

SRI SRI SRI LAKSHAMANA YATENDRULU AND ORS. ETC. ETC. A

v.

STATE OF ANDHRA PRADESH AND ANR.

JANUARY 24, 1996

[K. RAMASWAMY AND B.L. HANSARIA, JJ.] B

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987/Agam Shastra Pandit Service Rules, 1987.

Ss.2(16) 2(29), 47, 50, 51, 52, 53, 54, 55—Mathadhipathi— C
Padakanukas or other personal gifts made to Mathadhipathi as head of
institution—Management and administration of math properties—Removal of
Mathadhipathi—Filling of temporary and permanent vacancies in the office
of mathadhipathi—Nomination of mathadhipathi—Power of Commissioner
to frame scheme of administration of math—Held, right of mathadhipathi to D
administer and manage property endowed to math and rights of similar
character are legal rights—Mathadhipathi is neither hereditary trustee, nor a
trustee as envisaged by s.2(16) and s.2(29) but he is a trustee of math in
relation to property of math or specific endowment attached to math—Matters
relating to administration of math properties are not matters of religion but E
are secular activities though connected with religion enjoined on
mahant—Mathadhipathi incurring disqualifications enumerated in clauses
(d) to (i) of s.53 is liable to be removed—Suspension of a mathadhipathi is
a necessary and reasonable part of procedure for removal of mathadhipathi— F
Role of Commissioner in nomination of mathadhipathi under s.54 is mini-
mal—Power of Commissioner to frame scheme under s.55 is not absolute—
None of ss.50 to 55 offend Articles 25 or 26 of the Constitution of India.

Constitution of India, 1950 :

Articles 25 and 26—Freedom to practice and propagate religion—
Freedom to manage religious affairs—Sections 50 to 55 of Andhra Pradesh
Charitable and Hindu Religious Institutions and Endowments Act, G
1987—Held, are not violative of Articles 25 or 26—Administration and
management of math/properties are secular activities—Fastening an obliga-
tion on Mathadhipathi to maintain accounts of Padakanukas and other
personal gifts made to mathadhipathi does not amount to interference with
religion. H

A The petitioners filed the present writ petitions under Article 32 of
the Constitution challenging the Validity of Ss.50 to 50 of the Andhra
Pradesh Charitable and Hindu Religious Institutions and Endowments
B Act, 1987. These provisions deal with maintaining regular accounts or
receipts of Padakanukas and other gifts made to the Mathadhipathi as
head of the math, removal of Mathadhipathi, qualifications of mathad-
hipathi filling of temporary and permanent vacancies in the office of
mathadhipathi nomination of mathadhipathi and power of Commissioner
C to frame scheme of administration of the Math. Petitioners case was that
the maths represented by them were not public endowments but were
private trusts; the expenses for the maintenance of the maths and worship
D in the temple were being carried on solely from the Padakanukas given by
the devotees; mathadhipathi being the spiritual head to impart religious
instructions and he not being a trustee, his appointment was purely a
religious act and not a secular act, nomination of mathadhipathi was
based upon usage and customs of the respective maths; and therefore, the
provisions of Ss.50 to 55 of the Act attempting to regulate these matters
and vesting power in the Commissioner in respect of these matters
amounted to interference with religious tenets of Hindu religion and were
thus violative of Articles 25 and 26 of the Constitution of India.

E On behalf of the State, it was contended that provisions of Ss.50 to
55 of the Act regulate proper management and administration of the math,
the receipt of income, manner of use and accountability of Padakanukas
and other personal gifts made to the Mathadhipathi, the power to super-
F vise and safeguard the interests of the maths being a secular function was
entrusted by law to the Commissioner; the provisions were enacted to
avoid indelible effect on the administration of math properties and to
safeguard the interest of maths which otherwise would get affected adver-
sely due to protracted litigation for years; as regards the nomination of
Mathadhipathi, Agama Shastra Pandit Service Rules, 1987 provided
G guidance in that behalf and the Commissioner would receive advice of the
Agam Shastra Pandit in the matters of religion, including usages, customs
of Sampradayams observed by the religious institution; the Act and the
Rules provided sufficient safeguard in this respect and the Commissioner
would not exercise his powers arbitrarily or unreasonably, and his
decisions would be subject to correction in an appropriate proceeding.

H Dismissing the writ petition, this Court

HELD : 1. None of the Sections 50 to 55 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 offends Article 25 or 26 of the Constitution. Chapter V of the Act does not *per se* attempt to regulate the propagation or preaching of the tenets by Mahant or of the math or religious beliefs to which the math is founded or it seeks to propagate. [964-H; 948-H]

2.1. Section 47 defines "mathadhipathi" to mean any person in whom "the administration and management of a math or specific endowment attached to a math are vested." The definition of mathadhipathi for the purpose of the Act is expressly confined only in relation to the administration and management of a math or specified endowment attached to the math and vested in him as mathadhipathi. In the concept of mathadhipathi both the elements of power to hold property and duty to property maintain it are blended and neither can be detached from the other. The Mahant, therefore, as the spiritual head of the math is entrusted with the administration and management of the math or the specific endowment. His right to administer and manage the property endowed to the math and other rights of similar character are vested in the office of the Mahant and, therefore, they are legal rights attached to the management and the administration of the property endowed to the math. [947-F-H]

2.2. Mathadhipathi being an aesthetic sanyasi, question of hereditary succession to the office of mathadhipathi does not arise. He is, neither hereditary trustee nor a trustee in the sense envisaged by s.2(29) or s.2(16) of the Act. But in juxtaposition, his position as Mathadhipathi is of a trustee of the property of the math or specific endowment attached to it of which he is the head and holds the property as head of the institution as a trustee with beneficial enjoyment over the math properties for the propagation of the religious tenets and the philosophy applicable to the math or specific endowment and Hindu Dharma. [949-F-H]

H.H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious & Charitable Endowments, Mysore, [1963] Supp. 2 SCR 302 and *Kakinada Annadan Samajan Etc. v. Commissioner of Hindu Religious & Charitable Endowments, Hyderabad & Ors.*, [1977] 2 SCR 878, relied on.

2.3. Fastening an obligation on mathadhipathi to maintain accounts of the receipts of Padakanukas as personal gifts made to the mathadhipathi and to see that the funds are properly utilised for the purposes of

A the math in accordance with its objects and propagation of Hindu Dharma does not amount to interference with religion. Questions relating to administration of properties of math or specific endowment are not matters of religion under Article 26(b); they are secular activities though connected with religion enjoined on Mahant. [964-A-B; C]

B 2.4. Section 50 of the Act requires the mathadhipathi to maintain accounts in the manner prescribed therein which is a secular activity on the part of a mathadhipathi. The intervention of the legislature in that behalf is in the interest of the math itself. He is, therefore, enjoined to maintain accounts in the regular course of the administration and maintenance of the math. Operation of Section 50 is, therefore, a permissible statutory intervention under Articles 25(2)(a) and 26(b) and (d) of the Constitution. [964-D-E]

D 3.1. A mathadhipathi is liable to action under s.51 of the Act and the Commissioner would be entitled to initiate proceedings and remove a mathadhipathi or a trustee of a specific endowment on his satisfying anyone or all the conditions enumerated in clauses (d) to (i) or on mathadhipathi's incurring disqualifications enumerated in clauses (d) (i) or (a) to (c). Section 51 provides a complete machinery for removal of an erring Mahant adjudging him to be not a fit person to remain mathadhipathi. It further provides complete procedure and machinery to the charged Mahant/trustee to disprove the charge and in case of removal from office, he has right of instituting suit and preferring appeal to High Court to have it corrected and legality of the order of removal, tested with adequate procedural safeguards. The validity of the grounds for removal have already been upheld and validity of s.51(1) is, therefore, no longer *res integra*. [952-F; 955-B-C; 953-C]

Digvadarsan Rajendra Ramdassji Varu v. State of Andhra Pradesh & Anr., [1970] 1 SCR 103, relied on.

G 3.2. The suspension of a mathadhipathi, during inquiry is a necessary and reasonable part of the procedure for removal of mathadhipathi. It is essential, therefore, in these circumstances to make a provision for suspending him till the enquiry concludes and an order is made either exonerating or directing his removal. The action under s.51 does not infringe Article 25(1) or 26(b) or 26(d). [953-D-F]

4.1. By operation of sub-section (2) of Section 53, the qualifications for a mahant are prescribed. If a Mahant has already been removed, and if self-same person is nominated as a mathadhipathi under Section 51(2), it would be obvious that the Commissioner cannot recognise such a nomination and grant permission to him as Mathadhipathi. He would be entitled to call nomination afresh. Obviously, recognition of the Commissioner required under sub-section (1) of Section 53 only regulates in that behalf, and the when he is duly nominated as per the qualifications prescribed in sub-section (2) of Section 53. The provisions, therefore, are intended to avoid needless protracted litigation over succession adversely affecting due administration and maintenance of the math, to safeguard the interest of the math and due fulfilment of the objects for which the math or specific endowment is created or established. [953-F-H; 954-A]

4.2. The Commissioner who is the head of the Endowment Department is a high ranking officer with wide administrative experience and is expected to act fairly and reasonably to effectuate the purpose of Chapter V of the Act. It can be accepted that such a high ranking officer would call to his aid necessary and incidental or ancillary powers only to given effect to the purpose of the Act. He would act reasonably, objectively and fairly. If he commits any excess or acts unreasonably, the individual act is liable to be questioned and dealt with appropriately according to law. But for that ground Section 53 cannot be declared *ultra vires*. [954-B-D]

5.1. Role of the Commissioner in the nomination of Mathadhipathi under s.54 is minimal; but nomination *ipso facto* cannot be recognised by the Commissioner. By operation of sub-section (1) with a *non obstante* clause, viz., "subject to provisions of Section 53", the basic qualifications required for a person to be nominated as Mathadhipathi are enumerated in sub-section (2) of Section 53. The Commissioner is guided by Pandit Rules under which the duly competent person assists him in convening the meeting of Mahants having similar Sampardaya for nomination of a Mathadhipathi. Suitable procedure has been made in G.O.M.S. No 218 Revenue dated March 17, 1988 known as Administration of Math 1987. Proviso to clause (v) of sub-rule (2) of Rule 3 make the position clear. [956-E; 957-E-F]

5.2. The Commissioner should test the nomination but not interpose with the nomination, nor interdict a duly qualified person as Mathadhipathi. The role of the Commissioner in that behalf, therefore, is only in

A the nature of an intervener in the nomination duly testing whether the nominated person is a fit person to hold the office of Mahant and to manage and administer the math according to the tenets, Sampardayams, usages, customs and philosophy of the math and the properties attached to it. [958-D-E]

B 5.3. It cannot be said that the result of the provision of s.54 would be to reduce the Mahant to the position of a servant. No doubt, the Commissioner is invested with powers to pass orders, but orders can be passed only for the purpose specified in the section and not for interference with the right of the Mahant as are sanctioned by usage or for lowering his position as the spiritual head of the institution. The saving provisions contained in Section 91 of the Act makes the position quite clear. An apprehension that the powers conferred by this section may be abused in individual cases does not make the provision itself bad or invalid in law. The ratio with equiforce is applicable to the context in which the validity of the provision is to be tested. [957-B-D]

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Math, [1954] SCR 1005, relied on.

E 6.1. The power of the Commissioner to frame a scheme under Section 55 of the Act is not absolute but is conditioned upon reasonable belief on the basis of the report submitted by the Deputy Commissioner or the Assistant Commissioner having jurisdiction over the math or *suo motu*; but in later event he should have material on record for entertaining a reasonable belief that the affairs of the math and its properties are being mismanaged or that funds are misappropriated or that the mathadhipathi grossly neglected in performing his duties. Prior enquiry in that behalf is duly made in accordance with the Rules prescribed thereunder. [958-F-G]

G 6.2. If the Mahant resorts to devices to convert the income of the institution or of the funds or properties thereof into personal gifts made to him, that would be improper conduct for which he would be liable to be removed under s.51. The legislature by enacting that section did not attempt to re-enact Section 55 to bring the obligation of the Mahant, in a different garb. The same ratio applies to the present case. [963-D-E]

H

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 867 of 1987 Etc. Etc.

(Under Article 32 of the Constitution of India.)

K. Parasaran, R. Venugopal Reddy, Dr. V. Gaurishankar, P.P. Rao, A. Raghuvir, H.S. Gururaja Rao, M.N. Krishnamani, Ms. Shyamala Pappu, and A.K. Ganguli, Ms. Mrindula Ray Bharadwaj, Dr. Sumant Bhardwarj, Mohan Parasaran V. Balachandran, P.N. Ramalingam, A.D.N. Rao, T.V. Ratanam, Subodh Markandeya, Ajay Singh, Mrs. Chitra Markandeya, Sunil Kumar Jain for Jain Hansaria & Co., G. Prabhakar, B. Kanta Rao, S. Rajappa, Mrs. H. Wahi, R. Ashok, B. Parthasarathi, K. Rajendra Chowdhary, Y. Prabhakarara Rao, M. Dorairaj V. Balaji, A.T.M. Sampath, A. Subba Rao, A. Raghunath, K. Swami, Ms. Thilagavathya, R.D.B. Raju, N. Ganpathy, K. Ram Kumar, Ms. Asha Nair, C. Balasubramaniam, Adinarayana Raju, T.V.S.N. Chari (NP), Mr. P.K. Pillai, T.V. Ratnam, G.Venkatesh Rao, Ms Sadhana Ramachandran, M.R. Krishnamurthi, Pramod Sharma, R. C. Pathak and Sunil Kr. Jain for the appearing parties.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. The petitioners seek to question the vires of Sections 2 (22), 2 (27) and Sections 47 to 55 in Chapter V of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 (30 of 1987) (for short, "the Act"). But at the time of hearing Shri K. Parasaran, their learned senior counsel, restricted his arguments to the validity of Sections 50 to 55. The petitioner in the first writ petition is Peetadhipati of the institution known as "Mumukshu Jana Maha Peetham" (for short, 'Peetham') in Pada Muktevi village of Movva Mandal in Krishna District of Andhra Pradesh. It was averred therein that the Peetham was founded by one Seetharama Yetendrulu an advocate in the year 1938 and he became a sanyasi. His main philosophy was equality and universality of all religions faiths, good character, gratuitous conduct and devotion to God, far more important than mere rituals. He formed Mumukshu Jana Samajam in 1950. He published several books under that banner. He was running a Telugu magazine by name Mumukshuvu. He started school for the children. He was managing a temple of Lakshmiapati Swamy. The devotees collected funds for all those projects by voluntary donation and the amount given through bhiksha (seeing alms). He donated his ancestral

- A house and purchased 4 acres of land with the aid of Padakanukas (personal gifts). He died in 1972 and nominated one of his disciples as successor and thereafter with the aid of Padakanukas from thousands of disciples temples were constructed by the first petitioner and were being managed with the Padakanukas given by the devotees. It is not a public endowment but a private trust. The expenses for the maintenance of the math and worship in the temple are being carried on solely from the Padakanukas given by the devotees to reverence which the disciples gave to the Mathadhipathi. It is, therefore, clear that the above provisions are *ultra vires*, in their application to the petitioner math. Similar contentions have been raised in all other writ petitions. By their very admission, the petitioner's institution is a math and being managed from personal gifts etc. made by devotees and collected by disciples.

- Shri Parasaran, the learned senior counsel, contended that Section 48 of the Act excludes application of Sections 18 to 22, 25 and 28 of Chapter III to maths. the other provisions in Chapter III by implication would apply to the maths for the reason that they are not excluded. Sections 34 and 35, therefore, by implication stand attracted to the mathadhipathi irrespective of the fact whether mathadhipathi falls under the definition of "hereditary trustee" or not.

- Mathadhipathi is the spiritual head to impart religious instructions. Therefore, he cannot be treated as a hereditary trustee nor he be held to hold any office or service or a post by whatever name it is called. Appointment of a Mathadhipathi is not a secular act. Mathadhipathi, indisputably not being a trustee, his appointment is purely a religious act. The nomination of the mathadhipathi is based upon usage and custom of the math. It is a concept appertaining to Hindu religious endowment. It is *sui generis*. One cannot put it in a strait jacket by any jurisprudential concept. Section 54 imposes recognition of the nomination of a mathadhipathi by the Commissioner, an officer of the Government, who does not have knowledge of usages or practices prevalent in the relevant math. Imposition of such conditions is an interference with freedom of religion and power to manage religious affairs. Removal of Mahant under Section 51, filling up of vacancy under Section 53, recognition of nomination of Mahant under Section 54 and powers to frame a scheme for the management of a math under Section 55 are *ultra vires* of Articles 25(1) and 26(b) of the Constitution. The learned counsel elaborated the contentions arguing that

the procedure for nomination of the mathadhipathi, convening of a meeting with mathadhipathi of other maths of similar Sampardayams as provided under Section 54 (2) of the Act, are repugnant to the usage and Sampardayams of the same math. Each math is governed by its own usage and Sampardayams. No two maths can be held to be governed by the same set of usages and Sampradayams unless one is specific endowment or subordinate of the main math. Though several maths may propagate the same religious philosophy, each math will have its own distinct and different usage or Sampradayams. Even a math propagating the tenets of religious philosophy of Adishankracharya are having different Sampardayams. Similarly, each math following and propagating the dwaita philosophy of Madhwacharya will have its own Sampardayam. Maths propagating Vashisthadwaita philosophy of Shriramanujacharya have their own Sampradayams. Therefore, the Act attempting to regulate nomination of a Mathadhipathi at the recommendation of other mathadhipathis and its acceptance by the Commissioner, or filling up similarly of temporary vacancies in the office of Mathadhipathi, are but naked interference with religious tenets of Hindu religion.

The Act does not provide any guidelines for things to be done in Chapter V of the Act. The rules made by subordinate legislation cannot independently provide guidelines when the Act is silent as to the essential guidelines. In such a situation, the Act itself is unconstitutional for excessive delegation and provisions of Section 53 (2) (a) to (d) are not matters on which any secular authority is competent to decide as to whether the Commissioner will recognise a person nominated as Mahant who could have other qualifications like Acharya, Anusthana, Niyama, Bhakti etc. The best person to adjudge the requisite qualifications is the religious head himself or the disciples of such particular math or denomination and not by any other secular authority not even religious head of another math. Religion being a matter of particular faith, the persons having faith of particular denomination is to decide as to who will be their mathadhipathi and to whom they will disciples. It is not for the secular judgment or any other authority or even by making rules or even making provisions for testing his knowledge of Hindu religion, scriptures, Sampardayams etc. with the help of persons without such knowledge. In fact, in a math a celibate appointed as mathadhipathi would lead the life of a celibate. He may be nominated at any age, say at even the age of 7 years. He would learn scriptures in a traditional way in the math itself. A test to be

A conducted by Pandits to permit him to be appointed by a secular authority as the mathadhipathi is incongruous or repugnant to the Sampardayam. A mathadhipathi can be removed only on grounds which are secular in nature like some of the disqualifications mentioned in Section 51 (1)(i). A secular authority cannot exercise any power at any stage of appointment to a religious office. A mathadhipathi cannot be removed by secular authority

B except for secular reasons which must be just, fair and reasonable relatable to one or other of the grounds mentioned in Articles 25 and 26 of the Constitution. The question of approval or disapproval of a nomination of a mathadhipathi or removal of him on the ground of not having knowledge of the scriptures etc., would amount to interference with the religion. The

C direction to maintain regular accounts of receipts of Padakanukas would be no interference with religious duties; and so, it is unconstitutional, though such a provision for Padakanukas offered to him as head of the math may be valid; but to the extent of Padakanukas given as gifts personal to the mathadhipathi, the sections are violative of Article 25(1).

D He further contends that by operation of Section 48, the applicability of Section 29, which relates to appointment and continuance of executive officers, also stands applied to the maths by which the Act interferes with Mahant's right to manage the math. The power to frame the scheme under Section 55 is given to the Commissioner and he appoints the executive

E officer to manage the math, which is also an interference with the management of the math, which act is inherent in the office of the mathadhipathi as head of the institution. The provision for transfer of the office holders and servants of the math provided in Section 39 is unconstitutional. Most of the employees of the maths may be disciples themselves; their appointment, removal, dismissal etc. being matters of administration by the

F mathadhipathi for due management of the math, interference by Commissioner in that behalf is also *ultra vires* Article 25.

G Shri P.P. Rao, the learned senior counsel for the State, resisted these contentions. He conceded that though the definition of a trustee in Section 2(29) includes mathadhipathi insofar as his right to administer and manage the properties of the math are concerned the Act does not impinge upon his right as a spiritual head of math. The abolition of hereditary rights by Section 16 does not include the right of mathadhipathi. Mathadhipathi in most cases is nominated by his predecessor. Mathadhipathi is a sanyasi who

H has renounced worldly affairs and has severed his ties with natural family.

Therefore, is no scope for hereditary succession to the office of a mathadhipathi. The hereditary trustee defined under Section 2(16) and abolished by Section 16 does not, therefore, include mathadhipathi. The concept of hereditary trustee defined in the predecessor Act 17 of 1966 is the same as in the Act. Section 16, therefore, has no application to a mathadhipathi.

Qualifications and disqualifications of a mathadhipathi have been separately set out in Sections 53(2) and 51(1) respectively in Chapter V, which deals with maths. The qualifications or disqualifications for a trustee mentioned in Sections 18 and 19 do not apply to a Mahant. Equally, Section 20 deals with constitution of board of trustees and its Chairmanship which do not apply to a mathadhipathi since mathadhipathi is a single person. Section 22 has no application, since Section 51 deals with filling up of temporary vacancies of mathadhipathi and Section 53 deals with filling up of permanent vacancy in the office of mathadhipathi. Equally, Section 25 is not applicable to a math since Section 49 occupies the field for fixation of dittam for the math. Section 28 does not apply to mathadhipathi, which has been separately dealt with in Chapter V. All the provisions contained in Chapter V of the Act regulate proper management and administration of the math and the receipt of income, manner of use and accountability of the Padkanukas to Mahant and the math. Section 48, therefore, makes explicit what is implicit in other provisions of the Act. Recognition of nomination of Mathadhipathi (spiritual head) by the Commissioner under Section 53 was made a condition precedent for succession to the office of the mathadhipathi only to ensure that a person possessed of the qualifications prescribed in sub-section (2) of Section 53, and one who does not suffer from any of the disqualifications mentioned in sub-section (1) of Section 51, alone would succeed to the office of mathadhipathi. The object is to prevent future litigation to the succession to the office. It was enacted to avoid indelible effect on the administration of the math properties and to safeguard the interests of the math which otherwise adversely gets affected due to protected litigation for years. Power has been conferred on the Commissioner who is the head of the Endowment Department and a high-ranking officer with vast administration experience. The law presumes that he would reasonably exercise all the powers to grant permission. It would imply that the Commissioner would call in aid all necessary or consequential powers usually implied and necessary to the proper exercise of the power and performance of the duties to effectuate the purpose and the object of the regulation. Therefore, it would be necessary that the

A

B

C

D

E

F

G

H

- A Commissioner should have implied powers. In case where the Commissioner feels that the nomination of the successor requires examination, the obligation to consult a Mahant of a similar math is cast on him; that too with a mathadhipathi of other maths having the same Sampardayams. An agama shastra pandit working in the office of the Commissioner, Endowment Department, advises the Commissioner in the matters of religion including usages, customs or Sampardayams observed by a religious institution. Rules, viz., Agama Shastra Pandit Service Rules, 1987 (for short, "Pandit Rules") made in that behalf provide guidance. If no objection to the nomination of a mathadhipathi is raised by any person, or where the Commissioner does not have any other adverse material, or where the nominee does not suffer from any disqualification, he does not withhold permission for succession as a mathadhipathi. Only when objections are raised by any interested person or even by a disciple or the Commissioner has adverse material, he would seek clarification or information from the nominee or the mathadhipathi or both and then take a decision. Rule 5 of the Pandit Rules provides necessary guidelines in that behalf. The Commissioner is not expected to exercise his powers under Section 53 (1) arbitrarily or unreasonably. If he so does in an individual case, the correctness thereof may be quashed in an appropriate proceeding, according to the prescribed procedure.
- E The power to supervise and safeguard the interests of the maths is a secular function which has by law been entrusted to the Commissioner. In a given case, if he exercises the power in a manner objectionable to the incumbent the same would be amenable to correction in an appropriate forum. The law conferring such a power cannot be faulted. The provisions in Sections 52, 53, 54 and the Rules made thereunder would provide sufficient guidelines which postulate an enquiry. The administration of mathadhipathi Rules, 1987 would supplement the provisions in Sections 53 and 54. Justice Challa Kondaiah Commission pointed out misuse and abuse of the office by some mathadhipathi who used math properties as Padakunukas (personal gifts) for their personal gain and siphoned the income for personal luxuries or misused for wine or women etc. The Act only regulates and monitors math properties and income for its utilisation for religious purposes. The Rules give guidance and full freedom to the mathadhipathi for use of offerings personally given as Padakanukas to him for religious purpose and for his maintenance, consistent with his status according to Samparadayams or usage or custom of the said math. The
- H

Commissioner is invested with the power only for secular purpose specified in the section. It does not amount to interference with the rights of the mathadhipathi as spiritual head sanctioned by usage or custom nor does it tend to lower his position as spiritual head of the institution. The saving provisions contained in Section 91 of the Act make the matter more clear. The apprehension that the powers conferred on the Commissioner may be misused or abused is unfounded. Even if it has so happened, the provisions cannot be struck down or declared invalid on that apprehended premises.

There is no time limit fixed for nomination of a successor. The time limit mentioned in Section 54 (1) is only for intimation of the nomination by the mathadhipathi to the Commissioner. 90 days' time given thereunder is a fairly long period for such a intimation and it is a reasonable period. It would enable the Commissioner to consider all relevant aspects and to take a decision of his granting permission for recognition of the mathadhipathi.

Section 54(2) governs the case of nomination by previous mathadhipathi and when a mathadhipathi is not available to nominate his successor, a meeting of the mathadhipathis of other maths and the disciples of the math to decide the question of successor would arise. Rule 8 of Mathadhipathi Rules is relatable to Section 54(2). Rule 3(2)(iii) of the Rules, though speaks of minor giving consent, should be understood reasonably. A consent by a minor would mean a consent of a guardian on behalf of the minor known under Hindu Minority and Guardianship Act, 1956 or property guardian appointed by a competent court. Section 52 confers, therefore, only limited power to meet one of the contingencies enumerated therein, viz., occurrence of a temporary vacancy or existence of a dispute regarding successor or successor being a minor without there being a fit or suitable person to act on his behalf. In such contingencies the claim of disciples, if any, would be duly taken into consideration. The provisions in Section 52, therefore, are not invalid. Section 47 of 1966 Act is similar to Section 52 of the Act which has already been upheld by this Court. The executive officer is appointed under Section 29 only when a scheme has been framed under Section 55; that too, when the Commissioner is satisfied from the reports submitted to him that the properties of the math are mismanaged or misappropriated or that the Mahant grossly neglected his power as the mathadhipathi. The scheme framed would be

A subject to appeal. It would be framed only after making an enquiry. It is a secular act.

B Section 45 of the predecessor Act of 1966 did not require the mathadhipathi to maintain regular accounts of receipts of personal gifts or other gifts made to the mathadhipathi as head of the math. He was allowed to spend at his discretion for any purpose which is not immoral or illegal. As the Commission, after enquiry, found that corrupt practices were devised to siphon off the funds of the math as Padakanukas, i.e., personal gifts or the same are utilised for leading luxurious, immoral or extravagant way of life, the Commissioner has been empowered to direct the mathadhipathi to render accounts of the gifts received by mathadhipathis. The provision, therefore, was made only for accountability of the receipt of such gifts by the mathadhipathis. In view of the admission that the gifts made to the mathadhipathi for the math are accountable, the Mahant is liable to account for the same. The personal gifts also would be required to be accounted only to the extent of their receipt and not now they are spent by him; he has full freedom to spend for religious purposes etc. After deletion of Articles 19(1)(f) and 31 from Part III of the Constitution by 44th Constitution (Amendment) Act, the law down by this Court that the mathadhipathi had the fundamental right to property no longer is available to him. Therefore, he is required to maintain regular accounts of the receipt of Padakanukas or other personal gifts and to spend the same at his discretion for purposes connected with the objects of the math and propagation of the Hindu dharma. The Act only regulates secular activities of the mathadhipathi in spending the Padakanukas and that too in his own interest. Therefore, the regulations are permissible under Article 25 of the Constitution. It does not amount to interference with the religious functions of the mathadhipathi as head of the math. Since no rules regarding the transfer of the employees of the maths have been made, the question of vires need not be gone into. If and when rules are made the question whether they are consistent with the scheme needs to be gone into at that time. Therefore, the is argument in that behalf is only of academic interest.

G

Sections 50 to 55 of the Act read as under :

H "50. *Padakanukas and other gifts*:— (1) The Mathadhipathi shall maintain regular accounts of receipts of padakanukas or other personal gifts of property made to him as the head of the Math

and he shall be entitled to spend, at his discretion for any purpose which is connected with the objects of the math and propagation of Hindu Dharma. A

(2) Any padakanuka or other personal gift which remains undisposed of during the life time of the mathadhipathi shall devolve on the math as its assets. B

(3) In the case of gifts of property or money made to the mathadhipathi not as personal gifts but as gifts intended for the benefit of the math, the Mathadhipathi, shall keep accounts of all receipts and disbursements of such gifts and shall cause such accounts to be produced before the Commissioner or any person authorised by him in this behalf whenever so required. C

Explanation : Any gift of property or money made to that mathadhipathi shall, unless it is specified by the donor as padakanuka or personal gift, be presumed to be a gift intended for the benefit of the math. D

"51. Removal of Mathadhipathi - (1) The Commissioner may *suo motu* or on an application of two or more persons having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he - E

(a) is of unsound mind;

(b) is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee; F

(c) has ceased to profess the Hindu religion or the tenets of the math;

(d) has been sentenced for any offence involving more turpitude, such sentence not having been reversed; G

(e) is guilty of breach of trust or mis-appropriation in respect of any of the properties of the math;

(f) commits persistent and wilful default in the exercise of his powers or performance of his functions under the Act; H

A (g) violates any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like;

(h) leads an immoral life; or

B (i) fails or ignores to implement the principles set out in clause (17) of Section 2.

(2) The commissioner shall frame a charge on any of the grounds specified in sub-section (1) against the mathadhipathi or trustee concerned and given him an opportunity of meeting such charge, of testing the evidence adduced and of adducing evidence in his favour. After considering the evidence adduced and other material before him, the Commissioner may by order exonerate the mathadhipathi or trustee, or remove him. Every such order shall state the charge framed against the mathadhipathi or the trustee his explanation and the finding on such charge together with the reasons therefor :

Provided that in the case of a math or specific endowment attached thereto whose annual income exceeds rupees one lakh, the order of removal passed by the Commissioner against the mathadhipathi or trustee shall not take effect unless it is confirmed by the Government.

E (3) Pending the passing of an order under sub-section (2); the Commissioner may suspend the mathadhipathi or the trustee;

F (4) (a) Any mathadhipathi or trustee aggrieved by an order passed by the Commissioner under Sub-section (2), may within ninety days from the date of receipt of such order, institute a suit in the court against such order;

G (b) An appeal shall lie to the High Court within ninety from the date of a decree or order of the Court in such suit.

52. Filling of temporary vacancies in the office of the mathadhipathi:

H (1) Where a temporary vacancy occurs in the office of the mathadhipathi and there is a dispute in regard to the right of succession to such Office, or where the mathadhipathi is a minor and has no

guardian fit and willing to act as guardian, or where the mathadhipathi is under suspension under sub-section (3) of Section 51, the Commissioner shall, if he is satisfied after making an inquiry in this behalf that an arrangement for the administration of the math and its endowment or of the specific endowment, as the case may be is necessary, make such arrangement as he thinks fit until the disability of the mathadhipathi ceases or another mathadhipathi succeeds to the office, as the case may be.

(b) In making any such arrangement, the Commissioner shall have due regard to the claims, if any, of the disciples of the math.

(3) Nothing in this section shall be deemed to affect anything in the Andhra Pradesh (Andhra Area) Court of Wards Act, 1902 and the Andhra Pradesh (Telengana Area) Court of Wards Act, 1350 F.

53. Filling of permanent vacancies of the office of mathadhipathi :

(1) Where a permanent vacancy occurs in the office of the Mathadhipathi, by reason of death or resignation or on account of his removal under Section 51 or otherwise the person next entitled to succeed according to the rule of succession laid down by the founder, or where no such rule is laid down, according to the usage or custom of the math, or where no such usage or custom exists according to the law of succession, for the time being in force, shall with the permission of the Commissioner succeed to the office of the Mathadhipathi.

"53(2) A person for succession to the office of the mathadhipathi under sub-section (1) shall possess the following qualifications, namely :

(a) basic knowledge of the Hindu Religion and philosophy;

(b) knowledge of the relevant scriptures and sampradaya to which the math belongs;

(c) capacity to impart the knowledge and preach the tenets of the math to the disciples;

(d) religious temperament with implicit faith in discipline and practice; and

A (e) unquestionable moral character.

54. *Nomination of mathadhipathi* : (1) Subject to the provisions of Section 53, a mathadhipathi may nominate his successor. The fact of such nomination shall be intimated to the Commissioner, within ninety days of such nomination and the Commissioner may recognise such nomination. A nomination shall not be complete unless it is recognised by the Commissioner. The conditions for recognition shall be such as may be prescribed.

B

(2) Where a Mathadhipathi fails to nominate his successor under sub-section (1) or where there is no mathadhipathi, the Commissioner or any officer authorised by him shall after due publication convene a meeting with the Mathadhipathis of other maths of the same sampradayam and the disciples of the math recognise the person nominated in such meeting as a mathadhipathi subject to the provisions of this Act. The procedure for convening the meeting and method of publication shall be such may be prescribed.

C

D

55. *Power of Commissioner to frame schemes* : (1) Where the Commissioner either *suo motu* or upon a report submitted by the Deputy Commissioner or the Assistant Commissioner having jurisdiction has reason to believe that the affairs of the math and its properties are being mismanaged, funds are being misappropriated, or that there is gross neglect of duty on the part of the mathadhipathi he may after making such enquiry as may be prescribed order to frame a scheme of administration, of a math and the specific endowment.

E

F

(2) A scheme of administration framed under sub-section (1) may contain provision for -

(a) appointing or directing the appointment of an Executive Officer.

G

(b) constituting a committee consisting of not more than five persons for the purpose of assisting in the whole or any part of the administration of all the endowments of such math or of specific endowment;

H

Provided that the members of such Committee shall be chosen

from among such person having interest in such math or endowment; A

(c) determining the powers and duties of such committee; and

(d) any other relevant matter incidental to the framing of such scheme. B

(3) Until a scheme is framed under sub-section (1) the Commissioner may appoint a fit person to manage the properties of math and its endowment.

(4) The Commissioner, after consulting the mathadhipathi and other persons having interest, and after making such enquiry as may be prescribed may by order modify or cancel the scheme settled under sub-section (1). C

(5) Every order passed by the Commissioner under sub-section (1) and sub-section (4) shall be published in the manner prescribed. D

(6) Any person aggrieved by the order of the Commissioner passed either under sub-section (1) or under sub-section (4), may, within sixty days from the date of publication of the order, prefer an appeal to the Court." E

The rival contentions give rise to the question: whether any of the provisions of Sections 50 to 55 in Chapter V of the Act is *ultra vires* Article 25 or 26 of the Constitution? Chapter V of the Act deals with maths and specific endowments attached thereto. Section 47 defines "mathadhipathi" to mean any person whether known as Mahant or by any other name in whom "the administration and management of a math or specific endowment attached to a math are vested." In the concept of mathadhipathi, both the elements of power to hold property and duty to properly maintain it are blended and neither can be detached from the other. The Mahant, therefore, as the spiritual head of the math is entrusted with the administration and management of the math or the specific endowment. The personal or beneficial interest of the Mahant in the endowment attached to the math is manifested in his power of administration and disposal of the property. His right to administer and manage the property endowed to the math and other rights of similar character are vested in the office of the Mahant and, therefore, they are legal rights attached to the management and the ad- F G H

A ministration of the property endowed to the math. He holds the office by custom and usage of the institution. He acts for the benefit of the institution of which he is the head. The Mahant as an ascetic holds the property and, therefore, it is not heritable like ordinary devolution of the property since he has completely severed all his mundane connections with his natural family; cut off from the mundane affairs and is ordained to impart religious education to his disciples and teaching of the religious scriptures etc. to the followers of the religion or the sect. Therefore, the ordinary rules of succession to Mahantship do not apply.

C Article 25, as its language amplifies assures to every person subject to public order, health and morality, freedom not only to entertain his religious beliefs, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outwardly act as he thinks proper and to propagate or disseminate his ideas for the edification of others. Mahant as head of the spiritual fraternity and by virtue of his office has to perform the duties of a religious teacher. The deep layers of religion used in Article 25 and 26 and its manifest efficacy in social well-being and integration in the onward march of civilisation from tribal society to modern life would appropriately be dealt with in the connected cases relating to Archakas. Suffice it to state that it is the duty of Mahant to practise and propagate the religious tenets of which he is an adherent and if any provision of law prevents him from propagating his doctrine that would certainly affect the religious freedom guaranteed under Article 25. Math or a specific endowment *per se* cannot practise or propagate religion. It can be done only by individual persons. Whether those persons propagate their personal views or the tenets for which the institution was started, is immaterial for the purposes of Article 25. Only propagation of beliefs is protected, it does not matter whether the propagation takes place in a temple or any other meeting.

G Chapter V does not *per se* attempt to regulate the propagation or preaching of the tenets by Mahant or of the math or religious beliefs to which the math is founded or it seeks to propagate. The definition of the mathadhipathi for the purpose of the Act is expressly confined only in relation to the administration and management of a math or specific endowment attached to the math and vested in him as mathadhipathi. Mahant is not a mere manager or custodian of the property. In his office H as spiritual head, he was power to dispose of certain properties only for

the benefit of the institution, incur expenditure for the math, to carry on religious worship for the disciples and to maintain himself consistent with his office. Though he has undoubted power to apply the funds of the institution, it would always be subject to certain obligations and duties equally governed by customs and usage of the institution. By operation of Section 48, Sections 18 to 22, 25 and 28 in Chapter III of the Act shall not apply to the maths or specific endowment attached thereto. Though Section 2 (29) defines 'trustees' to include mathadhipathi, in the light of Section 47, by juridical metamorphosis, Mahant is a trustee of the math in relation to the management of the property of the math or the specific endowment attached to the math. He has to discharge the duties of a trustee and is answerable as such. The definition of "trustee" was used to reiterate the position he holds in general law of trust in relation to maths and in law he is enjoined to hold it as trustee. However, the word 'trustee' does not include his right as a spiritual head of the math or to be hereditary trustee. The definition of "hereditary trustee" under Section 2(16) which was abolished under the Act, therefore, does not apply nor does it include a Mahant who is spiritual head nominated by his predecessor mathadhipathi or regulated under the Act for the reasons stated by Shri Rao to which we agree as it is axiomatic that office of mathadhipathi is not hereditary or devolved by succession. In most case it is regulated by nomination by his predecessor under the Act; and in the absence of nomination, by consultation with Mahant of similar maths.

As seen, Mahant being an ascetic sanyasi, he renounces mundane affairs and totally cuts off his ties with his natural family. In *H.H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious & Charitable Endowments, Mysore*, [1963] Supp. 2 SCR 302, this Court had held at page 312 that "generally a mathadhipathi is a sanyasin who has renounced the worldly affairs and severed his ties with his family" Therefore, the question of hereditary succession to the office of mathadhipathi does not arise. He is, therefore, neither hereditary trustee nor a trustee in the sense envisaged under Sections 2(29) and 2(16) of the Act respectively. But in juxtaposition, his position as mathadhipathi is of a trustee of the property of the math or specific endowment attached to it of which he is the head and holds the property as head of the institution as a trustee with beneficial enjoyment over the math properties for the propagation of the religious tenets and the philosophy applicable to the math or specific endowment and Hindu Dharma. In *Kakinada Annadana Samajan Etc. v. Commissioner of Hindu*

A

B

C

D

E

F

G

H

A *Religious & Charitable Endowment, Hyderabad & Ors.*, [1977] 2 SCR 878 at 886, this Court had held that mathadhipathi is entitled to maintain all the properties of the math or the special endowment and allowed power to manage or administer the properties endowed to the math or specific endowment. Since Chapter V specifically deals with maths and Mahants, the general provisions in Chapter III relate to the administration and management of Hindu charitable and religious institutions and endowments to the extent of inconsistency stand excluded by Section 48 from their operation to maths and specific endowments attached to it. Section 49 relates to fixation of the dittam known as scale of expenditure with which we are not concerned in this case.

C Section 53 deals with filling up of permanent vacancies in the office of mathadhipathi. It is necessary to emphasise that mathadhipathi as spiritual head of the math, while imparting religious education, blends his personal beneficial interest in the properties of the math. The eligibility of succession as mathadhipathi by nomination and his qualification for eligibility are distinct from his power of management of the properties and of due administration of the math. The scope of interference with nomination as Mahant or his qualifications is delicate but bears paramount importance. Everyone interested in the math, predecessor mathadhipathi or disciples would be keenly and genuinely interested in due management and administration of math and its properties and specific endowments. The Commissioner, when called to deal with recognition or nomination, should keep these facts in forefront.

F Sub-section (1) of Section 53 deals with that question. Where a permanent vacancy occurs in the office of Mathadhipathi by reason of death or resignation or on account of his removal from office under Section 51 or otherwise, the person next entitled to succeed to the office of Mahant, according to the rules of succession laid down by the founder or where no such rule is laid down, according to the usage or custom as exists or according to the law of succession for the time being in force, shall, with the permission of the Commissioner, succeed to the office of mathadhipathi. Sub-section (2) prescribes basic qualifications thus :

H "53(2) A person for succession to the office of the mathadhipathi under sub-section (1) shall possess the following qualifications, namely :

- (a) basic knowledge of the Hindu religion and philosophy; A
- (b) knowledge of the relevant scriptures and sampradaya to which the math belongs;
- (c) capacity to impart the knowledge and preach the tenets of the math to the disciples; B
- (d) religious temperament with implicit faith in discipline and practice; and
- (e) unquestionable moral character." C

The regulation under sub-section (1) of Section 53, viz., permission of the Commissioner for the succession to the office of the mathadhipathi, is only to ensure that a person who possesses the qualifications prescribed in sub-section (2) and the nominee does not suffer from any of the disqualifications mentioned in Section 51(1) and such person alone would succeed to the office. Sri Parasaran is right in his emphasis that a disciple would learn from childhood religious education under the guidance of the spiritual head or any other suitable guide. The broad guidelines in Section 53(2) are illustrative as bridges to make a more mature sanyasi with profound knowledge in religion. In this perspective, it is pertinent to quote sub-section (1) of Section 51 which reads thus : D E

"51. Removal of Mathadhipathi - (1) The Commissioner may suo motu or on an application of two or more person having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he - F

- (a) is of unsound mind;
- (b) is suffering from any physical or mental defect or infirmity which renders him unfit to be a mathadhipathi or such trustee; G
- (c) has ceased to profess the Hindu religion or the tenets of the math;
- (d) has been sentenced for any offence involving moral turpitude, such sentence not having been reversed; H

- A (e) is guilty of breach of trust, or is appropriation in respect of any of the properties of the math;
- (f) commits persistent and wilful default in the exercise of his powers or performance of his functions under the Act;
- B (g) violates any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as celibacy, renunciation and the like;
- (h) leads an immoral life; or
- C (i) fails or ignores to implement the principle set out in clause (17) of Section 2."

- The Commissioner is empowered to remove a Mathadhipathi either on an application of two or more persons having interest in the proper management or administration of the math or *suo motu*. It is, to reiterate, that by the exemplary conduct, character, piety, erudition and dedication, the spiritual head inspires faith in the people and as its part properly manages the math and efficiently administers the properties of the math or specific endowment attached to the math. Mathadhipathi of Sri Raghavendra Swamy math inspires reverence and exacts respect. The problem of removal arises when the Mahant by his conduct and act, falls astray from the path of piety and indulges in acts uncalled for from a sanyasi and commits misfeasance and malfeasance, defalcation, misappropriation, falsification of accounts etc. The Commissioner would be entitled to initiate proceedings and remove a mathadhipathi or a trustee of a specific endowment on his satisfying any one or all the conditions enumerated on clauses (d) to (i) or on incurring disqualifications enumerated in clauses (a) to (c). He is liable to action under Section 51 (1).

- G In *Digiyadarsan Rajendra Ramdassji Varu v. State of Andhra Pradesh & Anr.*, [1970] 1 SCR 103, the appellant mathadhipathi of Sri Swami Hathiramji Math, Tirupathi-Thirumala, was suspended from his office pending enquiry under Section 46(2) of the predecessor Act 17 of 1966. He challenged the constitutionality of Sections 46 and 47 as violative of Articles 14, 25(1), 26(b) and (d) of the Constitution. After considering the
- H vires of those provisions, this Court had held that while the Mahant was

entitled to enjoy larger powers for the benefit of the institution of which he is the head, he is under an obligation to maintain the dignity of his office and to incur expenditure for the math. The Mahant cannot incur expenditure for personal luxury or objects incongruous with his position as a Mahant. The validity of Section 46, therefore, was upheld. If a Mahant if of unsound mind or suffers from any physical or mental defect or infirmity or has ceased to profess Hindu religion or the tenets of the math or if his case falls within any of clauses (d) to (h) of Section 46(1), his removal would be in the interest of the general public. A mathadhipathi cannot possibly perform his duties either as a spiritual or a temporal head nor can he properly administer or manage the trust if he falls within the categories mentioned in clauses (a) to (d) or has been guilty of breach of trust or wilful default etc. or leads an immoral life [vide clauses (e) to (h) of Section 46(1)]. The validity of Section 46(1), therefore, was upheld. The same are the provisions in Section 51(1) and, therefore, their validity is no longer *res integra*.

The suspension of a mathadhipathi, during inquiry, is a necessary and reasonable part of the procedure which has been prescribed by Section 46 of predecessor Act of 1966. If he is allowed to function during the pendency of an inquiry the entire purpose of the enquiry must be defeated. The mathadhipathi may, during enquiry, do away with most of the evidence or tamper with the books of accounts or otherwise commit acts of misappropriation and defalcation in respect of the properties of the math. It is essential, therefore, in these circumstances, to make a provision for suspending him till the enquiry concludes and an order is made either exonerating or directing his removal. The action under Sections 46 and 47 does not infringe Article 25(1) or 26(b) or (d).

By operation of sub-section (2) of Section 53, the qualifications for a mahant are prescribed. If a Mahant has already been removed, if self-same person is nominated as a mathadhipathi under Section 51(2), it would be obvious that the Commissioner cannot recognise such a nomination and grant permission to him as mathadhipathi. He would be entitled to call nomination afresh. Obviously, recognition of the Commissioner required under sub-section (1) of Section 53 only regulates in that behalf, and not when he is in duly nominated as per the qualifications prescribed in sub-section (2) of Section 53. The provisions, therefore, are intended to avoid needless protracted litigation over succession adversely affecting due

A administration and maintenance of the math, to safeguard the interest of the math and due fulfilment of the objects for which the math or specific endowment is created or established.

B The Commissioner who is the head of the Endowment Department is a high ranking officer with wide administrative experience and is expected to act fairly and reasonably to effectuate the purpose of Chapter V. It can be accepted that such a high ranking officer would call to his aid necessary and incidental or ancillary powers only to give effect to the purpose of the Act. He would act reasonably, objectively and fairly. If he betrays the faith and acts arbitrarily, the individual act is amenable to

C correction in an appropriate proceedings. So, he is not expected to act arbitrarily or at his whim either to accord or refuse permission to the nominated mathadhipathi. If he commits any excess or acts unreasonably, the individual act is liable to be questioned and dealt with appropriately according to law. But for that ground Section 53 cannot be declared *ultra vires*.

D

E Sub-section (2) of Section 51 provides procedure for removal of the mathadhipathi for one or the other grounds enumerated in sub-section (1) of Section 51. The Commissioner shall frame a charge on the proposed grounds enumerated in sub-section (1) and have it served on the Mahant. He should give an opportunity to the erring incumbent of meeting such charge. Opportunity to adduce evidence in proof of the charge or in rebuttal thereof, if the Mahant requests, should be given. After considering and testing the evidence adduced and other material before him, he should arrive at his decision and record reasons in support thereof and record

F finding on each charge whether the charge is proved or disproved. The Commissioner, may by order, exonerate the mathadhipathi or a trustee or may remove him from office. In the case of a math headed by a mathadhipathi whose annual income exceeds Rs. 1 lakh, the order by removal of mathadhipathi of trustee shall not take effect unless it is confirmed by the Government. The operation of sub-section (3) is only transitory, viz.,

G pending enquiry and passing of the final order under sub-section (2), the Commissioner is entitled to temporarily suspend the mathadhipathi or the trustee, as the case may be.

H Validity of similar provision in Section 46 of predecessor Act of 1966 has already been upheld by this Court in *Digyadarshan Rajendra*

Ramdassiji's case. Under sub-section (4) an aggrieved mathadhipathi/trustee has been given right of challenging the order of removal by instituting a suit in the court defined in Section 2(8) within 90 days from the date of the receipt of the order, with a further right of appeal to the High Court, under sub-section (5), within 90 days from the date of the decree or order of the Court. It would thus be clear that complete procedure and machinery has been provided to the charged Mahant/trustee to disprove the charge and in case of removal from office, he has right of instituting suit and preferring appeal to High Court to have it corrected and legality of the order of removal, tested with adequate procedural safeguards. Section 51 thus provides a complete machinery for removal of an erring Mahant adjudging him to be not a fit person to remain mathadhipathi. The validity of the grounds for removal have already been upheld in *Ramdassiji's* case.

Section 52 operates for filling up of temporary vacancies in the office of mathadhipathi. Sub-section (1) thereof enumerates the circumstances in which the office of mathadhipathi temporarily falls vacant, viz., where a dispute exists of the right to succession to the office of Mahant or where the Mahant is a minor and has no guardian fit and willing to act as guardian or where the mathadhipathi is under suspension under sub-section (3) of Section 51. On the existence of any of the three grounds, the Commissioner shall, if he is satisfied, after making enquiry in this behalf, that arrangement for administration of the math or the specific endowment, as the case may be, is necessary and after satisfying himself as to such necessity, makes such arrangements as he thinks fit until the disability of the mathadhipathi ceases or other mathadhipathi succeeds to the office, as the case may be. The satisfaction reached by the Commission would be on consideration of the material and other relevant attending circumstances. Sub-section (2) enjoins that the Commissioner, in making interim arrangement for filling up temporary vacancy, shall have due regard to the claims, if any, by the disciples of the math. In other words, the Commissioner is enjoined to make arrangements to fill up the temporary vacancy as an interim measure. He shall endeavour to give due regard to the claims of any of the disciples of the math for management of the math as temporary mathadhipathi until the disability of the mathadhipathi ceases or another mathadhipathi duly succeeds to the office, as the case may be. In the case of filling up of the vacancies when the mathadhipathi nominated is a minor, sub-section (3) makes available the remedy under the provisions of Andhra

A

B

C

D

E

F

G

H

A Pradesh (Andhra Area) Court of Wards, Act, 1902 or Andhra Pradesh (Telangana Area) Court of Wards Act, 1350F, as the case may be, to appoint property or personal guardian under the respective Acts applicable to the place where the math is situated, for appointment of a fit person as guardian to the ward/minor sanyasi mathadhipathi to administer the math and the properties attached to the math or specific endowment attached thereto. The appointment of guardian under Court of Wards Act as personal and property guardian would be for due administration of the math and for beneficial enjoyment, the Mahant has in the property or guardian under Hindu Guardianship and Maintenance Act, 1956 as and when it becomes applicable.

C
 Section 54 deals with nomination of the mathadhipathi. Shri Parasaran, learned senior counsel while addressing his arguments which need no repetition, raised a very strong objection and fervently, repeatedly, forcibly and persuasively argued that the secular authority should not be permitted to interpose in the nomination of Mahant by act of acceptance of the nominated mathadhipathi on diverse grounds mentioned hereinbefore. Having given our due careful and very anxious consideration to his arguments and equality palatable contentions of Shri P.P. Rao, we find that role of the Commissioner in that behalf is minimal. It is seen that by operation of sub-section (1) with a *non obstante* clause, viz., "subject to provisions of Section 53", the basic qualifications required for a person to be nominated as Mathadhipathi are enumerated in sub-section (2) of Section 53. The approach to this problem, which has to be kept in view by the Commissioner, has already been stated and bears no repetition. The Mahant may himself nominate his successor. In other words, the predecessor Mahant should keep the prohibited grounds enumerated in sub-section (1) of Section 51 and qualifications mentioned in Section 53 (2) before he nominates the successor. He is the best person to adjudge among his disciples or any other persons, the most fitting person eminently suited to succeed him. He would be actuated solely with religious fervour and capacity of his successor to properly and efficiently manage the trust, to elongate the object and purpose of the math according to the established traditions, usage, customs and Sampardayams. He is enjoined, after due deliberation, to decide his successor and to intimate such nomination to the Commissioner within 90 days. The Commissioner is further required to recognise such nomination. Nomination *ipso facto* cannot be recognised by
 H the Commissioner.

In *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiiar of Sri Shirur Math*, [1954] SCR 1005 which is locus classic, this Court had held that "(h)aving regard to the fact that the mathadhipathi occupies the position of a trustee with regard to the math, which is a public institution, some amount of control or supervision over the due administration of the endowments and the appropriation of their funds is certainly necessary in the interest of the public and we do not think that the provision of this section by itself offends any fundamental right of the Mahant. We do not agree with the High Court that the result of this provision would be to reduce the Mahant to the position of a servant. No doubt the Commissioner is invested with powers to pass orders, but orders can be passed only for the purpose specified in the section and not for interference with the rights of the Mahant as are sanctioned by usage or for lowering his position as the spiritual head of the institution. The saving provision contained in Section 91 of the Act makes the position quite clear. An apprehension that the powers conferred by this section may be abused in individual case does not make the provisions itself bad or invalid in law". The ratio with equiforce is applicable to the context in which we are called upon to test validity of the provision.

In this behalf, the Commissioner is guided by Pandit Rules under which the duly competent person assists him in convening the meeting of Mahants having similar Samparadaya for nomination of a mathadhipathi. He is required to recognise the nomination of Mahant. We find that the suitable procedure has been made in G.O. M.S. No. 218 Revenue date March 17, 1988 known as Administration of Math Rules, 1987 (for short, "Math Rules"). Proviso to clause (v) of sub-rule (1) of Rule 3 and proviso to clause (v) of sub-rule (2) of Rule 3 by way of amendment have been placed before us with an affidavit of Shri N. Narasimha Rao, Additional Commissioner, Endowment Department who was duly authorised to swear the affidavit in that behalf.

The above provisos intend to operate thus :

Proviso under clause (v) of sub Rule (1) of Rule 3:

Provided that the Commissioner shall consult and obtain the opinion of eminent persons in the field of religion and philosophy and Sampradaya to which the math belongs to satisfy himself that the nominee possesses the prescribed qualification."

A Proviso under clause (v) of sub-Rule (2) of Rule 3 :

"Provided that it shall not be competent to the Commissioner to refuse recognition of the nomination or permission to succeed without giving an opportunity of being heard to the Mathadhipathi and the nominee or the successor as the case may be."

B

C It would thus be seen that the Commissioner shall consult and obtain the opinion of eminent persons in the field of religion, philosophy and Sampradaya to which the math belongs to satisfy himself that the nominee possessed the prescribed qualifications under sub-section (2) of Section 53 and is not disqualified under Section 51(2) and would take decision before granting recognition. In case he would choose to refuse recognition to the nomination, the Commissioner should give an opportunity of being heard to the Mahant and the nominee giving the grounds on which he proposes to refuse recognition and consider the same. It would be obvious that he should record reasons for refusal. In other words, what is required is that the Commissioner should test the nomination but not interpose with the nomination, nor interdict a duly qualified person as mathadhipathi. The role of the Commissioner in that behalf, therefore, is only in the nature of an intervener in the nomination duly testing whether the nominated person is a fit person to hold the office of Mahant and to manage and administer the math according to the tenets, Sampardayams, usage, customs and philosophy of the math and the properties attached to it.

E

F The power of the Commissioner to frame a scheme under Section 55 of the Act is not absolute but is conditioned upon reasonable belief on the basis of the report submitted by the Deputy Commissioner or the Assistant Commissioner having jurisdiction over the math or *suo motu*; but in later event he should have material on record for entertaining a reasonable belief that the affairs of the math and its properties are being mismanaged or that funds are misappropriated or that the mathadhipathi grossly neglected in performing his duties. Prior enquiry in that behalf is duly made in accordance with the Rules prescribed thereunder. The enquiry would include an opportunity to the mathadhipathi to satisfy the Commissioner that the report or the material, the foundation for the formation of adverse opinion against the Mahant, is not well founded or does not exist. After holding such an enquiry and recording the finding in that behalf as implied in sub-section (1), the Commissioner is required to frame a scheme

H

to administer and manage the properties attached to the match or specific endowment. In the scheme so framed, he is required (a) to appoint an executive officer for day to day administration of the properties; and (b) to constitute a committee consisting of not more than five persons for the purpose of assisting him in the administration of the math as a whole or any part of the administration of all the endowments of such math or specific endowments. Under the proviso to sub-section (2) (b) "the members of such committee so chosen shall be among the persons having interest in such math or endowment". In other words, the members of the committee will be persons who are genuinely interested in the proper management of the math, management of the properties and useful utilisation of the funds for the purpose for which the math or specific endowment is created. The paramount consideration is only proper management of the math and utilisation of the funds for the purpose of the math as per its customs, usage, Sampardayams and philosophy and not the self-benefit of person intervening in the management of the math.

It would appear that the executive officer appointed should be in charge of day to day management of the math or the specific endowment attached to the math and the committee constituted would be of supervisory mechanism as over all in-charge of the math. Until the scheme is so framed, by operation of sub-section (3), the Commissioner may appoint a fit person to manage the properties of the math and its endowments. After consulting the mathadhipathi and other persons having interest and after making such enquiry in the prescribed manner, by operation of sub-section (4), the Commissioner may, by order, modify or cancel the scheme framed under sub-section (1). Every order made either under sub-section (1) or sub-section (4) shall be published in the prescribed manner. Any person aggrieved by the order of the Commissioner passed under sub-section (1) or (4), may, within 60 days from the date of publication of the order, prefer an appeal to the court. The order of the court by implication would be final.

It is true that it is the civil court, under Section 92 of the Civil Procedure Code, which frames the scheme. Instead, the legislature has entrusted that power to the Commissioner. The legislature in its wisdom felt it expedient to invest the said power with necessary limitations in the Commissioner with a right of appeal to an established court defined in Section 2 (8) of the Act. This Court in catena of cases had upheld the

- A schemes framed by the civil court. The change in the Act is only substitution of the Commissioner to the Court, subject to the limitations prescribed before and after making the scheme. Thus a scheme framed by the Commissioner is subject to right of appeal to the established court which would duly take care and correct any misapplication or non-application of the settled rules or principles in framing the scheme and could remedy it is an appeal.
- B The duration of this scheme thus framed may also be specified either in the original scheme or one upheld with modification, if any, in appeal.

- C The object of Section 55 appears to be to remedy mismanagement of the math or misutilisation of the funds of the math or neglect in its management. The scheme envisages modification or its cancellation thereof, which would indicate that the scheme is of a temporary nature and duration till the evil, which was recorded by the Commissioner after due enquiry, is remedied or fit person is nominated as mathadhipathi and is recognised by the Commissioner. The scheme is required to be cancelled as soon as the nominated mathadhipathi assumes office and starts administering the math and manages the properties belonging to, endowed or attached to the math or specific endowment.
- D

- E The next question is : whether Section 50 of the Act interferes with religion and, therefore, violative of Articles 25 and 26 of the Constitution? It is seen that the right to administer the math according to the tenets, philosophy, customs, usages and Sampardaya would include right to manage the properties and utilisation of the funds thereof for their due fulfilment. Section 50 divides Padakanukas into two parts, i.e., gifts personal to Mahant and to the math as such but given to him as being spiritual head. Sub-section (1) provides that the mathadhipathi shall maintain regular accounts of receipts of Padakanukas, viz., gifts offered as personal to the Mahant or other personal gifts of properties made to him as head of the math. In other words, he is required to account for the receipts of personal gifts. As head of the math he is entitled to utilise the funds at his discretion for any purposes connected with the objects of the math and propagation of Hindu dharma. The latter part indicates that after he renders accounts of their receipt, he is free to utilise and spend the gifts so received by him for any legitimate purpose which is connected with the objects of the math and for propagation of Hindu dharma. Since the latter
- F
- G
- H part is integrately connected with his status as Mahant, it does not

interpose or control his power to exercise his discretion. The obligation fastened on him is only to maintain regular account of receipts of personal gifts or other personal gifts of properties made personally to him as head of the math. As rightly conceded by Shri Parasaran, any such Padakanukas or other personal gifts which remain undisposed of during the life of the mathadhipathi shall devolve on the math as its properties by operation of sub-section (2) since the mathadhipathi is an ascetic, a sanyasi and it will devolve only on the head of the math as math property. The explanation makes the meaning more clear and unambiguous. Any gift of property or of money made to mathadhipathi shall, unless it is specified by the donor as Padakanukas or personal gift, be presumed to be gift intended for the benefit of the math.

In *H.H. Sundundra Thirth Swamiar* case (supra) relied on by Shri Parasaran, Section 55 of Madras Act pre-amendment and post-amendment, was considered. It was held at page 315 thus :

"..... We deem it necessary also to state that having regard to the large powers which the Mahant has over the application of the funds not only for the maintenance of the dignity of his office and expenses for the maintenance of the math but also for such purposes religious or charitable as are not inconsistent with the usage and custom of the endowment, application of the funds for personal enjoyment or luxury by the Mathadhipathi or for purposes wholly unconnected with the institution, would alone be covered by the second part of s.52(1)(f). In our view the provision which authorises the institution of a suit for removal of a Mahant where he is found to have wasted the funds or properties of the institution or has applied such funds or properties for purposes wholly unconnected with the institution does not amount to an unreasonable restriction upon the fundamental right of the Mahant in the property under his management."

After noticing the amendment and its effect on the decision in *Shirur Math* case (supra), in *H.H. Sudhundra Thirtha Swamiar* case (supra) this Court held thus :

"By express enactment the expression 'pathakanikas' for the purpose of s.55 as amended, means gifts of property made to a Mahant as the head of the Math. By that section, the Mahant is required

A to keep regular accounts of receipts of such gifts and is entitled to spend the same in accordance with the customs and usages of the institution, for such pathakanikas received by the Mahant are gifts to the Mahant as the head of the Math and therefore, in truth gifts to the Math. Obligations imposed upon the Mahant to maintain regular accounts of the receipts of pathakanikas of the character defined in s.55 and to utilise the same in accordance with the customs and usages of the institution cannot be regarded as an unreasonable restriction upon the fundamental right of the Mahant. A Mahant being bound to discharge the duties of a trustee and being answerable as such, a provision requiring him to maintain accounts of such pathakanikas would conduce to the effective exercise of the control over him and imposing an obligation to spend the same in accordance with the customs and usages of the institution is not inconsistent with his position as mahant even though he has a beneficial interest therein. Section 55 as amended will not apply to pathakanikas which are proved to be gifts personal to the Mahant.

E Our attention was invited by counsel for the appellants to cl. (g) s.52(1) in which adoption of devices to convert the income of the institution or of the funds or properties thereof into pathakanika is one of the grounds on which a suit for removal of a Mahant may lie. But the expression 'Pathakanika' as used in s.52 (1) (g) appears to have the larger meaning in which that expression is traditionally understood. In the context of of s.52 (1) (g), 'pathakanika' would mean personal gifts to the Mahant. If the Mahant resorts to devices to convert the income of the institution or the funds of properties thereof into personal gifts made to him that would be improper conduct for which he would be liable to be removed in a suit under s.52. But under s.55 the Legislature has expressly restricted the meaning of the expression 'pathakanika' by using the words, 'that is to say, any gift of property made to him as the head of the math'. We are therefore unable to hold that the expression 'pathakanika' in s.55 means personal gifts and the Legislature by enacting that section was attempting to re-enact s.55 as it originally stood in a different garb."

H This Court further held that Padakanukas for the purpose of Section

55, as amended, may not be gifts of property made to a Mahant as head of the math. The Mahant is required to keep regular accounts of receipts of such gifts. He is entitled to spend the same in accordance with the customs of the institution, for such Padakanukas received by the Mahant are gifts to the Mahant as head of the math and, therefore, in truth, gifts to the math. Obligations imposed upon the Mahant to maintain regular accounts of the receipt of the Padakanukas of the character defined under Section 55 and to utilise the same in accordance with the customs and usages of the institution were held valid.

The Mahant being bound to discharge the duties of a trustee and being answerable as such, a provision requiring him to maintain accounts of such Padakanukas would conduce to the effective exercise of control over him and imposing an obligation to spend the same in accordance with the customs and usages of the institution, is not inconsistent with his position as a Mahant, even though he has beneficial interest therein.

If the Mahant resorts to devices to convert the income of the institution or of the funds or properties thereof into personal gifts made to him, that would be improper conduct for which he would be liable to be removed in a suit under Section 52. The legislature by enacting that section did not attempt to re-enact Section 55 to bring the obligation of the Mahant, in a different garb. The same ratio applies to the present case.

Sub-section (3) provides that in the case of gifts of properties made to the mathadhipathi as personal gifts but gifts intended for the benefit of the math, he is enjoined to maintain accounts of all the receipts and disbursement of such gifts and to cause such accounts to be produced before the Commissioner or anyone authorised by him in that behalf whenever so required. Right to manage and administer the math includes right to use any gifts of money made to the math as gift intended for the benefit of the math. In law, he is enjoined as a trustee to account for the properties in his possession and is responsible for due management which is a secular act. It is seen that the report of Justice Challa Kondaiah Commission had collected material that some Mahants had resorted to corrupt practices by diverting the funds of the math as Padakanukas and personal gifts and utilised the same to lead immoral or luxurious life or siphoning the income to the members of natural family to which he belonged or on wine and women. The legislature on consideration thereof

A felt it expedient to remedy the evil and imposed a duty, which as trustee is enjoined on him. Fastening an obligation on mathadhipathi to maintain accounts of the receipts of Padakanukas as personal gifts made to the mathadhipathi and to see that the funds are properly utilised for the purposes of the math in accordance with its objects and propagation of Hindu dharma does not amount to interference with religion. Equally, in respect of gifts of properties or money made to mathadhipathi as gifts intended for the benefit of the math, he is bound under law as trustee, even without amendment to the Act, to render accounts for the receipts and disbursement and cause the accounts in that behalf produced from time to time before the Commissioner or any authorised person in that behalf, whenever so required is part of administration of properties of the math. Questions relating to administration of properties relating to math or specific endowment are not matters of religion under Art. 26(b). They are secular activities though connected with religion enjoined on Mahant.

D Section 50 of the Act which is corresponding provision in the predecessor Act of 1966 requires the mathadhipathi to maintain accounts in the manner prescribed therein which is a secular activity on the part of a mathadhipathi. The intervention of the legislature in that behalf is in the interest of the math itself. He is, therefore, enjoined to maintain accounts in the regular course of the administration and maintenance of the math.

E Operation of Section 50 is, therefore, a permissible statutory intervention under Articles 25 (2)(a) and 26 (b) of the Constitution.

It is thus clear that none of Section 50 to 55 of the Act offends Article 25 or 26 of the Constitution. The writ petitions are accordingly dismissed but, in the circumstances, without costs.

F R.P.

Petitions dismissed.