**HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

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**WRIT PETITION No.40252, 40704 of 2015 and 20913 of 2018 and 10855 of 2019**

**W.P.No.40252 of 2015:**

Between:

T.M.D.Rafi and 15 others.

... Petitioners

And

State of Andhra Pradesh and 2 others

... Respondents.

JUDGMENT PRONOUNCED ON 27.09.2019

**THE HON'BLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR**

**AND**

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes

*** THE HON'BLE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR**

**AND**

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

+ **WRIT PETITION No.40252, 40704 of 2015 and 20913 of 2018 and 10855 of 2019**

% 01.11.2019

W.P.No.40252 of 2015:

# T.M.D.Rafi and 15 others.

....Petitioners

v.

$ State of Andhra Pradesh and 2 others

.... Respondents

**! Counsel for the Petitioners :** Sri M.Vidya Sagar

**Counsel for Respondents:** Government Pleader for Endowments
Sri K.S.Murthy for respondent No.4

<Gist :

>Head Note:

? Cases referred:

(1) AIR 1951 Madras 473
(2) 2005 (5) SCC 632
(3) AIR 1954 SC 282
(4) (2008)5 SCC 257
(5) AIR 2006 SC 1622
(6) AIR 2007 SC 819
(7) AIR 2005 SC 3401
(8) (1989) 4 SCC 187
(9) AIR 1995 SC 2089

(10) [1966]3 SCR 242
(11) AIR 1996 SC 1023
(12) (1997) 6 SCC 1
(13) AIR 1951 SC 318
(14) 1955 (1) SCR 1045
(15) (1952) Cr LJ 1526
(16) [1972] 3 SCR 815
(17) AIR 1962 SC 853
(18) [1954] 1 SCR 1046
(19) [1962] 1 SCR 383
(20) (1986) 3 SCC 20
(21) 1952CriLJ966
(22) 1961 S.C.R. 1601
(23) AIR 2005 SC 3053
(24) 1979 KLT 350
(25) 1990 (1) KLT 874

**THE HON'BLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR**

**AND**

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**WRIT PETITION Nos.40252, 40704 of 2015 and 20913 of 2018 and 10855 of 2019**

**COMMON ORDER**: (*Per Hon'ble Sri Justice M.Satyanarayana Murthy)*

As the specific contention of the petitioners in all the writ petitions is one and the same, we find it to expedient to decide all the writ petitions by common order. For convenience sake, the Writ Petition No.40252 of 2019 is taken as lead petition.

The Writ Petition No.40252 of 2015 is filed under Article 226 of the Constitution of India to issue a writ of mandamus to declare the G.O.Ms.No.426 Revenue (Endowments-I) Department, dated 09.11.2015 issued by the respondent No.1 i.e. State of Andhra Pradesh incorporating Rule 4 (2) and Rule 18 of A.P. Charitable and Hindu Religious Institutions and Endowments Immovable Properties and Other Rights (other than Agricultural Lands) Leases and Licenses Rules, 2003, prohibiting non-Hindus in participation of tender – cum – auction process of shops or otherwise to obtain lease or license to carry on business in immovable property belonging to respondent No.3 – temple, as bad, illegal, arbitrary, opposed to law and violative of Article 14 and 15 of Constitution of India.

The petitioners were inducted as tenants in various shops, plots belonging to respondent No.3 – temple and carrying on their business in sale of different items near temple premises. While the petitioners carrying on business, the respondent No.1 issued G.O.Ms.No.426, Revenue (Endowments-I) Department, dated 09.11.2015, whereby ***A.P. Charitable and Hindu Religious Institutions and Endowments Immovable Properties and Other***

***Rights (other than Agricultural Lands) Leases and Licenses Rules, 2003*** (for short "the Rules, 2003"), framed in G.O.Ms.No.866, Revenue (Endowments-I) Department, dated 08.08.2003, were amended by incorporating Rule 4 (2) and Rule 18, which prohibits the persons professing other than Hinduism as their religion to obtain lease or licence either participating in tender process or otherwise.

On account of amendment, the petitioners are being deprived of their source of livelihood, as they are solely depending upon the income derived from the business being carried on, in the premises or plots belonging to respondent No.3 – temple, for the last more than 40 to 50 years. As per the procedure adopted by the respondents, the petitioners agreed to pay rent/ license fee at the enhanced rate at 33.5% for every 3 years, the rent was enhanced for some commercial premises and for the other premises in 2014 by proceedings issued by the Commissioner of Endowments, respondent No.2 herein. The leases of all the petitioners were expired by 31.12.2015.

On the complaint of Smt.N.Prabhavathi dated 11.08.2014, the Commissioner of Endowments issued proceedings dated 23.05.2015, directing the Executive Officer to take possession of all shops and prohibiting them to participate in public auctions for granting licenses to carry on business in shops belonging to Devastanam in future. The proceedings issued by the respondent No.2 debarring from participating in auction is an act of discrimination between Hindus and Non-Hindus. The proceedings issued by the Commissioner, respondent No.2 herein dated 23.05.2015 is the subject matter in W.P.M.P.No.29088 of 2015 and W.P.M.P.No.29089 of 2015 dated 21.07.2015, whereby the proceedings were suspended

during pendency of the Writ Petition. Thus, the petitioners are continuing in possession and enjoyment of the property as tenants without any interruption or hindrance.

A similar exercise was undertaken while auctioning two shops belonging to the respondent No.3 devastanam in Kurnool by referring to a G.O., i.e., G.O.Ms.No.8339, which is a preliminary notification prior to issuance of the impugned G.O., which prevented non-Hindus to participate in the public auction. The said auction notification debarring to participate in public auction is the subject matter in W.P.No.36409 of 2015, the High Court permitted the petitioners in the said writ petition, to continue in possession on paying the highest bid amount as interim order, *prima facie* the said act is a clear violation of Article 14 and 15 of Constitution of India. Earlier the Commissioner of Endowments, the respondent No.2 herein issued a circular dated 02.08.2011, and the right to participate in public auction was denied to non-Hindus and the said circular was in force till the same is replaced in the form of a statutory amendment to the impugned G.O.

Consequent to the preliminary notification the respondent No.1, the State issued the present impugned G.O. incorporating Rule 4 (2) and Rule 18, which prohibits the persons professing other than Hinduism as their religion, to obtain lease or license. Thus the Commissioner of Endowments who had earlier issued a circular, had now been brought into force, a Rule by amending the earlier Rules framed in G.O.Ms.No.866, Revenue (Endowments-I) Department, dated 08.08.2003.

The amendment to the Rules 2003 by G.O.Ms.No.426 dated 09.11.0215 amount to discrimination of Hindus from non-Hindus

and permitting only Hindus in auction for granting license of shops and other premises is a clear violation of fundamental right guaranteed under the Constitution of India, though such discrimination is prohibited in the religious institutions and it would destroy the secular character of the country and pave way for disturbing the rights of citizens on the basis of religion, on account of discriminatory attitude adopted by the State. The petitioners, who are solely depending upon the income derived from the business which is being carried on, in the shops located in the premises of respondent No.3, are being deprived of their livelihood in view of G.O.Ms.No.426, Revenue (Endowments-I) Department, dated 09.11.2015 issued by the respondent No.1 i.e. State of Andhra Pradesh.

Respondent No.2 filed detailed counter admitting issue of G.O.Ms.No.426 Revenue (Endowments-I) Department dated 09.11.2015, which is impugned in Writ Petition No.40252 of 2015 while asserting that the Government issued preliminary notification for proposed amendment to ***"Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other Rights (other than Agricultural Lands) Leases and Licenses Rules 2003"*** calling objections from the public if any. Later, final notification vide G.O.Ms.No.426, Revenue (Endowments-I) Department dated 09.11.2015 was issued by the Government after considering objections.

One such amended Clause to the Rule 4 (2)(k) of the Rules is as follows:

***"No person professing other than Hinduism as his religion is entitled to obtain lease or license either through tender-cumpublic auction or otherwise".***

The New Rule - 18 is as follows:

***"(1) In case of Vacant sites below 1000 Square yards, the Commissioner is competent to accord permission for construction of commercial complex, malls, shops etc., for any license period not exceeding thirty three years on BOOT basis. The objections and suggestions of the persons having interest, shall be called in ten days notice through leading news paper advertisement, and considered before taking any decision on the project. The selection of agency shall always be made through tender mode only.***

***(2) In case of Vacant sites above 1000 Square yards, the Executive Committee, i.e., official members, of Andhra Pradesh Dharmika Parishad is competent to accord permission for construction of commercial complex, malls, shops etc., for any license period not exceeding thirty three years on BOOT basis. The objections and suggestions of the persons having interest, shall be called in ten days notice through leading news paper advertisement, and considered before taking any decision on the project. The selection of agency shall always be made through tender mode only.***

***(3) In all such cases, selection by way of Public Tender / Auction shall be insisted upon to protect the interest of the temple or Endowment and thereby Hindu Dharma, which is paramount to the Executive Authority. The Executive Authority shall prescribe in Tender Rules that no activity which is detrimental to the sentiments of Hindu Religion shall be allowed to be under taken in such shops, malls, etc., for example sale of liquor, allowing any other religious activity of other religions, sale of non vegetarian items, activities which promote vulgarity etc.,***

***(4) No person professing other than Hinduism as his religion is entitled obtain lease or license even in above shops, malls etc."***

It is the specific contention of the respondent No.2 that the shrine of Lord Mallikarjuna picturesquely situated on a flat top of Nallamalai Hills, Srisailam is reputed to be one of the most ancient kshetras in India. It is on the right side of the River Krishna in Kurnool District of Andhra Pradesh. This celebrated mountain is also named as Siridhan, Srigiri, Sirigiri, Sriparvatha and Srinagam. It has been a popular centre of Saivite pilgrimage for centuries. The prominence of this Divya Kshetram is highlighted by the fact that while performing the daily household rituals we specify place of location of once existence with reference to Srisailam. The presiding Deities of this kshetram, Lord Mallikarjuna Swamy is one of the twelve Jyothirlingas and Goddess Bhramaramba Devi is one of the eighteen Mahasakthis and both are self manifested. The unique

feature of this kshetram is the combination of Jyothirlingam and Mahasakthi in one campus, which is very rare and only one of its kind. There is a common belief in vogue that this Holy Kshetram exists from times immemorial.

The respondent No.3 temple played a dominant role in religious, cultural and social history from ancient times. The epigraphical evidence reveals that the history of Srisailam begins with the Sathavahanas who were the first empire builders in South India. The earliest known historical mention of the Hill - Srisailam, can be traced in Pulumavis Nasik inscription of 1st Century A.D. The Sathavahanas, the Ikshayakus, the Pallavas, the Vishnukundis, the Chalukyas, the Kakatiyas, the Reedy Kings, the Vijayanagara Emperors Chatrapathi Shivaji are among the famous emperors who worshipped God Mallikarjuna Swamy. Prataparudra of Kakatiya Dynasty strived a lot for the improvement of this Kshetram and granted Paraganas for its maintenance. Ganapathideva has spent 12000 Golden Nanyas for the maintenance of the temple.

The period of Reddi Kings is the Golden Age of Srisailam that almost all rulers of the dynasty did celebrated service for this temple. In 14th Century Prolaya Vema Reddi of Reddy Dynasty constructed stepped path-way to Srisailam and Pathalaganga (Here the river Krishna is called as Pathalaganga) and Anavema Reddi constructed Veera Siromandapam in which the Veerasaiva devotees cut off their hands, tongue, limbs with devotion to attain the realisation of the God. This practice is known as Veeracharam. The Second Hariharaya of Vijayanagara Empire constructed the Mukhamantapam of Swamy shrine and also a Gopuram on Southern Side of the temple. In the 15th Century Sri Krishnadevaraya

Constructed the Rajagopuram on Eastern side and Salumantapas on both sides of the temple. The last Hindu King who strove hard for the improvement of the temple is Chatrapathi Shivaji, who constructed a Gopuram on northern side in the year 1667 A.D.

The history as to how hindu kings have contributed for the development of the holy shrine in order to protect the hindu religious sentiments and beliefs. Not only the erstwhile kings but also many philanthropist and devotees have contributed for the development of the kshetram in many ways. Every pilgrim who visit the holy shrine has his share of contribution in one way or the other, some by way of offering donations and every one by way of purchasing darshan tickets and prasadams.

In view of the history of respondent No.3 – temple, the rights of Hindu religious denomination have to be protected. Hence, the impugned G.O. was issued to protect the rights of Hindus and the same does not amount to depriving the non-Hindus to carry on any business.

It is specifically contended that the petitioners were inducted in the premises as tenants long ago, but they are not prompt in payment of rent or license fee. Earlier, no restrictions were imposed on any community or religion to participate in the auctions. The auctions were conducted for every (3) years, duly following the terms and conditions for grant of license or lease, approval orders were obtained from the Commissioner, Endowments Department from time to time. Respondent No.3 admitted the restriction imposed against the petitioners to participate in auction for granting license for the shops belonging to respondent No.3 vide proceedings in Rc.No.A4/21289/2011, Dated.02.08.2011 and in terms of

instructions issued by the Government of Andhra Pradesh vide G.O.No.747 Revenue (Endowments-III) Department, Dated.02.06.2007.

On the representation of Smt.N.Prabhavathi, the Revenue Inspector of respondent No.3 Devasthanam enquired and prepared a report that the petitioner No.1 and other non Hindus, Sri S.Jilani Basha and K.Rahmathulla are running their shops through Binamis, occupied additional space, carrying on business according to their will and wish. Hence, a report was submitted to Commissioner, Endowments Department vide in Rc.No.C2/5215/2014, dated.23.11.2014. The Commissioner of Endowments has issued orders in Rc.No.D1/18882/2014, Dated.23.05.2015 directing non Hindu tenants to vacate the premises of respondent No.3 – temple within one month and if anyone acts against the rules, criminal case may be filed against those persons.

Respondent No.3 admitted about proposed auction of the shops at Kurnool and Stay granted by High Court in W.P.M.P.Nos.29088 of 2015 and 29089 of 2015 in W.P.No.22528 of 2015.

The respondent No.3 Devasthanam is governed by Rules framed under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act 30 of 1987") and its provisions prohibits the propagation of any other religion except Hindu religion as per section 2 of the Act 30 of 1987. To protect the rights of Hindu Religious Chartable Endowments, the Commissioner, Endowments Department has issued the circular instructions in Rc.No.A4/21289/2011, Dated.02.08.2011 in which it was clearly mentioned that "Temple" means "***a place by whatever***

***designation known as a place of public religious worship, and dedicated to, or for the benefit of, or used as a right by Hindu community or any section there of, as place of public religious worship and includes subshrines, utsava Mandapams, Tanks and other necessary visible structures and land***".

It is contended that the persons who are not professing Hindu Religion particularly Muslims community, nearly 100 persons are carrying on business of Soda, juice items etc., sale to pilgrims around the Srisaila Devasthanam. Further the respondent No.3 Devasthanam never disturbed the source of living of petitioners community.

On account of following incidents, to upheld the sentiments of Hindus, the present G.O. was issued.

**(a) Non Hindu tenants are displaying the photographs of their religious choice, which is against the spirit of Hindu temple and its devotees.**

**(b) Non Hindu tenants are doing prayers in the shops and in their occupied premises, which is often causing law and order problem. They are doing prayers during day time in the presence of customers.**

**(c) The Non Hindu tenants are celebrating their festivals in their religious fervor in the endowment shops and distributing beef and meet on those occasions.**

**(d) The Non Hindu tenants are doing their festivals in their occupied endowment premises and giving strong replies that they have every right to do their festivals as they like.**

**(e) The Non Hindu tenants are polluting the religious atmosphere of shops and other endowed properties by doing religious congregations**

(f) **Some of the Non Hindu tenants have no respect towards Hindu deities and customs and spreading hatred by staying in the endowed properties**.

To avoid such disturbances to the Hindu devotees, who visit temple, having faith in the Hindu religion, the Rules were amended by following prescribed procedure.

The specific contention raised by the respondent No.2 is that the every religious institution is established or maintained for a religious purpose, and the temple whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as a right by the Hindu community or any section thereof, as a place of public religious worship and includes sub-shrines, utsavamandapas, tanks and other necessary appurtenant structures and land. In "***Ramaswamy Servai Vs Board of Commissioners for the Hindu Religious Endowments Madras***[1]", the Madras High Court held that "the presence of an idol, though an invariable feature of Hindu temples, is not a legal requisite under the definition of a temple in Section 9, Clause (12) of the Act. The word institution which is used in Section 84 (1) of the Act is a term of very wide import, capable of different meanings according to the context in which it is used. It means, among other things, a foundation, a system, a constitution, an establishment, or organization, a place designed for the promotion of some. Religious, charitable or other object of public utility and so on". As per the principle laid down in the above judgment and taking into history of religious institution, Srisailam itself was termed as Srisaila kshetram, which fell under the definition of the temple including its surrounding; as such the institution has every right to manage its own affairs in matters of religion, within the kshetram in accordance with Article 26 of the Constitution of India. As such there should not be any interference from any individual who has no faith in customs and beliefs followed by the particular institution and this Court cannot interfere and grant any relief in the petition.

[1] AIR 1951 Madras 473

It is also contended that in "***Zorastrian Cooperative Housing Society Limited and another v. District Registrar, Cooperative Societies (urban) and others***[2]" the Apex Court held that "there can be no objection to statutory interference with the composition or functioning of associations which are created, controlled and governed by statue-hence legislative provisions can be introduced in the statutes concerned for eliminating disqualifications for memberships based on sex, religion, persuasion or mode of life-however, further held, so long as there is no legislative intervention of such nature, it is not open to the court or authorities purportedly acting under the statue concerned to coin a theory that a particular approved bye-law of a registered cooperative society is not desirable and would be opposed to public policy as indicated by the Constitution."

Instructions issued in G.O.Ms.No. 747 Revenue (Endts.III) Department Dated 02.06.2007 clearly prohibits propagation of any other Religion in places of worship or prayer, other than the Hindu Religion, other than traditionally practices at such place and thereby, if a person/persons not professing Hindu Religion, became licensee can be restricted in following the fundamental rights like timely prayer of that Religion at the place of his license, rights of reading the books of his Religion in the place of his license, without observing the custom and usage of the Temple. The instructions issued by the Government are in accordance with Section 2 of the Act 30 of 1987.

Permitting non-Hindus to occupy the premises to celebrate their festivals in view of the incidents (referred above) will disturb the

[2] 2005 (5) SCC 632

faith of Hindu pilgrims, who visit temple, and such propagation of any religious ceremonies other than Hindu, violate the rights of pilgrims visiting temple. Therefore, the impugned G.O. amending various rules is in accordance with law and will not infringe or violate any fundamental right of non-Hindu and prays to dismiss the dismiss the writ petition.

Respondent No.3 also filed detailed counter reiterating the history of respondent No.3 – temple, while admitting passing of impugned G.O., circular and orders passed by the High Court of Judicature at Hyderabad in different writ petitions. Respondent No.3 also reiterated the instances of causing problems to the devotees by non-Hindus, who are tenants of various shops, which are prejudicial to the sentiments and beliefs of original donor, who having faith in particular deity. It is specifically contended that every religious institution is established or maintained for a religious purpose, and the temple whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as a right by the Hindu religious community or any section thereof, as a place of public religious worship and includes sub-shrines, utsavamandapas, tanks and other necessary appurtenant structures and land, referred the principle laid down by the Madras High Court in "***Ramaswamy Servai Vs Board of Commissioners for the Hindu Religious Endowments Madras***" (referred supra) and also another judgment of Apex Court in "***Zorastrian Cooperative Housing Society Limited and another v. District Registrar, Cooperative Societies (urban) and others***" (referred supra) to contend that there can be no objection to statutory interference to regulate the affairs of the temple, more particularly, to protect the

rights of religious denominations and such rules are passed to protect beliefs of Hindus and they are not violative of any fundamental right or statutory right of non-Hindus.

It is also contended that the rules framed by the Government is only subordinate legislation by exercising power under Section 153 of the Act 30 of 1987 and that the petitioners being non-Hindus are not entitled to participate in the auction being conducted for the purpose of granting license to carry on business in the immovable property belonging to the respondent No.3. Hence, the petition is not maintainable and prayed for dismissal of the petition.

During pendency of the petition, Sri A.Aravind Reddy filed petition to implead him as respondent No.4 to support the case of the respondent Nos.1 to 3 and he was permitted to come on record as per the orders dated 27.09.2019.

Sri M.Vidyasagar, learned counsel for the petitioners, contended that the G.O.Ms.No.426 Revenue (Endowments-I) Department, dated 09.11.2015 relates to grant of lease or license for occupation of premises belonging to respondent No.3 to carryon business, the amended rules impugned in this writ petition are infringing the fundamental right of the tenants in occupation, who are non-Hindus and such rules violate the fundamental right guaranteed under Article 14 and 15 of the Constitution of India, are arbitrary and illegal. It is also contended that the G.O.Ms.No.426 Revenue (Endowments-I) Department, dated 09.11.2015 is not in conformity with Section 82 of the Act 30 of 1987 and never override the very basic requirement of permitting the leases when the original statute does not incorporate any such condition which prohibits leases being given to non-Hindus, which is not specified under the

Act. Therefore, the rules as amended, impugned in the petition are contrary to the statutory provisions dealing with the leases and licenses of immovable property, belonging to the religious and charitable institution. Therefore, prohibiting non-Hindus from participating in public auction conducted by the institutions registered under the Provisions of the Act 30 of 1987 is discriminatory, without any reason and justification. It is further contended that when the amended rules impugned in this petition are prejudicial to the right of the petitioners to carry on their business, being the tenants in occupation of the property are contrary to the secular principle enunciated in the preamble of the Constitution of India and prays to declare the G.O.Ms.No.426 Revenue (Endowments-I) Department, dated 09.11.2015 issued by the respondent No.1 i.e. State of Andhra Pradesh which prohibits persons professing other than Hinduism as their religion from obtaining lease or license either through tender-cum-public auction or otherwise, as bad, illegal, arbitrary, opposed to law and violative of Article 14 and 15 of Constitution of India.

Learned Standing Counsel for respondent No.3 would contend that the rules which are impugned in this writ petition were framed by the competent authority exercising power under Section 153 of the Act 30 of 1987 with a view to protect the rights and sentiments of Hindus; that the rules framed for the benefit of religious denomination and the respondent No.3 is entitled to manage its affairs being religious institution and property in view of Article 26 (b) and (d) of the Constitution of India. As part of management or administration, the Government can have its control and pass such rules from time to time as to the management of religious institutions and property of such institutions. Therefore, rules

framed under the Act are not violative of any Constitutional or statutory provisions and they cannot be declared as arbitrary and illegal.

Learned counsel for respondent No.4 – devotee filed written submissions raising several contentions and his main contention is that the writ petition itself is not maintainable since the respondent No.3 would not fall within the definition of "State" under Article 12 of the Constitution of India, consequently, the writ petition is liable to be dismissed on this ground alone. He would draw the attention of this Court to Article 16 (5) of the Constitution of India and also drawn the attention of this Court to Section 19, 23, 29 and 19 (1) (j) of the Act 30 of 1987, which stipulates disqualification for appointment of any person as a trustee or executive officer or Commissioner etc., which clearly created a bar to appoint any person other than Hindu, to manage the affairs of Hindu religious institution or endowment and it is not discriminatory treatment of person based on religion.

He would contend that the role of the State in religious organization such as temples etc., under the provisions of the Act, is restricted to offering services and regulating the conduct of the secular affairs of the temples and religious institutions. Section 14 of the Act mandates that all properties of temples and religious institutions vests in the said temples and religious institutions only and these properties do not vest or belong to the State. Therefore, the State is unconcerned with the affairs of the religious institutions and its properties.

It is also contended that all temples and religious institutions are liable to pay contributions and audit fees to the Government under Section 65 of the Act and the same will be credited to the

endowments administration funds, created under Section 69 of the Act. The endowments administration fund vests in the Commissioner of Endowments (Section 69 (1)) is to be utilized by the Commissioner to pay the government as follows:

> "(3) The Commissioner shall out of the said Fund repay to the Government,—
>
> (i) the sums paid out of the Consolidated Fund of the State in the first instance towards the salaries, allowances, pension and other remuneration of persons appointed by the Government for rendering services under any of the provisions of this Act;
>
> (ii) any other expenditure incurred by the Government in the course of rendering services to and in connection with the administration of, the charitable or religious institution or endowment under the provisions of this Act;
>
> (iii) the loans received from the Government;
>
> (iv) the cost of publication of journals, manuals, descriptive accounts and other literature relating to Hindu religion or charitable or religion institutions or endowments;
>
> (v) the expenses of committees or sub-committees thereof constituted for any purpose of this Act by the Government or by any officer or authority subordinate to the Government and specifically authorized by them in this behalf.

Apart from the Endowment Administration fund, a common good fund is created under Section 70 of the Act. The Corpus of the fund, is created out of the payments made by the religious institutions and endowments and the said fund is to be used for purpose set out under Section 70 of the Act 30 of 1987, which is essentially religious in nature. Section 72 of the Act 30 of 1987 provides utilization of surplus funds for objects and purpose which is essentially religious in nature. Thus, the provisions of the Act would make it clear that the Government does not contribute a single paisa

towards any expenditure for any religious institutions or temples and in fact, the Government recovers money from the temples and religious institutions for the expenses that it may incur for offering services to the temples and religious institutions. In the absence of any contribution by the Government for the temples, Government is not competent to exercise its power in the affairs of temple including management of the property.

In "***the Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiyar of Sri Shirur Mutt***[3]" the Apex Court considered the issue as to contributions that are said to be levied in respect of the services rendered by the Government under Section 76 of the Madras Endowments Act and based on the principle laid down in the above judgment, he contended that the temple is not a "State" within the definition of State. Hence, the Court cannot exercise power of judicial review under Article 226 of the Constitution of India.

Learned counsel for the respondent No.4 also contended that the Commissioner of Endowments, respondent No.2 is competent to regulate the management of the property, State can frame certain rules in view of the power conferred under Section 153 of the Act 30 of 1987 and requested to dismiss the writ petition.

Considering the rival contentions and after perusing the material available on record, the points that arise for consideration are:

***(1) Whether the respondent No.3 is a "State" as defined under Article 12 of the Constitution of India?***

[3] AIR 1954 SC 282

***(2) Whether the shops and plots belonging to respondent No.3 – Hindu religious institution or endowment would form part of temple? If so, whether imposing restriction against the participation of Non-Hindus in tender process for grant of license to run business in immovable property belonging to Hindu religious institution is violative of Article 14 and 15 of the Constitution of India or any other fundamental right guaranteed under part III of the Constitution of India? If so, whether the G.O.Ms.No.426 Revenue (Endowments-I) Department, dated 09.11.2015 issued by the respondent No.1 i.e. State of Andhra Pradesh amending Rule 4 (2) and 18 of the Rules is liable to be declared as arbitrary, illegal and set aside?***

***P O I N T No.1***:

The main contention of the respondent No.4 - devotee is that the State has no control over the temple, nothing is contributed by the Government for the affairs and management of the respondent No.3 – temple, thereby the temple itself is a religious institution administered or managed by religious denomination i.e. collection of persons belonging to specific religion and the Government is not entitled to manage the affairs of the temple.

The word "State" is defined under Article 12 of the Constitution of India, as follows:

> *"12.Definition: In this part, unless the context otherwise requires, "the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."*

Respondent No.1 is the State exercising power under Section 153 of the Act 30 of 1987 framed the rules known as A.P. Charitable and Hindu Religious Institutions and Endowments Immovable

Properties and Other Rights (other than Agricultural Lands) Leases and Licenses Rules, 2003 and amended by G.O.Ms.No.426 Revenue (Endowments-I) Department, dated 09.11.2015.

The rules impugned are framed by the State to regulate the administration or management of Hindu Religious Institutions with an avowed object of protecting the rights of Hindus or persons, who are professing Hinduism or the persons, who developed faith in Hinduism. The persons, who professing Hinduism can manage the affairs of temple including management of religious institution and its properties in view of Article 26 (b) and (d) of the Constitution of India. However, the rules impugned in this writ petition are framed by the respondents i.e. State. In those circumstances, the contention that the temple would not fall within the definition of "State" as defined under Article 12 of the Constitution of India become insignificant, since the other respondent No.2 fall within the definition of "State" as defined under Article 12 of the Constitution of India and the respondent No.1 is State. Hence, we are of the considered view that this Court need not decide whether the respondent No.3 is a State within the definition of "State" under Article 12 of the Constitution of India, since, the dispute is with regard to the A.P. Charitable and Hindu Religious Institutions and Endowments Immovable Properties and Other Rights (other than Agricultural Lands) Leases and Licenses Rules, 2003, framed by the respondent No.1 exercising power under Section 153 of the Act 30 of 1987 as amended by G.O.Ms.No.426 Revenue (Endowments-I) Department, dated 09.11.2015. Accordingly, no finding is recorded on this point.

***P O I N T No.2***:

Before deciding the real controversy between the parties as to vires of provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Immovable Properties and Other Rights (other than Agricultural Lands) Leases and Licenses Rules, 2003, it is necessary to note the basic principles for interpretation of subordinate legislation.

The Apex Court in "***UCO Bank v. Rajinder Lal Capoor***[4]**"** considered the scope of interpretation of subordinate legislation and grounds for its invalidation, concluded that it is now a well-settled principle of interpretation of statutes that the court must give effect to the purport and object of the Act. Rule of purposive construction should, subject of course to the applicability of the other principles of interpretation, be made applicable in a case of this nature.

In "***State of T.N. v. P.Krishnamurthy***[5]",the Apex Court held as follows:

> "There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:
>
> (a) Lack of legislative competence to make the subordinate legislation.
>
> (b) Violation of fundamental rights guaranteed under the Constitution of India.
>
> (c) Violation of any provision of the Constitution of India.
>
> (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
>
> (e) Repugnancy to the laws of the land, that is, any enactment.
>
> (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)
>
> The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the

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[4] (2008)5 SCC 257
[5] AIR 2006 SC 1622

area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non- conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."

In "***State of Kerala v. Unni***[6]", the Apex Court is of the consistent view that when a subordinate legislation imposes conditions upon a licensee regulating the manner in which the trade is to be carried out, the same must be based on reasonable criteria. A person must have means to prevent commission of a crime by himself or by his employees. He must know where he stands. He must know to what extent or under what circumstances he is entitled to sell liquor. The statute in that sense must be definite and not vague. Where a statute is vague, the same is liable to be struck down.

In "***State of Rajasthan v. Basant Nahata***[7]" Section 22-A of the Registration Act, 1908 which was inserted by Rajasthan Amendment Act 16 of 1976 was struck down, holding:

(1) The executive while making a subordinate legislation should not be permitted to open new heads of public policy,
(2) the doctrine of public policy itself being uncertain cannot be a guideline for anything or cannot be said to be providing sufficient framework for the executive to work under it,
(3) Essential functions of the legislature cannot be delegated and it must be judged on the touchstone of Article 14 and Article 246 of the Constitution, and
(4) only the ancillary and procedural powers can be delegated and not the essential legislative point.

[6] AIR 2007 SC 819
[7] AIR 2005 SC 3401

In "***Supreme Court Employees' Welfare Association v. Union of India***[8]", the Apex Court held as under:

> "Thus as delegated legislation or a subordinate legislation must conform exactly to the power granted. So far as the question of grant of approval by the President of India under the proviso to Article 146(2) is concerned, no such conditions have been laid down to be fulfilled before the President of India grants or refuses to grant approval. By virtue of Article 74(1) of the Constitution, the President of India shall, in exercise of his functions, act in accordance with the advice of the Council of Ministers. In other words, it is the particular department in the Ministry that considers the question of approval under the proviso to Article 146(2) of the Constitution and whatever advice is given to the President of India in that regard, the President of India has to act in accordance with such advice. On the other hand, the Chief Justice of India has to apply his mind when he frames the rules under Article 146(2) with the assistance of his officers. In such circumstances, it would not be unreasonable to hold that the delegation of the legislative function on the Chief Justice of India and also on the President of India relating to the salaries, allowances, leave and pensions of the officers and servants of the Supreme Court involve, by necessary implication, the application of mind. So, not only that the Chief Justice of India has to apply his mind to the framing of rules, but also the government has to apply its mind to the question of approval of the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions. This condition should be fulfilled and should appear to have been so fulfilled from the records of both the government and the Chief Justice of India. The application of mind will include exchange of thoughts and views between the government and the Chief Justice of India and it is highly desirable that there should be a consensus between the two. The rules framed by the Chief Justice of India should normally be accepted by the government and the question of exchange of thoughts and views will arise only when the government is not in a position to accept the rules relating to salaries, allowances, leave or pensions."

While deciding the legality of subordinate legislation, the Court must keep in mind the above guidelines.

Before going to the main contention, it is necessary to decide who is Hindu and who is non-Hindu?

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[8] (1989) 4 SCC 187

The Act 30 of 1987 did not define the word "Hindu", but the Karnataka Act defined word "Hindu" and it is exclusive definition but not wide in its import.

Hindus (Hindustani) are persons who regard themselves as culturally, ethnically, or religiously adhering to aspects of Hinduism. Historically, the term has also been used as a geographical, cultural, and later religious identifier for people living in the Indian sub-continent. Person, who professes Hinduism is a Hindu. But in the present petition, all the petitioners are non-Hindus i.e. Muslim by religion. Therefore, it is an undisputed fact the petitioners are not Hindus.

The historical meaning of the term Hindu has evolved with time. Starting with the Persian and Greek references to the land of the Indus in the 1st millennium through the texts of the medieval era, the term Hindu implied a geographic, ethnic or cultural identifier for people living in the Indian subcontinent around or beyond the Sindhu (Indus) river. By the 16th century, the term began to refer to residents of the subcontinent who were not Turkic or Muslims.

The Apex Court while deciding the meaning of Hindu religious denomination in "***Bramchari Sidheswar Shai v. State of West Bengal***[9]" defined the word "religion" and based on the Oxford dictionary the word "denomination" is defined as collection of individuals classed together under the same religious sect or body having a common faith and organisation and designated by distinctive name and the Apex Court placed reliance on the judgment

[9] AIR 1995 SC 2089

in "***Shastri Yagnapurushdasji and Others v. Muldas Bhundardas Vaishya and another***[10]" and extracted paragraph Nos.27, 28, 29, 30 and 31 of the judgment, wherein the word "Hindu" is defined as follows:

> (27) Who are Hindus and what are the broad features of Hindu religion, that must be the first part of our enquiry in dealing with the present controversy between the parties. The historical and etymological genesis of the word 'Hindu' has given rise to a controversy amongst indo-logists; but the view generally accepted by scholars appears to be that the word 'Hindu' is derived from the river Sindhu otherwise known as Indus which flows from the Punjab. 'That part of the great Aryan race', says Monier Williams, 'which immigrated from Central Asia, through the mountain passes into India, settled first in the districts near the river Sindhu (now called the Indus). The Parisian pronounced this word Hindu and named their Aryan brethren Hindus. The Greeks, who probably gained their first ideas of India Persians, dropped the hard aspired, and called the Hindus 'Indoi'.
>
> (28) The Encyclopaedia of Religion and Ethics, Vol. VI, has described 'Hinduism' as the title applied to that form of religion which prevails among the vast majority of the present population of the Indian empire (p.686). As Dr. Radhakrishnan has observed: The Hindu civilization is so called, since its original founders or earliest followers occupied the territory drained by the Sindhu (the Indus) river system corresponding to the North-West Frontier Province and the Punjab. This is recorded in the Rig Veda, the oldest of the Vedas, the Hindu scriptures which give their name to this period of Indian history. The people on the Indian side of the Sindhu were called Hindu by the Persian and the later western invaders [The Hindu View of Life by Dr. Radhakrishnan, p.12]. That is the genesis of the word 'Hindu'.
>
> (29) When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more.
>
> (30) Confronted by this difficulty, Dr. Radhakrishnan realised that 'to many Hinduism seems to be a name without any content. Is it a museum of beliefs, a medley or rites, or a mere map, a geographical expression [The

[10] [1966]3 SCR 242

Hindu View of Life by Dr. Radhakrishnan, p.11]? Having poses these questions which disturbed foreigners when they think of Hinduism, Dr. Radhakrishnan has explained how Hinduism has steadily absorbed the customs and ideas of peoples with whom it has come into contact and has thus been able to maintain its supremacy and its youth. The term 'Hindu', according to do. Radhakrishnan, had originally the territorial and not a creedal significance. It implied residence in a well defined geographical area. Aboriginal tribes, savage and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother. The Hindu thinkers reckoned with the striking fact that the men and women dwelling in India belonged to different communities, worshiped different gods, and practised different rites [The Hindu View of Life by Dr. Radhakrishnan, p.12](Kurma Purana).

(31) Monier Williams has observed that 'it must be borne in mind that Hinduism is far more than a mere form of theism resting on Brahmanism. It presents for our investigation a complex congeries of creeds and doctrines which in its gradual accumulation may be compared to the gathering together of the mighty volume of the Garden swollen by a continual influx of tributary rivers and rivulets, spreading itself over an ever-increasing areas of country, and finally resolving itself into an intricate Delta of tortuous streams and jungly marshes..... The Hindu religion is a reflection of the composite character of the Hindus, who are not one people but many. It is based on the idea of universal receptivity. It has ever aimed at accommodating itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested, and assimilated something from all creeds [Religious Thought & Life in India by Monier Williams, p.57].'

Here, the petitioners are non-Hindus admittedly applying the definition of Hindu, debarred from participating in the public auction of shops belonging to respondent No.3 – temple, and the rules imposing such restriction are impugned in this petition.

At this stage, it is relevant to advert to definition of Temple as defined in Section 2 (1) of the Andhra Pradesh (Andhra Area) Temple Entry Authorization Act, 1947 (for short “Act 5 of 1947”) to decide whether the immovable property belonging to the temple other than agricultural lands forms part of temple.

Section 2 (1) of the Andhra Pradesh (Andhra Area) Temple Entry Authorization Act, 1947 defined "temple" and it means a place, by whatever name known, which is dedicated to or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of public religious worship, and includes subsidiary shrines and mantapams attached to such place.

At the same time, Section 2 (27) of the Act 30 of 1987 defined the word "temple", as follows:

> (27) Temple means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by the Hindu community or any section thereof; as a place of public religious worship and includes sub-shrines, utsava, mandapas, tanks and other necessary appurtenant structures and land;
>
> Explanation:— A place of worship where the public or a section thereof have unrestricted access or declared as a private place of worship by court or other authority but notwithstanding any such declaration, public or a section thereof has unrestricted access to such place and includes a temple which is maintained within the residential premises, if offerings or gifts are received by the person managing the temple from the public or a section thereof at the time of worship

The definition of "temple" under Section 2 (27) of the Act 30 of 1987 is more exhaustive than the definition of temple under the Act 05 of 1947. The words "appurtenant structures and land" at the end of the definition was not included in the definition of temple under Section 2 (1) of the Act 05 of 1947. Therefore, in view of the definition of temple under Section 2 (27) of the Act 30 of 1987 the word "appurtenant structures" includes sub-shrines, utsava, mandapas, tanks where the Hindu community or section using the same for religious public worship. The shops, plots in dispute are part and parcel of appurtenant structures and site of Kshetram. Therefore, the shops and plots where petitioners are carrying on business obtaining

lease or license forms part of temple i.e. Hindu Religious temple belonging to Hindu denomination, administered by trust board consisting of Hindus only and managed by representatives of the Government i.e. Commissioner, Executive Officer, who are Hindus only. Therefore, the temple is totally governed by the provisions of the Act 30 of 1987 and rules framed thereunder.

The petitioners do not fall within the meaning of "Hindu" as per the judgment in "***Shastri Yagnapurushdasji and Others v. Muldas Bhundardas Vaishya and another***" (referred supra). The temple is governed by Act 30 of 1987. According to Section 153 (1) of the Act 30 of 1987, the Government is empowered to issue any notification in Andhra Pradesh Gazette and make rules for carrying out all or any of the purposes of this Act.

The word "***may make rules for carrying out all or any of the purposes of the Act***" gained importance in this perspective, since, Section 82 of the Act 30 of 1987 deals with Lease of Agricultural Lands. In the present case, this Court is concerned with clause (4) of Section 82 of the Act 30 of 1987, which relates to grant of lease or licence of any immovable property, other than the agricultural land belonging to, or given or endowed for the purpose of any charitable or religious institution or endowment subsisting on the date of commencement of Act, subject to the rules prescribed under the Act.

To grant lease or licence to carry on business in the properties belonging to the temple, Government is competent to frame appropriate rules. Therefore, State notified rules known as Andhra Pradesh Charitable and Hindu Religious Institutions and

Endowments Immovable Properties and Other Rights (other than Agricultural Lands) Leases and Licenses Rules 2003 by G.O.Ms.No.866, Revenue (Endowments-I) Department, dated 08.08.2003. Later, certain amendments are notified in Gazette publication, which are impugned in the present writ petition, since those rules debarring non-Hindus to participate in the auction or tender process for obtaining lease or license of immovable property belonging to the Hindu religious and charitable endowments.

Undisputedly, respondent No.3 is a Hindu temple owning several properties including shops, which are occupied by the petitioners as tenants, but on account of expiry of lease period and after introduction of the amendment to the Rules, 2003, temple authorities proposed to auction the right to enjoy the immovable property by obtaining license from the temple and issued notification, at that stage, the petitioners approached this Court on the ground that the proposed amendment debarring the petitioners, being non-Hindus from participating in the tender process to obtain license to occupy shop premises or plots belonging to the respondent No.3 to carry on business, on the ground that it amounts to discrimination of citizens of India based on their religion though they are entitled to equal protection of laws, thereby such rules are hit by Article 14 and 15 of the Constitution of India.

At this stage, it is relevant to mention few provisions of the Andhra Pradesh (Andhra Area) Temple Entry Authorization Act, 1947.

Section 4 of the Andhra Pradesh (Andhra Area) Temple Entry Authorization Act, 1947 conferred power on trustees to make

regulations for the maintenance of order, decency, decorum and the due performance of rites and ceremonies in temples. It is apposite to extract the said provision for better appreciation, accordingly it is extracted hereunder.

> *"The trustee or other authority in charge of a temple shall have power, subject to the control of the State Government and to any rules which may be made by them, to make regulations for the maintenance of order and decorum in the temple and the due observance of the religious rites and ceremonies performed in the temple, but such regulations shall not discriminate in any way against any Hindu on the ground that he belongs to a particular caste or sect."*

The said Act was enacted only to permit every Hindu to enter into the temple to worship deity offer prayers irrespective of caste and sect, to which he belongs to. Therefore, the said Act is intended to permit every Hindu to enter into the temple to offer prayers to the deity in the temple while enabling the trustee or competent authority to make necessary regulations to maintain decency and decorum of the temple. But here the rules were framed by the Government and amended, which are impugned in this petition.

The main thrust in the argument of the learned counsel for the petitioners Sri M.Vidyasagar is that debarring non-Hindus from participating in auction or tender process to obtain lease or license is hit by Article 14 of the Constitution of India.

Article 14 of the Constitution of the India deals with fundamental right of equality before law, and the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The basis for challenge in this petition is that the petitioners being non-Hindus are debarred from carrying on business in the

premises belonging to the respondent No.3, which is religious institution being managed by Hindu religious denomination. However, time and again, the Apex Court and other Courts had an occasion to deal with the similar contentions while interpreting Article 14 of the Constitution of India and carved out certain exceptions.

Turning to Article 14 of the Constitution of India, right to equality is recognized as fundamental right, but it is subject to certain limitations. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. It would be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages. Hence, the Act singling out the religious and charitable institutions and endowments of Hindu religion, which is the major religion of the country, leaving out such institutions and endowments of other religions for the purpose of regulating their administration is not violative of Articles 14, 15 (1) and 25 of the Constitution of India. (Vide: ***Pannalal Bansilal Pitti v. State of A.P***.[11]")

The principle does not take away from the State, the power of classifying persons for legitimate purposes. The legislature is competent to exercise its discretion and make classification (Vide: "***Anukul Chandra Pradhan v. Union of India***[12]". Differential

[11] AIR 1996 SC 1023
[12] (1997) 6 SCC 1

treatment does not per se constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for the differentiation. If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons (Vide: "***State of Bombay v. Balsara F.N.***[13]"

Reasonableness for such distinction or classification of different persons depends upon various factors and they vary from group to group or person to person and what classification is reasonable and what is not reasonable depends upon the facts of each case. For the purpose of application of Article 14 of the Constitution of India, laws made by different Legislatures cannot be taken together for the purpose of comparison or contract to show that the provisions of the one are discriminatory when read with the provisions of the other. Each law must be dealt with specifically. When the same Legislature enacts a number of connected laws, their combined operation may be taken into consideration for determining whether the provisions of any one of them are discriminatory. But the same process cannot be applied where similar laws on the same subject are enacted by different Legislatures. To treat the classification as permissible classification or reasonable classification, it must pass the test satisfying two conditions (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a

[13] AIR 1951 SC 318

rational relation to the object sought to be achieved by the statute in question. (Vide: ***Budhan Choudhry v. State of Bihar***[14]")

Classification must have a reasonable basis. But it is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases. It depends on the objects of the legislation in view and whatever has a reasonable relation to the object or purpose of the legislation is a reasonable basis for classification of the object coming under the purview of the enactment. Thus;

***(a) the basis of classification may be geographical provided there is a nexus between the territorial basis of the classification and the object sought to be achieved by the Act***

***(b) The justification for classification may be historical.***

***(c) The classification may be according to difference in time .***

***(d) Age may form a rational basis in relation to the object of particular subjects of legislation. Thus persons who have not attained majority may be incapacitated from entering into contracts.***

***(e) The classification may be based on the difference in the nature of the persons, trade, calling or occupation, which is sought to be regulated by the legislation e.g. admission to an educational institution.***

***(f) Limiting the benefit of exemption on the basis of old and new industrial units by fixing a cut-off date has good reasons.***

***(g) Classification should be based upon empirical study or survey conducted by the State. It should be based on scientific study and collection of relevant data.***

While considering any rule or provision on the ground of violation of fundamental right, the Court must keep in mind whether there is any basis for reasonable classification.

When a reasonable classification is permissible under Article 14 of the Constitution of India, debarring non-Hindus from

[14] 1955 (1) SCR 1045

participation in the auction or otherwise for obtaining lease to carry-on business in the shops is permissible classification since the premises, for which the proposed license to be granted would fall within the definition of temple as defined in Section 2 (27) of the Act 30 of 1987. Moreover, the alleged acts of non-Hindus would cause serious inconvenience to worship deity by Hindus, as such to protect the interest of Hindu worshippers of deity and to avoid any amount of inconvenience or any prejudice to their interest; the State issued such rules inconsonance with the Act itself. The State exercised its power under Section 153 of the Act 30 of 1987, therefore, it is difficult to hold that the rules are discriminatory and it is purely religious matter. Hence, we find no force in the argument of the learned counsel for the petitioners and the same is hereby rejected.

In view of our foregoing discussion, we are of the confirmed view that such discrimination permitting Hindus only, debarring non-Hindus to participate in the auction of leasehold rights or license in respect of the shops and plots belonging to the respondent No.3 does not amount to violation of fundamental right guaranteed under Article 14 of the Constitution of India.

The other contention raised before us is that discriminating the petitioners on the ground of religion is hit by Article 15 of the Constitution of India.

Article 15 of the Constitution of India prohibits discrimination on the grounds of religion, race, caste, sex or place of birth and no citizen shall, on the ground of religion, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment, or the

use of wells, tanks, bathing ghats, roads and places of pubic resort maintained wholly or partly out of State funds or dedicated to the use of general public subject to certain exceptions contained in Article 15 of the Constitution of India.

No doubt, certain exceptions are carved to clause (1) and (2) of Article 15 of the Constitution of India, but debarring non-Hindus to participate in tender process or auction for grant of license to carryon business in the shops and plots belonging to the temple does not amount to discriminating the petitioners on the ground of religion, for the simple reason that Article 25 of the Constitution of India guarantees freedom of conscience and free profession, practice and propagation of religion, subject to public order, morality and health and other provisions of part III of the Constitution of India and all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. Sub-clause (b) of clause (2) of Article 25 of the Constitution of India is an exception to clause (1) and as per the said exception, the State can make certain laws providing social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Therefore, the subordinate legislation notified by the Government would fall within the Article 25 (2) (b) of the Constitution of India, but it is always subject to public order, morality and health.

In the case on hand, on account of acts of occupants of the shops, who are non-Hindus, there is a possibility of disturbing public order. Apart from that distribution of beef, mutton and other non-vegetarian or at least eating non-vegetarian in the temple premises would certainly against the morality of the Hindu worshippers.

Therefore, the acts of the petitioners complained by respondent No.3 infringe the rights of Hindu worshippers of deity and to avoid such disturbance of public order, the rules are framed, and that too temple is the sole owner of the property and that was not vested in the Government. Moreover, temple itself is not a State, thereby the petitioners are not entitled to claim any right in the property of an individual on the ground of violation of Article 14 or 15 of the Constitution of India, since, the temple being an institution of Hindu denomination; acquisition and administration of property by respondent No.3 is fundamental right guaranteed under Article 26 (b) and (d) of the Constitution of India. Therefore, the respondent No.3 can manage its property as they like for the benefit of religious denomination. Consequently, imposing restriction on participation of non-Hindus in tender process or otherwise to obtain shops on lease or license does not amount to infringement of fundamental right guaranteed under Article 14 and 15 of the Constitution of India, since, it is based on rationale and reasonable discrimination supported by reason.

At the same time, Article 26 of the Constitution of India guarantees fundamental right of freedom to administer religious affairs subject to public order, morality and health, and every religious denomination or any section thereof shall have the right 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.

The shops and plots belonging to the respondent No.3 is the property acquired by the religious denomination and the institution

is entitled to administer such property in accordance with law, vide Article 26 of the Constitution of India. Since the respondent No.3 is religious institution of Hindu religious denomination and the shops or plots, which are occupied by the petitioners forms part of temple as defined in clause (27) of Section 2 of the Act 30 of 1987 and in view of the legislation, temple can manage its property in accordance with law. Therefore, restricting non-Hindus to participate in the auction etc. is in accordance with the Article 26 (b) and (d) of the Constitution of India.

Article 25 deals with freedom of conscience and free profession, practice and propagation and it is extracted hereunder for better appreciation

> "*Article 25: Freedom of conscience and free profession, practice and propagation of religion:*
>
> *(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion*
>
> *(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law*
>
> *(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;*
>
> *(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.*
>
> *Explanation I. The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.*
>
> *Explanation II. In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."*

The protection guaranteed by Article 25 of the Constitution of India is not confined to matters of doctrine of belief but extends to acts done in pursuance of religion and, therefore contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. Freedom of conscience and free profession, practice and propagation of religion is part of Part III, which deals with fundamental rights, that guarantees every person in India shall have the freedom of conscience and shall have the right to profess, practice and propagate religion, subject to restrictions imposed by the State on the ground of public order, morality and health; other provisions of the Constitution; regulation of non-religious activity associated with religious practice; social welfare and reform; throwing open of Hindu religious institutions of a public character to all classes of Hindus. Since the freedom belongs to every person, the freedom of one cannot encroach upon a similar freedom belonging to other persons. However, subject to the restrictions stated above, every person in India can exercise such freedom of religion to practice or profess or protect any religion as guaranteed under Article 25 of the Constitution of India. Thus, the fundamental right guaranteed under Article 25 of Constitution of India is hedged by few exceptions stated above, more particularly, public order, morality and health. What is “public order” is not defined under the Constitution. But the Apex Court in various judgments defined what is “public order”. Expression “Public Order” has a distinct Connotation. Public order, has a comprehensive meaning so as to include public safety in its relation to the maintenance of public order and maintenance of public order involves consideration of public safety. They are closely allied

concepts (Vide: "***Revana Siddaiah v. State of Mysore***[15]").

At the same time, according to Article 25 of the Constitution of India the freedom of conscience and free profession, practice and propagation of religion is religious matter, but not secular matter. If it is secular matter, it would not fall within Article 25 of the Constitution of India. What is secular matter and what is religious matter, depends upon the facts of each case. For the first time, the Apex Court in "***Commissioner of Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Shirur Mutt***" (referred supra) defined what is "religion" and what is "religious" and drawn the distinction between "religious matter" and "secular matter" holding as follows:

> *"Religion is a matter of faith with individuals or communities and it is not necessarily theistic. A religion may hot only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.*
>
> *The guarantee under the Constitution of India not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression 'practice of religion' in Article 25.*
>
> *What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these will be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities will not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b)."*

[15] (1952) Cr LJ 1526

The Supreme Court again in "***His Holiness Srimad Perarulala Ethiraja Ramanuja Jeer Swami etc. v. State of Tamil Nadu***[16]" re-stated the position by quoting the summarised portion of law, as was done in "***Sardar Syeda Taker Saifuddin Saheb v. State of Bombay***[17]"

> *"The content of Articles 25 and 26 of the Constitution came up for consideration before this Court in the "**Commissioner of Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar**", (referred supra) "**Sri Jagannath Ramanuj Das and Anr. v. State of Orissa and Anr**.[18]", "**Durgah Committee, Ajmer v. Syed Hussain Ali**[19]", and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine of belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. The second is that what constitutes an essential part of a religion or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."*

In view of the law declared by various Courts referred supra, temples are bound to maintain certain principles of Agamasastra, thereby imposed restrictions on propagation of other religions within temple area. Smoking, distribution of beef or any other non vegetarian food in temple premises is also prohibited, included temple area. But the incidents narrated in the counter filed by the respondents about the indulgence of petitioners in several activities like distribution of mutton, beef and celebration of muslim festivals (referred above) is against the principles of Agamasastra, prejudicial to sentiments of pilgrims who visit temple – respondent No.3, belonging to religious denomination.

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[16] [1972] 3 SCR 815
[17] AIR 1962 SC 853
18 [1954] 1 SCR 1046
19 [1962] 1 SCR 383

Coming to the other aspect of public order and morality; when the Hindus are offering prayers in the temples, Muslims allegedly indulging in distribution of beef and mutton in the temple premises, will seriously affect the religious beliefs of Hindus and it is contrary to the principles of Agamasastra. If such practice is permitted, there is a possibility of creating law and order problem on account of religious ill-feelings, it may cause disturbance to the public order and morality.

What is public order within Article 25 of Constitution of India is discussed in "***Municipal Corporation of the City of Ahmedabad v. Jan Mohammed UsmanBhai***[20]" held as follows:

> Clause (6) of Article 19 protects a law which imposes in the interest of general public reasonable restrictions on the exercise of the right conferred by Sub-clause (g) of Clause (1) of Article 19. Obviously it is left to the court in case of a dispute to determine the reasonableness of the restrictions imposed by the law. In determining that question the court cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. The right conferred by Sub-clause (g) is expressed in general language and if there had been no qualifying provision like Clause (6) the right so conferred would have been an absolute one. To the persons who have this right any restriction will be irksome and may well be regarded by them as unreasonable. But the question cannot be decided on that basis. What the Court has to do is to consider whether the restrictions imposed are reasonable in the interest of general public. In "***State of Madras v. V.G. Row***[21]" this Court laid down the test of reasonableness in the following terms :
>
> > It is important in this context to bear in mind that the test of reasonableness, where ever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.

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[20] (1986) 3 SCC 20
[21] 1952CriLJ966

> The tests of reasonableness have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and in judging their validity, courts must approach the problem from the point of view of furthering the social interest which it is the purpose of the legislation to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law, to solve its problems and furthering the moral and material progress of the community as a whole. (See: ***Joti Prasad v. Union Territory of Delhi***[22]) If the expression 'in the interest of general public' is of wide import comprising public order, public security and public morals, it cannot be said that the standing orders closing the slaughter houses on seven days is not in the interest of general public.

In view of concept of public order, morality and health, to prevent the disturbance which is likely to be caused on account of permitting non-Hindus to participate in the auction, the Government can impose such restrictions. Hence, imposition of such restrictions debarring non-Hindus from participating in auction are based on limitations under Articles 25 and 26 of Constitution of India.

If Articles 14, 15, 25 and 26 are read together, when the religious institution – respondent No.3 is permitted to acquire movable and immovable property and manage the property in accordance with law, while permitting Hindus to propagate their religion in view of Article 25 (2) (b) of the Constitution of India, the same is subject to public order, morality and health. Imposing such restriction is not violative of Article 15 of the Constitution of India on the basis of religion, since Article 26 is an exception to Article 15 of the Constitution of India in relation to religious rights, in such case, rules impugned in the petition cannot be held to be arbitrary, unconstitutional and illegal.

When rule or legislation is passed, the validity of such rule is to be determined by the Court if it is challenged before the Court.

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[22] 1961 S.C.R. 1601

Normally, the test laid down to decide such issue is - whether the legislature has got power to enact such law or whether such enactment or rule infringes any fundamental right guaranteed under Constitution of India or any statutory right of a citizen.

Applying the necessary tests for deciding the validity of the rules in the present case, only ground urged before this Court is violation of fundamental right guaranteed under Article 14 and 15 of the Constitution of India and not legislative competency to enact such rules.

As discussed above, the amended rules impugned in the writ petition are not infringing the fundamental right guaranteed under part-III of the Constitution of India, it protects the right of Hindu religious denomination to administer their property in accordance with law. Temple is the owner of the property, it is not a State, and can manage its affairs like any other owner of the property though it is governed by the Act 30 of 1987 in view of the fundamental right guaranteed under Article 26 (b) and (d) of the Constitution of India since the word 'administer' includes the management of the temple.

An identical issue with regard to appointment of members of the Board of Hindu Charitable Institution disqualifying non-Hindus came up for consideration before the Apex Court in "***M.P.Gopalakrishnan Nair v. State of Kerala***[23]". The Supreme Court after elaborate consideration of various statutory provisions of Guruvayoor Devaswom Act, 1978 held that such restriction is valid. Section 2 (c) of the above Act defined the word "committee". Section 3 thereof defined the word "temple", which includes its properties and

[23] AIR 2005 SC 3053

endowments and the subordinate temples attached to it. Sub-section (2) of Section 4 of the 1978 Act provides for disqualification for being nominated under Clause (e) of Sub-section (1) of Section 4 if:

> "(i) he believes in the practice of untouchability or does not profess the Hindu Religion or believe in temple worship; or
>
> (ii) he is an employee under the Government or the Devaswom; or
>
> (iii) he is below thirty years of age; or
>
> (iv) he is engaged in any subsisting contract with the Devaswom; or
>
> (v) he is subject to any of the disqualifications mentioned in Clauses (a), (b) and (c) of Sub-section (3) of Section 5. "

Sub-section (3) of Section 4 of the 1978 Act provides for election of one of its members by the members of the Committee as its Chairman at its first meeting. Sub-section (4) of Section 4 enjoins every member of the Committee to make and subscribe an oath in the presence of the Commissioner in the following form, that is to say -

> "I, A B, do swear in the name of God that I profess the Hindu Religion and believe in temple worship and that I do not believe in the practice of un-touchability."

The members, who are not professing Hinduism and not believing in temple worship, are disqualified to be appointed as members of the committee. The Apex Court adverted to Articles 25 and 26 of the Constitution of India and drawn distinction between secular matters and religious matters, held that The management or administration of a temple partakes to a secular character as opposed to the religious aspect of the matter. The 1978 Act segregates the religious matters with secular matters. So far as, religious matters are concerned, the same have entirely been left in the hands of the 'Thanthri'. He is the alter ego of the deity. He gives mool mantra to the priests. He holds a special status. He prescribes

the rituals. He is the only person who can touch the deity and enter the sanctum sanctorum. He is the final authority in religious matters where for a legal fiction has been created in Section 35 of the Act in terms whereof the Committee or the Commissioner or the Government is expressly prohibited from interfering with the religious or spiritual matters pertaining to Devaswom. His decision on all religious, spiritual ritual or ceremonial matters pertaining to Devaswom is final unless the same violates any provision contained in any law for the time being in force. The impugned provisions of the Act must be construed having regard to the said factor in mind. By reason of Section 4(1) of the 1978 Act, the Committee will consist of nine members. The nomination of one person from the Council of Ministers as a representative of the employees of the Devaswom and five persons, one of whom shall be a member of a Scheduled Caste, are required to be nominated by the Hindus among the Council of Ministers from amongst the persons having interest in the temple. The area within which such nomination can be made by the Hindus amongst the Council of Minister is, thus, limited.

In "***M.P.Gopalakrishnan Nair v. State of Kerala***" (referred supra) the Apex Court also adverted to the definition of Hindu in "***Shastri Yagnapurushdas ji v. Muldas Bhundardas Vaishya***" (referred supra) and "***Krishnan v. Guruvayoor Devaswom Managing Committee***[24]" and held as follows:

> "From its provisions it is clear that the Act has ensured that only persons who believe in temple worship are to be in the management of the temple. The Act has further ensured that none except the Thanthri gets any voice in the spiritual administration of the temple and that his voice atone will prevail in such matters. The practice of religion by the denomination

[24] 1979 KLT 350

including customs, practices and rituals is, therefore, preserved in its entirety and there is no tampering therewith in any manner whatsoever.

It is not clear how Vesting of such a right on the Hindus in the Council of Ministers can effect their denominational rights when the members of the Managing Committee, the Commissioner and the Administrator have all got to be believers in temple worship. To insist on such a qualification in the electorate will be as bad saying that when the law relating to a temple is under consideration in the legislature, only Hindu legislators can vote and they must further be qualified as believers in temple worship.

It is expected that the action of such a body would be bona fide and reasonable. Once a committee is constituted which would be representing the denomination, in our opinion, it would be not be correct to contend that even the authority empowered to nominate must also be representative of the denomination.

Indisputably the State has the requisite jurisdiction to oversee the administration of a temple subject to Articles 25 and 26 of the Constitution of India. The grievance as regard the violation of the constitutional right as enshrined under Articles 25 and 26 of the Constitution of India must be considered having regard to the object and purport of the Act. For fulfilling the said requirements, the denomination must have been enjoying the right to manage the properties endowed in favour of the institutions. If the right to administer the properties never vested in the denomination, the protection under Article 26 of the Constitution of India is not available.

In the said case, the High Court in its impugned judgment has arrived at a finding as regard categorical existence of a subsisting religious practice that as on the date of coming into force of the Constitution of India it has not been established that the denomination of temple worshippers had any right to be on the management committee or the members of such a committee were being elected/nominated by an electoral college consisting exclusively of members of such denomination. Nothing has been pointed out before us to show that such a finding is contrary to the materials on records.

In "***M.P.Gopalakrishnan Nair v. State of Kerala***" (referred supra) the Apex Court further held as follows:

"The freedom guaranteed under Article 25 of the Constitution is not an unconditional one. A distinction exists between the matters of religion, on the one hand, and holding and management of properties by religious institutions, on the other. What is necessary to be considered for determining the issue is as to whether by reason of the impugned Act the administration of the institution had been taken from the hands of the religious denomination and vested in another body. If the answer to the said question is rendered in the negative, attack to the constitutionality of the Act would not survive.

Furthermore, it is permissible for a legislature to take over the management of the temple from the control of a person and vest the same in a Committee of which he would remain the Chairman. [See Raja Bira Kishore Deb, hereditary Superintendent Jagannath Temple P.O. and District Puri v. The State of Orissa [1964]7SCR32]

It is also now trite that although State cannot interfere with the freedom of a person to profess, practise and propagate his religion, the secular matters connected therewith can be the subject matter of control by the State. The management of the temple primarily is a secular act. The temple authority controls the activities of various servants of the temple. It manages several institutions including educational institutions pertaining to it. The disciplinary power over the servants of the temple, including the priest may vest in a committee. The payment of remuneration to the temple servants was also not a religious act but was of purely secular in nature. [See Shri Jagannath Temple Pun Management Committee represented through its Administrator and Anr. v. Chintamani Khuntia and Ors. (1997)8SCC422, Pannalal Bansilal Pitti and Ors. v. State of A.P. and Anr. [1996]1SCR603 and Bhun Nath and Ors. v. State of J&K and Ors. [1997]1SCR138].

State of Rajasthan and Ors. v. Shri Sajanlal Panjawat and Ors. [1974]2SCR741 relied upon by Mr. Menon was also a case where the statute enabled the Government to appoint a committee of management. The provision was upheld. When the Government in terms of a statute is entitled to appoint a management committee for the temple, without violating the constitutional provisions, the more remote aspect of the mode of nomination of the members of the Managing Committee cannot be said to constitute violation of any constitutional mandate.

Yet again in Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Ors. v. State of U.P. and ors. [1997]2SCR1086, this Court held:

"31... It is a well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation..."

(See also N. Adithayan v. Travancore Devaswom Board and Ors. [2002]SUPP3SCR76 )

Recently in Guruvayoor Devaswom Managing Committee and Anr. v. C.K. Rajan and Ors. (2003)7SCC546, a bench of this Court of which one of us (S.B. Sinha, J.) was a member observed:

"60. It is possible to contend that the Hindus in general and the devotees visiting the temple in particular are interested in proper management of the temple at the hands of the statutory functionaries. That may be so but the Act is a self-contained code. Duties and functions are prescribed in the Act and the Rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance. The State should be asked to look into the grievances of the aggrieved devotees, both as parens patriae as also in discharge of its statutory duties."

The decision of the Kerala High Court in Krishnan v. Guruvayoor Devaswom Managing Committee [referred supra] did not lay down any proposition of law that the person authorized to nominate the persons of the Managing Committee should also form part of the denomination. With respect the Full Bench in Narayanan Namboodiri v. State of Kerala (AIR1985Ker160) misread and misinterpreted Krishnan (supra). Even assuming that the decision in Narayanan Namboodiri (supra) is correct (which it is not) it is not proper or correct to brand all Ministers of leftist Government as persons not believing in temple worship. There is no presumption that a Communist or Socialist (who may normally form part of a leftist Council of Ministers) are ipso facto non believers in god or in temple worship. Such a sweeping allegation or premise on which the prayer is based need not be correct. It depends on each individual approach. The observations in a judgment should not be, it is trite, read as a ratio. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom. [See Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr. - para 42 - (2005) 1 SCALE 385 and Haryana State Coop. Land Dev. Bank v. Neelam (2005)ILLJ1153SC]"

In "***Muraleedharan Nair v. State of Kerala***[25]", the Bench was concerned with the interpretation of Sections 4 and 6 of the Hindu Religious Institutions Act, 1950. In that case for the purpose of contesting in election, the candidate in the nomination paper itself was required to comply with Rule 3(b) mentioned in the Scheduled II which reads, thus:

[25] 1990 (1) KLT 874

"3(b) The person nominated shall affix his signature to the nomination paper before it is delivered to the Chairman, slating that he believes in God and professes the Hindu Religion and believes in temple worship and that he is willing to serve as a member of the Board, if elected."

The crucial question addressed by the Apex Court is “whether the vesting of power in the "Hindus" in the Council of Ministers to nominate the members of the Managing Committee could be held to violate Articles 25 and 26.” The temple is being visited by millions every year. Apart from proper management of the funds flowing from these devotees, the Devaswom also owns other properties, runs a college, a guest house, choultries etc., all of which require efficient and prompt management. This is quite apart from the spiritual management dealing with religious side which is under the sole control management and guidance of the Thanthri. It is the secular aspect of the management that is vested in the Management Committee. Therefore, imposition of such condition is not violative of any constitutional right and dismissed the appeals.

In the present case, on account of permitting non-Hindus to carry on business, more particularly, the petitioners, who belong to Muslim religion, may pollute sacred sentiments on account of their acts like distribution of mutton, beef and offering religious prayers of Muslims in Hindu temple etc. To prevent such pollution of Hindu sentiments, State enacted those rules with an avowed object to protect the interest of religious institutions managed by religious denomination.

In view of the definition of temple under Section 2 (27) of the Act 30 of 1987, which includes sub-shrines, utsava mandapas, tanks and other necessary appurtenant structures open for religious worship, but allowing non-Hindus to enter such religious premises

exclusively meant for Hindus may violate their right to worship the deity in the temple on account of the conduct of non-Hindus. When the religious denomination is entitled to manage or administer the property under Article 26 (b) and (d) of the Constitution of India, enactment of such rules impugned in the writ petition debarring the petitioners from participating in auction cannot be held to be violative of fundamental right under Constitution of India.

In "***Force 1 Guarding Services Pvt. Ltd. v. the State of Tamilnadu (W.P.No.20024 of 2011)***" the Madras High Court dealt with a question whether non-Hindu organisation is entitled to participate in the auction inviting tender by the respondent No.3 – Arulmigu Subramaniya Swami Thirukoil. In the said case, the petitioner – company was disqualified to participate in the auction.

The petitioner is a company being run by Christian religious person, who used to provide security personnel in the temple to render their services on payment of salary on outsourcing basis. But a condition was imposed that non-Hindus are not entitled to participate in the bid. The said condition was challenged before the Court while contending that Regional Manager of the company is a Hindu and the company providing only Hindu security guards (60 in number) to work in the temple, thereby imposition of such condition is violative of Article 14, 15, 16, 25 and 26 of the Constitution of India, but the learned Single Judge of Madras High Court upheld the condition holding that the temple is not a Government and the temple can manage its affairs and its administration, hence debarring non-Hindus from participating in auction for providing security in the temple and not violative of fundamental right guaranteed under the Constitution of India.

Considering the principles laid down in the above judgments including the judgments of Apex Court in "***M.P.Gopalakrishnan Nair v. State of Kerala***" (referred above) where non-Hindus are debarred for being elected as member of Trust Board and the Madras High Court judgment in "Force 1 Guarding Services Pvt. Ltd. v. the State of Tamilnadu (W.P.No.20024 of 2011)", wherein non-Hindus debarred from participating in tender process for providing security guards to the temple.

Similarly, Act 30 of 1987 itself provides certain provisions debarring non-Hindus for being appointed as members of Trust Board, employees or Commissioner etc., under Sections 19 and 20 of the Act. When Section 153 of the Act 30 of 1987 permits the Government to frame rules and regulations with regard to any matters covered by the Act, the rules framed by the Government, which are impugned in the writ petition debarring non-Hindus from participating in auction is not violative of Articles 14, 15, 26 and 26 of the Constitution of India.

Based on the principles laid down by the Apex Court in "***M.P.Gopalakrishnan Nair v. State of Kerala***" (referred above) and the Madras High Court judgment in "Force 1 Guarding Services Pvt. Ltd. v. the State of Tamilnadu (W.P.No.20024 of 2011)", "***Muraleedharan Nair v. State of Kerala***" and "***Narayanan Namboodiri v. State of Kerala***" (referred supra), we hold that the amended rules are not violative of any fundamental right guaranteed under the Constitution of India or any statutory right and the amended rules are valid. Consequently, the writ petition is liable to be dismissed.

In the result, the Writ Petition No.40252 of 2015 is dismissed. No costs.

**W.P.Nos.40704 of 2015, 20913 of 2018 and 10855 of 2019**:

In view of the detailed order passed in Writ Petition No.40252 of 2015, these writ petitions are also dismissed. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

**ACTING CHIEF JUSTICE C. PRAVEEN KUMAR**

**JUSTICE M. SATYANARAYANA MURTHY**

27.09.2019
Ksp