MYSORE HIGH COURT

K. Mukundaraya Shenoy

Vs

State of Mysore

Writ Petns. Nos. (M) 3 and 4 of 1956

(S.R. Das Gupta C.J. and A.R. Somnath Iyer, J.)

16.07.1959

JUDGMENT

Das Gupta, C.J.

1. The petitioners in these petitions are the managing members of two temples viz. (1) Konkanimata Venkatramana Temple and (2) Halemarigudi Temple. It is not disputed before us that these two temples were founded, owned and administered by a community called Gowd Saraswath Brahmin community of Kaup Peta. Administration of these temples, prior to the date hereinafter mentioned, used to be conducted in accordance with two schemes which were framed under two decrees of the Court of the Subordinate Judge South Kanara, both passed in the year 1921. Under the said schemes the section of Gowd Saraswath Brahmin community residing at Kaup Peta was to elect a Board consisting of five members and the management of moveable and immoveable properties of the said temples was to vest in the said Board. The said section of Gowd Saraswath Brahmin Community was also to elect a committee consisting of five members who will supervise the work of the board. The schemes laid down the qualifications required of the persons to be elected as members of the board and the general qualifications required for voting at such elections.
These voters were to assemble once a year on the next day of Ati Mari Puja and at that meeting members of the board shall read to the voters the statement of the annual income and expenditure which shall have been prepared giving particulars under different heads. These, in broad out-line, are the provisions of the schemes framed by the Court for the management of these two temples. It would appear from the provisions of the said schemes that the Gowd Saraswath Brahmin Community of Kaup Peta carried on the management of the said temples and of their properties through the board and the supervisory committee both of whom used to be elected by the said Community.

2. On 26th August, 1951 the Madras Hindu Religious and Charitable Endowments Act (Act 19 of 1951) was passed. The Act created a hierarchy of authorities, i.e., the State Government, the Commissioner, Deputy Commissioner, the Assistant Commissioner and the Area Committee and vested the superintendence and control of the administration of all religious endowments in the Commissioner or the authorities mentioned.

In these petitions the petitioners are challenging the validity of Sections 39, 41, 42, 18, 44, 45, 50, 71(4), 103(3)(ii) of the said Act and the ground on which most of the said sections are so challenged is that they offend the provisions of Article 26 of the Constitution. In other words, it is contended on behalf of the petitioners that because of these sections the power and control of the Gowd Saraswath Community of Kaup Peta, which is a religious denomination has been superseded and transferred to the authorities mentioned in the said Act. At this stage it should be mentioned that it was not disputed before us that this Gowd Saraswath Brahmin Community of Kaup Peta is a religious denomination. The main contention urged on behalf of the State was that the said sections merely impose reasonable restrictions on the administration of the affairs of the said institutions by the religious denomination or its representatives and did not take away the whole right of administration from the hands of the said denomination.

3. In the case of *Commissioner, Hindu Religious Endowments v. Lakshmindra Thirtha Swamiar*[1], their Lordships of the Supreme Court held that under Article 26 (d) it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law and the law therefore must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. Their Lordships, however, made it clear that a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under Article 26. The question, therefore, which we have to decide in this case so far as these sections are concerned is whether or not as a result of these provisions the right of administration of these two institutions has been taken away from the hands of the religious denomination altogether and has vested in the authorities mentioned in the said Act. In order to determine this question it would be necessary to scrutinize each one of the said provisions separately. Before doing that I would mention that the petitioners before us are also challenging Section 76 (5) of the said Act and R. (1) framed under Section 76(1) of the Act. The challenge to these sections is made on different grounds which I shall mention when I deal with the same. I shall first take up the sections of the Act which are challenged on the ground that they violate the provisions of Article 26 of the Constitution.

4. Of the said sections, which are challenged on the ground, that they violate the provisions of Article 26 of the Constitution, Sections 39, 41, 42, 44, 45 and 103(3)(ii) may be taken together. Section 39 so far as it is material for the present purpose, reads as follows : Sub-section (1) "Where a religious institution included in the list published under Section 38 or over which no Area Committee has jurisdiction, has no hereditary trustee, the Commissioner shall constitute a Board of Trustees consisting of not less than three and not more than five persons appointed by him." Sub-section (3) - Every trustee appointed under sub-section (1) or sub-section (2) shall hold office for a term of five years, unless in the meanwhile the trustee is removed or dismissed or his resignation is accepted by the Commissioner or he otherwise ceases to be a trustee".

5. Material portion of Section 41 reads as follows :

[1] AIR 1954 SC 282

> "(1) In the case of any religious institution over which an Area Committee has jurisdiction, the Area Committee shall have the same power to appoint trustees as is vested in the Commissioner in the case of a religious institution referred to in Section 39 : Provided that the Area Committee may, in the case of any institution which has no

hereditary trustee, appoint a single trustee".

Sub-section (2) of Section 41 inter alia provides that the provisions of Section 39, sub-section (3) shall apply to the trustee or trustees appointed, or the Board of Trustees constituted, by the Area Committee as they apply in relation to the trustee or trustees appointed or the Board of Trustees constituted, by the Commissioner. At this stage it should be mentioned that so far as these institutions are concerned the Area Committee has jurisdiction and therefore Section 41 and not Section 39 would apply to the present case and the Area Committee shall have the same power to appoint trustees as in the case of religious institutions referred to in Section 39 and the same power to remove and dismiss such trustees.

6. Section 42 reads as follows :

> "The power to appoint trustees under Section 39 or Section 41 shall be exercisable notwithstanding that the scheme, if any, settled, or deemed under this Act to have been settled for the institution contains provisions to the contrary."

Section 44 reads as follows :

> "Every non-hereditary trustee lawfully holding office at the commencement of this Act, shall be deemed to have been duly appointed trustee under this Act for the residue of his term of office at such commencement."

Section 45 gives power to the Deputy Commissioner in the case of any religious institution over which an Area Committee has jurisdiction and the Commissioner in the case of any other religious institution to suspend, remove or dismiss any hereditary or non-hereditary trustee or trustees thereof on any of the grounds mentioned in the said section. Sub-section (3) of Section 45 provides, that pending the disposal of the charges framed against the trustee, the Commissioner or the Deputy Commissioner may place the trustee under suspension and appoint a fit person to discharge the functions of the trustee.

7. Section 103 (e) (ii) provides that in any scheme settled or deemed to have been settled under the Madras Hindu Religious Endowments Act, 1926 (including a scheme settled under Section 92 of the Code of Civil Procedure 1908) and in force immediately before the commencement of this Act, all powers conferred and all duties imposed by such scheme on any Court or Judge or any other person or body of persons not being a trustee or trustees or a paid or an honorary officer or servant of the religious institution, shall be deemed to have been conferred or imposed on the Area Committee if the institution is subject to the jurisdiction of such a Committee and on the Commissioner, in other cases; and the Area Committee or the Commissioner, as the case may be, shall exercise such powers and discharge such duties in accordance with the provisions of the scheme subject to such restrictions and conditions, if any, specified in the scheme.

8. It was contended before us on behalf of the petitioners that prior to the enactment of this Act, i.e., the Madras Hindu Religious and Charitable Endowments Act (Act 19 of 1951) the religious denomination was exercising its power of control and management over these institutions

through its representatives, i.e., the board of trustees. If, then it was urged, the power of appointment of such trustees vested under the Act in the Commissioner or the Area Committee, as the case may be, and the said Commissioner or the Area Committee would have full power to suspend and dismiss such trustees then the denomination is virtually reduced to the position of a non-entity and is wholly bereft of its powers of management and control of the institutions.
It was further urged that even the existing boards of Trustees who were appointed by the denomination under the schemes framed under two decrees of the Court of the Subordinate Judge, South Kanara, and who are still functioning shall be deemed to have been duly appointed under this Act for the remaining period of their term of office. Thus, it was argued, the existing trustees although elected by the denomination are really reduced to the position of servants of the Area Committee or of the Commissioner, as the case may be.

9. In my opinion, this contention of the Petitioners is sound and should be accepted. It seems to me to be clear that the Act in question by empowering the Area Committee to appoint the trustees and also to remove and dismiss them has virtually taken away, to use the expression of their Lordships of the Supreme Court, the right of administration of these two institutions from the hands of the religious denomination altogether and has thus violated the right guaranteed under Article 26. The learned Advocate for the Petitioners was right in his contention that the essence of the whole matter was the right to appoint trustees. Under the scheme of management the denominations were exercising their power of control and management by appointing trustees of their own choice. In other words, the denomination was exercising its power of control, management and supervision over these institutions through their own representatives elected for that purpose. If then these trustees can no longer be elected by the denomination but are to be appointed by the Commissioner or the Area Committee, as the case may be, then the denomination ceases altogether to have any control over the management of the institutions in question. This being the position, it can rightly be contended that the Act in question by virtue of these sections has completely taken away the right of administration from the hands of the religious denomination and has vested it in other authorities and as such violated the right guaranteed under Article 26 of the Constitution. Trustees appointed under the Act would virtually be servants of the State through whom the State will exercise its own power of management and control. Even the existing trustees who had been appointed by the denominations would have to function as trustees under the Act. In other words, they will be deemed to have been appointed by the authorities concerned and would be liable to be removed and dismissed by the said authorities. I am, therefore, of the opinion that Sections 39 and 41, 42 and 44 of the Act are ultra vires the Constitution and as such should be declared invalid. This was also the view taken by the Madras High Court in the case reported in *Devaraja v. State of Madras*[2], Their Lordships in the course of their judgment observed as follows :

> "The right to appoint, dismiss, suspend and remove trustees is vested in the Commissioner and also the appointment of non-hereditary trustees - vide Sections 18 and 39 (2). This power to appoint trustees under Sections 39 and 41 of the Act can be exercised by the authorities concerned notwithstanding that a scheme has been already settled which scheme is deemed under the new Act to have been settled under that Act in respect of such institution. .... In other words, the effect of the Act is to reduce the trustees to the position of servants, the Government and the Commissioner being the masters, as the relationship is nothing more and nothing less."

These sections as also others, with which we are not concerned in these petitions, were declared invalid by their Lordships of the Madras High Court in the said case. At this stage it should be mentioned that the provisions of this Act came up for consideration before the Supreme Court in Sirur Mutt's Case, AIR 1954 SC 282, but these sections were not considered by their Lordships of the Supreme Court in the said case.

10. I am unable to accept the contention of the learned Government Pleader that these sections only impose a reasonable restriction upon the right of the denomination to manage these institutions. In my opinion, the effect of these sections is to take away altogether the said right and are, therefore, void.

11. As for Section 45 of the Act Mr. Govind Bhat learned Advocate for the petitioners, did not challenge the right of the Deputy Commissioner or of the Commissioner to suspend, remove or dismiss a trustee after proper charges are framed and he is given an opportunity to meet such charges. What, however, was challenged by him was the right of the Commissioner or the Deputy Commissioner under sub-section (3) of the said section to appoint a person to discharge the functions of a trustee during the period a trustee is placed under suspension. It was urged that no such power can be validly given to the authorities mentioned. In my opinion, however, sub-section (3) of Section 45 in conferring power upon the authorities concerned to appoint a trustee to discharge temporarily the functions of a trustee during the period of his suspension merely imposes a reasonable restriction on the administration of the affairs of the institution by the denominations and does not take away the right of administration from the hands of the religious denomination altogether. This part of Section 45, therefore, cannot be said to be violative of the right guaranteed under Article 26. This section is, therefore, held valid.

12. Regarding Section 103 (e) (ii), I am unable to hold that the said section when it says that all powers conferred on any Court or Judge or any other person or body of persons not being a trustee or trustees shall be deemed to have been conferred or imposed on the Area Committee, meant to transfer the power of the denomination to the Area Committee. I cannot hold that 'any other person or body of persons' mentioned in that section means the denomination.

[2] AIR 1953 Mad 149

The learned Government Pleader also conceded before us that by virtue of the said provision the power of the denomination was not sought to be transferred to the Area Committee or the Commissioner. Section 103 (e) (ii) therefore cannot be held to be ultra vires the Constitution.

13. I shall now take up the remaining sections, challenged in these petitions on the ground that they violate Article 26 of the Constitution. They are Sections 18, 50 and Section 71 (4) of the Act. Section 18 provides as follows :

> "(1) The Commissioner may call for and examine the record of any Deputy or Assistant Commissioner, of any Area Committee, or of any trustee not being the trustee of a math or of a specific endowment attached to a math, in respect of any proceeding under this Act (not being a proceeding in respect of which a suit or an appeal to a Court is provided by this Act), to satisfy himself as to the regularity of such proceeding, or the correctness, legality or propriety of any decision or order passed therein".

(2) If any such decision or order has been passed by any Deputy or Assistant Commissioner, or by the trustee of any religious institution other than one included in the list published under Section 38, and it appears to the Commissioner that the decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly."

The effect of this section, it is urged, is to supersede the right of administration of these religious denominations and vests the same in a department of the Government. I am unable to accept this contention. The said provision, in my opinion, only places a reasonable restriction on the right of administration of the denomination. I have already mentioned that their Lordships of the Supreme Court laid down that although the law must leave the right of administration to the religious denomination itself, it can impose such restrictions and regulations as it might choose to impose without taking away altogether the right of administration from the hands of religious denomination. The effect of this section, in my opinion, is to impose a reasonable restriction upon the right of administration by the denomination and not to take away altogether the said right. In this connection it should be mentioned that Section 20 of the Act which subjects the administration of all religious endowments to the general superintendence and control of the Commissioner came to be considered by their Lordships of the Supreme Court in the Sirur Mutt case and their Lordships held the said section to be valid. Section 20 provides that such superintendence and control shall include the power of passing any orders which may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist. Section 20 in my opinion, goes much further than Section 18 of the Act. Under Section 20 the Commissioner may pass any orders which he thinks necessary to make for proper administration of the endowment. If that power is not violative of Article 26 of the Constitution, as has been held by their Lordships of the Supreme Court, I do not think the power conferred by Section 18 of the Act can be said to be so violative. Section 20 has not been challenged before us, as it cannot be in view of the decision of the Supreme Court in Sirur Mutt's case. I do not think that the effect of Section 18 is to supersede altogether the right of administration by a religious denomination and vest in the same in a department of the Government. The effect of the said section, to my mind, is to impose a restriction on the said power of management by the denomination which the law is entitled to impose. The contention of the learned Advocate for the petitioner on this point must, therefore, fail.

14. I shall now take up Section 50 of the Act. Section 50 provides as follows :

"Notwithstanding anything contained in any scheme settled or deemed to be settled under this Act, or any decree or usage to the contrary, the trustee of a temple shall have power, subject to such conditions as the Commissioner may, by general or special order, direct, to fix fees for the performance of archanais and to determine what portion, if any, of such fees shall be paid to the archakas or other office-holders or servants of the temple."

This section is also challenged on the same ground, viz., that it violates the provisions of Article 26 of the Constitution. I am again unable to accept this contention. The section leaves the power to fix fees for the performance of archanais and to determine what portion, if any, of such fees

shall be paid to the archakas or other office-holders or servants of the temple, but, only subjects the said powers to such conditions as the Commissioner may by general or special order direct. The power given under this section to the Commissioner is not more extensive than the general power of superintendence and control which is conferred by Section 20 of the Act and which has been held valid by their Lordships of the Supreme Court. It can by no means be said that because of this section the right of administration by the denomination has been altogether taken away. The right to fix fees for the archanas is still left with the trustees, subject only to such conditions as the Commissioner by general or special order direct. In my opinion, the section only imposes a reasonable restriction on the power of management by the denomination which the law is empowered to impose in the interest of the general public.

15. I now come to Section 71 (4) of the Act. Section 71 (1) enjoins the trustee of a religious institution to keep regular accounts of all receipts and disbursements. Sub-section (2) of Section 71 provides thai the accounts of every religious institution, the annual income of which as calculated for the purposes of Section 76 for the Fasli year immediately preceding is not less than sixty thousand rupees, shall be subject to concurrent audit, that is to say, the audit shall take place as and when expenditure is incurred. Sub-section (3) of Section 71 provides that the accounts of every other religious institution shall be audited annually or if the Commissioner so directs in any case or class of cases, at shorter intervals. Subsection (4) of Section 71 reads as follows :

> "The Audit shall be made -
> (a) in the case of a religious institution the annual income of which calculated as aforesaid for the fasli year immediately preceding is not less than one thousand rupees, by auditors appointed in the prescribed manner, who shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code".

The contention of the learned Advocate for the petitioner before us was that by this provision the power to appoint auditors, which under the scheme is vested in the general body, has been taken away and has been transferred to a department of the Government. This, it was urged, was violative of the said Article 26 of the Constitution. I am wholly unable to accept this contention. It appears from Sections 72 and 73 (1) of the said Act that after completing the audit, the Auditor shall send a report to the Area Committee or to the Commissioner, as the case may be, and shall specify in his report all cases of irregular, illegal or improper expenditure, or of failure to recover monies or other property due to the religious institution, or of loss or waste of money or other property thereof, caused by neglect or misconduct, Section 73 (2) provides that the auditor shall also report such other matter relating to the accounts as may be prescribed or on which the Commissioner or the Area Committee concerned, may require him to report. Section 74 inter alia provides that the Area Committee or the Commissioner, as the case may be, shall send a copy of every audit report relating to the accounts of a religious institution to the trustee thereof, and it shall be the duty of such trustee to remedy any defects or irregularities pointed out by the auditor and report the same to the Area Committee or the Commissioner, as the case may be. Section 74 further provides that if, on a consideration of the report of the auditor along with the report, if any, of the trustee, and the remarks, if any, of the Area Committee, the Commissioner thinks that the trustee or any other person was guilty of misappropriation or wilful waste of the funds of the institution or of gross neglect resulting in a loss to the institution, the Commissioner may, after giving notice to the trustee or such person to show cause as to why an order of surcharge should

not be passed against him and after considering his explanation, if any, by order, certify the amount so lost and direct the trustee or such person to pay within a specified time such amount personally and not from the funds of the religious institution. It would appear from these provisions that the Commissioner or the Area Committee, as the case may be, has the right to scrutinize the accounts kept by the trustee and take suitable action on such scrutiny. These powers are not challenged in these petitions. That being so, no objection can legitimately be taken to the auditors through whom the accounts will be scrutinized being appointed in the prescribed manner and their being designated public servants within the meaning of Section 21 of the Indian Penal Code. I do not see any logic in the contention that although the accounts of the trustees, who are representatives of the general body, are to be scrutinized and action taken thereon at the instance of the authorities concerned, the auditors to be appointed for that purpose should be appointed by the General Body. This contention, in my opinion, must therefore fail.

16. The only other section of the Act which remains to be considered is Section 76 (5) thereof. This section is challenged on a ground different from the ground on which the above mentioned sections are challenged before us. Section 76 (5) was introduced by the amending Act of 1954. Before enumerating the said sub-section it would be necessary to refer to the provisions of sub-section (1) of Section 76. Sub-section (1) provides as follows :

> "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 five per centum of its income as may be prescribed".

Sub-section (5) reads as follows :

> "Whenever there is any surplus after meeting all the charges referred to in the foregoing sub-section, it shall be lawful for the Commissioner, acting suo motu or on an application to make grants to poor and needy religious institutions for carrying out repairs and renovation subject to such rules as may be framed by Government in this regard."

It was contended before us that the power conferred by the said sub-section to make grants out of the surplus, if any, to poor and needy religious institutions for carrying out repairs and renovation should be held invalid. The precise argument of the learned Advocate for the petitioners before us on this point was that the fees which are to be levied under the said section are to be in respect of services rendered by the Government and their officers and for defraying the expenses incurred on account of such services. If that is so, then the Government cannot be given, any right to make grants out of any surplus that may remain after meeting all the charges and expenses for such services to any other object, however, laudable the same may be. In my opinion, this contention is sound and should be accepted. The fee can be imposed for services rendered. In this case, it is clear that the fees to be imposed under Section 76 are to be in respect of services rendered by the Government and their officers and for defraying the expenses on account of such services. In the first place, the imposition should be commensurate with services to be rendered and the expenses thereof so that there may not be any surplus. In the second place, the surplus, if any, cannot be diverted for any purpose other than the purpose of defraying the expenses of such services, however laudable the said purpose may be. In my opinion, if there is any surplus the same should be added to the next year's income and if it is seen that the fees

imposed regularly leave a surplus then the imposition should be correspondingly reduced so that it may be commensurate with the expenses that are to be incurred in connection with such services. I, therefore, hold that sub-section (5) of Section 76 should be declared invalid.

17. The last matter to be considered in these petitions is R. (1) framed under Section 76 (1) of the Act. That rule provides that every religious institution shall from the income derived by it, pay to the Commissioner annually a contribution calculated on a percentage of its income at the rates mentioned therein. When we turn to the rates mentioned in the said rule we find that the rate of contribution has been fixed on the basis of the income of the institution. For instance, if the annual income is ₹ 200/- or above but does not exceed ₹ 3,000/-the rate of contribution is 3 per cent and if the annual income exceeds ₹ 3,000/- but does not exceed ₹ 10,000/- the rate of contribution is 3 ½ per cent. This rule is challenged in these petitions. At first it was argued by the learned Advocate for the Petitioners that the basis should be the quantum of services rendered and not the quantum of income. In other words it was contended that what has been done in this rule is that if there is a higher income, then a higher rate is to be imposed without taking into consideration the quantum of services rendered. It was urged that it may be that although an institution yields a high income there is very little service to be rendered in respect thereof. In such a case the imposition of a higher rate of contribution merely on the ground that the institution yields a higher income cannot be justified. The learned Government pleader in meeting the said contention contended before us that an institution with higher income is expected to require more services and the principle on which the rate of contribution has been fixed is a reasonable one. In any event the contended, that the rate of contribution cannot be said to have been fixed on a grossly unreasonable basis. We put to the learned Advocate for the Petitioners, in the course of his argument, to suggest any other basis on which the said rate of contribution could have been fixed. He was unable to do so. In my opinion, it is not possible to hold that the basis on which the said rate of contribution has been fixed can be said to be grossly unreasonable.

18. The learned Advocate for the Petitioner realizing the difficulty of maintaining his present contention did not press the same any further but resorted to another argument to induce us to hold that the rule should be quashed and the Government should be asked to frame fresh rules. The said argument was based on the following facts. In the Madras State there is a separate Hindu Religious and Charitable Endowments Department with a hierarchy of officers. The said officers are not employed for any other work of the Government but in the Mysore State the Commissioner for Endowment has been authorized to carry on the functions of the Commissioner under the Madras Act. For the purpose of administration of the Act the Government has put only one Assistant Commissioner, a few Inspectors and clerks. The revenue under Section 76 (1) from South Kanara leaves a very large surplus in the hands of the Government. He relied on the counter affidavit filed by the Government on this point wherein although it is stated that the contention that the revenue under Section 76 (1) from South-Kanara District leaves a very large surplus in the hands of the Government, is not correct, the actual income received by the Government of Mysore from the contribution under Section 76 (1) from South Kanara District for the period between 1-7-1957 to 30-6-1958 is about ₹ 56,000/00, though the demand raised was for about ₹ 65,000/00 and the expenditure incurred by the State for

administering the Act in the District of South Kanara is ₹ 36,400/-. In the said counter affidavit the details of the amounts totaling to ₹ 36,400/- have also been given. The learned Advocate for the Petitioner contended before us that this affidavit filed on behalf of the Government itself shows that there is a large surplus.

19. The learned Government pleader stated before us that the sum of ₹ 36,400/- mentioned in the said affidavit does not include the pay of the Commissioner and of the Deputy Commissioner. The said sum only covers the pay of the Assistant Commissioner and his staff. In answer to the said contention the learned Advocate for the Petitioner urged before us that the pay of the Commissioner and of the Deputy Commissioner is met out of the general revenue and therefore there is still a large surplus in the hands of the Government. He, therefore, contended that fresh rules should be framed taking into consideration the expenditure to be incurred in connection with the said institutions. In my opinion, on the materials placed before us it is not possible to give any definite opinion on this point. This point is raised for the first time in the additional affidavit of the petitioners and the State, in my opinion, is justified in contending that it had not sufficient opportunity to place all materials before the Court on this point. This point is therefore left open to be determined, if raised, in any future application, on proper materials.

20. In the result, therefore, I hold that Sections 39, 41, 42, 44 are violative of the provisions of Article 26 of the Constitution and are invalid. I further hold that sub-section (5) of Section 76 of the Act is invalid being ultra vires the powers of the Legislature. These sections are, therefore, struck down. Rest of the sections of the Act challenged in these petitions stand. We express no opinion in these petitions as to the validity or otherwise of rule (1) framed under Section 76(1) of the Act. The question as to the validity of the said rule is left open. Each party will bear and pay its own costs of these applications.

Somnath Iyer J.

21. I agree.

Order accordingly.