H. H. Shri Swamiji of Shri Amar Mutt and Others

Vs

Commissioner, Hindu Religious and Charitable Endowments Department and Others

And

Bhandarikeri Mutt and Others

Vs

State of Mysore and Another

Civil Appeals Nos. 1445-1448 and 1720-A-1722 of 1968

(V. R. Krishna Iyer, R. S. Pathak, E. S. Venkataramiah JJ)

27.08.1979

JUDGMENT

CHANDRACHUD, C.J. (For Himself, Krishna Iyer, Untwalia, and Koshal, JJ.) –

1. These seven appeals by certificate are directed against the judgment dated August 25, 1967 given by the High Court of Mysore in writ petitions nos. 1649, 1650 and 1651 of 1664, writ petitions nos. 1575, 1576 and 1579 of 1965 and writ petition no. 1439 of 1966. These writ petitions were filed by the appellants under Article 226 of the Constitution praying that the demand notices issued by the Commissioner for Hindu Religious and Charitable Endowments of Mysore be quashed and for a writ of mandamus restraining the respondents from taking any action in pursuance thereof.

2. Until November 1, 1956, when the States Reorganisation Act, 37 of 1956, came into force, the district of South Kanara was a part of the former State of Madras. As a result of the States Reorganisation Act that district became a part of the State of Mysore, now the State or Karnataka.

3. The Madras legislature passed an Act called the Madras Hindu Religious and Charitable Endowments Act, 19 of 1951 (the Madras Act of 1951), to provide for the better administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras. Section 76(1) of the Act, as it stood originally, provided that in respect of the services rendered by the Government and their officers, every religious institution shall, from the income derived by it, pay to the Government annually such contribution not exceeding 5 per centum of the its income as may be prescribed. This provision and some other provisions of the Act were challenged in the Madras High Court on behalf of the Shirur Mutt and others. The challenge was upheld by the High Court and the appeal filed therefrom by the Commissioner, Hindu Religious Endowments, Madras, was dismissed by this Court in Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954 SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335). Section 76 (1) was held void by this Court on the ground that the provision relating to the payment of annual contribution contained in it was in the nature of tax and not fee and therefore it was beyond the legislative competence of the Madras State legislature to enact the provision. The

Madras legislature amended Section 76 (1) of the Act so as to provide that in respect of the services rendered by the Government and their officers, "and for defraying the expenses incurred on account of such services", every religious institution shall, from the income derived by it, pay to the Commissioner annually such contribution not exceeding five per centum of its income as may be prescribed. The validity of the amended section was upheld by this Court in H. H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, Mysore.

4. After the formation of the new State of Mysore under the States Reorganisation Act, 1956, laws which were in force in the areas which were formerly comprised within the Madras State, continued to apply to those areas notwithstanding the fact that they became part of the new State of Mysore. Section 119 of the Act of 1956 provides that the provisions of part II ('Territorial Changes and Formation of New States') shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day. It is by reason of this section that the Madras Act of 1951 continued to apply to the South Kanara District which prior to November 1, 1956 was a part of the Madras State but which became after that date a part of the Mysore State.

5. We will refer to the facts of civil appeal 1445 of 1968 which arises out of writ petition 1575 of 1965. The facts of the other appeals are in material respect similar. The appellant who is the Mathadhipati of Shri Admar Mutt in the South Kanara district received a notice dated April 24, 1964 from the Commissioner, Hindu Religious and Charitable Endowments, Mysore, demanding payment of contribution for Fasli years 1367 to 1370 which correspond to calendar years 1957 to 1960. By the notice, the Commissioner demanded a sum of Rs. 12,724.60 for the Fasli year 1367, Rs. 12,274.60 for the Fasli year 1368, Rs. 11,270.70 for the Fasli year 1369 and Rs. 12,169.20 for the Fasli year 1370. The appellant disputed his liability to pay the contribution on the ground that the Commissioner was not entitled to make any demand for the period subsequent to November, 1956, that even assuming that he had the lawful authority to make the demands, the amount demanded was excessive bearing no relationship with the services rendered by the Department and that the expenditure which was incurred on the maintenance of the office and staff of the Commissioner and the Deputy Commissioner could not wholly or in part be recovered from the appellant by way of contribution under Section 76(1) of the Madras Act of 1951.

6. Since the Commissioner did not accept the appellants' contention, the appellants filed the writ petitions in the Mysore High Court asking that the demand notices be quashed as illegal. Those writ petitions were dismissed by the High Court but it has given to the appellants certificate to appeal to this Court under Articles 133(1) and (c) of the Constitution.

7. Simultaneously with the States Reorganisation Act coming into force, the Government of Mysore issued a notification under Section 122 of that Act authorising the Commissioner for Settlements and Charitable Endowments for Mysore to exercise the functions of the Commissioner under the Madras Act of 1951. It is contended on behalf of the appellants that the aforesaid notification lacks law's authority because, the Commissioner being a Corporation Sole, the only authority which is competent to issue the notification under Section 122 is the Central Government, by reason of the provisions contained in Section 109(1) of the S.R. Act. It is true that by Section 80 of the Madras Act of 1951, the Commissioner is constituted a Corporation Sole with a perpetual succession. But the provisions of Section 109(1) of the S.R. Act on which the argument rests do not support the argument. The relevant part of Section 109(1) provides that where any body corporate has been

constituted under a State Act for an existing State, any part of which is by virtue of the provisions of Part II of the S.R. Act transferred to any other State, then notwithstanding such transfer, the body corporate shall, as from the appointed day continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, "subject to such directions as may from time to time be issued by the Central Government". Under this provision, it is competent to the Central Government to issue directions to a body corporate and by reason of sub-section (2) of Section 109, any direction issued by the Central Government under sub-section (1) shall include a direction that any law by which the said body corporate is governed shall have effect subject to such exceptions and modifications as may be specified in the directions. In other words, the body corporate has to function within the scope of and in accordance with the directions issued by the Central Government from time to time. But the power of the body corporate to function under the parent Act is not conditional on the issuance of directions by the Central Government. If directions are issued by the Central Government, they have to be complied with by the body corporate. If no directions are issued, the powers and functions of the authority remain unimpaired and can nevertheless be exercised as contemplated by the Act which creates the body corporate.

8. The second contention made on behalf of the appellants is that the demands made by the Commissioner for the payment of fees is illegal because, considering the services rendered to them, the demands are clearly excessive. In other words the argument is that there is no quid pro quo between the services rendered by the State to the appellants and the fees which the Commissioner has called upon them to pay.

9. The affidavit of Shri Annaji Rao in support of writ petition 1575 of 1965 filed by the Admar Mutt contains the following averment directed to establishing the absence of quid pro quo. It is stated in paragraphs 14 to 18 of the said affidavit that :

> (1) in the district of South Kanara, the are about 310 major religious institutions which are dealt with by the establishment of the Commission. Out of these, only 30 have an annual income exceeding Rs. 20,000. Out of these 30, 17 are Mutts and out of these 17,9 are situated in Udipi, South Kanara;
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> (2) the 30 major institutions are dealt with by the Deputy Commissioner, South Kanara, Mangalore, under the powers delegated to him by the Commissioner. The remaining 280 institutions are dealt with by the Assistant Commissioner who has a separate establishment of his own;
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> (3) the Deputy Commissioner, who deals with the 30 major institutions, utilises the services of two clerks and one stenographer in his office at Mangalore, the expenditure on whose salary cannot exceed Rs. 6000 per annum approximately. The only work that is being done by the Deputy Commissioner in respect of the Mutts is to receive the draft annual budgets submitted by them and to make his remarks thereon. A service of this nature cannot cost more than Rs. 200 per annum;
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> (4) for the petty services which are being rendered to the appellants, the five Udipi Mutts have been called upon to pay a sum of Rs. 30,000 for the four years in question. A sum of Rs. 25,000 is demanded from the other four Mutts for the same period. Apart from these 9 Mutts, there are 8 other Mutts and 13 other major institutions from whom a sum of Rs. 50,000 has been demanded. These demands are grossly uncorrelated to the cost of services rendered to the appellants.

10. On December 20, 1966 an application was filed in the High Court on behalf of the appellants asking that the respondents be directed to furnish the necessary particulars regarding, inter alia, (i) the date when the Religious Endowments Fund was constituted; (ii) the demands made in respect of the major institutions in South Kanara; (iii) the salaries payable to the establishments of the Commissioner and the Deputy Commissioner; (iv) the functions discharged by the Deputy Commissioner in respect of the Mutts; (v) the expenditure incurred by the Commissioner's office in Mangalore and in Bangalore; and (vi) the total number of institutions controlled by the Department in the four areas which were formerly parts of other States but which had become a party of the State of Mysore under the States Reorganisation Act.

11. The information sought by the appellants could have been supplied by the respondents because matters like the date of constitution of the Fund, the annual salary budget of the Commissioner's establishment at different places and the total number of institutions to which services were rendered would be within their special knowledge. For the purpose of finding whether there is a correlationship between the services rendered to the fee payers and the fees charged to them, it is necessary to know the cost incurred for organising and rendering the services. But matters involving consideration of such a correlationship are not required to be proved by a mathematical formula. What has to be seen is whether there is a fair correspondence between the fee charged and the cost of services rendered to the fee payers as a class. The further and better particulars asked for by the appellants under Order VI, Rule 5 of the Civil Procedure Code, would have driven the Court, had the particulars been supplied, to a laborious and fruitless inquiry into minute details of the Commissioner's department budget. A vivisection of the amounts spent by the Commissioner's establishment at different places and for various purposes and the ad hoc allocation by the Court of different amounts to different heads would at best have been speculative. It would have been no more possible for the High Court if the information were before it, than it would be possible for us if the information were before us, to find out what part of the expenses incurred by the Commissioner's establishment at various places and what part of the salary of his staff at those places should be allocated to the functions discharged by the establishment in connection with the services rendered to the appellants. We do not therefore think that any substantial prejudice has been caused to the appellants by reason of the non-supply of the information sought by them.

12. The necessity for establishing quid pro quo between the free and the cost of services rendered is a matter which is no longer open to doubt or debate. Several decisions of this Court have considered that question, beginning perhaps with the decision in the Shirur Mutt i(1954) SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335) case and ending (hopefully) with the recent judgment delivered by a Constitution Bench of this Court in a large group of Market Fee cases from Punjab and Haryana in Kewal Krishan Puri v. State of Punjab (Civil Appeal No. 1083 of 1977, etc. decided on May 4, 1979)

13. In the Shirur Mutt (1954) SCR 1005 : AIR 1954 SC 282 : 1954 SCJ 335) case in which the levy under the unamended Section 76(1) of the Madras Act of 1951 was held to be a tax Mukherjea, J., who delivered the judgment of the Court, said that the distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden while a fee is for a special benefit or privilege. Public interest, according to the Court, is at the basis of all impositions but in a fee it is some special benefit which the individual receives. After this decision, Section 76 was amended by the Madras legislature and the amended section was upheld by this Court in Sudhundra Thirtha Swamiar case (1963 Supp 2 SCR 302 : AIR 1963 SC 966). It was held in that case that a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual

services rendered by the authority to the individual who obtains the benefit of the service. Shah, J., who spoke for the Court, emphasised that if with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amount collected, there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax.

In other words,

> a fee being a levy in consideration of rendering service of a particular type, correlation between the expenditure by the Government and the levy must undoubtedly exist, but a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may.

In Hingir-Rampur Coal Co. Ltd. v. State of Orissa ((1961) 2 SCR 537 : AIR 1961 SC 459), the court while upholding the levy of fee said through Gajendragadkar, J., that the scheme of the Act showed that the cess was levied against the class of persons owning mines in the notified area and it was levied to enable the State Government to render specific services to that class by developing the notified mineral area. In Indian Mica & Micanite Industries Ltd. v. State of Bihar ((1971) 2 SCC 236 : 1971 Supp SCR 319 : AIR 1971 SC 1182), Hegde, J. who spoke for the Court said that before any levy can be upheld as a fee, it must be shown that the levy was "reasonable correlationship" with the services rendered by the Government to the fee payer but that it will be impossible to expect an exact correlationship. According to the learned Judge, the correlationship expected is one of a general character and not as of arithmetical exactitude. In Secretary, Government of Madras, Home Department v. Zenith Lamp & Electrical Ltd. ((1973) 1 SCC 162 : 1973 SCC (Tax) 200 : (1973) 2 SCR 973) where the question was as regards the validity of court fees, Sikri, C.J. speaking for the Court, pointed out that there must be a "broad correlationship" between the fees collected and the cost of administration of civil justice and that each case has to be judged from a reasonable and practical point of view for finding out the element of quid pro quo. All of these decisions have been discussed and the principles laid down therein reaffirmed by this Court in the Punjab and Haryana Market Fee (Civil Appeal No. 1083 of 1977, etc. decided on May 4, 1979) cases in which the judgment was delivered by one of us, namely, Untwalia, J.

14. It is clear from the various facts mentioned by the respondents in their affidavit in the High Court that under the supervision and control of the Commissioner, there are as many as 324 institutions with an income of over Rs. 200 per annum and 1796 institutions with an income of less than Rs. 200 per annum. The latter class of smaller institutions requires and receives services from the Department as much as the former class of bigger institutions does. The amounts collected by the levy of fees on these institutions was just enough to balance the bulk of the expenditure incurred, at least during the period under review, for financing the conduct of affairs of a Department which is charged with the duty and obligation of rendering services to the institutions directly and to the public which patronises or visits them indirectly.

15. The rules framed under the Madras Act of 1951 prescribe a fee varying from 3 to 5 per cent of the annual income of the institutions. The figures furnished by the Commissioner in the third statement dated August 10, 1967 which was filed in pursuance of the directive issued by the High Court show that the total demand made on all the religious institutions for fees during the years 1957 to 1964 amounted to Rs. 8,80,389 while the allocable expense for the services was Rs.

7,54,160. It is not without significance that though the total demand made on the Mutts during the said period was in the sum of Rs. 3,64,591, the contribution received from the Mutts was Rs. 24,526 only. In the absence of any acceptable evidence showing that the Department had built up large accumulations or reserves out of the fees collected from the various class of institutions considering that services are required to be rendered to a large class of institutions consisting of major and minor institutions, we do not think we can positively come to the conclusion that there is no approximation or correspondence between the fees levied on the appellants and the services rendered to the class to which they belong. The second contention therefore fails.

16. The third and last contention made by the learned Counsel for the appellants is that the application of the Madras Act of 1951 to one district only of the State of Karnataka offends against the guarantee of equality contained in Article 14 of the Constitution which provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It is urged that as a result of the application of the Madras Act of 1951 to the Mutts and temples in the South Kanara district, they are required to pay fee under the Act which similar institutions situated in other areas of Karnataka do not have to pay. The burden thus imposed on the appellants is said to be an act of hostile discrimination and therefore unconstitutional.

17. In support of this argument Counsel has drawn our attention to certain decisions of this Court which we will presently examine but before doing so, we must recall the background in which the Madras Act of 1951 became applicable to the South Kanara district of the State of Mysore, now the State of Karnataka. To recapitulate briefly, the South Kanara district which was formerly a part of the State of Madras, became a part of the State of Mysore as a result of the reorganisation of States on November 1, 1956. It is by reason of the provisions of the States Reorganisation Act, 1956 that the Madras Act of 1951 continues to apply to the South Kanara district notwithstanding the fact that it is no longer a part of State of Madras. Section 119 of the S.R. Act provides to that effect.

18. In State of Rajasthan v. Rao Manohar Singhji (1954 SCR 996 : AIR 1954 SC 297 : 1954 SCJ 439) three Ordinances, No. XXVII of 1948 and Nos. X and XV of 1949 were challenged on the ground, inter alia, that after the final formation of the State of Rajasthan in May, 1949 the Ordinances remained in force in a part of the State with the result that while Jagirs in a part of the State were managed by the State, the Jagirs in the rest of the State were left untouched and remained with the Jagirdars. Section 8-A, which was inserted in Ordinance XXVII of 1948 be Section 4 of Ordinance X of 1949 and was amended by Section 3 of Ordinance XV of 1949, provided that the revenue including taxes, cesses and other revenue from forests which was until then collected by Jagirdars shall in future be collected by and paid to the Government. After deducting collection charges and other expenses, the Government was to pay back the revenue to the Jagirdars concerned.

19. This case is distinguishable for the simple reason that the decision turned on the application of Article 13 of the Constitution and the case did not involve considerations arising out of the provisions of the States Reorganisation Act. The respondent therein was a Jagirdar in the former State of Mewar which was integrated in April 1948 to form what was known as the former United State of Rajasthan. In April and May, 1949 that State was amalgamated with the former States of Bikaner, Jaipur, Jaisalmar and Jodhpur and the former Union of Matsya to form the State of Rajasthan. The three Ordinances in question were issued by the former United State of Rajasthan, as a result of which the management of the Jagirs in the State, including those in Mewar, was assumed by the State. After the final formation of the State of Rajasthan in May 1949, the Ordinances remained in force in a part of the State only with the result that the Jagirdars of only a part of the

State could not collect their rents while Jagirdars in other areas like Bikaner, Jaipur, Jaisalmar, Jodhpur and the Matsya Union were under no such disability, since there was no such law in those areas. But when the integration of April and May, 1949 took place, the discrimination exhibited itself not by virtue of anything inherent in the impugned Ordinances but by reason of the fact that Jagirdars of one part of the State were subject to a disability while those in the other parts remained wholly unaffected. As observed by this Court in its judgment, this was an obvious case of discrimination not supported on the ground that it was based upon a reasonable classification. The discrimination was not open to any exception until the Constitution came into force on January 26, 1950 when by reason of Article 13, all laws in force in the territory of India immediately before the commencement of the Constitution insofar as they were inconsistent with the provisions of Part III became void to the extent of the inconsistency. The High Court as well as this Court found that Section 8-A was unconstitutional because there was no real and substantial distinction why the Jagirdars of a particular area should continue to be treated with inequality as compared with the Jagirdars in another area of the State. There was nothing to show that there was any peculiarity or any special feature in the Jagirs of the former United State of Rajasthan, like Mewar, to justify differentiation from the Jagirs comprised in the States which were subsequently integrated into the State of Rajasthan in 1949. In other words, after the formation of the new State there was no justification for taking away the powers of the jagirdars of a disfavored area like Mewar and to leave them intact in the rest of the areas like Bikaner, Jaipur and Jodhpur.

20. In Jia Lal v. Delhi Administration ((1963) 2 SCR 864 : AIR 1962 SC 1781 : (1963) 1 Cri LJ 1), on which also the appellants rely, there were two appeals before this Court arising out of convictions under Section 19(f) of the Indian Arms Act, 1878. Section 29 of that Act provided that for prosecution for an offence under Section 19(f) of the Act committed in the territories north of the Jamuna and Ganga, no sanction was required but sanction was required for the prosecution if the offence was committed in other areas. The Court examined the legislative history of Section 29 and noticed that the section made a distinction between the areas to which the Arms and Ammunition Act of 1860 applied and the other areas. The former included territories which had been disarmed under orders of the Governor-General and those in which a general search had been ordered, which comprised the territories north of the Jamuna and Ganga. This differentiation came to be made as a result of the political situation which obtained in India following the "rebellion" of 1857, its genesis being that the largest opposition to the British Government came from Taluqdars to the north of the Jamuna and Ganga. Bearing in mind these historical reasons, Venkatarama Aiyar, J., speaking for the Court observed that more than a century had elapsed since 1857 and the conditions had so radically changed that it was impossible any longer to sustain any distinction between the territories north of the Jamuna and Ganga and the other territories on any ground pertinent to the object of the law in question. Section 29 was accordingly held to be repugnant to Article 14. This decision too is distinguishable for two reasons. Firstly, more than a century had elapsed since the occurrence of events which led to differential treatment being accorded to the area North of Jamuna and Ganga; and it is a well-known fact of history that political conditions had changed vastly in India during that period. Secondly, as in Rao Manohar Singhji (1954 SCR 996 : AIR 1954 SC 297 : 1954 SCJ 439), the discrimination was violative of Article 14 of the Constitution of India because there was no longer any nexus between the geographical classification made by Section 29 of the Indian Arms Act, 1878 and the object of the provision. After the enactment of the Constitution of India, Article 13 rendered Section 29 unconstitutional.

21. There are certain decisions to which the appellants' Counsel himself drew out attention fairly and they clinch the issue. We will now refer to them. In Bhaiyalal Shukla v. State of M. P. (1962 Supp 2 SCR 257 : AIR 1962 SC 981 : (1962) 13 STC 236), the appellant was engaged in the

business of construction as a contractor under the P.W.D. in the Rewa Circle of the former State of Vindhya Pradesh which had become a part of the State of Madhya Pradesh. He challenged the levy of sales tax on building materials supplied by him during the years 1953-59. After the reorganisation of the States, Madhya Pradesh had as many as four sales tax Acts. One of the arguments advanced on behalf of the appellant was that a person belonging to the area of the former State of Madhya Pradesh was not liable to sales tax on building materials in a works contract, under the C.P. and Berar Sales Tax Act because of the decision of this Court in Pandit Banarsi Das (Pandit Banarsi Das Bhanot v. State of M. P., 1959 SCR 427 : AIR 1958 SC 909 : (1958) 9 STC 388), but another person living in an area forming part of the former State of Vindhya Pradesh was liable to sales tax under the same Act, as extended to Vindhya Pradesh. While rejecting the argument that Article 14 was thereby contravened, this court held that the laws in different portions of the new State of Madhya Pradesh were enacted by different legislatures, and under Section 119 of the States Reorganisation Act, all laws in force were to continue until repealed or altered by the appropriate legislature. The sales tax in Vindhya Pradesh having been validly enacted, it carried its validity with it under Section 119 of the State Reorganisation Act, when it became a part of Madhya Pradesh. Thereafter, observed Hidayatullah, J. on behalf of the Court, the different laws which were in force in different parts of Madhya Pradesh could be sustained on the ground that the differentiation arose from historical reasons and a "geographical classification based on historical reasons" was valid. For the last proposition, reliance was placed on two unreported decisions of the Court, dated November 8 and November 30, 1960.

22. In Anant Prasad Lakshminivas Generival v. State of A. P. (1963 Supp 1 SCR 844 : AIR 1963 SC 853 : (1964) 1 SCJ 615), the appellant who claimed to be the sole hereditary trustee and mutawalli of a temple in Hyderabad was served with a notice by the Director of Endowments, Hyderabad, to have the temple registered under the Hyderabad Endowments Regulations, 1940. The Director of Endowments of Hyderabad also passed two orders directing that the supervision of the temple be taken over under Rule 170 of the Endowments Rules and that the management of the temple do vest in the Director of Endowments, Hyderabad. The appellant filed a writ petition in this Court challenging the validity of the Regulations and the Rules framed thereunder as being repugnant of Articles 14 and 19 of the Constitution. His contention was that there were two laws in force in two parts of the State of Andhra Pradesh with respect to religious endowments and that these two laws were different in many matters resulting in discrimination which was hit by Article 14. The State of Andhra Pradesh, as it came into existence after the States Reorganisation Act, 1956, consists of two areas one of which came to that State from the former Part B State of Hyderabad in 1956. This Court observed, while repelling the challenge under Article 14, that the two areas naturally had different laws and that, assimilation of the laws which were in operation in the two parts of the State and bringing them under one common pattern was bound to take some time. It appears that the Court was informed that the question of having one law for public trusts of religious or charitable nature was under the active consideration of the State Government, for which reason, the Court thought that it was not right to strike down all the laws prevailing in the two parts of the State because of certain differences in them arising out of historical reasons. The Court applied to the facts before it the ratio of Bhaiyalal Shukla (1962 Supp 2 SCR 257 : AIR 1962 SC 981 : (1962) 13 STC 236) and distinguished the decision in Rao Manohar Singhji (1954 SCR 996 : AIR 1954 SC 297 : 1954 SCJ 439).

23. In State of M. P. v. Bhopal Sugar Industries Ltd. ((1964) 6 SCR 846 : AIR 1964 SC 1179 : 52 ITR 443), the respondent company filed a writ petition in August, 1960, in the M. P. High Court praying that the State of Madhya Pradesh be restrained from enforcing the Bhopal State Agricultural Income Tax Act, 1953 on the ground that it contravened the company's right under Article 14 of the

Constitution of India. By the States Reorganisation Act, 1956, the territory of the State of Bhopal became from November 1, 1956 a part of the State of Madhya Pradesh. Though shortly thereafter, the Adaptation of Laws Order was issued to apply certain laws uniformly to the entire state and though the legislature, under the Madhya Pradesh Extension of Laws Act, 1958 had made certain other alterations in the law applicable to the State, the Bhopal State Agricultural Income Tax Act remained unamended. Nor was its operation extended to the other regions of the State. The result was that agricultural income tax was levied within a part of the State of Madhya Pradesh, namely, in the territory of the former State of Bhopal but not in the rest of the territory of the State of Madhya Pradesh. Reversing the judgment of the High Court, this Court held, relying upon Bhaiyalal Shukla (1962 Supp 2 SCR 257 : AIR 1962 SC 981 : (1962) 13 STC 236) and other cases that where application of unequal laws is reasonably justified for historical reasons, a geographical classification founded on such historical reasons is valid. While upholding the impugned statutes in its application to a part of the State, the Court observed that Section 119 of the States Reorganisation Act was intended to serve a temporary purpose, viz., to enable the new units to consider the special circumstances of the diverse units, before launching upon a process of adaptation of laws so as to make them reasonably uniform, keeping in view the special needs of component regions and administrative efficiency. Therefore, differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not immediately attract the clause of the Constitution prohibiting discrimination.

24. In Vishwesha Thirtha Swamiar v. State of Mysore ((1972) 3 SCC 246 : (1972) 1 SCR 137 : AIR 1971 SC 2377), the new State of Mysore enacted the Mysore Land Revenue (Surcharge) Act, 1961 and the Mysore Land Revenue (Surcharge) Amendment Act, 1962. These Acts were challenged on the ground, inter alia, that they were violative of Article 14 since there was inequality in taxation between lands situated in South Kanara district and the lands comprised in areas situated in the erstwhile State of Mysore. This challenge was repelled by this Court on the ground that the impugned acts were in the nature of temporary measures, passed while resettlement and survey was being done in entire State. This process necessarily took a long time and therefore it could not be said that the State had acted arbitrarily in imposing surcharge on land revenue which was being levied under the existing settlements and Acts.

25. These decisions are authority for the validity of Section 76(1) of the Madras Act of 1951 in its application to the South Kanara district of the State of Mysore, now the State of Karnataka. This Court has said time and again that dissimilar treatment does not necessarily offend against the guarantee of equality contained in Article 14 of the Constitution. The rider is that there has to be a valid basis for classification and the classification must bear nexus with the object of the impugned provision. In matters arising out of reorganisation of States, continued application of laws of a State to territories, which were within that State but which have become a part of another State, is not discriminatory since the classification rests on geographical considerations founded on historical reasons.

26. In Bhopal Sugar Industries Ltd. ((1964) 6 SCR 846 : AIR 1964 SC 1179 : 52 ITR 443), Shah, J., who spoke for the Court, has traced the genesis of Section 119 of the States Reorganisation Act to which attention may usefully be called :

> It is necessary to bear in mind that the various administrative units which existed in British India were the result of acquisition of territory by the East India Company from time to time. The merger of Indian States since 1947 brought into the Dominion of India numerous Unions or States, based upon arrangements ad hoc, and the

> constitutional set up in 1950 did not attempt, on account of diverse reasons mainly political, to make any rational rearrangement of administrative units. Under the Constitution as originally promulgated there existed three categories of States, besides the centrally administered units of the Andaman and Nicobar islands. Part 'A' States were the former Governors' Provinces, with which were merged certain territories of the former Indian States to make geographically homogenous units : Part 'B' States represented groups formed out of 275 bigger Indian States by mutual arrangement into Unions. Part 'C' States were the former Chief Commissioners' Provinces. These units were continued under the Constitution merely because they formerly existed. Later an attempt was made under the States Reorganisation Act to rationalise the pattern of administration by reducing the four classes of units into two - States and Union territories - and by making a majority of the States homogeneous linguistic units. But in the States so reorganised were incorporated regions governed by distinct laws, and by the mere process of bringing into existence reorganised administrative units, uniformity of laws could not immediately be secured. Administrative reorganisation evidently could not await adaptation of laws, so as to make them uniform, and immediate abolition of laws which gave distinctive character to the regions brought into the new units was politically inexpedient even if theoretically possible. An attempt to secure uniformity of laws be before reorganisation of the units would also have considerably retarded the process of reorganisation. With the object of effectuating a swift transition, the States Reorganisation Act made a blanket provision in Section 119 continuing the operation of the laws in force in the territories in which they were previously in force notwithstanding territorial reorganisation into different administrative units the competent legislature or authority amended, altered or modified those laws ..... Continuance of the laws of the old region after the reorganisation by Section 119 of the States Reorganisation Act was by itself not discriminatory even though it resulted in differential treatment of persons, objects and transactions in the new State because it was intended to serve a dual purpose - facilitating the early formation of homogeneous units in the larger interest of the Union, and maintaining even while merging its political identity in the new unit, the distinctive character of each region, till uniformity of laws was secured in those branches in which it was expedient after full enquiry to do so. The laws of the regions merged in the new units had therefore to be continued on grounds of necessity and expediency.

27. Bearing in mind considerations, we are of the view that while Madras Act of 1951, in its application to the South Kanara District of Mysore, Now Karnataka, does not infringe Article 14 of the Constitution.

28. But then, learned Counsel for the appellants argues that while following the judgments above referred to, we must not overlook the caveat contained in those judgments and the description therein of Section 119 of the States Reorganisation Act as a 'temporary measurement '. In this behalf, reliance is also placed by Counsel on the decision in Narottam Kishore Dev Verma v. Union of India ((1964) 7 SCR 55 : AIR 1964 SC 1590 : (1965) 2 SCJ 576). The petitioners therein applied for the consent of the Central Government under Section 87B of the Code of Civil Procedure to sue the Maharaja of Tripura Ruler of a former Indian State which had merged with India. Consent having been refused, they filed a writ petition in this Court challenging the validity of Section 87B on the ground that in granting exemption to Rulers of former Indian States from sued except with the consent of the Central Government, the section contravened Article 14 of the Constitution. The

Court followed an earlier judgment and repelled the challenge but while doing so, Gajendragadkar, C.J., speaking for the Court, made an important observation inviting the Central Government to consider seriously whether it was necessary to allow Section 87B to operate prospectively for all time and whether transactions subsequent to January 26, 1950 should also receive the protection of the section. The Court felt that, considered broadly in the light of the basic principle of equality before of equality before law, it was somewhat odd that Section 78B should continue to operate for all time. "With the passage of time", observed the learned Chief Justice, "the validity of historical considerations on which Section 87B is founded will wear out and the continuance of the said section in the Code of Civil Procedure may later be open to serious challenge".

29. The narrow question that remains for consideration now is whether though the initial application of the Madras Act of 1951 to the South Kanara District was not violative of Article of Article 14, its continued application offends against the guarantee of equality. In this connection, a matter of primary importance to be borne in mind is that Section 119 of the States Reorganisation Act 1956, was intended, as said in Bhaiyalal Shukla (1962 Supp 2 SCR 257 : AIR 1962 SC 981 : (1962) 13 STC 236) to serve a "temporary purpose", viz., to enable the new units to consider the special circumstances of the diverse units, before launching upon a process a adaptation of laws so as to make them reasonably uniform, having regard to the special needs of the various regions and the requirements of administrative efficiency. Acts, Rules and Regulations whose constitutional validity is upheld and can be upheld only the ground that no violation per se of Article 14 is involved in the application of different laws to different components of a State, if the area to which unequal laws are applied has become a part of the State as a result of the States' reorganisation, cannot continue to apply to such areas indefinitely. An indefinite extension and application of unequal laws for all time to come will militate against their true character as temporary measures taken in order to serve a temporary purpose. Thereby, the very foundation of their constitutionality shall have been destroyed, the foundation being the Section 119 of the States Reorganisation Act serves the significant purpose of giving reasonable time to the new units to consider the special circumstances obtaining in respect of diverse units. The decision to withdraw the application of unequal laws to equals cannot be delayed unreasonably because the relevance of historical reasons which justify the application of unequal laws is bound to wear out with the passage of time. In Broom's Legal Maxims (1939 Edn., p. 97) can be found a useful principle, "Cessante Ratione Legis Cessat Ipsa Lex", that is to say, "Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself".

30. We do not however see any justification for holding that the continued application of the Madras Act of 1951 to South Kanara District because violative of Article 14 as immediately as during the period under consideration, which was just five or six years after the passing of the States Reorganisation Act. Nor indeed are we disposed to hold that the continued application of that Act until now is shown by adequate data to be violative of Article 14.

31. But that is how the matter stands today. Twenty-three years have gone by since the States Reorganisation Act was passed but unhappily, no serious effort has been made by the State legislature to introduce any legislation - apart from two abortive attempts in 1963 and 1977 - to remove the inequality between the temples and Mutts situated in the South Kanara district and those situated in other areas of Karnataka. Inequality is so clearly writ large on the face of the impugned statute in its application to the district of South Kanara only, that it is perilously near the periphery of unconstitutionality. We have restrained ourselves from declaring the law as inapplicable to the district of South Kanara from today but we would like to make it clear that if the Karnataka legislature does not act promptly and remove the inequality arising out of the application of the

Madras Act of 1951 to the district of South Kanara only, the Act will have to suffer a serious and successful challenge in the not distant future. We do hope that the Government of Karnataka will act promptly and move an appropriate legislation, say, within a year or so. A comprehensive legislation which will apply to all temples and Mutts in Karnataka, which are equally situated in the context of the levy of fee, may perhaps afford a satisfactory solution to the problem. This, however, is a tentative view-point because we have not investigated whether the Madras Act of 1951, particularly Section 76(1) thereof is a piece of hostile legislation of the kind that would involve the violation of Article 14. Facts in regard thereto may have to be explored, if and when occasion arises.

32. In the result the appeals fail and are dismissed but there will be to order as to costs.

SHINGHAL. J. - (concurring) –

I have gone through the judgment of my Lord the Chief Justice. While I concur with him that the appeals fail and should be dismissed. I think there is really no occasion to consider the argument of Mr. Datar that the continued application of the Madras Hindu Religious and Charitable Endowments Act. 1951 (referred to as the Madras Act of 1951 by the Chief Justice) to the South Kanara district is violative of Article 14 of the Constitution. So also, I am unable to subscribe to the view that "inequality is so clearly writ large on the face of the impugned statute in its application to the district of South Kanara only that it is perilously near the periphery of unconstitutionality". When the necessary data a justify that conclusion has not been placed on the record and when it has been found that there is no justification for holding that the continued application of that Act to the South Kanara district has become violative of Article 14 "until now" if I may say so with respect, that is my apology for expressing myself on that short point, although I agree with my Lord on question relating to the competence of the Commissioner for Settlements and Charitable Endowments to exercise the functions of the Commissioner under the Madras Act of 1951 of the existence of quid pro quo.

34. The right to equality enshrined in Article 14 has been shortly but grandly stated in the form of the directive that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of the country. It is therefore a fundamental right which every citizen possesses; and he has the further right, under Article 13(2), to ask there the law which takes away or abridges any of the rights conferred by Part III shall, to the extent it contravenes that right, be declared to be void. That is why further provision has expressly been made in Article 32 guaranteeing the right to move this Court "by appropriate proceedings" for the enforcement of the rights conferred by Part III, and it has been provided in Article 226, inter alia, that every High Court shall have the power to issue the writs mentioned therein, for the enforcement of any of those rights. It does not require much argument to say further that, in either case, it is for the aggrieved citizen to file the appropriate proceeding or petition for a redress of his grievance in order that the Court may hear the other concerned party, examine the merits of the matter, and arrive at a decision.

35. In other words, a pleading or a statement of the material facts in necessary on the side of the petitioner and, if his claim is contested, on the side of the respondent, for that enables them to formulate their case in preparation of the hearing. Besides giving fair notice of the case of either side, that defines the points at issue and confines the controversy to them. It also enables the parties to bring out their evidence to best advantage, and eliminates prejudices or a snap decision. Pleadings are thus of vital importance for if there is no pleading of the necessary fact in a petition for the redress of a grievance, the petitioner has himself to thank for his ultimate discomfiture on that account.

36. Before referring to the pleadings in these cases, it may be mentioned that a point quite similar to the one before us arose for consideration in State of M. P. v. Bhopal Sugar Industries Ltd. ((1964) 6 SCR 846 : AIR 1964 SC 1179 : 52 ITR 443). In the case, the former Bhopal State enacted the Bhopal State Agricultural Income Tax Act, 1953, which provided for the imposition and levy of tax on agricultural income. The Act was brought into force on July 15, 1953, and was applied to the territory of the whole of the Bhopal State. That State was incorporated into the new State of Madhya Pradesh with effect from November 1, 1956, and by virtue of Section 119 of the States Reorganisation Act, 1956, the Bhopal State Agricultural Income Tax Act continued to remain in force in that constituent region. Later, the Madhya Pradesh Extension of Laws Act, 1958, extended several Central and State laws to the entire State of Madhya Pradesh, but no change was made in the territorial operation of the Bhopal State Agricultural Income Tax Act in the area to which it originally applied in 1953. There was, however, no law in the rest of the Madhya Pradesh State providing for the levy of tax on agricultural income.

37. The Bhopal Sugar Industrial Ltd., which had been incorporated under the Companies Act of the Bhopal State, continued to pay the agricultural income tax under the Bhopal Act until 1960, when it challenged the levy as violative of Article 14 of the Constitution. It has held by a Constitution Bench of this Court that while, prima facie, a differential treatment was being accorded by the State of Madhya Pradesh to persons carrying on agricultural operations in the Bhopal region, because the State subjected the to tax on agricultural income which was not imposed upon agricultural income earned in the rest of the State, "that by itself (could) not be a ground for declaring the Act ultra vires". This Court took note of the mandate of Article 14, and referred to a number of its earlier decisions in which it had been held that where application of unequal laws was reasonably justified for historical reasons, a geographical classification founded on those historical reasons would be upheld. This Court expressed its view as follows :

> Continuance of the laws of the old region after the reorganisation by Section 119 of the State Reorganisation Act was by itself not discriminatory even though it resulted in differential treatment of persons, objects and transactions in the new State, because it was intended to serve a dual purpose - facilitating the early formation of homogeneous units in the larger interest of the Union, and maintaining even while merging its political identity in the new unit, the distinctive character of each region, till uniformity of laws was secured in those branches in which it was expedient after full enquiry to do so. The laws of the regions merged in the new units had therefore to be continued on grounds of necessity and expediency. Section 119 of the States Reorganisation Act was intended to serve this temporary purpose, viz., to enable the new units to consider the special circumstances of the diverse units, before launching upon a process of adaptation of laws so as to make them reasonably uniform, keeping in view of the special needs of the component regions and administrative efficiency. Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not therefore immediately attract the clause of the Constitution prohibiting discrimination.

38. It was at the same time appreciated that by passage of time, considerations of necessity and expediency may be obliterated, and the grounds which justified classification of a geographical region for historical reasons may cease to be valid, and it was observed that a purely temporary provision could not be permitted to assume permanency so as to perpetuate a discriminatory treatment without a rational basis to support it after the initial expediency and necessity had disappeared. But even while making this observation on a point relating to legal aspect of the prayer

for redress under Article 14 of the Constitution, this Court expressed disagreement with the view of the High Court that as no attempt was made to remove the discrimination in the matter of the levy of agricultural income tax, it was unlawful because the State had since the enactment of the States Reorganisation Act sufficient time and opportunity to decide whether the continuance of the Bhopal State Agricultural Income Tax Act in the Bhopal region would be consistent with Article 14 of the Constitution. In that connection, the Court went on to bold as follows :

> It would be impossible to lay down any definite time-limit within which the State had to make necessary adjustments so as to effectuate the equality clause of the Constitution. That initially there was a valid geographical classification of regions in the same State justifying unequal laws when the State was formed must be accepted. But whether the continuance of unequal laws by itself sustained the plea of unlawful discrimination in view of changed circumstances could only be ascertained after a full and thorough enquiry into the continuance of the grounds on which the inequality could rationally be founded, and the change of circumstances, if any, which obliterated the compulsion of expediency and necessity existing at the time when the Reorganisation Act was enacted.

39. Specific mention was made of the pleadings of the parties and it was held that there was no clear perception by the parties of what has to be pleaded and proved to establish a plea of denial of equal protection of the laws. The Company merely assumed that the existence of a law relating to taxation which imposed agricultural income tax in the Bhopal region, there being no similar levy in the rest of the State, was in law discriminatory. That is clear from the petition of the Company which merely asserted that the Act discriminated between the Company and other owners of sugarcane farms in the State of Madhya Pradesh, because it singled out the Company and other agriculturists in the Bhopal region from other agriculturists and sugarcane farm owners in the State of Madhya Pradesh and subjected them to liability without any reasonable basis for classification.

This Court made a reference to the view of the High Court that if after the expiry of a reasonable period during which the State had the opportunity of making the necessary adaptations so as to make the Act applicable to the entirety of the new State, the State fails to adapt the law, the historical considerations which initially justified the classification must be deemed to have disappeared. It clearly held that such an assumption, without further enquiry, was not correct. It in fact went to the extent of holding that "the mere existence of agricultural income impost in one region, and absence of such impost in another region may not necessarily justify an inference of unlawful discrimination.

40. It was therefore held in that case that as the petition for the writ was 'singularly deficient in furnishing particulars which would justify the plea of infringement of Article 14 of the Constitution", the mere plea of differential treatment was by itself not sufficient. For that reason it allowed the State's appeal and remanded the case for retrial after giving an opportunity to the parties to amend the writ petition and the affidavit in reply.

41. I have made a reference to the above unanimous decision of a Constitution Bench of this Court for it has stood the test of time and directly bears on the point on which I have felt it necessary to express myself differently from the view taken by my Lord the Chief Justice. I shall therefore proceed to examine whether the appellants in these cases could be said to have furnished the necessary particulars in their pleadings, to enable the High Court to examine their claim with reference to Article 14 of the Constitution for it is by now well settled that mere efflux of time

would not raise the presumption of discrimination of denial of equality before the law.

42. It will be sufficient for me to refer in this connection to the pleading in writ petition 1575 of 1965 and the accompanying affidavit, for the averment in the other petitions are no better.

43. It has thus been stated in paragraph 22, in respect of the Admar Mutt, Udipi, as follows :

> 22. The petitioner submits that the States Reorganisation Act came into effect on November 1, 1956. The Madras H.R.E. Act is being enforced by the respondents only in the old Madras area namely, South Kanara and the Kollegal Taluk of the present Mysore District whereas in entire areas of old Mysore, Coorg and Hyderabad, there is no such demand, nor any legislation similar to the one in the former areas. In the Bombay area, there is a separate Bombay Public Trusts Act. Respondent 3 has ample time in these 8 or 9 years to unify the legislation and not to take advantage of the disparities between the different areas and then try to enforce the Madras Act and to make as much amount as it can from out of the district of South Kanara alone. This action of respondent is wholly discriminatory under Article 14 of the Constitution of India and is void and illegal on that ground alone.
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> Then it has been stated in paragraph 23 that the demands made by the Commissioner of Hindu Religious and Charitable Endowment upon the Mutts and the non-Mutts out of the 30 major institutions and the others which are minor institutions is discriminatory any illegal for the reason that "Mutts are a class by themselves and cannot be discriminately mixed up with temples even from the point of view of the services rendered by the first respondent to them".

44. It is thus quite clear that the appellants rested their plea of discrimination on the sole ground that the continued application of the provisions of the Act to South Kanara district of the reorganised State after 8 or 9 years from November 1, 1956, (when the State was formed) without "unifying" the legislation on the subject of Hindu Religious and Charitable Endowments, was "wholly discriminatory". The other plea in paragraph 23 about "mixing" of Mutts with temples is not quite intelligible and has not even been referred to by Counsel during the course of their arguments. The ground which has been taken is therefore quite untenable for, as has been mentioned, it has been declared in the case of the Bhopal Sugar Industries ((1964) 6 SCR 846 : AIR 1964 SC 1179 : 2 ITR 443) that it is impossible to lay down any definite time limit within which the State has to make the necessary adjustment for the purpose of effectuating the equality clause of the Constitution, and that while the differential treatment could not be permitted to assume permanency without a rational basis to support it as years go by, a mere plea of differential, treatment is by itself not sufficient to attract the application of Article 14. The following further observation in that case clearly bears on the point under consideration :

> It cannot be said that because a certain number of years have elapsed or that the State has made other laws uniform, the State has acted improperly in continuing an impost which operates upon a class of citizens more harshly than upon others.

45. It may be that if the appellants had furnished the necessary particulars in support of their plea of discrimination, the respondents would have come out with whatever defence was available to them. For instance, the State might perhaps have found it possible to plead that the provision for the collection of the contribution under Section 76 of the Madras Act of 1951 was beneficial to the

religious and charitable institutions and endowments and was not burdensome in view of the services rendered by the authorities of the State Government, and that sub-section (5) of that section was beneficial as it provided that if there was a surplus after meeting all the charges referred to in the preceding sub-section, it could be utilised for helping the poor and needy institutions etc. As it is, Section 81 of the Act provides for the establishment of the Madras Hindu Religious and Charitable Endowments Administration Fund, which vests in the Commissioner, and not in the State, so that it has its separate existence and purpose, and it might have to be examined whether the provision for the making of compulsory contribution to it was unfair or discriminatory.

46. If the appellants thought otherwise, it was necessary for them to plead and establish the necessary facts to enable a proper enquiry into their allegation of inequal or discriminatory treatment. But, as has been stated, there has not been done. I am therefore unable to think that, in the absence of the necessary pleadings, it can be said that inequality is so clearly writ large on the face of the impugned statute in its application to the district of South Kanara only, that it is perilously near the periphery of unconstitutionality merely because of the lapse of 23 years.

47. But quite apart from the unsatisfactory nature of the pleadings in these cases which, by itself, justified the dismissal of the writ petitions, and the fact that a Constitution Bench of this Court has taken the view, in the case of the Bhopal Sugar Industries Ltd. ((1964) 6 SCR 846 : AIR 1964 SC 1179 : 52 ITR 443), that it cannot be said that because a certain number of years have elapsed, the State has acted improperly in continuing an impost which operates upon a class of citizens more harshly than upon others, it has to be remembered that a Mutt is a monastic institution for the use and benefit of ascetics belonging to a particular Order presided over by a superior who is its religious teacher. The Mutt property, though originally given by a donor, belongs to that spiritual family represented by the superior or mahant. It does not, however, vest in him, as he is some sort of a "shebait", and vests in the Mutt as a juristic person. This has been sufficiently borne out in the definition of "Math" in clause (10) of Section 6 of the Madras Act of 1951. A Mutt has therefore a laudable object and it is in the interest of all concerned that such endowments should be properly administered. As there are Mutts in the other areas of the Karnataka State (besides the South Kanara district) it is necessary that the State Government should examine whether the contribution provided for by the Madras Act of 1951 is really necessary and advantageous for the proper administration of the religious and charitable institutions and endowments in the State as a whole and, if not, whether it is an inequality, and its continued applicability to the South Kanara district can be justified with reference to Article 14 of the Constitution. I agree with the Chief Justice that this may be done "say within a year or so".

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