ORISSA HIGH COURT

Ram Chandra Deb

Vs

State of Orissa

O.J.C. No. 321 of 1955

(K.L. Narasimham, C.J. and P.V.B. Rao, J.)

30.04.1958

JUDGMENT

K.L. Narasimham, C.J.

1. This is a petition under Article 226 of the Constitution by the Raja of Puri challenging the constitutional validity of Sri Jagannath Temple Act, 1955 (Orissa Act 11 of 1955) (hereinafter referred to as the Act) passed by the Orissa Legislature and published in the Orissa Gazettee dated 4-11-1955.

2. The petition was filed by Sri Ramchandra Deb, who made extravagant claims to the effect that the Temple of Lord Jagannath at Puri (hereinafter referred to as the Temple) was the private temple of his family, that all its moveable and immovable properties were also his private properties and that by passing the Act the Orissa Legislature infringed the fundamental rights guaranteed under Articles 14, 19, 26, 27, 28 and 31(2) of the Constitution. Sri Ramchandra Deb died after the filing of the petition and his son Sri Bira Kishore Deb, was substituted in his place on 5-3-1957. Mr. A.C. Gupta who appeared for Sri Bira Kishore Deb frankly conceded that the Temple was a public Temple and the properties of the Temple were the properties of the Deity and not the private properties of the Raja of Puri. In view of this concession, the scope of the controversy between the parties has been very much narrowed down and the main question for consideration is whether the Act infringes the fundamental rights guaranteed under Articles 25 and 26 of the Constitution. Mr. Gupta urged as a subsidiary point that Articles 14, 19 and 31(2) may also be attracted.

3. The Orissa Legislature first attempted to control public Hindu Religious Endowments in Orissa by passing the Orissa Hindu Religious Endowments Act, 1939 (Orissa Act 4 of 1939). This Act was repealed and reenacted with several additions and modifications by the Orissa Hindu Religious Endowments Act 1951 (Orissa Act 2 of 1952) which has brought into force with effect from 1-1-1955. Some attempts were made by the Commissioner of Endowments appointed under the said Acts, to control the administration of the Temple and its endowments. But the Legislature thought that special legislation was necessary for the Temple in view of its unique character.

As a first step in this direction, the Orissa Legislature passed an Act entitled the Puri Sri

Jagannath Temple (Administration) Act 1952 (Orissa Act 14 of 1952), with the main object of securing an accurate record of rights and duties of the innumerable sebaks, pujaris and other persons connected with the management of the Temple and its endowments. Section 3 of that Act conferred power on the State Government to appoint a Special Officer for the preparation of such a record of rights, and Section 4 conferred consequential and ancillary powers on that Officer. That Act was amended by the Puri Sri Jagannath Temple (Administration) (Amendment) Act, 1954 (Orissa Act 1 of 1954) by which finality was given to the record of rights as prepared by the Special Officer and published in the prescribed manner, subject to the right of the aggrieved party to challenge the correctness of any entry in the said record of rights by an application before the District Judge Sri Lakshman Panda, a senior Officer of the Orissa Judicial Service, was appointed special Officer for the preparation of the record of rights and his report was published in several parts; Part 1 being published on 15-3-1934. It gives an exhaustive review of the history of the Temple, the connection of the various Rajas of Puri with the Temple, the innumerable Nitis and festivals associated with the Temple and other particulars. With the consent of both parties this report of the Special Officer (Ext. A) was taken as the main basis for the purpose of examining the constitutional validity of the Act. Mr. Gupta on behalf of the petitioner stated that for the purpose of this petition he would not challenge the correctness of the facts stated in the Report, but would argue the constitutional question on the basis of those facts as well as on the basis of the preamble and other provisions of the Act.

4. It will be useful at this stage to give a brief summary of the history of the Temple and the association of the various Rajas of Puri with its management. It is admitted by historians that the Temple in its present form was built by Raja Ananga Bhim Deo one of the Kings of Orissa sometime in the eleventh century. Since then, successive kings of Orissa richly endowed the Temple and supervised its management. The innumerable religious rites and ceremonies in the Temple were recorded in a palm leaf Chronicle known as Madala Panji and also in another book in Sanskrit Known as Niladri Malioday and the Special Officer has pointed out in his report (page 30) that in matters of doubt the aforesaid books especially the former, were considered as authoritative. Apart from superintending the management of the Temple, the kings of Orissa were also performing some religious duties in their capacity as "Adya Sebak" (foremost Sebak) of the Lord. After the defeat and death of the last independent Hindu King of Orissa, Raja Mukund Deo in 1565, Orissa came under the Afghan rulers of Bengal for a short time but in 1590 Raja Mansingh, the General of Emperor Akbar defeated the Afghans and annexed Orissa to the Moghul Empire. An ancestor of the Raja of Puri (Who was then known as the Raja of Khurda) of the Bhoi dynasty was placed in charge of the administration of the Temple by Raja Mansingh in 1590 and since that date the connection of the family with the Temple began. The Moghul rule lasted till about 1756. History records that the local Muslim Governors ousted the Raja from the management of the Temple levied a tax on pilgrims and took over the management themselves, primarily because it was lucrative. During the Mahratta period also (1756 to 1803) the management of the Temple was taken over by the Ruling power, who, being Hindus used to meet from the general revenues the annual deficit between the income and expenditure of the Temple. Orissa came under the British rule in 1803 and the East India Company took over the management of the Temple and tried to administer it through three Pandits. This arrangement was found to be unsatisfactory and by Regulation IV of 1809 the management of the Temple was handed over to the then Raja of Khurda known as the Raja of Puri. The material sections of this regulation are as follows :

"II. First. The superintendence of the Temple of Jagannath and its interior economy, the conduct and management of its affairs, and the control over the priests, officers and servants attached to the Temple, are hereby vested in the Raja of Khurda who, on all occasions, shall be guided by the recorded rules and institutions of the Temple or by ancient and established usage.

"Second : The Raja of Khurda and his successors shall hold the charge vested in them by the above clause so long as they shall continue to coo-duct themselves with integrity, diligence and propriety, but nothing contained in this Regulation shall be construed to preclude the Governor-General in Council, from removing the present Raja or any of his successors from the superintendence of the Temple on proof of misconduct in such person, made to the satisfaction of the Government."

The aforesaid provisions of the Regulation thus show that though the then ruling power conferred on the Raja of Khurda hereditary right of management and superintendence of the Temple, that right was expressly made subject to the supervision of the then Ruling power who could remove him from the post on proof of misconduct. That Regulation also provided for the levy of a tax on pilgrims who may visit the Temple. But in 1840 by another Regulation (Regulation X of 1840) pilgrim tax was abolished. Section 2 of that regulation was as follows :

"2. And it is hereby enacted that the superintendence of the Temple of Jagannath and its interior economy, the conduct and management of its affairs and the control over the priests, officers and servants attached to the Temple, shall continue vested in the Raja of Khurda for the time being, provided always that the said Raja and all persons connected with the Temple shall on all occasions be guided by the recorded rules and institutions of the Temple or by ancient and established usages, so far as the same may be consistent with the provisions of the Act."

It will be noticed that the power of the Government to remove the Raja for misconduct which was expressly provided in Regulation IV of 1809 was omitted from this Regulation. Soon after the abolition of the pilgrim tax, Government in 1843 handed over to the Raja of Puri the Estate known as "Sathaw Hazari Mahal" yielding an annual rental of Rs. 17420/- for the purpose of utilising the same for the administration of the Temple. Again on 3-4-1858 another Estate known as 'Ikrajat Mahal' was also handed over to the Raja of Puri for the purposes of the Temple. In paragraph 9 of the deed of transfer of "Ekrajat Mahal" property (Ext. E) it was stated as follows :

"Again, this may also be stated that as proposed above the lands that are being donated are given in the custody of the Raja of Khurda being the Superintendent of Jagannath Temple, that the Hon'ble Raja is the trustee or the lands aforesaid for the Temple, i.e., he will have possession over the property as trustee thereof and the said properties will remain in the custody of his heirs on condition stated above, so long as they continue to be the Superintendents of the Temple".

This divestment of the power of the Government to supervise the conduct of the Raja and to

remove him for misconduct was in pursuance of the agitation carried on by some of the Christian missionaries in England against the propriety of a Christian Government being in charge of a Hindu religious institution. There were also some other deeds of transfer relating to lands whose income was appropriated for the maintenance of Police force in the temple. It is unnecessary to refer to them in detail.
It is sufficient to say that from 1840, Government voluntarily divested themselves of all powers of supervision and control over the work of the Raja of Puri. In 1885, however, during the minority of the then Raja of Puri a suit was brought by Government against the guardian of the minor Raja of Puri and it was compromised on condition that the guardian appointed a competent manager to look after the administration of the Temple. The minor Raja Mukunda Deb, attained majority sometime in 1897, but as he mismanaged the affairs of the Temple he was compelled to appoint a Deputy Magistrate, namely Rai Bahadur R.K. Das as Manager from 1902. Since then though the Raja of Puri was nominally the Superintendent, a Government servant was always in charge of the management till Raja Ram Chandra Deb succeeded his father in 1926. He also appointed Sri R.K. Das as Manager for sometime and subsequently took over the administration of the Temple in his personal hands. Thus, the supervision and control over the actions of the Raja which the Government voluntarily gave up in 1840 was restored though in a modified form in 1902 by the Government interfering when there was evidence of gross mismanagement, compelling the Raja to appoint a Government servant as its manager and, conferring on him powers of superintendence, by the execution of a power of attorney. Hence, though by virtue of Regulation IV of 1809 the Raja of Puri can rightly claim to be the hereditary Superintendent of the Temple, it is also correct to say that he is subject to the supervision and control of the Ruling power, in the exercise of this right.

5. Apart from his powers of superintendence over the Temple, the Raja of puri as the Adya Sebak has certain religious functions to perform which are known as Gajapati Mahaseva. These have been described in detail at pp. 48-49 of the Special Officer's Report (Ext. 4). As the foremost Sebak he is respected by the people as "Chalanthi Bishnu" and given special honours in the Temple. He is also entitled to certain quantity of Mahaprasad and other offerings made inside the Temple. Apart from him there are innumerable sebaks attached to the Deity whose rights and duties have been accurately recorded by the Special Officer. The rights and duties of the Raja as Adya Sebak should, however, be carefully distinguished from his rights and duties as the hereditary superintendent of the Temple. The former are based on ancient custom and usage as recorded in Madala Panji and Niladri Mahoday and as permitted by tradition. But the latter are derived solely from the grant made by the ruling power by Regulation No. IV of 1809.

6. Though Sri Gupta, on behalf of the petitioner disclaimed the temple and its endowments to be the Raja's private properties, it is desirable at this stage to examine whether the hereditary right of superintendent ship of the Temple conferred on the Raja of Puri is 'property' within the meaning of the Constitution. The Raja has no beneficial or personal interest in the endowments of the Temple in his capacity as Superintendent. Even after his appointment as hereditary superintendent in 1809, Government used to meet the expenses of the Temple amounting to about Rs. 53,000/- per annum by imposing a tax on pilgrims and paying the collections to the Raja. After the abolition of the pilgrim tax in 1840, a Mahal known as Sathais Hazari Mahal yielding an annual rental of Rs. 17420/- was made over to the Raja in 1843 and a corresponding deduction was made from the annual money payment. Subsequently also when, Ekrajat Mahal was transferred to the Raja in 1858 and other lands and properties were transferred, Government

stopped making monetary contribution towards the maintenance of the-Temple, but in the deed of Transfer of the Ekrajat Mahal (Ext. 3) quoted above, it was made absolutely clear that the Raja had not beneficial interest in the property and that he would be in charge of Mahal so long as he or his heirs continued to be the superintendents of the Temple. There can be no question of any surplus income being available out of the properties of the Temple over which the Raja could claim any beneficial interest. In the deed of transfer it was further made clear that the lands were given in commutation of the annual payment hitherto made by Government to the Superintendent, for expenses connected with the Temple. In the Khewat of Ekrajat Mahal also (Ext. B) the name of the proprietor was shown as Sri Jagannath Mahaprabhu and the character of the interest of the Raja was shown as Manager. It must therefore be held that the position of the Raja of Puri so far as his right to Superintendentship of the Temple is concerned, is merely that of a hereditary manager or trustee with no beneficial or personal I interest in the endowments. It is mere hereditary office to which no emoluments were attached. The perquisites Khai, and other income that he used to derive from the Temple were based on his position as Adya Sebak in charge of Gajapati Mahaseba, which right, as already shown, is distinct from his right as superintendent.

7. In the Federal Court decision reported in *Umayal Achi v. Lakshmi Achi*[1], Varadachariar, J. held that trusteeship in respect of religious or charitable trusts with no beneficial interest in the property of the trust would not be 'property' for the purpose of the Hindu Women's Right to Property Act 1937. In *Angurbala v. Debabrata*[2], their Lordships of the Supreme Court while affirming this view held that a sebait was not in the same position as a trustee, that he had a beneficial interest in the endowment, and that consequently his right was 'property' within the meaning of either the Hindu Women's Right to Property Act or the Hindu Law. The observations of Varadachariar, J., in the aforesaid Federal Court decision were distinguished on the ground that in that case there were no materials to

> "hold that in regard to trust that formed the subject-matter of the suit the trustees had any beneficial or personal interest in the trust properties".

Their Lordships quoted, with approval, the Madras decision reported in *Suryanarayanacharyulu v. Seshamma*[3], and held that the office of Archakatvam which is a hereditary religious office would be 'property' because the holder of the
office for the time being was beneficially entitled to enjoy the income of the endowed property. Again, in a later decision of the Supreme Court reported in *Commr. of Hindu Religious Endowments v. Lakshmindra Thirtha Swamiar of Shirur Math*[4], a Mahant's interest in his Math was held to be "property" because he retained in himself not only the functions of a manager, but had a personal interest of a beneficial character, in the properties of the Math which is sanctioned by custom and is much larger than that of a Sebait in devottar property. Hence, the true test in deciding whether the hereditary right to a religious office in a Temple is "property" or not, seems to be whether the holder of that office has any personal interest of a beneficial character in the properties of the temple. If he has no such interest, it is not property at all. The position of the Raja of Puri as Superintendent of the Temple seems to be very similar to that of a Dharmakarta of a temple in South India who has been held not to have any proprietary interest. In *Vidyapurna Thirtha Swami v. Vidyanidhi Thirtha Swami*[5], the functions of the Dharmakarta of a temple as distinct from those of the head of a Math were explained. In a later Privy Council decision

reported in *Srinivasa Chariar v. Evalappa Mudaliar*[6], the previous Madras decision was cited with approval and it was pointed out that

> "the position of Dharmakartha is not that of a sebait of a religious institution or of the head of a Math. These functionaries have much higher right with larger powers of disposal and administration and they have a personal interest of a beneficial character".

I would therefore hold that the hereditary superintendentship of the Temple of the petitioner is not "property" and consequently the Act would not offend Articles 19(1)(f) and 31(2) of the Constitution. His rights and perquisites as the Adya Sebak in charge of Gajapati Mahaseba were not touched by the Act. They may be rights of property recognized by the Constitution.

8. The main attack on the Act was with special reference to Article 26 of the Constitution and before examining this question it is desirable to summarise briefly the relevant provisions of the Act. The preamble, though unusually long, is worth quoting :

> "Whereas the ancient Temple of Lord Jagannath of Puri has ever since its inception been an institution of unique national importance, in which millions of Hindu devotees from regions far and wide have reposed their faith and belief and have regarded it as the epitome of their tradition and culture;

And whereas long prior to and after the British conquest the superintendence, control and management of the affairs of the Temple have been the direct concern of successive Ruler, Governments and their officers and of the public exchequer;
And whereas by Regulation IV of 1809 passed by the Governor-General-in-Council on 28-4-1809, and thereafter by other laws and regulations and in pursuance of arrangements entered into with the Raja of Khurda, later designated the Raja of Puri,
the said Raja came to be entrusted hereditarily with, the management of the aft airs of
the Temple and its properties as Superintendent subject to the control and supervision of the ruling powers; And whereas in view of the grave and serious-irregularities thereafter, Government had to intervene on various occasions in the past; And whereas the administration under the superintendent has further deteriorated and situation has arisen rendering it expedient to reorganize the scheme of management of the affairs of the Temple and its properties and provide better administration and governance therefore in supersession of all previous laws, regulations, and arrangements, having regard to the ancient customs and usages and the unique and traditional nitis and rituals contained in the record of rights prepared under the Puri Sri Jaggannath Temple (Administration) Act, 1952, in the manner hereinafter appearing etc.". The Legislature thought that the Temple being an institution of unique national importance to which millions of Hindu devotees from various parts of. India come to worship, required special legislation. It also thought that though the Raja of Puri was entrusted hereditarily with the management of the affairs of the Temple as its Superintendent, there has been a deterioration in the management of the Temple necessitating a complete reorganization of the scheme of management of the Temple and its endowments. Section 2 of the Act says that as soon as the Act comes into force the provisions of the Orissa Hindu Religious Endowments Act 195H would cease to apply to the Temple. The Puri Sri Jagannath Temple (Administration) Act 1952 was

made a part of the Act by Section 3, Section 5 vested the management of the Temple in a Managing Committee constituted under the Act, and that Committee was made a body corporate having perpetual succession and common seal. The constitution of the Committee is fully described in Section 6. It consists of 11 persons with the Raja of Puri as its Chairman. The Commissioner of Endowments Act and the Administrator of the Temple appointed under Section 19 of the Act were made ex-officio members. One person was to be nominated by the State Government from the learned Pandits entitled to sit on the Muktimandop of the Temple. Three persons were to be nominated by the State Government from the sebaks of the Temple recorded in the Record of Rights. Four other persons were to be nominated by the State Government from other classes of persons. No person was eligible to be a member of the Committee unless he professes the Hindu Religion. Section 7 preserves the hereditary right of the Raja of Puri to be the Chairman of the Committee by saying that if at any time the Raja happens to be a minor the State Government may appoint any other person to be the Chairman of the Committee, but it shall take into consideration the suitability of the next in the line of succession to Raja of Puri for such temporary appointment after consulting the Advocate General. Section 8 preserves intact all the rights and privileges of the Raja of Puri as Adya Sebak in charge of Gajapati Mahaseva. Section 11 gives wide powers of control to the State Government to dissolve or supersede the Committee if it defaults in-performing its duties. Section 13 deals with the procedure to be adopted by the Committee at its meetings. The decisions are taken by majority of votes, the Chairman (Raja of Puri) having no right to vote unless there is equality of votes - in which case he gets a casting vote. Section 15 enumerates the, duties of the Committee and may be quoted in fall :

> "15. Subject to the provisions of this Act and the rules made thereunder, it shall be the duty of the Committee -
> (1) to arrange for the proper performance of seva puja and of the daily and periodical nitis of the Temple in accordance with the Record of Rights;
> (2) to provide facilities for the proper performance of worship by the pilgrim;
> (3) to ensure the safe custody of the funds, valuable securities and jewelleries and for the preservation and management of the properties of the Temple;
> (4) to ensure maintenance of order and discipline and proper hygienic conditions in the Temple and of proper standard of cleanliness and purity in the offerings made therein;
> (5) to ensure that funds of the specific and religious endowments are spent according to the wishes as far as may be known, of the donors;
> (6) to make provision for payment of suitable emoluments to its salaried staff and
> (7) 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."

Section 19 confers on the State Government the power to appoint an Administrator for the Temple who shall be a Government servant professing Hindu religion. He shall be a whole-time officer attached to the Temple. He is given extensive powers of administration by Section 21, including the power to punish the various sebaks and to decide disputes amongst them subject of course to right of appeal to the Committee. Section 24(2) reserves a right to a sebak who is punished, either by the Administrator or by the Committee to establish his right, if any, in a competent civil court. Chapter IV of the Act deals with the budget, audit and accounts which are

not material for the present discussion. Chapter V deals with other general provisions, including the constitution of a fund known as "Sri Jagannath Temple Fund" and the purpose for which it may be utilised. Section 30 confers general powers of superintendence and control on the State Government. The other sections are merely consequential and ancillary.

9. It will thus be seen that the essential feature of the Act is the transfer of management of the Temple which was formerly in the sole charge of the Raja of Puri, to a Committee consisting of eleven persons, including the Raja as its Chairman. All the other members of the Committee are either Government servants or persons nominated by the Government. Apart from thus controlling the Committee by exercising their powers of nomination the Government have extensive powers of superintendence and control over the actions of the Committee, and may remove the members for adequate reasons and also issue appropriate orders under Section 30 and in extreme cases they have also the power to supersede or dissolve the Committee.
The Raja's position has undoubtedly been very much weakened by his being in a hopeless minority in the Committee and by his not having the right to vote except when there is equality of votes. But his influence over the deliberations of the Committee cannot be judged merely by the numerical strength of the Committee. It very much depends on the personality an influence which he may exercise, especially over the nominated members from the Mukti-Mandap and from the Sebaks.

10. It was urged by Mr. Gupta that the Act offended clauses (b) and (d) of Article 26 of the Constitution by interfering with the fundamental right of the institution to manage its own affairs in matters of religion and to administer its property in accordance with law. Mr. Gupta relied very much on the observations of the Supreme Court in 1954 SCB 1005 (already cited) and in *Ratilal Panachand v. State of Bombay*[7], where the aforesaid clauses of Article 26 were fully considered and explained. In the latter decision their Lordships summarised at page 1063 (of SCR) their conclusions laid down in the former decision, in the following words :

> "So far as Article 26 is concerned it deals with a particular aspect of the subject of religious freedom. Under this Article any religious denomination or a section of it has the guaranteed right to establish and maintain institutions for religious and charitable purposes and to manage in its own way all affairs in matters of religion. Rights are also given to such denomination, or a section of it, to acquire and own moveable and immoveable properties, and to administer such properties in accordance with law. The language of the two clauses (b)
> and (d) of Article 26 would at once bring out the difference between the two.

In regard to the affairs in matters of religion, the right of management given to a
religious body is a guaranteed fundamental right which no legislation can take away. On the other hand, as regards the administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly a right to administer such property but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted. But here again it should be remembered that under Article 26(d) it is the religious denomination itself which has been given the right to administer its properties in accordance with law which the State may validly impose. A law which takes away the right of

administration altogether from the religious denomination and vests it in any other or secular authority would, amount to violation of the right which is guaranteed under Article 26(d) of the Constitution." Their Lordships further stated that the expression. 'religion' mentioned in clause (b) of Article 26 includes' not only the philosophical side of religion, but also religious practices as laid down in the tenets of any religious sect. They unambiguously affirmed the principle that by virtue of clause (b) of Article 26, the religious practices sanctioned by a particular denomination should be preserved inviolate. The legislature is not competent to alter or modify the same, subject of course to certain limitations such as public order, morality or health as specified in the Article itself. In my opinion, there is no provision in the Act which interferes with the religious practices in the Temple. On the other hand, Sub-Section (1) of Section 15 makes it mandatory for the Committee to see that the daily and periodical Nitis of the Temple are properly performed. With a view to avoid any ambiguity as to what the daily and periodical Nitis would be, the Legislature went further and by Orissa Act 14 of 1952 provided for the preparation of an accurate record of rights for the Temple and under Sub-Section (1) of Section 15 required the Committee to follow the record of rights in the performance of the daily and periodical nitis. Thus, far from interfering with the religious practices of the Temple the Legislature has gone out of its way and made elaborate arrangements for the very strict observance of the religious practices in the Temple, as recorded in the ancient
books like 'Madala Panji" and 'Niladri Mohodaya' and incorporated in the record of rights prepared by the Special Officer. Even if the Special Officer, while preparing
the record of rights omitted a particular item any aggrieved party can got it corrected by applying to the District Judge.

11. It was contended however, that inasmuch as the funds of the Temple will be under the administrative control of the committee, it may cripple the performance of rituals by sanctioning inadequate funds for such performance or sometimes by even refusing to sanction any money whatsoever and that in this manner the religious practices may be interfered with. This apprehension seems to be unfounded. Sub-Section (1) of Section 15 of the Act casts on the Managing Committee the duty of arranging for the proper performance of the rituals and this duty involves the supply of necessary funds for the purpose. Doubtless, the Committee must have some discretion as regards the amount of money that may have to be sanctioned for a particular ritual, but the conferment of such discretion will not amount to interference with religious practices. In 1954 SCR 1005 a similar argument was advanced to the effect that the power to fix the scale of expenses for the rituals attached to a religious institution may cause interference with the performance of religious practices in the institution, but their Lordships of the Supreme Court rejected that argument in the following terms at page 1029 (of SCR) :

> "Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to a religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent Legislature, for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies."
>
> "Some discretion must therefore necessarily remain with the Managing Committee to decide, bearing in mind the finances of the Temple, the amount that could be sanctioned for the rites and ceremonies of Lord Jagannath and the mere conferment of such

discretion will not amount to interference with religious practices.

12. The main point of attack by Mr. Gupta against the Act is its repugnancy to clause (d) of Article 26 of the Constitution. That clause confers a fundamental right on any religious denomination to administer the properties of its institutions in accordance with law. In 1954 SCR 1005 their Lordships of the Supreme Court laid down that the expression "to administer such property according to law" occurring in that clause will not include the complete taking over of the administration from the denomination concerned and handing it over to another body. At page 1029 (of SCR) they observed:

> "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 clause (d) of Article 26."

A similar observation made by their Lordships in 1954 SCR 1055 : at page 1063 : (AIR 1954 SC 388 at p. 391) (G) has already been quoted. Mr. Gupta's argument may be summarized thus. The worshippers of Lord Jagannath of Puri constitute a distinct religious denomination within the meaning of Art.

26. They have therefore the right to administer the Temple and its endowments in accordance with law. Such administration should be through the Raja of Puri as Superintendent of the Temple, assisted by the innumerable sebaks attached thereto. The Act, however, completely takes away the administration from the hands of the Raja and the sebaks, and entrusts it to a Committee in which the Raja of Puri though the Chairman is a mere figurehead and all the other members are nominees or creatures of the Government. Thus, according to Mr. Gupta the scheme of the Act is to take away the administration from the religious denomination known as the worshippers of Lord Jagannath and entrust it to the nominees of the State Government, and hence there has been a contravention of the fundamental right guaranteed by Article 26(d).

13. Mr. M. Mohanty who appeared for one of the Sebaks of the Temple in O. J. C. No. 7 of 1956 (which was heard along with this petition) also challenged the Act as unconstitutional, but he put forward a slightly different argument so far as this Article is concerned. According to him there is a distinct cult known as the Cult of Lord Jaggannath of Puri otherwise known as "Jagannath Dharma." That the cult requires the Temple and its endowments to be administered by the Raja of Puri assisted, of course, by innumerable sebaks. That cult forms a separate 'religious denomination' within the meaning of Article 20 and the Act by taking away the administration from that denomination and handing it over to a secular Committee offend that Article. Mr. Mohanty laid special emphasis on clause (d) of Sub-Section (2) of Section 28 of the Act which says that the funds of the Temple may be utilised for 'culture and propagation of the tenets and philosophy associated with the Temple of Sri Jagannath." According to him this clause amounts to legislative recognition of the existence of a separate cult known as "Jagannath Dharma".

14. Both Mr. Gupta and Mr. Mohanty urged that the fact that all the members of the Committee are required to be Hindus by religion (see Section 6(2) of the Act) will not save the Act from this constitutional objection inasmuch as the followers of Jagannath Dharma, or the worshippers of Sri Jagannath cannot be equated to the Hindu Public in general.

15. The Advocate-General attempted to meet these arguments in the following two ways : Firstly, he said that the Temple does not belong to any particular sect, cult or creed of Hindus, but it is a public Temple above all sects, cults and creeds. According to him the Hindu public all over India should be deemed to be the worshippers of the Temple and so long as the administration of the Temple vests in those who profess the Hindu religion, it is not taken away from the religious denomination to which the Temple belongs or entrusted to any other body. Secondly, he urged that the followers of Hindu religion in India will not form a separate "religious denomination" within the meaning of Article 26 and that the said expression applied only to the innumerable sects, sub-sects, cults and creeds into which the Hindu religion has been divided and sub-divided. According to him, therefore, the fundamental right guaranteed under Article 26 will not apply to public religious institutions which belong to the Hindu public in general and not merely to any particular sect or cult.

16. A question arises as to what is the precise significance of the expression "religious denomination" occurring in Article 26. Does it apply to Hindus! in general or is it restricted only to sects or sub-sects amongst Hindus ? In 1954 SCR 1005 the subject-matter of the litigation was a Math belonging to the followers of Madhavacharya. Hence, there was no diificulty in saying that they belonged to a religious denomination. In 1954 SCR 1055 the subject-mutter of the litigation consisted of (i) endowments belonging to the Swetambari Sect of Jains and (ii) endowments for the benefit of the followers of Zoroastrian religion. Their Lordships of the Supreme Court held that the followers of Zoroastrian religion would also for in a "religious denomination" within the meaning of Article 26. If the followers of Zoroastrian religion can be held to form a separate religious denomination for the purpose of Article 26, there seems no special reasons why the followers of Hindu religion also should not be held to ton a religious denomination within the meaning of the same Article. The fact that the adherents of Hindu religion are very large in number compared to those who profess Zoroastrian religion or the fact that amongst the Hindus there are innumerable sects and sub-sects where as amongst the Parsees there are presumably no sects at all, will not affect the legal position. The Advocate-General sought to support his argument by relying on Article 27 of the Constitution In which the words "religion" and religious denomination" occur in juxta-position in the phrase "maintenance of any particular religion or religious denomination". (According to him, if "religion" and "religious denomination" convey the same idea, the framers of the Constitution would not have used the two expressions side by side in the same Article. The Advocate General, therefore, contended that if the expression "religion" is not the same as "religious denomination" in Article 27, the same rule of interpretation should be applied to Article 26 also.

17. I am not, however impressed with these arguments. Both the expressions "religion" and "religious denomination" appear to have been used on Article 27 with a view to leave no room for ambiguity. But unless the context requires it, such a narrow meaning cannot be given to the expression "religious denomination" occurring in Article 26. The word "religion" is used, and in the context it would only mean religion of the particular religious denomination to whom the institution belongs. To accept the argument of the Advocate General would be to hold that though an institution belonging to a sect or sub-sect of Hindus would get the protection of Article 26, and institution which belongs to the Hindu public in general and not to a particular sect or sub-sect would not get the protection of that Article. An Article conferring a fundamental right should not be so narrowly construed as to exclude institutions of the Hindu Public in general,

from the benefit of that Article. In *Laskshmindra Tirtha Swamiar v. Commissioner of Hindu Religious Endowments*[8], the expression "denomination" occurring in Article 26 was construed as follows : (at page 639) :

> "There being several religions in India such as Islam, Christianity. Zoroastrianism and Hinduism it may not be wrong to take Hinduism and the
> members of that religion as constituting a religious, denomination in a larger sense, it' it should be taken in a limited sense, Adwaita, Dwaita. Vishishtadwaita and Saivite, may be another classification and the members of each faith may be treated as members of one denomination."

This view was not dissented from by the Supreme Court in 1954 SCR 1005 which was an appeal against the judgment of the Madras High Court in AIR 1952 Madras 613. On the other hand, as already pointed out, by recognizing the Parsees who are the followers of Zoroastrianism as forming a religious denomination, the Supreme Court has practically confirmed the view taken by the Madras High Court that the expression "denomination" may be used both in a larger sense and in a narrow sense, and its construction will depend on the context. In a country like India where there are several religious faiths, the followers of each religion may also be quite appropriately called a religious denomination. I am not therefore inclined to accept the Advocate-General's contention that the followers of the Hindu religion in general will not form members of r. religious denomination within the meaning of Article 26 and that an institution meant for the Hindu public generally will not get the protection of that Article.

18. The Advocate-General relied on some observations made in a recent decision of the Supreme Court reported in *Venkataramana Devaru v. State of Mysore*[9], in support of his contention that the general Hindu public will not constitute a "religious denomination" for the purpose of Article 26. I do not think this decision supports the extreme contention put forward by the Advocate-General. There the main question for consideration was whether a public temple belonging to a section of the Hindu public namely Gouda Saraswat Brahmins could be validly thrown open to all classes of Hindus on account of the provisions of sub-clause (b) of clause (2) of Article 25 of the Constitution. It was contended before their Lordships that as Gouda Saraswat Brahmins undoubtedly formed a religious denomination clause (b) of Article 26 conferred on them a fundamental right to manage the affairs of their temple and that the said right cannot be curtailed by the general words of sub-clause (b) of clause (2) of Article 25 which requires that all Hindu religions institutions of a public character should be thrown open to all classes and sections of Hindus. Their Lordships noticed the conflict between sub-clause (b) of clause (2) of Article 25 and clause (b) of Article 26 and by adopting the rule of harmonious construction held that the latter was subject to the former. The further question as to whether the general Hindu public formed a separate religious denomination for the purpose of Article 26, did not arise for consideration. That decision will not therefore support the Advocate-General in the present instance.

19. The next important question to decide is whether the worshippers of Lord Jagannath of Puri or the followers of 'Jagannath Dharma' form a separate class or sect as distinct from the Hindu general public, so as to form a separate denomination of their own. It is, I think, too late to contend that the devotees of Lord Jagannath at Puri form a class distinct from the Hindu public in general. The preamble of the Act makes it clear that millions of Hindu devotees not only from

Orissa but from all parts of India have reposed their faith and belief in the Temple. In Hunter's and Stirling's
History of Orissa, edited by B.K. Sahu, Vol. I at page 7 occur the following passages :

> "Besides this perpetual appeal to the popular instinct the worship of Jagannath aims at a Catholicism which embraces every form of Indian belief, and every conception of the Deity. Nothing is too high and nothing is too low to find
> admission into his Temple. The fetishisms and bloody rites of the aboriginal races, the mild flower worship of the Vedas, and every compromise between the two along with the lofty spirituality of the great Indian reformers have here found refuge. But not content with this representing Vishnu in all his manifestations priests have super-added the worship of the other members of the Hindu Trinity in their various .shapes and the disciple of every Indian sect can and his beloved rites and some form of his chosen Deity, within the sacred precincts." Again in Volume II of the same book, at p. 277 occurs the following passage :
> "Without going into any profound speculation as to the origin, nature and meaning of the worship of Jagannath, there is one cause sufficiently obvious to (sic) all sects should unite in harmony here in the performance of their religious ceremonies, namely, that the Temple instead of being consecrated exclusively to .some form of the Deity Vishnu is in fact occupied in joint tenancy by forms of three of the most revered divinities of the Hindu faith."

20. In the Calcutta Review of 1891, Mr. N.K. Bose sometime Collector of Puri gave the following sketch of the Hindus of Puri and their religion (see pp. 106-107 of Puri Gazetteer by L. S. S. O' Malley) : (edited by Mr. P.T. Mansfield)

> "Jagannath is the great god of the people of Orissa. All who call themselves Hindus are entitled to worship him, and excepting the pronounced aboriginal tribes and those low castes who are engaged in offensive occupations, all are entitled to enter the precincts of the Temple. For the excluded classes there is an image at the entrance of the gate called Patitapaban Hari to whom they can offer their homage. The worship of Jagannath is for the highest minds amongst the Hindus, a pure system of theism. To the polytheistic multitude it offers the infinite phases as objects of worship and provides for their delectation an infinite number of rituals and ceremonies.

In a word, it supplies the spiritual requirements of different phases of Hindus in different stages of their intellectual development. Under its broad all-respective foot doctrines the most divergent find a resting place. There you see the learned Pandit of the Sankaracharya monastry seeking salvation by way of spiritual knowledge. Here you find a large number of saiva sanyasis voluntarily enduring excruciating torture and misery, and seeking absorption into the deity by severe austerities. You also see a large number of devotees consecrating their entire soul as it were to Hari with outpourings of love and affection. Jagannath is an unsectarian name. All Hindu sects worship at its shrine. The followers of Sankaracharya, Ramanuja, Ramanand, Kabir,

Chaitanya and Nanak fire to be seen doing homage to the great Cod. Even the Jains of Digambar sect flock to the Temple at a. certain season of the year. The common link of all the sects is their belief in the supremacy of jagannath; and their differences consist in the character which they assign to his supremacy, in their religious and other practices founded on the nature of such beliefs, and in their sectarian marks."

21. In the Report of the Special Officer also (Ext. A) at page 10 a list of the various deities installed at the Temple is given at pp. 39-43. It will be found that the deities embrance almost all the deities known in the Hindu pantheon. Doubtless, the main temple is that of Lord Jagannath who is none else but Vishnu, but Durga, Bimla, Lokenath, Brahma, Saraswati, Lakshmi, Nabagruha, Surjya and other minor deities, also have their shrines within its precincts and the definition of the Temple as given in the 1952 (Orissa Act 14 of 1952) (which must be deemed to be a part of the Act) includes all shrines and sacred places within its precincts. The cooked food offered to the Deity is known as Mahaprasad and great sanctity is attached to it by all classes of Hindu irrespective of their caste and creed. Hunter records an instance where a Puri priest received Mahaprasad from the hands of a Christian (see Hunter's History of Orissa, Vol. I p. 6 - edited by N.K. Sahu).

22. In the light of the aforesaid authorities the question for decision is whether the worshippers of Lord Jagannath or the followers of Jagannath Dharma can be said to form a distinct denomination amongst the Hindus. In 1954 SCR 1005 at page 1022 : (AIR 1954 SC 282 at p. 289) (D) their Lordships of the Supreme Court quoted the following definition of the word 'denomination' in the Oxford Dictionary :

> "Collection of individuals classed together under the same name; a religious sect or body having a common faith and organization and designated by a distinctive name".

The worshippers of Lord Jagannath cannot be said to form an organization at all. Every Hindu, whether he is a resident of Orissa or of any other State in India is a worshipper of Lord Jagannath. The Temple is as sacred to the followers of Sankaracharya as to those of Sri Ramanuja or Sri Chaitanya or Madhavacharya or the Vira Saivites of the Kanarese country. The so-called distinctive features of the worship of Jagannath namely : (i) the fundamental unity of all Gods and (ii) the brotherhood of man and complete equality before God, are indistinguishable from the principles of Hindu religion. In the later portion of the Rig Veda, especially in the Tenth Book, the unity of all the Gods of Hindu pantheon is particularly emphasised; and again in the Upanishads the divine nature of the individual Soul Jivatus (Sic) an existing in every human being and the consequent essential equality of all human beings is forcefully thought out. It is true that the language used by the Legislature in clause (d) of Sub-Section (2) of Section 28 of the Act is somewhat unhappy and lends some support to Mr. Mohanty's contention that "the tenets and philosophy associated with the temple of Lord Jagannath" are "of a distinctive nature". But the preamble of the Act shows clearly that it is not a sectarian Temple but a Temple belonging to Hindus all over India. If at all the worship of Jagannath can be called a separate cult, it is in substance a cult meant to destroy all cults and sub-cults amongst the Hindus and unify them in one cult namely the general Hindu cult. The special sanctity attached to the cooked food or Mahaprasad will not suffice to make the Temple a denominational one. In every temple where food is offered to the deity it becomes sacred and purifies the persons who part-take of the same.

I would, therefore, take the view that the worshippers of Jagannath or the followers of Jagannath Dharma are indistinguishable from the general Hindu public and they cannot be said to have a common faith or organization apart from that of the followers of the Hindu religion and hence they do not form a religious denomination, separate from that of the Hindu general public.

23. From this conclusion it necessarily follows that clause (d) of Article 26 will be contravened only if the administration of the Temple is taken away from the Hindu and entrusted to persons of other faiths. But so long as every member of the Managing Committee is required by law to be a Hindu it cannot be said that by taking away the administration from the sole hands of the Raja of Puri and entrusting it to a Committee consisting of Hindus only (including the Raja of Puri), the administration has been taken away from a religious denomination so I as to offend Article 26(d). As pointed out by the Supreme Court in 1954 SCR 1005 it is only when the administration is handed over to some other body that the question of infringement of fundamental rights would arise. If, out of the same denomination the law takes away the administration from one individual and entrusts it to another individual, Article 26(d) will not be contravened. Doubtless, if the person from whom the administration is taken away has any property right in the endowment the other provisions of the Constitution such as Articles 19(1)(f) and 31(2) may be attracted. But I have already held that the Raja of Puri as the hereditary superintendent of the Temple has no property right in the Temple or in its endowments.

24. It was then contended that the extraordinary powers conferred on Government by Section 11 of the Act to dissolve or supersede the Committee appointed under Section 6 and to get the Temple administered through a person appointed by Government was unconstitutional. But it should be noted that the power under Section 11 of the Act is to be used only under extraordinary circumstances, i.e. where the Committee defaults in performing its duties or exceeds or abuses them. Moreover, by clause (3) of Section 11 of the Act even after its dissolution or supersession, the person to be appointed to perform the functions of the Committee is also required to profess the Hindu religion. Thus, the administration of the Temple is not vested in a person who does not profess the Hindu religion. Hence Article 26(cl) will not be contravened :

25. It will be helpful at tin's stage to examine some of the relevant provisions of the Madras Hindu Religious and Charitable Endowments Act 1951 whose constitutionality was fully discussed by the Supreme Court in 1954 SCR 1005 . Section 53 of that Act conferred power on the Deputy Commissioner of Endowments to settle schemes for the management of temples and maths. The material portions of that Section are worth quoting :

> "58(2) A scheme settled under Sub-Section (1) for a temple or for a specific endowment other than one attached to maths may contain provision for (a) removing an existing trustee whether hereditary or non-hereditary, provided that where provision is made in the scheme for the removal of a hereditary trustee provision shall also be made therein for the appointment as trustee of the person next in succession who is qualified; (b) appointing a new trustee or trustees in place of, or in addition to, the existing trustee or trustees; (c) defining the duties and powers of a trustee or trustees; and (d) appointing or directing the appointment of a paid executive officer who shall be a person professing the Hindu religion on such salary and allowances as may be fixed to be paid out of the funds of the

institution and defining the powers and duties of such officer.

(3) A scheme settled under Sub-Section (1) for a math or for a specific endowment attached to a math may contain a provision for :

(a) associating one or more persons with the trustee or trustees or constituting a separate body for the purpose of participating or assisting in the whole or any part of the administration of the endowments such as a math or a specific endowment;

Provided that such person or persons or the members of such community shall be chosen from persons having an interest in such math or endowment...."

Their Lordships of the Supreme Court upheld the constitutional validity of these provisions at page 1036 (of SCR) in the following, terms :

> "We find nothing wrong in Section 58 of the Act which relates to the framing of the scheme by the Deputy Commissioner. It is true that it is a Government officer and not the Court which is given, the power to settle the scheme but we think that ample safeguards have been provided in the Madras Act to rectify any error or unjust decision made by the Deputy Commissioner. Section 61 provides a right of appeal to the Commissioner against an, order of the Deputy Commissioner and there is a right of suit given to a party who is aggrieved by the order of the Commissioner, with a further right oh appeal to the High Court".

The constitutional validity of the Orissa Hindu Religious Endowments Act 1939 (as amended by Orissa Act 2 of 1952) was also considered by the Supreme Court in *Sri Jagannath Ramanuj Das v. State of Orissa*[10] where their Lordships held that the corresponding; provision (section 39) was invalid because the right of appeal to a judicial tribunal was taken away. At page 1032 (of SCR) they observed :

> "We think that the settling of a scheme in regard to a religious institution by an executive officer, without the intervention of any judicial tribunal amounts to an unreasonable restriction upon the rights of property of the superior of the religious institution which is blended with his office." It was in consequence of this decision that in the Orissa Hindu Religious Endowments Act 1951, as amended by Orissa. XVIII of 1954 a right of appeal to the High Court was given in Section 44 against any scheme prepared under Section 42.

26. Thus, under the Endowments Acts of both Madras and Orissa, the provision for settling a scheme which (i) in the case of a hereditary trustee of a temple provides for his removal and the appointment in his place of the next in the line of succession and who is qualified and (ii) in the case of a math provides for associating one or more persons with the trustee (Mathadhipathi) or for constituting a separate body for the purpose of participating in the administration of the endowment of the math, was held
to be valid by the Supreme Court so long as the aggrieved party was given the right to move a judicial tribunal against the order of the Endowments Commissioner. This was insisted upon because the Mathadhipathi had some sort of property right in the institution and if his power of

administration is crippled, without the intervention of a judicial body, it may amount to an unreasonable restriction on his right to property
under Article 19(1)(f). Their Lordships did not hold this provision to be invalid on the ground that the taking away of the administration from the hereditary trustee or mathadhipathi and giving it to another body of persons of the same religious persuasion, in association with him was invalid as offending Article 26(b) of the Constitution. In the present case, I have already held that the Raja of Puri had no property interest in the endowment as hereditary superintendent of the Temple. Hence the necessity for the intervention of a judicial tribunal does not arise as there can be no question of any unreasonable restriction on his right to property. In other respects, the provision of the Act are substantially the same as those of any scheme which may be validly prepared by the Endowments Commissioner either under Section 58 of the Madras Act, or under Section 42 of the (latest) Orissa Act. By keeping the Raja of Puri as Chairman of the new Committee the Government are merely associating several persons along with the hereditary superintendent, for the purpose of participating in the administration of the endowment. If the Government want to remove the Raja of Puri from chairmanship, they are first required to consult the Advocate General (see Section 7 of the Act) and then, after giving the Raja a reasonable opportunity to show cause, take into consideration the suitability of the next in line of succession for such appointment. Again if the Raja's rights as Adya Sebak are in any way adversely affected either by the order of the Administrator, or by the Committee in exercise of the powers conferred by Sub-Sections (3) and (4) of Section 21 of the Act, he" is given the right to approach the Civil Court (see Section 24(2) of the Act). Hence, these provisions must be held to be constitutional in view of the observations of the Supreme Court quoted above so long as all the members of the Committee are required to profess the Hindu religion. In 1954 SCR 1055 Section 44 and Section 47(3) and (6) of the Bombay Public Trusts Act were declared to be invalid because they provided for the transfer of the administration of an institution belonging to a particular sect or religion, to a Charity Commissioner who may belong to any other sect or religious persuasion. Such a feature is not found in the Act.

27. In my opinion, therefore, the Act does not offend either clause (b) or clause (d) of Article 26 of the Constitution.

28. The next Article to be considered is Article 14. According to Mr. Gupta, the Legislature should not have made a separate Act for the Temple alone. There are adequate provisions in the Orissa Hindu Religious Endowments Act which is a general Act applicable to all public temples and religious institutions. The Commissioner of Hindu Religious Endowments has ample powers under that Act to frame a scheme for the proper management of the Temple also and the Legislature by enacting a separate piece of legislation for the Temple alone, ignoring the other temples of Orissa such as those at Bhubaneswar where also there may be similar maladministration has contravened Article 14. This argument also is untenable. The principles underlying Article 14 of the Constitution have been reiterated in several decisions of the Supreme Court and it is unnecessary to repeat them in detail. All that that Article prohibits is class legislation and not reasonable classification for the purpose of legislation so long as such classification is not arbitrary and "bears a rational relation to the object sought to be achieved by the statutes in question", See *Bidi Supply Co. v. The Union of India*[11], In *Charanjit Lal v. Union of India*[12], a
separate law enacted for one company was held not to offend Article 14 of the Constitution, on the ground that there were special reasons for passing legislation for that company. Fazl Ali, J., at

page 877 (of SCR) while quoting Willis or Constitutional law relied specially on the following passage :

> "A law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it".

Mukherjea, J. observed at page 911 (of SCR) :

> "There can certainly be a law applying to one person or a group of persons and it cannot be held to be unconstitutional, if it is not discriminatory in its character".

29. In a very recent decision of the Supreme Court in *Ramkrishna Dalmia v. S.R. Tendolkar)*[13] , the previous decisions on Article 14 of the Constitution were reviewed and the following principles were laid down :

> (a) A law may be constitutional even though it related to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
> (b) There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it, to show that there has been a clear transgression of the constitutional principles;
> (c) It must be presumed that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
> (d) The Legislature is free to recognise degrees-of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
> (e) In order to sustain the presumption of constitutionality the court may take into consideration-matters of common knowledge, matters of common report, the history of the times, and may assume every state of facts which can be conceived as existing at the time of legislation; and
> (f) While good faith and knowledge of existing condition; on the fact of the Legislative are to be presumed if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the-extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

Hence, a separate piece of legislation applicable to the Temple would be constitutional if the reasons-given for singling out that institution "bear a rational relation to the object sought to be achieved" by such legislation. As already pointed out, the preamble to the Act says that apart from the unique character of the Temple as compared to the other Temples of Orissa, grave and serious irregularities have taken place there which necessitated the passing of the Act. The special Officer's

Report gives a vivid picture of the gross mismanagement that has been going on recently in the administration of the Temple (See part II, Ch. VIII of the Report). There is no material before us to show that the other temples in Orissa have the same unique feature as the Temple, or else that the mismanagement there is also of the same grave type. Moreover, it is a fact of which judicial notice can be taken, that the Temple is fundamentally different from the other temples of Orissa. It is a temple of all India importance which does not belong to any sect or sub-sect. Its endowed properties are very vast and they are spread not only over Orissa but also over other States in India. The number of sebaks in the Temple is very large and their rights and duties are very complex. It is true that even under the provisions of the Orissa Hindu Religious Endowments Act, the Commissioner of Endowments may settle a scheme for the management of the Temple, but if the legislature thought that the Commissioner who has to supervise the administration of innumerable temples and religious institutions in Orissa will not have sufficient time to devote to the Temple and that; special legislation was necessary for this particular Temple because of its unique character, it cannot be said that tie classification is unreasonable or arbitrary.
The Legislature is free to recognize degrees of maladministration of the various temples in Orissa and to pass a separate law in respect of a particular institution which requires urgent attention. Hence the Act does not offend Article 14 of the Constitution.

30. There is, however, one provision of the Act which, I think, is clearly unconstitutional in view of the observations of the Supreme Court in 1954 SCR 1055 . I refer to clause (f) of Sub-Section (2) of Section 28 of the Act which enumerates the various purposes for which the Sri Jagannath Temple Fund may be utilized. Clauses (a), (b), (c), (d) and (e) of that sub-section all deal with the purposes which have some connection with the temple. Clause (f) is as follows :

> "(f) With the previous sanction of the State Government, for the establishment and maintenance of, or making of any grant, or contribution to, any leper asylum, poor home, orphanage, or similar other institutions."

The purpose of this clause is undoubtedly charitable, but it has no connection with the Temple. The clause does not say that the leper asylum, poor home, or orphanage, or other institution must be maintained for the Hindus only. The diversion of the income of the temple for the upkeep of any charitable institution which is open to persons of all religions would he outside the scope of the Act. In 1954 SCR 1055 the constitutional validity of Sections 55 and 56 of the Bombay Act which permitted the application of the doctrine of express in regard to the income from a religious institution was considered. Their Lordships held it to be invalid on the following grounds at p. 1071 of (SCR) :

> "A religious sect or denomination has the undoubted right guaranteed by the Constitution to manage its own affairs in matters of religion and this includes the right to spend the trust property or its income for the religious purposes and objects indicated by the founder of the trust, or established by usage obtaining in a particular institution. To divert the trust property or funds for purposes which the Charity Commissioner or the Court considers expedient or proper, although the original objects of the founder can still be carried out, is

> to our minds an unwarrantable encroachment on the freedom of religious institutions in regard to the management of their own religious affairs. We consider it to be a violation of the freedom of religion and the right which a religious denomination as under our Constitution, to manage its own affairs in matters of religion, to allow a secular authority to divert the trust money for purposes other than those for which the trust was created. The State can step in only when the trust was created. The state can step in only when the trust fails or is incapable of being carried out either in whole or in part."

Sri Jagannath Temple Trust Fund can be used only for purposes of the Temple or for matters ancillary to the same such as providing relief to the pilgrim, dissemination of the principles of Hindu religion for which the Temple stands, etc. It may also be properly used for maintaining or making contributions for the maintenance of Hindu orphanage and Hindu leper asylums because the Temple has been held to be a Hindu public temple; and the maintenance of Hindu poor and diseased may come within the purposes for which the contributions were made to the Fund. But the Fund cannot be utilized for maintaining a purely secular leper asylum, orphanage, etc. to which persons of all religions are eligible for admission. The question of the application of the cy pres doctrine does not arise at all because it is not the case of the Advocate-General that the purpose for which the trust was originally created is incapable of being carried out either in whole or in part. I would accordingly pronounce clause (f) of Sub-Section (2) of Section 28 of the Act to be invalid.

31. All the other provisions of the Act are declared valid, and the petition is dismissed with costs. Hearing fee Rs. 200 (Rupees two hundred only).

P.V.B. Rao, J.

32. I agree.

Petition dismissed.

Cases Referred.

[1] AIR 1945 FC 25
[2] AIR 1951 SC 293
[3] AIR 1950 Mad 103
[4]1954 SCR 1005
[5] ILR 27 Mad 435
[6] ILR 45 Mad 565 at page 581 : (AIR 1922 PC 325 at p. 331)
[7]1954 SCR 1055
[8] AIR 1952 Mad 613
[9] AIR 1958 SC 255
[10]1954 SCR 1046
[11]AIR 1956 SC 479
[12]1950 SCR 869 : (AIP 1951 SC 41)
[13](AIR 1958 SC 538) pronounced on 28-3-1958