

Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others

Vs

State of U.P. and Others

Civil Appeals Nos. 1013-1017 of 1987

(K. Venkataswami, K. Ramaswamy, G. B. Pattanaik JJ)

14.03.1997

JUDGMENT

K. RAMASWAMY, J.

1. These five appeals by special leave arise from the Division Bench judgment of the Allahabad High Court, made on 28-10-1986 in CM Writ Petition No. 1244 of 1984 and batch. The primary question is as to the constitutionality of the Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983 (U.P. Act No. 29 of 1983) (for short "the Act"), made for the management of the temple of renowned Lord Vishwanath, otherwise known as Sri Adi Visheshwara of Kashi. By and large, every Hindu believes that without a visit to Kashi for a bath in River Ganges and prayer offered to Lord Shiva, life is incomplete and meaningless and every endeavour is made to visit Kashi at least once in life. The idol of Lord Shiva at Varanasi on the bank of holy River Ganges is one of the five Jyotirlingas in India believed to be self-incarnated (swayam bhava); other four, viz., (1) Rameshwaram in Tamil Nadu State; (2) Srisailam on the banks of River Krishna in Andhra Pradesh; (3) Dwarka in Gujarat State; and (4) Onkar in Madhya Pradesh on the bank of River Narmada, are believed to be Jyotirlingas according to Hindu mythology. Hindus believe that Lord Brahma is the Creator, Lord Vishnu is the Protector and Lord Shiva is the Destroyer of evils and the wicked. Lord Shiva is the commonman's God and it is believed that He is easily accessible by fervent prayer and fulfils the prayers of devotees. Though there are several stories on self-incarnation of linga (idol) at Varanasi, the fact remains that it is very ancient. For the last one thousand years, Lord Vishwanath/Visheshwara has been pre-eminent Shiva Linga (idol) at Kashi, the supreme principal deity. According to the mythological literature, Lord Avimukteshwara (never forsaken) appears to be the supreme deity in Kashi since the Gupta ages, i.e., 4th century AD till 12th century AD Pandit Lakshmi Dhara of 12th century in his "Puranic Mahatmya" and "Tirtha Vivechana Kanda" and Dandini, the great Sanskrit Scholar (6th century) in his "Dasha Kumaracharita" refer to this aspect of the matter. Mitra Mishra in his book "Tirtha Prakash" has also stated that Lord Visheshwara and Lord Avimukteshwara appear to be separately located as is spoken in "Linga Purana" quoted by Lakshmi Dhara. The ancient name of Kashi appears to be "Avimukta". The Linga of Lord Visheshwara appears to have been located to north of the sacred well, Jnana Vapi while encircling the Temple of Avimukteshwara, the shrines of Dandapani, Taraka and Mahakaal all of which are also erected near the Jnana Vapi and Lord Visheshwara Temple. According to Puranic Mahatmya and Kashi Khanda of the Skanda Purana, the Jyotirlingas was established by Lord Shiva himself when he went into exile to the Mount Mandara during the reign of the legendary King Divodasa. Since Lord Shiva himself disguised the Linga, according to Mahatmya Lord Shiva never really left the sacrosanct and sacred temple. Hence, it became "Avimukta" (Never Forsaken). This was also stated by Vaachaspati Mishra in his famous Puranic work "Tirtha Chintamani" in 1460 wherein he had stated that "Visheshwara" and "Avimukteshwara" were merely two names for the same

Jyotirlinga. Narayan Bhatta had similarly mentioned it to be so in 16th century in his work "Tirthalishetu". According to the literature, by 13th to 14th century AD and especially dated 1325 AD the Temple called Padameshwara was existing as per "Kashi Ka Itihas", p. 190 written by Moti Chandra. As stated earlier, in due course, Jyotirlinga in the name of Lord Visheshwara gained popularity and Avimukteshwara Linga was installed in a corner of the temple. Every Hindu believes that Lord Shiva is worshipped by the common man and perhaps for that belief Linga of Lord Sri Visheshwara became famous. In the year 1193 AD, when one of the Lieutenants of Mohd. Ghori, namely, Kutubuddin Eibak completely destroyed Lord Shiva's Temple, the priest (mahant) concealed the idol of Lord Vishwanath from being defiled and destroyed. The Temple construction was undertaken in a big way in 1585 by Raja Todar Mal, the Finance Minister of Akbar the Great, the Mughal Emperor who was then Governor of Jaunpur. The Temple was constructed accordingly on a large scale consisting of a central sanctum (Garba Griha) surrounded by eight mandapas or pavilions. Aurangzeb again destroyed the Temple of Lord Shiva in 1669 AD when again the then priest (mahant) removed the idol of Lord Shiva so as to prevent it from being defiled and destroyed. Thereafter, it was again restored in the year 1777 AD by Rani Ahilya Bai Holkar of M.P. who had built the present Temple and installed the present deity. Maharaja Ranjit Singh in 1859 AD had got it renovated, covering the dome with gold plates weighing 22 tons of gold.

2. Though it is claimed that some of the appellants are the descendants of Pt. Visheshwar Dayal Tiwari and that the mahant (priest) of the Temple got it re-erected, it is not necessary for the purpose of this case to dwell on the history. Suffice it to state that the management of the Temple was in an appalling condition. Devoted pilgrims when they visited the Temple were subjected to exploitation at the behest of pandas and the precincts were in most unhygienic condition. Admittedly, the jewellery of Lord Shiva was stolen which necessitated constitution of a Committee which had gone into and recommended to the Government to take steps for proper management thereof. The theft that took place in the midnight of 4-1-1983-5-1-1983, 14 years from now, had become a cause of concern to all the Hindus and the residents of Varanasi, in particular for protection and proper management of the Temple. It became necessary to take effective steps to provide efficient administration and proper arrangements for orderly visit and prayer by the devotees thronging daily the precincts of the Temple in millions coming from every nook and corner of the country and abroad. On the basis of the recommendation of the said Committee dated 14-1-1983, an Ordinance titled "U.P. Sri Kashi Vishwanath Temple Ordinance, 1983" was promulgated by the Governor of the State of Uttar Pradesh on 24-1-1983 whereby the management and control of the said Temple was taken over from the mahants and pandas (priests). On 28-1-1983, the Government issued a Notification specifying the "Appointed Date" under the Ordinance to be 28-1-1983 and another Ordinance No. 9 of 1983, namely, U.P. Sri Kashi Vishwanath Temple (Second) Ordinance, 1983 was issued since the first one was to expire on 16-3-1983 by operation of proviso to Article 213 of the Constitution. The Government issued another Ordinance, viz., Ordinance No. 20 of 1983 on 27-4-1983, which was replaced by the Act of Parliament. The appellants, though initially challenged the Ordinance, pending proceedings, the U.P. Act No. 29 of 1983 came into force after receiving the assent of the President on 12-10-1983 and was notified in the State Gazette on 13-10-1983.

3. By operation of sub-section (2) of Section 1, the Act came into force w.e.f. 28-1-1983, i.e., on the "appointed date" under the first Ordinance. Before the High Court, the Act was assailed by filing a writ petition, primarily on the ground that it infringes the appellants' fundamental rights enshrined in Articles 25(1) and 26(b) and (d) of the Constitution. One of the learned Judges of the Bench had held that though the Temple of Sri Kashi Vishwanath was and is a public Temple of the common people, the presiding deity, i.e., Lord Vishwanath is the Lord of all. It is a commonman's Temple but it is a denominational temple of Shaivites of Hindu community. Another learned Judge held that it is

not a denominational one. However, both the learned Judges held that the legislature was competent to enact the law for management of the Temple along with its properties. The learned Judges gave directions to consider taking in some of the representatives of the appellants as members of the Board; they gave other directions which we would consider at the appropriate places while dealing with questions separately. The appellants feeling aggrieved by the decision of the High Court, have filed the present appeals. The learned counsel on both sides have filed written arguments, pursuant to this Court's direction dated 13-12-1991. After a considerable time having been taken while the matter was before different Benches, it ultimately came up before this Bench and has been heard at length.

4. Shri Rajeev Dhavan, learned Senior Counsel, contended that Lord Shiva Temple is a denominational Temple of Shaivites of which the appellants are the members. They have their exclusive right to worship and to manage the Temple including the right to receive offerings given by the pilgrims to Lord Shiva, to perform pooja (rituals) and ceremonies in accordance with prevailing customs and usages in the Temple handed down from centuries. The Act interdicts to exercise that right and interfere with those rights which are part of their religion. The Act prevents them from managing the Temple and its properties which interferes with their right to profess and practice any religious belief offending Articles 25 and 26 of the Constitution.

5. We find no force in the contention. The preamble of the Act in unequivocal language, manifests its intention that the Act is to provide "for the proper and better administration of Sri Kashi Vishwanath Temple at Varanasi and its endowment and for matters connected therewith or incidental thereto". Sub-section (2) of Section 1 gives overriding effect to the Act. It envisages that the Act "shall have effect, notwithstanding anything to the contrary contained in any other law for the time being in force or custom or use, contract, deed or engagement, judgment, decree or order of any court or scheme of management settled by any court".

6. Section 5 declares that ownership of the Temple and its endowment shall vest in the deity of Sri Kashi Vishwanath. "Temple" has been defined under Section 4(9) which reads as under :

"4. (9) 'Temple' means the Temple of Adi Vishweshwara, popularly known as Sri Kashi Vishwanath Temple, situated in the city of Varanasi which is used as a place of public religious worship, and dedicated to or for the benefit of or used as of right by the Hindus, as a place of public religious worship of the Jyotirlinga and includes all subordinate temples, shrines, sub-shrines and the ashthan of all other images and deities, mandapas, wells, tanks and other necessary structures and land appurtenant thereto and additions which may be made thereto after the appointed date;"

7. "Endowment" has been defined by Section 4(5) which reads as under :

"4. (5) 'endowment' means all properties, moveable or immovable, belonging to or given or endowed for the support or maintenance or improvement of the Temple or for the performance of any worship, service, ritual, ceremony or other religious observance in the Temple or any charity connected therewith and includes the idols installed therein, the premises of the Temple and gifts of property made or intended to be made for the Temple or the deities installed therein to any one within the precincts of the Temple;"

8. "Temple Fund" has been defined under Section 4(10) to mean the temple constituted under

Section 23 of the Act. Chapter IV deals with "Property and Accounts". Section 23(1) postulates that there shall be constituted a Fund to be called "Sri Kashi Vishwanath Temple Fund" which shall be vested in and administered by the Board and shall consist of the following, namely -

- "(a) the income derived from the moveable and immovable properties of the Temple;
- (b) the religious offerings made or intended to be made to the deity of Sri Kashi Vishwanath or any other deity in the Temple;
- (c) any contribution by the State Government either by way of grant or by way of loan;
- (d) any donation or charity made by a person in or for the Temple;
- (e) any other gift or contribution made by the public, or local authorities or institutions;
- (f) all fines and penalties imposed under the Act;
- (g) all recoveries made under the Act."

Thus the totality of the endowment and the Temple Fund vests in the Deity, Sri Kashi Vishwanath. Its management is entrusted to the Board of Trustees (for short, "the Board").

9. Section 4(3) defines "Board" to mean the "Board of Trustees" constituted under Section 6. Sub-section (1) of Section 6 postulates that with effect from the appointed date, the administration and governance of the Temple and its endowments shall vest in a Board called "the Board of Trustees for Sri Kashi Vishwanath Temple". It shall consist of the members specified in sub-section (2), namely :

- "(a) Dr. Vibhuti Narain Singh who shall also be the President of the Board;
- (b) Shri Jagadguru Sankaracharya of Sringeri;
- (c) Secretary to the Government of Uttar Pradesh in the Department of Cultural Affairs - ex officio;
- (d) Secretary to the Government of Uttar Pradesh in the Department of Finance - ex officio;
- (e) Secretary to the Government of Uttar Pradesh in the Department of Harijan and Social Welfare - ex officio;
- (f) Secretary to the Government of Uttar Pradesh in the Judicial/Legislative Department by rotation in such manner as may be prescribed - ex officio;
- (g) Director of Cultural Affairs, Uttar Pradesh - ex officio;
- (h) Commissioner, Varanasi Division - ex officio;
- (i) District Magistrate, Varanasi - ex officio;

(j) Vice-Chancellor, Sampurnanand Sanskrit Vishwavidyalaya Varanasi - ex officio;

(k) Two local eminent persons having good knowledge and experience in the management and administration of the affairs of the Temple and any worship, service, ritual or religious observance made therein, to be nominated by the State Government;

(l) Three eminent Hindu scholars well versed in Hindu theology, to be nominated by the State Government."

Sub-sections (3) to (5) provide as under :

"(3) Where a member of the Board cannot perform his duties as such by reason of the fact that he is not a Hindu, the person available next below him in this behalf shall be a member of the Board for the time being.

(4) The Board shall be a body corporate having perpetual succession and may sue or be sued by the name aforesaid.

(5) The constitution of the Board and every change therein shall be notified by the State Government."

10. Thus, the Board consists of 8 non-officials well-versed in the knowledge and experience in Hindu theology, management and administration of the Temple, two local officials and five Secretaries having diverse experience. All these men of wisdom and experience are imbued to infuse in proper, efficient and honest administration and management of the Temple, endowment and the Temple Fund, the property of the Deity Lord Vishwanath.

11. It would, thus, be seen that the ownership of the Temple and its endowment shall vest in the Deity of Sri Kashi Vishwanath, the presiding Deity of the Temple. The management of Temple and the endowment shall vest in the Board to cater to the welfare of the pilgrims, proper and better management of the performance of daily and periodical ceremonies and rituals. By operation of sub-section (4) of Section 6, the Board shall be a body corporate having perpetual succession and it may sue and be sued in the name of the Board. The term of the office of the Board as specified in Section 7, is 3 years from the date of the notification of the nomination and some of the members mentioned in the proviso specified in clauses (a) and (b) of sub-section (2) shall be life members. Other members are liable to be removed by operation of sub-section (1) of Section 8 following the procedure prescribed in sub-section (2) thereof and the decision of the Government in that behalf is final under sub-section (3) and (shall not be liable to be questioned in any court of law).

12. By operation of Section 13, the Board shall be entitled to take and be in possession of all moveable and immovable properties, cash, valuables, jewellery, records, documents, material objects and other assets belonging to or forming part of the Temple and its endowments. Every person, by operation of sub-section (2), who has possession, custody or control of any such moveable or immovable property, cash, valuable, jewellery, record, document, material object or other asset, as mentioned in sub-section (1) shall, subject to all just exceptions, produce and deliver the same, when required, under the Act, to the Chief Executive Officer defined in Section 4(4) to mean the Chief Executive Officer appointed under Section 16.

13. Chapter III under the caption "the Temple Establishment", consists of Sections 16 to 22 and

deals in this behalf. Section 16 empowers the State Government to appoint a Chief Executive Officer for the Temple. His conditions of service may be determined by the State Government from time to time under sub-section (2) thereof. The proviso thereto protects his pre-existing salary and other conditions of service. Section 17(1) enjoins that the Chief Executive Officer shall be the Principal Executive Officer of the Temple and, subject to the control of the Board, shall be "responsible for management of the secular affairs of the Temple and its endowments". Subsection (2) thereof provides that subject to the provisions of the Act and the rules made thereunder, the Chief Executive Officer shall do the following duties :

"(a) to carry out the decisions and orders of the Board and the Executive Committee in accordance with the provisions of this Act;

(b) to arrange for the proper collection, maintenance and disposal of the religious offerings in the Temple and to keep a full and proper account thereof;

(c) to have custody of and make suitable arrangement for the preservation and maintenance of all records, jewellery, valuables, moneys, valuable securities and properties of the Temple;

(d) to record and maintain the minutes of proceedings of the Board;

(e) to call for tenders for works or supplies and to accept tenders, the value or amount whereof does not exceed five thousand rupees;

(f) to exercise control over the employees of the Temple and take appropriate action against them in cases of breach of discipline;

(g) to do all such things as may be required for the due performance of his duties imposed by or under this Act."

14. Section 18 deals with emergency powers of the Chief Executive Officer. Under sub-section (1) thereof, the Chief Executive Officer may direct the execution of any work or the doing of anything which is not provided for in the budget for the year or which is, in his opinion, immediately necessary and unavoidable "for the preservation of the Temple or its endowments or for the health, safety or convenience of the pilgrims or worshippers resorting to the Temple or for the due performance of the worship, service, rituals, ceremonies or observances in the Temple and may further direct that the expenses of the execution of such work or the doing of such thing shall be paid out of the Temple Fund". Under sub-section (2), he is enjoined to forthwith submit the report in that behalf together with the statement of reasons for such action, to the Board and the Executive Committee. The Board shall take such action, after taking into account the recommendations of the Executive Committee, as it deems fit.

15. Section 19 deals with the constitution of the Executive Committee. Sub-section (1) thereof adumbrates that the Executive Committee shall be subject to the directions of the Board or the State Government and shall be responsible for the superintendence, direction and control of the affairs of the Temple. Under sub-section (2) thereof, the Executive Committee shall consist of the following members, namely -

##(a) Commissioner, Varanasi Division - Chairman; (b) District Magistrate, Varanasi - Member; (c) Senior Superintendent of Police, Varanasi - Member; (d)

Administrator/Mukhya Nagar Adhikari, Nagar Mahapalika, Varanasi - Member (e)
Members of the Board specified in Section - Member ex 6(2)(j) offico; (f) Chief
Executive Officer - Member - Secretary."##

16. Sub-section (3) of Section 19 is equally of importance and it is worth noting that where a member of the Executive Committee cannot perform his duties as such by reason of the fact that he is not a Hindu, the person, available next below him in this behalf, shall serve on the Committee. It has also power under sub-section (4) to co-opt as member, any other suitable person, not more than two in number, for the discharge of its functions. Under sub-section (5), it shall exercise such power and perform such functions as are conferred on it by or under the Act or are assigned to it by the Board. Under Section 20, the Chief Executive Officer is required to prepare a schedule setting forth the designations, grades and duties of persons constituting the establishment of the Temple. If any member of the establishment claims any special right by virtue of a judgment, etc., sub-section (2) of Section 20 makes the Chief Executive Officer responsible to give effect to such judgment and decree of a court while preparing the Schedule. All the particulars mentioned and the details specified in the said Schedule shall be submitted to the Board which is empowered to make any change or modification and after its approval such persons shall be entitled to the conditions of employment prescribed therein, the details whereof are not material. Section 21 deals with the Temple staff and their conditions of service. Section 22 deals with appointment of archakas. It reads as under :

"22. (1) Every archaka attached to or serving in the Temple shall be responsible for the proper performance and conduct of worship, service, rituals, ceremonies and other religious observances in the Temple and other general or special, daily or periodical services connected therewith and the Board or the Executive Committee or the Chief Executive Officer or any other employee of the Temple shall not interfere with the discharge of the duties by the archaka as such.

(2) The archaka shall be entitled to such remuneration for his services as may be agreed upon between him and the Board and failing such agreement, as may be determined in accordance with the rules made in this behalf and shall not be entitled to any other perquisites or emoluments, save as permitted by or under this Act."

17. Section 24 gives power to the Chief Executive Officer to prepare, within three months from the appointed date, the scale of expenditure in the Temple and the amounts which should be allotted to the various objects connected with the Temple which should be done by operation of sub-section (2) after consultation with the archaka and also have "due regard to the requirements of worship or offerings in connection with the performance of the general or special, daily or periodical services, rituals, ceremonies or other religious observances according to the usage or otherwise". The proposals referred to in sub-section (1), viz., scale of expenditure etc. shall be submitted in the prescribed manner to the Board. Sub-section (4) bears a salutary provision which envisages that "the Board shall cause the proposal to be published in such manner, as may be prescribed, and any person interested may submit his objections or suggestions within a period of 30 days from the date of publication". Under sub-section (5), after considering the objections and suggestion, if any, received under sub-section (4), the Board shall pass such orders, as it thinks fit, on such proposals, having regard to the objects specified in sub-section (2) and the financial position of the Temple. A copy thereof under sub-section (6) shall be published in the prescribed manner. Sub-section (7) gives to the aggrieved person right to appeal against such an order, which lies to the State Government and the order of the State Government in appeal is declared to be final. The result of

the expenditure under sub-section (5) may be revised from time to time by operation of sub-section (8) and the provisions of sub-sections (1) to (5) of Section 25 shall mutatis mutandis apply to such revisions. By operation of sub-section (9) of Section 24, the scale of expenditure shall be the first charge on the Temple Fund and save as aforesaid, "shall not be altered". Section 25 deals with preparation of the budget of the Temple for each year; the details in that respect are enumerated therein. Section 26 deals with regular accounts to be kept in such form as may be approved by the State Government and they should contain such particulars and in such manner as may be prescribed. Under Section 27, the accounts shall be audited annually. Section 28 provides for imposition of surcharge for dereliction of duties. Section 29 makes provisions as to acquisition or transfer of the property of the Temple, as to how the property shall be dealt with; the details thereof are not necessary. Section 30 deals with prohibition on borrowing of money. Section 31 regulates entering into and execution of the contracts.

18. The powers and functions of the Board are detailed in Sections 14 and 15 of the Act which read as under :

"14. Subject to the provisions of this Act and any rules made thereunder, it shall be the duty of the Board -

(a) to arrange for the due and proper performance of worship, service and rituals, daily or periodical, general or special, of Sri Kashi Vishwanath and other deities in the Temple, ceremonies and other religious observances in accordance with the Hindu Shastras and scriptures and usage;

(b) to ensure maintenance of public order, health and morality, including arrangement for lighting, hygienic conditions and proper standard of cleanliness in the Temple;

(c) to ensure the safe custody of the funds, cash, valuables, jewellery and other properties of the Temple;

(d) to make adequate arrangements for the preservation and management of the properties and secular affairs of the Temple;

(e) to ensure that the funds of the endowments are spent according to the wishes, so far as may be known or ascertained, of the donors;

(f) to provide facilities for the proper performance of worship by the pilgrims and worshippers;

(g) to make provision for the convenience and medical relief of pilgrims and worshippers;

(h) to undertake for the benefit of the pilgrims and worshippers -

(i) the construction of buildings for their accommodation;

(ii) the construction of sanitary works;

(iii) the improvement of means of communication;

- (iv) such other matters as may be prescribed;
- (i) to make provision for the payment of suitable emoluments to the salaried staff;
- (j) to do all such things as may be incidental and conducive to the efficient management of the affairs of the Temple and its endowments and the convenience of the pilgrims and worshippers.

15. The Board shall exercise all such powers, as are necessary for or incidental to the performance of its duties and functions under this Act and in particular shall have power -

- (a) to fix fees for the performance of any worship, service, ritual, ceremony or religious observance in the Temple;
- (b) to call for such information and accounts as may, in its opinion be necessary for satisfying itself that the Temple and its endowments are properly maintained and administered and their funds are duly appropriated for the purposes for which they exist or were founded;
- (c) to prohibit within the premises of the Temple or within such area belonging to the Temple, as may be specified in this behalf -
 - (i) sale, possession, use or consumption of any intoxicating liquor or drug;
 - (ii) sale, possession, preparation or consumption of meat or other foodstuffs containing meat;
 - (iii) slaughter, killing, maiming of any animal or bird for any purpose;
 - (iv) gaming with cards, dice, counter, money or other instruments of gaming;
- (d) to do or direct the doing of such other things as may be prescribed."

19. Section 32 deals with power of the State Government to cause inspection to be made in the prescribed manner. Section 33 gives power to the State Government to issue directions "not being inconsistent with the provisions of this Act" or the rules made thereunder. It shall be the duty of the Board to comply with such directions. Chapter VI consists of Sections 34 and 35 which deal with penalties for contravention of the directions, the details whereof are not necessary. Chapter VII consists of Sections 36 to 47 under the caption "Miscellaneous", the details whereof are not material for the purpose though they contain integral scheme for effective and proper and better management of the Temple and endowments. From a broad perspective of the scheme, as explicit from the preamble and the above built-in operational structure, the object of the Act is to regulate the management and administration of the Temple and endowments and the Temple Fund for matters connected therewith and incidental thereto.

20. According to the religious literature on Pooja Puddhutti in Kashi Visheshwara, most of the traditional mantras are in the Paramparagata (Lokik tradition) so it does not find place in Dharmashastras. Pooja Puddhutti as being observed at Kashi Visheshwara Temple are to be found in four Vedas. However, a compilation of these mantras are contained in Shukla Yajurveda which is a compilation of Yajush Mantras by Rishi Yajnavalkya. However, there appears to be some

controversy as to whether the rituals are to be performed by touching of the Linga by the devotee or to prohibit the worshipper and pooja to be performed by archaka (priest) as per vedic/shastric parampara. In all Jyotirlingas in the country, pooja is performed by the devotee himself touching the Linga. As a result that controversy was referred to Kashi Vidvat Parishad (Kashi Council of Scholars) for resolution of the dispute and to find out whether Lokik Parampara with the tradition of offering prayers to the Linga by touching the Linga or Shastravat Parampara i.e. according to the Dharmashastras is to be followed in performing pooja to Shiva Linga in Lord Visheshwara Temple. The Committee recommended Lokik Parampara since it is believed by the people in popular tradition. Accordingly, by custom and usages Lokik Parampara being timeless usage of Hindu Dharma, besides being flexible enough to be moulded and adopted according to changing times, Lokik Parampara, i.e., popular people's belief of performing pooja by touching the Linga, which is most ancient of times, is being followed. Accordingly, the Pooja Puddhutti at the Visheshwara Temple is being followed as part of the great and universal traditions of Hinduism. Accordingly, every devotee is entitled to enter into Garba Griha, i.e., the sanctum sanctorum and himself/herself perform pooja (ceremonies) and no one is restricted or barred of the same. On the issue of Prokshana of Lord Visheshwara by Panchagavya, the Committee recommended that it was not a part of the traditional mode of worship of Jyotirlinga and was not required. His Holiness, the Sankaracharya of Kanchi Kamakoti Peetam had also subscribed to the above view and directed that the traditional pooja at Visheshwara Temple should be commenced with Mangala Vadya and pooja in accordance with the Shodashopachara. The present Pooja Puddhutti contains this Shodashopachara.

21. From this legal and factual backdrop, the question is whether the appellants have any fundamental right in the aforesaid. If so, to what extent? By operation of Section 14, clause (a), it shall be the duty of the Board to arrange for the due and proper performance of worship, service and rituals, daily or periodical, general or special, of Sri Kashi Vishwanath and other deities in the Temple, ceremonies and other religious observances in accordance with the Hindu Shastras, scriptures and usages. Under clause (f), the Board is enjoined to provide facilities for the proper performance of worship by the pilgrims and worshippers and under clause (j), to do all such things as may be incidental and conducive to the efficient management of the affairs of the Temple and its endowments and to the convenience of the pilgrims and worshippers. It would thus be seen that the Act ensures and enjoins the Board, the Executive Committee and the Chief Executive Officer assisted by all the staff, to ensure due and proper performance of worship, services, rituals and ceremonies, daily or periodical, general or special, of Sri Kashi Vishwanath and other deities in the Temple in accordance with Hindu Shastras, scriptures and usages. The Act does not invest the Government with any power to interfere with the religious part of management or day-to-day administration of the Temple or its endowments.

22. Under Section 22, every archaka (priest) attached to or serving in the Temple should be responsible for the proper performance and conduct of worship, service, rituals, ceremonies and other religious observances in the Temple and other general or special, daily or periodical services connected therewith. The Board or the Executive Committee or the Chief Executive Officer or any other employee of the Temple shall not interfere with the discharge of the religious duties performed by the archaka as such and in such capacity in the performance of ceremonies, rituals, services being observed in accordance with the established custom and usage. It would, therefore, be seen that the proper performance and conduct of daily or periodical, general or special rituals, ceremonies, services etc. to Lord Sri Vishwanath, the presiding deity of the Temple and other deities in the Temple is the duty of the priests of the temple and they are required to perform them in accordance with Hindu Shastras, scriptures and usages. The Board should ensure their effectuation. The Board,

Executive Committee or the Chief Executive Officer or any of the officers are prohibited from interfering with the performance of religious services or ceremonies etc. The Act, thus, demarcates the religious functions and then entrusted to priests; similarly, the secular functions of administration and management of the Temple, endowment and Temple Fund are entrusted to the Board for proper, efficient, honest, truthful administration and management with piety and devotion to serve Lord Visheshwara and the pilgrims and worshippers.

23. The question is whether Sri Kashi Vishwanath Temple is a denominational Temple and whether the Act interferes with freedom of conscience and the right to profess, practice and to propagate religion of one's choice and whether the devotees of Lord Vishwanath are members of religious denomination and shall have the fundamental right to manage its affairs in the matter of religion guaranteed under Articles 25 and 26 of the Constitution or to administer the properties of the Temple in accordance with law. In the Law Lexicon by P. Ramanatha Iyer (1987, Reprint Edn.) at p. 315, the author says that "denomination" means a class or collection of individuals called by the same name; a sect; a class of units; a distinctively named church or sect as clergy of all denominations. The maxim *Denominatio est a digniore* means "Denomination is from the more worthy" (Burrill). *Denominatio fieri debet a dignioribus*, another maxim means "denomination should be deduced from the more worthy" (Wharton's Law Lexicon). *Denomine proprio non est curandum cum in substantia non erretur quia nomina mutabilia sunt res autem immobiles* meaning "as to the proper name, it is not to be regarded when one errs not in substance; because names are changeable, but things are immutable". (Bouvier Law Dictionary; American Encyclopedia) In *Commr., H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, [1954 SCR 1005 : AIR 1954 SC 282], the precise meaning of the word "denomination" had come up for consideration before the Constitution Bench. It was held, following the meaning given in Oxford Dictionary, that the word "denomination" means a collection of individuals or class together under the same name, a religious group or body having a common faith and organisation and designated by a distinctive name. On the practices of the Math, the meaning of the connotation "denomination" in that behalf, it was held that each such sect or special sects which are founded by their organiser generally by name be called a religious denomination as it is designated by distinctive name in many cases. It is the name of the founder and has common faith and common spiritual organisation. Article 26 contemplates not merely a religious denomination but also a section thereof. Therefore, it was held that Shirur Mutt [1954 SCR 1005 : AIR 1954 SC 282] was a religious denomination entitled to the protection of Article 26. In *Durgah Committee v. Syed Hussain Ali* [(1962) 1 SCR 383 : AIR 1961 SC 1402] another Constitution Bench considering the ratio laid in Shirur Mutt case [1954 SCR 1005 : AIR 1954 SC 282] explained Sri Venkataramana Devaru case [Sri Venkataramana Devaru v. State of Mysore, 1958 SCR 895 : AIR 1958 SC 255] and had laid down that the words "religious denomination" under Article 26 of the Constitution must take their colour from the word religion and if this be so the expression religious denomination must also specify three conditions, namely, it must be (1) a collection of religious faith, a system of belief which is conducive to the spiritual well-being, i.e., a common faith; (2) common organisation; (3) a designation by a distinctive name. Therein, the endowment to the tomb of Hazrat Khwaja Moin-ud-din Chishti of Ajmer, under the Khadims Durgah Khwaja Saheb Act, 1955 was challenged by the respondents as violative of their fundamental rights under Articles 25, 26, 19(1)(f) and (g) of the Constitution. This Court had held that Hazrat Khwaja Moin-ud-din Chishti tomb was not confined to Muslims alone but belonged to all communities, i.e., Hindus, Khwajas and Parsis who visit the tomb out of devotion for the memory of the departed soul and it is a large circle of pilgrims who must be held to be the beneficiary of the endowment made to the tomb. Considered from that perspective, it was held that the right to receive offerings was not affected or prejudiced by the Act,

though they had a right to worship in accordance with their faith. Article 26 requires to be carefully scrutinised to extend protection and it must be confined to such religious practices as are an essential and integral part of it and no other. The management of the properties was in the hands of the officers. Article 26 does not create rights in any denomination or a section which it never had. It merely safeguards and guarantees the continuance of a right which such denomination or the section had. If the denomination never had the right to manage property in favour of a denominational institution as per reasonable terms on which the endowment was created, it cannot be had (sic said) to have it. It had not acquired the said right as a result of Article 26 and that the practice and the custom prevailing in that behalf which obviously is consistent with the terms of the endowment should not be ignored. The Act cannot be treated as illegal and the administration and management should be given to the denomination. Such a claim is inconsistent with Article 26. In *Bramchari Sidheswar Shai v. State of W.B.* [(1995) 4 SCC 646] the relevant facts were that the Ramakrishna Mission had established educational institutions to which approval and affiliation were granted by the Government and the University. The dispute arose as regards the composition of the Governing Body, viz., whether the Government's nominee would be associated on a standard pattern? Ramakrishna Mission claimed "minority" status being a denomination. In that perspective, this Court while rejecting the claim of the Mission as a minority institution under Article 30(1), upheld its denominational character within the meaning of Article 26(a) of the Constitution. It was held that it being a denomination was entitled to administer the educational institutions. Therein, the vires of the statute did not come up for consideration in the context of the followers of Shri Ramakrishna who are professing the line of teachings and doctrines of Shri Ramakrishna. The followers were considered to be a denominational section of the citizens. The ratio therein, therefore, does not apply to the facts of the present case.

24. In *State of Rajasthan v. Sajjanlal Panjawat* [(1974) 1 SCC 500] Section 52 of the Rajasthan Public Trust Act was challenged as ultra vires Articles 25 and 26 offending the denominational right to manage their Jain Temple properties, namely, by the Jain denomination. The management of the Temple of Rikhabdevji with its properties was vested in the Rulers of Udaipur before the Constitution of India came into force. The rights which the Jains or any one of the Jain denomination, namely, Svetamber or Pitamber or both, have had in the Temple or its management in the pre-Constitution period, vested in the State; they cannot claim right to its management under the Act. Following the ratio in *Durgah Committee of Ajmer case*, [(1962) 1 SCR 383 : AIR 1961 SC 1402], it was held that the right to acquire any property by religious denomination is different from the right to manage its own affairs in matters of religion. The latter is a fundamental right which cannot be taken away by the legislature; the former can be regulated by the law which the legislature can validly enact.

25. The question, therefore, relates to only administration of properties belonging to the religious group or institution. They are not matters of religion to which Article 25 or 26 gets attracted. Article 26 does not protect the right to management and they are not entitled to the management. In *Raja Bira Kishore Deb v. State of Orissa* [AIR 1964 SC 1501 : 30 Cut LT 426] another Constitution Bench had held that Section 6 of Sri Jagannath Temple Act, 1954 extinguishes the hereditary right of the Raja and entrusts secular management of the Temple of Lord Jagannath at Puri to the Committee of which he remains the Chairman. The superintendence of the Temple is not the property. It carried no beneficial interest or enjoyment of the property with it. The right was not acquired by the State. The whole of the right to manage the Temple was extinguished and in its place another body for the purpose of administration of the properties of the Temple was created. In other words, the affairs of the functionary are brought to an end and another functionary had come into existence in its place. Such process cannot be said to constitute the acquisition or

extinguishment of office or the vesting of the right in such persons holding that office. In that context, it was contended that the Act interfered with religious affairs of the Temple offending Article 19(1) of the Constitution. The contention was rejected. The contention that it is a denominational Temple was also not accepted. In *S.P. Mittal v. Union of India* [(1983) 1 SCC 51 : AIR 1983 SC 1] the Constitution Bench was to consider whether Auroville (Emergency Provisions) Act was violative of Article 26 of the Constitution. Considering the speeches and writings of Shri Aurobindo on religious beliefs, it was held that it was not a religious denomination. The Act was incidental to the proper administration. It was not violative of Articles 25 and 26 of the Constitution.

26. It would appear from the judgment of the High Court that the Advocate General contended that the protection of Articles 25 and 26 was not available to the Hindus as a community but as a denominational sect or section thereof and that Hindus are not denominational section. One of the learned Judges in that background considered the scope of denomination and held that Shaivites among Hindus are a denominational section and that, therefore, they are entitled to the protection of freedom of conscience and to establish and manage the religious institution or properties attached to it. It is a well-settled law that secularism is the basic feature of the Constitution. The Constitution seeks to establish an egalitarian social order in which any discrimination on grounds of religion, race, caste, sect or sex alone is violative of equality enshrined in Articles 14, 15 and 16 etc. of the Constitution. India is a land of multi-religious faiths and the majority are Hindus; Hinduism is their way of life, belief and faith. Unfortunately, they are disintegrated on grounds of caste, sub-caste, sect and sub-sect. Unity among them is the clarion call of the Constitution. Unity in diversity is the Indian culture and ethos. The tolerance of all religious faiths, respect for each other's religion are our ethos. These pave the way and foundation for integration and national unity and foster respect for each others' religion; religious faith and belief. Integration of Bharat is, thus, its arch. Article 15(2), therefore, lays emphasis in that behalf that no citizen shall, on grounds only of religion, race, caste, sect, place of birth or any of them be subjected to any disability, liability, restriction or conditions with respect to access to shops, public restaurants, hotels, places of public entertainment or the use of wells, tanks, baths and places of public resorts maintained wholly or partly out of State fund or dedicated to the use of general public. Congregation and assimilation of all sections of the society, in particular in place of worship generates feeling of amity assured in the Preamble and fosters fraternity for social cohesion, harmony and integration. Thus, the Constitution lays seedbed to integrate the people transcending various religious, regional, linguistic, sectional diversities, castes, sects and/or divisive actions or acts. Integration of all sections belonging to different castes, sub-castes, sects and sub-sects or people professing different religious faiths transcending the diversity of religious beliefs. Apart from communion of the individual with his perceived cosmos or divinity, the primary aim of all religious faiths is to inculcate the feeling of oneness among all people, to imbibe the good of that religion or that faith teaches; to get rid of unfounded or superstitious beliefs and to make a person self-disciplined. Every right carries with it the co-relative duty. Article 51-A of the Constitution enjoins every citizen to abjure violence, to cultivate the spirit of tolerance, reform and enquiry, in other words, rational thinking and to distinguish between good and bad; to discard bad and viciousness and to imbibe good and to improve the faculty of constructive thinking. So, all religions are equally entitled to constitutional protection under Articles 25 and 26.

27. The right to establish and maintain institutions for religious and charitable purposes or to administer property of such institutions in accordance with law was protected only in respect of such religious denomination or any section thereof which appears to extend help equally to all and religious practice peculiar to such small or specified group or section thereof as part of the main

religion from which they got separated. The denominational sect is also bound by the constitutional goals and they too are required to abide by law; they are not above law. Law aims at removal of the social ills and evils for social peace, order, stability and progress in an egalitarian society. In *A.S. Narayana Deekshitulu v. State of A.P.* [(1996) 9 SCC 548] a Bench of this Court (to which one of us, K. Ramaswamy, J., was a member) considered in extenso the entire case-law in the context of abolition of the hereditary rights of archakas and mathadipatis (trustees) and of the attached right to share in the offerings, plate collections etc. and appointment of Executive Officer to religious institution and endowment under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the A.P. Act"). There is a difference between secularism and secularisation. Secularisation essentially is a process of decline in religious activity, belief, ways of thinking and in restructuring the institution. Though secularism is a political ideology and strictly may not accept any religion as the basis of State action or as the criterion of dealing with citizens, the Constitution of India seeks to synthesise religion, religious practice or matters of religion and secularism. In secularising the matters of religion which are not essentially and integrally parts of religion, secularism, therefore, consciously denounces all forms of supernaturalism or superstitious beliefs or actions and acts which are not essentially or integrally matters of religion or religious belief or faith or religious practices. In other words, non-religious or anti-religious practices are antithesis to secularism which seeks to contribute in some degree to the process of secularisation of the matters of religion or religious practices. For instance, untouchability was believed to be a part of Hindu religious belief. But human rights denounce it and Article 17 of the Constitution of India abolished it and its practice in any form is a constitutional crime punishable under Civil Rights Protection Act. Article 15(2) and other allied provisions achieve the purpose of Article 17.

28. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos/Creator and realise his spiritual self. Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his *Judicial Process*, life is not logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination all be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion

may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. And whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question.

29. Justice B.K. Mukherjea in his Tagore Law Lectures on Hindu Law of Religious and Charitable Trust at p. 1 observed :

"The popular Hindu religion of modern times is not the same as the religion of the Vedas though the latter are still held to be the ultimate source and authority of all that is held sacred by the Hindus. In course of its development the Hindu religion did undergo several changes, which reacted on the social system and introduced corresponding changes in the social and religious institution. But whatever changes were brought about by time - and it cannot be disputed that they were sometimes of a revolutionary character - the fundamental moral and religious ideas of the Hindus which lie at the root of their religious and charitable institutions remained substantially the same; and the system that we see around us can be said to be an evolutionary product of the spirit and genius of the people passing through different phases of their cultural development."

30. Hinduism cannot be defined in terms of Polytheism or Henotheism or Monotheism. The nature of Hindu religion ultimately is Monism/Advaita. This is in contradistinction to Monotheism which means only one God to the exclusion of all others. Polytheism is a belief of multiplicity of Gods. On the contrary, Monism is a spiritual belief of one Ultimate Supreme who manifests Himself as many. This multiplicity is not contrary to on-dualism. This is the reason why Hindus start adoring any deity either handed down by tradition or brought by a Guru or Swambhuru and seek to attain the Ultimate Supreme.

31. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion. In Seshammal case [Seshammal v. State of T.N., (1972) 2 SCC 11] on which great reliance was placed and stress was laid by the counsel on either side, this Court while reiterating the importance of performing rituals in temples for the idol to sustain the faith of the people, insisted upon the need for performance of elaborate ritual ceremonies accompanied by chanting of mantras appropriate to the deity. This Court also recognised the place of an archaka and had held that the priest would occupy place of importance in the performance of ceremonial rituals by a qualified archaka who would observe daily discipline imposed upon him by the Agamas according to tradition, usage and

customs obtained in the temple. Shri P.P. Rao, learned Senior Counsel also does not dispute it. It was held that Articles 25 and 26 deal with and protect religious freedom. Religion as used in those articles requires restricted interpretation in etymological sense. Religion undoubtedly has its basis in a system of beliefs which are regarded by those who profess religion to be conducive to the future well-being. It is not merely a doctrine. It has outward expression in acts as well. It is not every aspect of the religion that requires protection of Articles 25 and 26 nor has the Constitution provided that every religious activity would not be interfered with. Every mundane and human activity is not intended to be protected under the Constitution in the garb of religion. Articles 25 and 26 must be viewed with pragmatism. By the very nature of things it would be extremely difficult, if not impossible, to define the expression "religion" or "matters of religion" or "religious beliefs or practice". Right to religion guaranteed by Articles 25 and 26 is not absolute or unfettered right to propagate religion which is subject to legislation by the State limiting or regulating every non-religious activity. The right to observe and practice rituals and right to manage in matters of religion are protected under these articles. But right to manage the Temple or endowment is not integral to religion or religious practice or religion as such which is amenable to statutory control. These secular activities are subject to State regulation but the religion and religious practices which are an integral part of religion are protected. 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. This Court upheld the A.P. Act which regulated the management of the religious institutions and endowments and abolition of hereditary rights and the right to receive offerings and plate collections attached to the duty.

32. It would, therefore, be necessary to consider whether the Act infringes the right of the Hindus who believe in Shaiva form of worship. In A.S. Narayana Deekshitulu cases [(1996) 9 SCC 548] this Court pointed out that in matters of performing pooja, in Shiva Temple, 28 Agamas are applicable whereas in Vaishnava Temples Panchratna Agama contain elaborate rules regulating how the Temple would be constructed, whereat the principal deity is to be consecrated, whereat the other idols are to be installed and what would be the place where the worshippers would stand and worship the deity. Accordingly, in para 5, it was held that to integrate the people, all people are entitled to participate in all forms of worship. The only prohibition was as to the entry into sanctum sanctorum in which the priest would be entitled to enter. The form of worship and absence of prohibition for devotees to enter the sanctum sanctorum in the Temple has already been pointed out and needs no reiteration.

33. Thus, it could be seen that every Hindu whether a believer of Shaiva form of worship or of panchratna form of worship, has a right of entry into the Hindu Temple and worship the deity. Therefore, the Hindu believers of Shaiva form of worship are not denominational worshippers. They are part of the Hindu religious form of worship. The Act protects the right to perform worship, rituals or ceremonies in accordance with established customs and practices. Every Hindu has right to enter the Temple, touch the Linga of Lord Sri Vishwanath and himself perform the pooja. The State is required under the Act to protect the religious practices of the Hindu form of worship of Lord Vishwanath, be it in any form, in accordance with Hindu Shastras, the customs or usages obtained in the Temple. It is not restricted to any particular denomination or sect. Believers of Shaiva form of worship are not a denominational sect or a section of Hindus but they are Hindus as such. They are entitled to the protection under Articles 25 and 26 of the Constitution. However, they are not entitled to the protection, in particular, of clauses (b) and (d) of Article 26 as a religious denomination in the matter of management, administration and governance of the temples under the Act. The Act, therefore, is not ultra vires Articles 25 and 26 of the Constitution.

34. It is then contended that abolition of the right to manage the Temple as Mahant is offensive of their right to religious practice and management of the Temple. This controversy is no longer res integra. This Court in *Pannalal Bansilal Pitti v. State of A.P.* [(1996) 2 SCC 498] was to decide the validity of the provisions of the A.P. Act in the matter of abolishing the right of hereditary trustees and appointment of the Executive Officer and non-hereditary trustee. In *Sri Sri Sri Lakshamana Yatendrulu v. State of A.P.* [(1996) 8 SCC 705] this Court was to decide the constitutionality of Sections 50 to 55 of the said A.P. Act dealing with action against erring Mathadhipati, maintenance of accounts and removal of Mathadhipati for misconduct and filling up of the resultant vacancies. After elaborate consideration, the provisions were upheld as valid and constitutional. Diverse provisions of the A.P. Act, 1987 were upheld. We need not reiterate them once over and to avoid burdening the judgment, we adopt the reasons given therein and agree with the same. For the same reasons, the need to examine in detail aforequoted provisions is obviated. Accordingly, we hold that the contention that some of the persons have customary and hereditary rights as archakas and that the Act extinguishes their rights and so is violative of Articles 25 and 26(b) and (d) of the Constitution, is untenable and devoid of substance.

35. Obviously, therefore, it was contended that in the constitution of the committees or the Board of Trustees the appellants are entitled to be nominated as members of the Board. The absence of any provision in the Act in that behalf is violative of their right to be members of the Board. The learned Judges of the High Court observed the need to consider their representation. Shri Javali, learned Senior Counsel, sought support in that behalf from *Pannalal* case [(1996) 2 SCC 498] and was adopted by Shri Dhavan. The A.P. Act relates to abolition of hereditary right of the founders of the religious institution or endowment or the Board of Trustees. That Act was based upon the Report of Justice Kondiah Commission and has abolished those rights. While the validity of the provisions was upheld, the provisions were read down to indicate that all hereditary trustees need not be painted with the same brush as having committed misconduct or mismanaged the institution or endowment. In *Pannalal* case [(1996) 2 SCC 498] this Court examined the question in detail and held that if in an individual case a hereditary trustee incurs any disqualification, an enquiry may be conducted and one of the members of the family of the founder may be appointed as a hereditary trustee along with non-hereditary trustees and as a Chairperson of the Board of Trustees so that the institution would be properly maintained and rituals and ceremonies conducted as per the custom, usage and practice. In the present case, the Act relates to the individual institution, namely, Sri Kashi Vishwanath Temple at Varanasi with particular reference to the mismanagement etc. by the selfsame persons. The Committee appointed by the Government had gone into and found the need for the legislative interference. As a consequence, it would be difficult to read down Section 6 to give any direction to nominate the members of the family or some of the appellants as members of the Board. On the other hand, sub-sections (2)(k) and (2)(l) of Section 6 deal with nomination of eminent Hindu scholars or local eminent persons having good knowledge and experience in the management and administration of the affairs of the Temple and in worship, service, rituals or observance, these persons are therein, made eligible. It is for the appropriate Government to consider whether or not any of them would be eligible to be considered for nomination as one of the eight non-official members of the Board at the relevant time.

36. It is seen from mythological literature referred to hereinbefore that Lord Sri Vishwanath is swayam bhava (self-incarnated). The object of the Act is only to ensure efficient and effective performance of the duties of services, conduct of worship, daily or periodical, general or special rituals services, ceremonies and other religious observances in accordance with the Hindu Shastras, customs and practices by the archakas and equally to provide hygienic conditions, proper standard of cleanliness, sanitation, maintenance of morality, public order and healthy atmosphere; to provide

benefit to the pilgrims and worshippers of accommodation, sanitary conditions therein, proper arrangement and facilities for worship, performance of pooja by pilgrims and worshippers. The Board, as seen, is composed of 7 officials and 8 non-officials for efficient management of the Temple. Dr. Vibhuti Narain Singh was statutorily inducted by Section 6(1)(a) as a member and President of the Board. We are informed that he had disclaimed interest and abstained from taking responsibility or interest in the management of Lord Sri Visheshwara Temple and endowments thereof and is not taking any part therein. Since he is not a party to the present proceedings, we are not expressing any opinion in that behalf. Suffice it to state that it would be for the State Government to cause a notice issued to him seeking whether he is willing to take keen and active interest in the management and maintenance of the Temple and its endowments as member and President of the Board. In case he declines to associate himself or fails to take part as member and President of the Board, then it would be needless to mention that the State Government would take steps to have Section 6(1)(a) so amended as to bring into the Board another eminent non-official member and follow the procedure of election of the President of the Board. In view of the national importance of Lord Sri Visheshwara Temple and the belief and faith every Hindu has in the presiding deity Lord Shiva as well as in other deities installed therein, it is needless to reiterate that the legislative object of proper, efficient, effective and sustained management of the Temple/endowments and of the Fund of the Temple, constantly requires to be effectuated and ensured. Equally, facilities for the pilgrims and worshippers for darshan, performance of pooja, rituals, ceremonies etc. require to be constantly monitored and provided by the Executive Committee or the Chief Executive Officer and the staff under the supervision of the Board. Consequently, non-official members of the Board should, of necessity, be eminent persons having rich knowledge and experience in the management and administration of the affairs of the Temple and the performance of services, rituals or religious observances in the Temple without creating any vested interest. It would be voluntary service with religious and pious devotion, selfless service to the society as responsible member of the society without any distinction of caste, sect or sub-sect among Hindus.

37. Equally, the Vice-Chancellor under Section 6(1)(j) per force is a person having good knowledge and perceptions in the aforementioned disciplines. Equally, the persons to be nominated under Section 6(1)(l) must be eminent Hindu scholars well-versed in Hindu theology. The Government should always take care to ensure that the persons nominated under Section 6(1)(k) and (l) are those endowed with the above qualifications, quality devoted to and zeal for active association with proper and efficient management of the Temple, its endowments, the Fund and service to the pilgrims so that the object of the Act would be constantly monitored and effectively implemented. If any infraction in this behalf is committed by the State Government in periodical nomination and if any of them does not fulfil the requirements, that would be a matter for anybody to call in question the same and have the same corrected in an appropriate proceeding.

38. The further contention of Shri Rajeev Dhavan is that the right of the denomination to practice their faith and manage their affairs, as guaranteed by Articles 26(b) and (d), has been eroded and they have been deprived of it. The theft of jewellery of Lord Vishwanath is an offence and a law and order problem and cannot be made a ruse or a cause to interfere with religious rights and management of the religious properties. Interference in that behalf must be proportionate to the need, namely, preventing recurrence of thefts or mismanagement by appropriate action by law-enforcing authorities. Even if there is any mismanagement of the properties belonging to the Temple it should be corrected exercising the power either under Section 92 CPC or under appropriate existing provision in the U.P. Religious Endowments Act. It would, therefore, be clear that the Act interferes with religious affairs and management of the properties attached to the religious

institution guaranteed by Articles 26(b) and (d). He further contended that even if it is found to be necessary, the Act must be read down giving the appellant the right to manage religious affairs and the administration of the properties, performance of the ceremonies by the pandas (archakas, priests) so as to preserve the sanctity of the rights of the worshippers which include, inter alia, the right to management of the properties according to long-standing usage or custom and to receive offerings given by the pilgrims. Placement of the management of the religious affairs and the properties in the hands of a few Hindus will not satisfy the denominational right of the Hindus. He also contended that pandas are not just Shaivites but are like the trustees/mahants. They are archakas as well. They perform pooja/ceremonies etc. which is integral to the working of the Temple as a religious institution - a spiritual and temporal fact of religion - and cannot be relegated to be a secular activity. The Act deprives them of the share of the offerings received by the archakas without compensation. As Shaivites, the Act interferes with their legitimate right to function as pandas in their denominational character and also deprive them of their right to livelihood protected under Article 21 of the Constitution as it is integral to the management of the Temple. We find no force in any of the contentions. It is already held that practice of religious faith according to tenets of Hindu religion, custom and usage stand protected by the Act. But the secular management of the religious affairs in the Temple is a secular part. The legislature has power to interfere with and regulate proper and efficient management thereof. This aspect of the question has been elaborately considered by a three-Judge Bench to which two of us (K. Ramaswamy and G.B. Pattanaik, JJ.) were members in *Bhuri Nath v. State of J&K* [(1997) 2 SCC 745 : JT (1997) 1 SC 546]. Therein the controversy related to abolition of Baridars' rights to perform pooja and to own the properties and abolition thereof by the Jammu and Kashmir Act of Mata Sri Vaishno Devi in Jammu. Since this Court elaborately discussed the reasons in support of its holding, the need to reiterate them once over is obviated.

39. The denominational status has already been held to be non-existent and Articles 25 and 26 do not protect them. Various regulatory measures devised under the Act aim only at proper and better management and administration of the Temple, endowments and all matters incidental to or connected with the management thereof. The Act itself has drawn a distinction between religious affairs and secular control. Chief Executive Officer acts under the control and supervision of the Board. The Board, Executive Committee and Chief Executive Officer have been entrusted with the duty to ensure performance of religious services, rituals, ceremonies and worships in accordance with the Hindu Shastras, customs and practices being followed in the Temple etc. The priests are given full freedom to perform daily or periodical rituals and ceremonies as are in vogue. They are responsible for proper performance and conduct of worship, service, rituals, ceremonies and other religious observances in the Temple and other general or special, daily or periodical services connected therewith. Obviously, the legislature being aware of the power under Section 92 CPC etc. to frame the scheme, appears to have felt it expedient in the interest of the institution itself and has taken legislative measure to regulate it, by employing non obstinate clause in relevant provisions in the Act. The legislature, therefore, having undoubted power has stepped in and made the Act as a permanent measure to prevent mismanagement and to improve hygienic and sanitary conditions prevailing in the Temple and to provide orderly facilities for worship by the pilgrims coming from every nook and corner of India and abroad as a regular stream of devotees and local worshippers. As has already been stated, in Lord Sri Vishwanath Temple the presiding deity is the idol (Linga) of Lord Shiva and all other deities are situated therein to whom due and regular performance of daily and periodical rituals and ceremonies are ensured under the Act. The Temple is one of the renowned Temples in India; Hindus constantly keep visiting the Temple throughout the day, week, month and year uninterruptedly as an unbroken chain; the legislature has stepped in to prevent misuse,

mismanagement and irreligious acts, actions and conduct, to regulate proper and efficient management and administration of the Temple, performance of all religious services, ceremonies and rituals in a systematic and organised manner by competent persons on the religious side of performing ceremonies without any interruption. The Board assisted by the Executive Committee and Chief Executive Officer with the aid of the establishment are entrusted with the duty to effectuate the efficient management of the Temple, the endowment and proper utilisation of the Temple Fund and safe custody of the jewellery etc. and proper management of the properties in the light of the demarcation. The Act itself has demarcated and drawn distinction between secular part and religious parts of the activities in the Temple; the former (sic latter) have been entrusted to the competent priests well versed in the performance of rituals and ceremonies and services according to Hindu Shastras, customs, usages and practices as applicable and prevailing in the Temple. The secular part has been entrusted to the Board, Executive Committee and Chief Executive Officer etc. appointed as per the Act.

40. The Government kept its control only on the secular side as the Temple is one of the important Hindu Temples in the State of U.P. and in Bharat. Properties and endowments vest in the deity, Lord Shri Vishwanath. The management of the Temple by mahant/panda/archaka is not their property. The Act has merely changed the management from pandas to the Board. Only the right of management in the pandas has been extinguished from the appointed day and placed in the Board for better and proper management. It is not vested in the State nor the State acquired it for itself. In other words, the affairs of Lord Shri Vishwanath Temple by pandas/mahant have become extinct and the Board has assumed the management. This entrustment of management cannot be said to constitute acquisition of the property or extinguishment of right to property. In the light of the above, there is need to give restrictive interpretation to the word "religious faith" and "religion" so as to allow the pandas to manage the Temple both on temporal part and deny them the secular part of the management of the Temple. The ratios laid in Pannalal case, [(1996) 2 SCC 468] Lakshamana case [(1996) 8 SCC 705] and Narayana case [(1996) 9 SCC 548] do not apply to the Act in question.

41. The management has been entrusted to the Board consisting of eminent personalities specified in Section 6 of the Act. As seen, seven officers well experienced in the management and eight non-officials fully acquainted with and experienced in the religious part of the religion are members of the Board. The ratio in Tharamel Krishnan v. Guruvayoor Devaswom Managing Committee [(AIR 1978 KER 68)] has no application to the facts in this case. Therein, the constitution of the Committee was found to be inconsistent with the scheme of management guaranteed by the Constitution and, therefore, it was declared to be ultra vires. On the facts of this case, we need not go into the correctness of those decisions. But in this case, as seen, a clear demarcation came to be made between temporal and secular aspects of the management of the Temple. The religious management is entrusted to eminent personalities professing Hindu religion, well versed in religious and administrative facets of management and, therefore, the Act does not infringe the rights conferred under Articles 26(b) and (d).

42. It is then contended that some of the mahants are prevented from performing pooja. The appellants had not set up their case that as pandas/archakas/priests, they were prevented from performing duties in rendering rituals/ceremonies, services etc. They staked their claims as mahants which claims we have negated. Interim direction was given by this Court not to prevent them from performing pooja as devotees. Therefore, that direction is a made absolute and they will not be prevented from performing pooja as devotees. Section 22 takes care of any service being rendered as archaka (priest). "Archaka" has been defined in Section 4(2) to mean any person who performs or

conducts any worship, service, rituals in the Temple and includes a pujari, if he was doing the same on the appointed date. By its necessary implication, if any of the appellants is found to be of good character, possessed of the requisite qualification and experience etc. he/they may continue as archaka/priest and may be appointed by the Board. The further contention that it offends their right to livelihood guaranteed by Article 21 of the Constitution is devoid of any force. In view of the settled legal position that the legislature is empowered to enact the law regulating the secular aspect of the management of the Temple or the religious institution or endowment, panda/archaka (priest), by whatever name called, is not integral part of the religion and performs all the religious tenets or ceremonies in a Temple as servant of the Temple. They owe their existence to an appointment. They are servants of the Temple terminable on the ground of misconduct or unfitness to perform service, rituals/ceremonies in accordance with Hindu Shastras, customs and practices prevailing in the Temple handed down from centuries. On abolition, the right of the holder of the office or post stands extinguished. It does not vest in the State but is regulated by the Act. The need to pay compensation does not arise. However, by operation of Section 22, archakas or pandas found eligible to perform religious service (pooja) etc. are regulated and entitled to be considered for appointment and to consequential salary. As regards qualifications of the archaka (priest)/panda/pujari or samarchaka at Lord Kashi Vishwanath Temple, there is a great deal of unanimity among Dharmashastris that the pujari at Lord Vishwanath Temple should at least have a graduation or equivalent degree with Sanskrit and subjects such as Veda, Dharmagama, Shaivagama and Purohitya. Though according to the scholars, it was not initially prescribed to have Aupadhik Yogyata (educational qualification) for the archaka, deval or the samarchaka at Sri Kashi Vishwanath Temple, he should be proficient in Vedocharana, i.e., the proper incantation, delivery and pronunciation of Vedic mantras. He should practice Trikaal Sandhya. He should be conversant with all the mantras, srutis and vandanas of Lord Sri Visheshwara. He should also be fully trained and conversant in Rudrashtadyayi. It would appear that Dharmashastras recommend that the process of selection for the archakas of Kashi Vishwanath Temple should be undertaken by a committee of traditional Dharmashastris comprising of a minimum of three renowned scholars who should be empowered to select the archakas or samarchakas from the qualified candidates. As was held in Narayana case [(1996) 9 SCC 548], periodical training and continuing education would improve and augment excellence.

43. The right to receive offerings from the pilgrims is incidental to the service rendered by the archaka (priest). Independent of service, there is no right to receive offerings from a pilgrim or the devotee. Therefore, the regulation of rendering service and prohibition to receive offerings, though may affect the livelihood of a pre-existing archaka, it being a regulatory measure, it is sequel or consequential to the abolition. It is not a vested right as such but is a right coupled with duty to render service. When the service on customary basis is abolished, concomitantly right to receive offerings given by the pilgrims stands extinguished and prohibited and is vested in the Deity, Lord Shiva. It is not an acquisition of their right but it has only incidental and consequential effect. Equally, it is not a vested right in the individual panda/archaka/priest de hors the service. Rights of persons in service as archakas is not affected; on the other hand, Section 22 is subject to regulation and extends the right to earn livelihood guaranteed by Article 21.

44. The further contention that the impugned Act is overboard and is vitiated with vice of discretionary power without any supervision or guidelines and is ultra vires, is devoid of any force. The Act has carefully formulated different principles, applied the same in the matter of nomination of the members of the Board, appointment of the Executive Committee, the staff and proper and efficient management of the Temple. Even the discretionary powers are well within the parameters laid under the Act. Even assuming that if any action is found to be in excess of the statutory

conferment of the power or wanting in quality that would be an individual case which may be liable to challenge in an appropriate proceeding and for that reason the Act cannot be declared as ultra vires.

45. In view of the finding that Lord Sri Vishwanath Temple is not a denominational temple and Hindus as such are not denomination/section/sect nor the appellants are denominational worshippers, the contention that Sections 6 and 3 cannot be read down so as to make the appellants as members of the Board under Section 6 of the Act, is without any force. Similarly, it is difficult to accede to the contention that Section 6 must be read down to include those persons who profess to be denominational Hindu Shaivites practicing as members of the Board. Equally, Sections 20(1) and (2) cannot be read down so as to give wider powers to the "archaka" defined in Section 4(2). Equally, Sections 22(2), 23(2)(b), 24(2) and 25(8) cannot be read down so as to confer functional and financial responsibilities on the archaka. Thus considered, we hold that the Act does not suffer from any invalidity except to the extent indicated in the judgment.

46. The appeals are accordingly dismissed but without costs.