in hand. As a worshipper at the altar of peace, I find it difficult to reconcile myself to religion, which throughout the ages, has justified war calling upon it a Dharma Yuddha, a Jihad or a Crusade. I believe that by getting mixed up with religion, ethics has lost much of its point, much of its purpose and major portion of its spontaneity".

30. Dharmaraja Yudhishtira in Mahabharat replying to a question of Yaksha on Dharma said -- "Formal logic is vasillating. Srutis are contradictory. There is no single Rishi whose opinion is final. The principle of Dharma is hidden in a cave. The path of the virtuous persons is the only proper course."

31. In *Sastri Yagnapurushadji and Others Vs. Muldas Bhudardas Vaishya and Another*, while dealing with Hindu religion Supreme Court observed:

"Whilst we are dealing with this broad and comprehensive aspect of Hindu Religion, it may be permissible to enquire what according to this religion, is the ultimate goal of humanity? It is the release and freedom from the unceasing cycle of births and rebirths. Moksha or Nirvana, which is the ultimate aim of Hindu religion and philosophy, represents the state of absolute absorption and assimilation of the individual soul with the infinite. What are the means to attain this end? On this vital issue, there is great divergence of views; some emphasise the importance of Gyan or knowledge, while others extol the virtues of Bhakti or

devotion; and yet others insist upon the paramount importance of the performance of duties with a heart full of devotion and mind inspired by true knowledge. In this sphere again, there is diversity of opinion, though all are agreed about the ultimate goal. Therefore, it would be inappropriate to apply the traditional tests in determining the extent of the jurisdiction of Hindu religion. It can be safely described as a way of life based on certain basic concepts to which we have already referred."

32. Dealing with the formation of various sects in Hindu religion the Supreme Court further observed:

"The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought and practices elements of corruption and superstition and that led to the formation of different sects. Buddha started Buddhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion, Gyaneshwar and Tukaram initiated the Varakari cult; Guru Nanak inspired Sikhism; Dayanand founded Arya Samaj, and Chaitanya Mahaguru began Bhakti cult; and as a result of the teachings of Ramakrishna and Vivekananda, Hindu religion flowered into its most attractive, progressive and dynamic form. If we study the teachings of these Saints and religious reformers, we would notice an amount of divergence in their respective views; but underneath that divergence, there is a kind of subtle indescribable unity which keeps them within the sweep of the broad and progressive Hindu religion."

33. In the *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, the Supreme Court did not approve the definition of religion given in *Davis v. Beason* (1888) 133 US 333 (supra) for the purposes of Articles 25 and 26 of the Constitution. It observed:

"We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Article 44(2), Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution makers when they framed the Constitution."

34. In *S. P. Mittal v. Union of India*, : [1983]1SCR729 , Chinnappa Reddy, J., also expressed the same views:

"I apprehend, I share the views of those who have neither faith nor belief in religion and who consider religion as entirely unscientific and irrational Chanting of prayer appears to me to be mere jingoism and observance of ritual, plain superstition. But my views about religion, my prejudices and my predilections, if they be such, are entirely irrelevant. So are the views of the credulous, the fanatic, the bigot and the zealot. So also the views of the faithful, the devout, the Acharya, the Moulvi, the Padre and the Bhikshu each of whom may claim his as the only true or revealed religion. For our present purpose, we are concerned with what the people of the Socialist, Secular Democratic Republic of India, who

have given each of its citizens freedom of conscience and the right to freely profess, practise and propagate religion and who have given every religious denomination the right to freely manage its religious affairs, mean by the expression "religion" and "religious denomination". We are concerned with what these expressions are designed to mean in Articles 25 and 26 of the Constitution."

35. In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, the Supreme Court while considering what is the precise meaning- of the expression "religious denomination" observed:

"As regards Article 26, the first question is what is the precise meaning or connotation of the expression "religious denomination" and whether a Math could come within this expression. The word "denomination" has been defined in the Oxford Dictionary to mean "a collection of individuals classed together under the same name: a religious sect or body having a common faith and organization and designated by a distinctive name." It is well known that the practice of setting up Maths as centres of theological teaching was started by Shri Shankaracharya and was followed by various teachers since then. After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day.

Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name, -- in many cases it is the name of the founder--and has a common faith and common spiritual organization. The followers of Ramanuja, who are known by the name of Shri Vaishnabas, undoubtedly constitute a religious denomination and so do the followers of Madhwacharya and other religious teachers. It is a fact well established by tradition that the Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of these Maths profess to be followers of that teacher. The High Court has found that the Math in question is in charge of the Sivalli Brahmins who constitute a section of the followers of Madhwacharya. As Article 26 contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of this Article."

36. This proposition was consistently followed in later Supreme Court cases. In *S. P. Mittal v. Union of India* (supra) the Supreme Court reviewing the entire law on the point held :

"These terms have also been judicially considered in the *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, wherein the following propositions of law have been laid down.

(1) Religion means "a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being."

(2) A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well.

(3) Religion need not be theistic.

(4) ""Religious denomination" means a religious sect or body having a common faith and organization and designated by a distinctive name.

(5) A law which takes away the rights or administration from the hands of a religious denomination altogether and vests in another authority would amount to violation of the right guaranteed under Clause (d) of Article 26."

The aforesaid propositions have been consistently followed in later cases including *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, and can be regarded as well settled.

The words "religious denomination" in Article 26 of the Constitution must take their colour from the word "religion" and if this be so, the expression "religious denomination" must also satisfy three conditions:

(1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is a common faith :

(2) common organisation; and

(3) designation by a distinctive name."

37. In *Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another*, , the Supremo Court relying on the proposition laid down in *S. P. Mittal v. Union of India* (supra) held :

"Ananda Marga appears to satisfy all the three conditions viz., it is a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual well-being; they have a common organization and the collection of these individuals has a distinctive name. Ananda Marg, therefore, can be appropriately treated as a religious denomination, within the Hindu religion."

38. Thus it is clear that irrespective of dictionary meaning of the word "denomination" a mere "collection of individuals classed together under the same name" cannot be regarded as a religious denomination for the purposes of Article 26. It is only a religious sect or body having a common faith and organization and is designated by a distinctive name which can be treated as a religious denomination. Incidentally in Hindi version of the Constitution term "Dharmik Sampradaya" has been used for religious denomination under Article 26 which also leads to the same conclusion. It is also clear from the observations of the Supreme Court in *Acharya Jagdishwarananda Avadhuta v. Commr. of Police* (supra) that Ananda Marga is a religious denomination within the Hindu religion, that religious denomination as something within a religion and not the religion itself.

39. In view of the proposition laid down by the Supreme Court in the aforesaid cases we have now to examine whether Shri Kashi Vishwanath temple is a denominational temple or not. In other words, whether this temple was established and managed by any particular religious; denomination.

40. No particular religious denomination has challenged the vires of the impugned enactment. These writ petitions have been filed by the Pandas of the temple and a few citizens of Varanasi who claim themselves to be representatives of the Hindu community. In order to understand the precise claim of the petitioners relevant paragraphs of Civil Misc. Writ Petition No. 6915 of 1983, Sri Adi Visheshwar of Kashi Vishwanath Temple and others v. State of U. P. and others are quoted below : --

"10. That in the city of Varanasi there is an idol of Lord Vishwanath since times immemorial which is the presiding deity of the temple known as the temple of Shri Adi Visheshwar of Kashi Vishwanath. The deity in the temple commands very great respect by devotees of the Hindu community and it constitutes a religious denomination within the meaning of Articles 25/26 of the Constitution.

11. That since the invasion of Mohammad Ghori one of his Lieutenants Qutub Uddin Aibak in 1193 A. D. destroyed the temple completely, but the symbol of Lord Shiv or Lord Visheshwar was saved from the iconoclast and during various Muslim invasions thereafter the temple was destroyed and it is established that the priests of the temple commonly known as Pandas or Mahants saved the idol by hiding it. Finally when Aurangzeb in 1669 A.D. destroyed the temple, the symbol of Lord Shiva was removed and Aurangzeb was not able to break the same. After peace was restored, the symbol was again installed by the ancestors of the petitioners and other Mahants of the temple with due ceremonies prescribed by the Hindu Shastras at a site near the old Vishwanath temple which had been converted into a mosque.

12. That in the year 1777 Rani Ahlyabai Holker of Indore built a temple at the place where the said symbol of Lord Shiva had been installed earlier and donated the same to the presiding deity under the care of Mahants and in 1859 Raja Ranjit Singh got the temple covered with gold which weighed nearly 22 1/2 mds.

13. That there had always been a class of hereditary persons who were known and described as Pandas whose duty was to look after the Seva Puja Rag Bhog of the idol of Sri Adi Visheshwar and manage the affairs of the temple to the exclusion of every body else.

14. That the offerings that are left over after meeting the expenses of the symbol of petitioner No. 1 have since times immemorial been the sole properties of the Mahants or Pandas of the temple and there being no claim of any one, the same could not be said to be meant for any other purpose and no member of public at larger any Government agency had any control over the same.

15. That after the death of Devi Dutt the Mahant there was a dispute about the

right to act as Pandas of the idol Lord Vishwanath and Pandit Visheshwar Dayal Tewari filed a suit in the year 1900 which was decreed and it was held that Pandit Visheshwar Dayal Tewari being the brother-in-law (Bandhu) was entitled to the office of the priest and Pandas of the idol Sri Adi Visheshwar hereinafter described as Lord Vishwanath.

16. That Pandit Visheshwar Dayal Tewari executed a Will dated 15-1-1902 treating the income from the office of the Panda, his personal property and gave certain directions with respect to the management of the offerings to the symbol Lord Vishwanath.

17. That in its various decisions the Hon^{ble} High Court has held that the right to receive the offerings of the temple was exclusive and personal right of the family of the Pandas and in the judgment of 18-1-1935 of the 1st Additional Sub-Judge, Banaras in Suit No. 20 of 1935 it has been held that "the right to receive offerings in the temple, is as much as a property as a house or a zamindari or movables" and in dealing with the interpretation of the Will dated 22-11-1905 executed by Srimati Indram (the wife of) Pandit Visheshwar Dayal dated 15-1-1902 the learned Sub-Judge further observed --

"I pass on now to consider the deed of appointment dated 11-11-1905 executed by Musammat Indrani. She first recites in the deed that by virtue of the authority vested in her by her husband's will, she was executing that deed in consultation with her advisers, she declares that Uma Shanker the eldest of the grandsons was the fittest of all and appoints him "to be a gaddinashin and the owner of the temple of Vishwanathji, as also of the other property ancestral or otherwise." She goes on to say, "from this date nominee aforesaid should take into his own hands and do the entire management of the temple of Vishwanath as well as of other things as the owner. He should continue to support the son and other grandsons, well enough, and in case they anyhow get displeased and separate he should pay each of them every month for their maintenance according to position (income). All the powers relating to the said temple and other property ancestral or otherwise as heretofore enjoyed by me the executant, shall be exercised by the nominee aforesaid." "

18. That again one of the Mahants Sri Kailash Pati Tewari (of the petitioner No. 1) filed a Suit No. 43 of 1958 in the court of Civil Judge, Varanasi for a declaration that he was the sole person duly qualified to manage the affairs of the temple to the exclusion of all other Mahants, who belonged to the same family of Mahants of the temple. The trial court had decreed the suit but in appeal to this High Court, the judgment was reversed, suit was dismissed and it was held that all the Mahants of the temple had equal rights in the management of the affairs of the temple except those who were found unfit by reason of their conduct etc."

41. The case of the petitioners in all the four writ petitions is more or less similar except that while in the writ petitions filed by Pandas alone deity of Lord Vishwanath has been claimed to be religious denomination, no such claim has

been made in the writ petition in which the citizens of Varanasi have also joined. Now it has to be seen whether deity of Lord Vishwanath is a religious denomination. The "deity" in our opinion does not satisfy any of the three conditions laid down by the Supreme Court, i.e., it is neither religious sect nor a body having common faith and organisation and designated by a distinctive name and therefore it cannot be treated as a religious denomination by any stretch of imagination.

42. The petitioners did not even set up the claim of their being shaivites in the writ petition but tried to develop it during the arguments. This claim of the petitioners deserves to be rejected outright, as no foundation whatsoever was laid for it in their pleadings nor was any evidence led by them on this point. The petitioners appear to be under misconception that all the worshippers of Lord Shiva are shaivites. If this argument of the petitioners is accepted it will lead to the conclusion that all the temples whether of Lord Rama, Lord Krishna, Lord Shiva and Lord Hanuman etc. would be denominational temples and all the Hindus would form one religious denomination or the other depending on their being worshippers of a particular God which could never have been intended by the makers of the Constitution. It is now well settled that worshippers of a particular deity or God do not form a religious denomination. It is noteworthy that the petitioners have not claimed that they exclusively worship Lord Shiva and do not worship any other God. The petitioners, as a matter of fact, have not mentioned any special tenets, faith or belief observed by them on the basis of which they could be distinguished from other Hindus.

43. The citizens of Varanasi have rightly not claimed themselves to be religious denomination or section thereof. They claim themselves to be the representatives of Hindu community which cannot be termed to be a religious denomination. Hinduism is a religion and not a religious denomination but each one of its sects, sub-sects or body having common faith and organization and designated by a distinctive name is a religious denomination for the purpose of Article 26.

44. Thus, neither the deity of Lord Vishwanath nor the Hindu community can be considered to be a religious denomination under Article 26. But assuming without holding that the deity of Lord Vishwanath or the Hindu community is a religious denomination, petitioners can possibly have no cause for grievance, inasmuch as neither the deity of Lord Vishwanath nor the Hindu community have been deprived of their any right by the impugned enactment. Under the enactment entire property of the temple vests in the deity of Lord Vishwanath and its management continues with the Hindu community. Section 3 of the enactment provides that no person shall, unless he is a Hindu by religion, be eligible for being or continuing as a member of the Board or executive committee or as Chief Executive Officer or as an employee of the temple and every person shall cease to hold office or to exercise any power or discharge any function as such when he ceases to be a Hindu, while u/s 5 the ownership of the temple and its entire

endowment vests in the deity of Shri Kashi Vishwanath.

45. On the own case of the petitioners set up in paragraph 12 of the writ petition the temple was constructed in 1777 by Rani Ahalyabai Holker of Indore and was donated to the presiding deity under the care of Mahants, which means that neither the temple was constructed nor was being managed by any particular religious denomination. No religious denomination staked its claim for management of the affairs of the temple during this period of over two centuries. Long history of litigation referred to in the pleadings of the petitioners also shows that the petitioners and their ancestors treated the temple as a private property until the Civil Court held that they had only right of management. The claim of the petitioners and their ancestors that the temple was a private property was also never contested by any religious denomination in the civil court As a matter of fact even in these writ petitions no right has been claimed for any religious denomination. On the other hand, even the citizens of Varanasi, the alleged representatives of Hindu community have supported the claim of the Pandas regarding the right to manage the affairs of the temple. It is now well settled that Article 26 does not create rights in any denomination which it never had. They merely safeguard and guarantee the continuance of the existing rights.

46. In *The Durgah Committee, Ajmer and Another Vs. Syed Hussain Ali and Others*, , the Supreme Court said : --

"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 other words, if the denomination never had the right to manage the properties endowed in favour of a denominational Institution as for instance by reason of the terms on which the endowment was created it cannot be heard to say that it has acquired the said rights as a result of Article 26(c) and (d), and that the practice and custom prevailing in that behalf which obviously is consistent with the terms of the endowment should be ignored or treated as invalid and the administration and management should now be given to the denomination. Such a claim is plainly inconsistent with the provisions of Article 26. 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."

47. It is now well settled that right to maintain a religious or charitable institution under Article 26 is not an independent right but it flows from the right to establish such institution.

48. In *S. Azeez Basha and Another Vs. Union of India (UOI)*, the Supreme Court Observed : --

"What we have said with respect to Article 30(1) which gives right to minorities to establish and administer educational institutions of their choice applies equally to Clause (1) of Article 26 and therefore we are of opinion that the words

"establish and maintain" must be read conjunctively and it is only institution which a religious denomination establishes which it can claim to maintain. It is not necessary to go into all the implications of the word "maintain", it is enough for present purposes to say that the right to maintain institution for religious and charitable purposes would include the right to administer them. But the right under Clause (a) of Article 26 will only arise where the institution is established by a religious denomination and it is in that event only that it can claim to maintain it. As we have already held, the Aligarh University was not established by the Muslim minority and therefore no question arises of its right to maintain it within the meaning of Clause (a) of Article 26."

49. Shri Kashi Vishwanth temple may be a public Hindu temple but it is not a denominational temple and therefore vires of impugned enactment cannot be challenged on the ground that it infringes the fundamental rights guaranteed to every religious denomination or any section thereof under Article 26 of the Constitution.

50. I agree with brother Sahai, J. that even if the petitioners are taken to be religious denomination the impugned enactment does not violate Article 26 or any other provisions of the Constitution.

51. The writ petitions are accordingly dismissed but in the circumstances of the case there will be no order as to costs.

PER COURT

52. For the reasons given in our separate judgments the petitions fail and are dismissed. There shall be no order as to costs.