Pannalal Bansilal Pitti & Ors. Etc vs State Of Andhra Pradesh & Anr on 17 January, 1996

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Bench: K. Ramaswamy, B.L Hansaria

PETITIONER:
PANNALAL BANSILAL PITTI & ORS. ETC.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ANR.

DATE OF JUDGMENT: 17/01/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 1023 1996 SCC (2) 498
JT 1996 (1) 516 1996 SCALE (1)405

ACT:

HEADNOTE:

JUDGMENT:

AND WRIT PETITION [C] NOS. 908, 1066, 1359 & 1375 OF 1987 AND TRANSFER CASES NOS. 169 OF 1988 & 60 OF 1989 J U D G M E N T K. RAMASWAMY, J.

This bunch of writ petitions and transfer cases is at the behest of hereditary trustees of Hindu Religious and Charitable Institutions and Endowments challenging the constitutionality of Sections 15, 16, 17, 29 (5) and 144 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) (for short, "the Act").

The facts in writ petitions No. 713/87 are sufficient for deciding the controversy. The first petitioner is a founder of several charitable and religious institutions in Hyderabad and Secunderabad of Andhra Pradesh. He is a hereditary trustee of a premier institution known as Raja Bahadur Sir bansilal Motilal Charitable Trust founded by his father donating Rs. 5,00,000/- in 1933. It also established Sri Ranganath Mandir, Sri Jagannath Mandir, Sri Narsingh Mandir, Sri Lakshman Maharaj, Raja Bahadur Sir Bansilal Hospital Trust and Sri Sanskrit Sahitya Nidhi Trust in Hyderabad. Hari Prasad badruka, the 3rd petitioner's family founded Shri Venkatesh Goraksha Trust with a sum of Rs.1,00,000/- and donated 568 acres of land in Dabirpura and Konaipalle villages. They also claimed to have purchased 58.35 acres in Hakimpet for grazing the cows. Raja of Jataprolu in Mahaboobnagar District founded Madana Gopala Swamy and other temples at Jataprolu village; Shri narsimha Swamy and Shri Ratna Lakshmi Devi temples at Singapatnam; and Shri Amareshwara Swamy temple at Kollapuram. They endowed 300 acres of seri lands for performance of Nitya Nivedhya Deeparadhana. The first petitioner is a hereditary trustee and is entitled to nominate other trustees for proper management. He is also a Mutawalli, who in terms of the deed of trust, shall deduct 1/3 of the net income as his remuneration after excluding the management and establishment expenses.

It is the case of all the petitioners that they have been properly and efficiently maintaining the aforestated trusts and charitable or religious institutions without any complaint. The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments, 1966 (17 of 1966)) (for short, `the Predecessor Act of 1966) recognised their hereditary right and made them Chairman of the respective trusts, in the event of constituting a board of trustees with non- hereditary trustees. The religious institutions and endowments or charitable institutions were established on charity which every Hindu wishes to perform. Establishment of charitable and religious institutions or endowments is a part of freedom of conscience and right to maintain the institutions founded by them. The Act, while purporting to regulate administration and governance of Hindu charitable and religious institutions or endowment grossly violates the constitutional rights under Articles 25 and 26 of the Constitution. Several learned senior counsels S/Shri H.S.Gurujarao, A.K. Ganguli, R. Venugopala Reddy, M.N.Krishnamani along with S/Shri A. Subba Rao and Sampath, argued in support of the contentions of the petitioners. They also have filed written submissions. Shri P.P. Rao, the learned senior counsel, resisted the contentions on behalf of the State and also submitted his written arguments.

The main thrust of the arguments of the learned counsel is that Articles 25 and 26 guarantee freedom to manage religious affairs and right to freely profess, practise and propagate the religion to all citizens alike. Hindus constitute majority population and Hindu religion is the major religion in the country. Equally Muslim, Christian and Parsee citizens are entitled to the similar constitutional rights under Articles 25 and 26. Without touching the administration and governance of charitable or religious institutions or endowments founded or maintained by Muslims, Christians or Parsees

making law regulating the administration of Hindu religious institutions and above endowments offends Articles 14 and 15(1) of the Constitution. It is also contended that when a denomination, which is a part of the major religion is protected by Article 26, the major religions themselves as genus are entitled to the protection of Article 26. Institutions belonging to them cannot, therefore, be regulated under the law offending their right to religious practice. By operation of clause (2) of Article 25, law of general application in respect of religious institutions should be made and singling out the religious institutions or endowments established and maintained by Hindus is an invidious discrimination violating Article 14. The regulation of administration and governance of the religious institutions or endowments would amount to restriction on the religious practices or freedom of religion, since establishment, maintenance and administration of the religious institutions and endowments are intertwined with the very religious faith itself. It is impermissible for an outside agency or the party like the State to determine as to which activity is essential part of religion and which part is not. It would not, therefore, be open to the State to restrict or prohibit, under the guise of its secular power, the administration of the religious or charitable institutions or endowments, country to what the followers of the religion believe to be the religious duty. The administration of religious or charitable institution and endowments as part of the religious practice, perceived and rigorously followed by Hindus cannot, therefore, be divested by legislation.

The further contention in this regard is that the State cannot directly undertake to expend public money for patronizing any particular religion. Under the garb of regulating administration and maintenance or religious or charitable institutions and endowments, as a secular State, the legislature cannot make law to appoint its officers or servants to manage the religious institutions or endowments. Abolition of hereditary trusteeship totally deprives the right to practise charity or to render charitable service or to establish religious institutions as a part of religious charitable disposition or religious practice, which offends right to religious practice guaranteed under Articles 25 and 26 of the Constitution. It is further contended that without factual foundation of any mismanagement or misutilisation of the funds of Hindu religious and charitable institutions or endowments, abolition of the trusteeship is arbitrary, unjust and unfair violating Article 14 of the Constitution.

Shri Venugopala Reddy contended that if any hereditary trustee has mismanaged or misutilised the funds of the religious institutions or endowment, he could be removed by following the procedure prescribed under the predecessor Act of 1966 and it being successfully working, the hereditary right itself cannot be divested under the Act on that premise. Abolition of hereditary trusteeship and divesting him of the right to maintain and administer the religious institution or endowment is not a remedy to cure the defect, if any, as pointed out by Justice Challa Kondaiah Commission. In each case, the Endowments Department has to conduct a survey, on its finding of any mismanagement or misutilisation and appropriate, individual remedial action would be taken, but on that premise, the right of hereditary trusteeship cannot be abolished by the by the Act. He also contended that when Section 18 of the Act recognises and gives right to representation to a member of the family in the board of trustees, abolition of hereditary trusteeship under Section 16 is unconstitutional. He urged that when right of a representation to a member from the family of the founder of the trust of religious institution or endowment is recognised under Section 18, the rule of primogeniture envisaged in the trust, its abolition is unconstitutional. Further, the statutory abolition would dry up

the zeal to establish a religious or charitable institution or endowment. The pious wish or charitable disposition to establish a religious institution or endowment is a desire to perpetuate the memory of the founder, who was inspired with religious piety or charitable disposition. The members of his family are entitled to be members of the trust, and the right to chairmanship of the board ensures that the work would be carried out as set out in the deed of endowment.

Shri Krishnamani further contended that when the founder trustee or the hereditary trustee of the religious or charitable institution or endowment renders free services in an honorary capacity, the executive officer and the non- hereditary trustees, receive salary or emoluments from the endowment depleting its source and denuding its very source of income to do better or efficient service to the followers or for the religious charitable purpose. The trustee appointed by the donor's family would work with dedication which would be wanting in the officers or non-hereditary trustees, since the latter do not have any personal interest in the efficient or proper management of the institution or the endowment. Denial of that right to do service to the religious institution or endowment to the founder or the members of the family is, therefore, arbitrary, unfair and unjust offending Article 14 of the Constitution.

Shri P.P. Rao, the learned counsel for the State, resisted these contentions. According to him, the Challa Kondaiah Commission after exhaustive survey had pointed out diverse defects in the administration and management of Hindu charitable and religious institutions or endowments or specific endowments and made several recommendations, one of which relates to abolition of hereditary trusteeship as part of the scheme. The report does indicate the mismanagement and misutilisation of the funds of religious institutions or endowments or the same used as a source to draw money for the family management of the founder. The administration and maintenance of the religious or charitable institutions or endowments are secular activities, though religious practices are not, and the latter have not been interfered with by the Act. On the other hand, they are specifically protected and the Act has directed the officers to follow the established religious practices and sampradayams and to adhere to the same in the management. Executive offices appointed under the Act are also Hindus having faith and dedication to the proper and efficient management of the institutions and endowments. Hereditary trustee, by its very nature, is not an insurance for efficient and proper management. With a view to remedy the defects pointed in Challa Kondaiah Commission, the legislature stepped in, abolished the hereditary trusteeship, made provision for the payment of emoluments to them and regulated the same in Chapter III, for the proper and efficient management of the religious institutions and endowments. The legislative scheme is only to ensure efficiency and proper management in a secular manner and, therefore, the provisions are not in violation of Articles 25 and 26 of the Constitution. He also pointed out that there is no prohibition to make the law applicable to Hindu religious situations and endowments, without bringing religious or charitable institutions or endowments established by persons belonging to other religions. It could be done in a phased manner, wherever evils are pointed out. The statutory intervention in that behalf would be inevitable and accordingly be availed of to enact a law in that behalf. The Act which is applicable to Hindu religious or charitable institutions or endowments, therefore, does not violate Article 14. Procedure for appointment of a non-hereditary trustee is a fair procedure for due administration and maintenance of religious or charitable institutions and endowments.

Having regard to these diver contentions, the question arises: whether Sections 15, 16, 17, 29(5) and 144 of the Act are ultra vires the Constitution. They reads thus:

> "15. Appointment of Board of Trustees:-
>
> (1) In respect of a charitable or religious institution or endowment including in the list published under clause (a) of Section 6-
>
> (a) whose annual income exceeds rupees ten lakhs, the Government shall constitute a Board of Trustees consisting of nine persons appointed by them;
>
> (b) whose annual income does not exceed rupees ten lakhs, the Commissioner shall constitute a Board of Trustees consisting of seven persons appointed by him.
>
> (2) In respect of a charitable or religious institution or endowment included in the list published under clause (b) of Section 6, the Deputy Commissioner having jurisdiction shall constitute a Board of Trustees consisting of seven persons appointed by him.
>
> (3) In the case of any charitable or religious institution or endowment included in the list published under clause (c) of Section 6, the Assistant Commissioner having jurisdiction shall constitute a Board of Trustees consisting of five persons appointed by him :
>
> Provided that the Assistant Commissioner may either in the interest of the institution or endowment or for any other sufficient cause or for reasons to be recorded in writing appoint a single trustee instead of a Board of Trustees,
>
> 16. Abolition of hereditary trustees:- Notwithstanding any compromise or agreement entered into or scheme framed or judgment, decree, or order passed by any court, tribunal or other authority or in a deed or other document prior to the commencement of this Act and in force on such commencement, the rights of a person for the office of the hereditary trustee or mutawalli or dharmakarta or muntazim or by whatever name it is called shall stand abolished on such commencement.
>
> 17. Procedure for making appointments of trustees and their term:-(1) In making the appointment of trustees under Section 15 the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, shall have due regard to the religious denomination or any such section thereof to which the institution belongs or the endowment is made and the wishes of the founder:
>
> Provided that one of the trustees shall be from the family of the founder, if qualified.

Further details are not relevant.

XXX XXX XXX (4) No person shall be a trustee in more than one Board of Trustees.

29.(5) (a) The Executive Officer appointed under this section shall be under the administrative control of, the trustee of the institution or endowment and shall be responsible for carrying out all lawful directions issued by such trustee, from time to time;

(b) The Executive Officer shall, subject to such restrictions as may be imposed by the Government -

(i) be responsible for the proper maintenance and custody of all the records, accounts and other documents and of all the jewels, valuables, moneys, funds and other properties of the institution or endowment;

(ii) arrange for the proper collection of income and for incurring of expenditure;

(iii) sue or be sued by the name of the institution or endowment in all legal proceedings :

Provided that any legal proceeding pending immediately before the commencement of this Act, by or against an institution or endowment in which any person other than an Executive Officer is suing or being sued shall not be affected;

(iv) all moneys received by the institution or endowment in such bank or treasury as may be prescribed and be entitled to sign all orders cheques against such moneys;

Provided that such deposit may be made in the treasury if the rate of interest offered by it is higher than that of any bank.

(v) have power in cases of emergency, to direct the execution of any work or the doing of any act which is provided for in the budget for the year or the immediate execution or doing of which is in his opinion, necessary for the preservation of properties of the institution or endowment or for the service or safety of the pilgrims resorting thereto and to direct that the expenses of executing such work or the doing such act shall be paid from the funds of the institution or endowment :

Provided that the Executive Officer shall report forthwith to the trustee any action taken by him under this sub- clause and the reasons therefor.

(c) The Executive Officer shall, with the prior approval of the trustee, institute any legal proceedings in the name of the institution or endowment, or defend any such legal proceedings;

(d) Where there is no Executive Officer in respect of any charitable or religious institution or endowment, the trustee or the Chairman of the Board of Trustees, as the case may be, of the institution or endowment shall exercise the powers perform the functions and discharge the duties of an Executive Officer.

XXX XXX XXX

144. Abolition of shares in Hundi and other rusums:- Notwithstanding any judgment, decree or order of any Court, Tribunal or other authority or any scheme, custom, usage or agreement, or in any manual prepared by any institution or in any Farmana or Sanad or any deed or order of the Government to the contrary governing any charitable or religious institution or endowment, all shares which are payable or being paid or given or allowed at the commencement of this Act to any trustee, Dharmakartha, Mutawalli, any office holder or servant including all offerings made in the premises of the Temple or at such places as may be specified by the Trustee, all Prasadams and Panyarams offered either by the Temple or devotee, and such other kinds of offerings, all shares in the lands of the institution or endowment allotted or allowed to be in possession and enjoyment of any archaka, office holder or servant towards remuneration or otherwise for rendering service and for defraying the `Paditharam' and other expenses connected with the service or management of the temple, shall stand abolished with effect on and from the commencement of this Act."

The object of the Act is to consolidate and amend the law relating to the administration and governance of charitable and Hindu religious institutions and endowments in the State of Andhra Pradesh as the title of the Act itself indicates. It applies to all public charitable institutions and endowments, whether registered or not, in accordance with the provisions of the Act other than wakfs governed under the Wakfs Act, 1954. It also applies to all Hindu public religious institutions and endowments whether registered or not in accordance with the provisions of the Act. Section 2(16) defines "hereditary trustee" to mean the trustee of a charitable or religious institution and endowment, the succession to whose office devolves according to the rule of succession laid down by the founder or according to usage or custom applicable to the institution or endowment or according to the law of succession for the time being in force, as the case may be. "Charitable endowment" means all property given or endowed for any charitable purpose. Religious institutions or endowment, as defined in Section 2(22), means property (including movable property) and religious offerings whether in cash or kind, given or endowed for the support of a religious institution or given or endowed for the performance of any service or charity of a public nature connected herewith or of any other religious charity and includes the institution concerned and also the premises thereof. "Religious institution" defined in Section 2(23), means a math, temple or specific endowment and includes a Brindavan, Samadhi or any other institution established or maintained for a religious purpose. "Specific endowment", defined by Section 2(25), means any property or money endowed for the performance of any specific service or charity in a charitable or religious institution or for the performance of any other charity, religious or otherwise, Under Section 6 of the Act, the Commissioner shall prepare separately and publish in the prescribed manner, a list of all religious or charitable institutions and endowments etc., all properties belonging to or given or

endowed to the charitable or religious institutions or endowments, as the case may be. Equally, of public religious or charitable institutions or endowments. Section 15 deals with appointment of board of trustees in accordance with the procedure prescribed thereunder. Section 16, with a non obstante clause, abolishes hereditary trusteeship. Consequently, the right of a person for the office of the hereditary trustee or mutawalli or dharmakarta or muntazim or by whatever name called, stands abolished on commencement of the Act. Section 17 provides procedure to make appointment of trustees and their term of office. Section 29(5) deal with the appointment and duties of Executive Officers who shall be responsible for carrying out all lawful directions issued by trustee from time to time. He shall be responsible for the proper maintenance and custody of all records, accounts and other documents and all the jewels, valuables etc. of the institution or endowment. Section 144 deals with the abolition of shares being paid or allowance given or allowed to any trustee, dharmakartha, mutawalli, any office holder or servant. The shares in the land or institution or endowment allotted or allowed to be in possession and enjoyment of office holder towards remuneration or otherwise stands abolished.

To complete the narrative and to have homogeneous whole, it is of relevance to tread into the powers and duties of the trustees regulated in Chapter III of the Act. Section 23 deals with powers of the trusses. The trustee of every charitable or religious institution or endowment has to administer its affairs, manage its properties and apply its funds in accordance with the terms of the trust, the usage of the institution or endowment, and all lawful directions which a competent authority may issue in respect thereof. He is also enjoined to act as carefully as a man of ordinary prudence would deal with such affairs, fund and properties, if they were of his own. All powers incidental to the prudent and beneficial administration of charitable or religious institution or endowment are entrusted to him. Other details are incidental to the exercise of the power and for the present controversy they are not of material consequence, hence omitted. Section 24 prescribes duties of the trustees. Section 25 deals with fixation of dittam known as "scale of expenditure". Section 26 prescribes powers of trustees of charitable or religious institution over trustee of specific endowments. Section 27 validates acts of trustees or board of trustees despite defect in their performance thereof. Section 29 deals with appointment and duties of Executive officers and Section 32 with appointment of subordinate officers. Section 30 and 31 relate to appointment of Engineering staff, Architects and Shilpis.

The first question is whether it is necessary that the legislature should make law uniformly applicable to all religious or charitable or public institutions and endowments established or maintained by people professing all religions. In a pluralist society like India in which people have faith in their respective religions, beliefs or tenets propounded by different religions or their off-shoots, the founding fathers, while making the Constitution, were confronted with problems to unify and integrate people of India professing different religious faiths, born in different castes, sex or sub-sections in the society speaking different Languages and dialects in different regions and provided secular Constitution to integrate all sections of the society as a united Bharat. The directive principles of the Constitution themself visualise diversity and attempted to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or

amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages.

The second question is: whether abolition of hereditary trusteeship violates Articles 25 and 26 of the Constitution. Article 25(1) assures, subject to public order, morality and health and to the other provisions of Chapter III that all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. Sub-clause (2) of Article 25 saves the operation of the existing law and also frees the State from Article 25(1) to make any law regulating or restricting any economic, financial, political or other secular activity, which may be associated with religious practice. Equally, law may provide for social welfare and reform, the throwing open of Hindu religious institutions of a public character to all classes and sections of the society. Article 26 gives freedom to manage religious affairs, subject to public order, morality and health, every religious denomination or any section thereof to establish institutions for religious and charitable purpose, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law.

Contents of Articles 25 and 26 of the Constitution have been considered in several decisions starting from Shirur Mutt case (infra) and have been placed beyond controversy. The first principle laid is that the protection of these articles is not limited to matters of doctrine or belief. They extend also to acts done in pursuance of religion and, therefore, a guarantee for rituals and observances, ceremonies and motive of worship which are integral parts of religion. The second principle is that what constitutes an essential part of religion or religious properties has to be decided by the Courts with a reference to the doctrine of particular religion and includes practices which are regarded by the community as a apart of its religion.

In The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954) S.C.R. 1005], known as Shirur Mutt case, this Court had held that the language of Article 25 indicates to secure to every person subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. It is the propagation of belief that is protected, no matter whether the propagation takes place in a church, or monastery or in a temple or parlour meeting. At page 1023, it was held that the word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. Religion, undoubtedly, has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion conducive to their spiritual well being. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship etc. guarantee under the Constitution not only protects the freedom of religious denomination but it also protects ceremonies and modes of worship which are regarded as integral parts of religion; and the forms and observations might extend even to interests of food and dress. What Article 25(2) (a) contemplates is not regulation by the State of religious practices as such, the

freedom of which is guaranteed by the Constitution. The guarantee is in-built to every religion to establish and maintain institutions for religious and charitable purposes and their management in matters of religion to own and acquire movable and immovable properties. But they are subject to Article 25 and other provisions of the Constitution.

Founding a temple or a charitable institution is an act of religious duty and has all the aspects of Dharma.

BIG PRARSARA SMRITI "10th Chapter, Sloks 1, 2 and 3 indicates as under

> "Let me describe the charities with the procedures, narrated by Sage Parasara to Veda Vyasa :
>
> 1. By charity one can go to heaven.
>
> 2. By charity one enjoys peace.
>
> 3. Here and there [in this and other world], the one who did charity will be respected.
>
> 4. There is no better religious duty in all the three worlds than doing charity.
>
> 5. Therefore, charity to be practiced as far as possible MANU SMRITI 4TH Chapter Sloka 227, 228
>
> 1. One should practice charity daily with a pleasant heart to the deserving, as far as he can. Offering charity is real worship of the God without the elaborate procedure of having sacrificial fire lit etc.
>
> 2. At least something should be given in charity when sought as one of the many beneficiaries may lift the donor from going to hell."

Bhagwat Geeta and some of the Smrities extol and motivate charity for spiritual well being as is shown hereunder:

> "1. BHAGWAD GEETA - CHAPTER 18 Yagya Dana Tapa Karma, Na Tyajyam, Karyamev yat.
>
> The Ygnya, charity and Tapas are never to be given up; in fact all these three things are to be strictly observed on a continuous basis. These are the most sacred acts which makes the man pure.
>
> 2. VYSA SMRITHI - CHAPTER IV - SLOKA 15- I am discribing the Dana Dharma as detailed by Vyasa. What one gives daily as charity and what one enjoys daily is the only wealth one has as his. The other is the wealth meant for some one else. For,

some one else will be enjoying with his wealth and even his wife, when the man dies.

3. KAPILA SMRITHI - SLOKA 427 Charity shall be done by all; especially when one has the means he should do charity without fail on every occasions."

Hindu Piety found expression in establishing temples, creation of endowments or specific endowments, by gifts to idols and images consecrated and installed in temples and to religious institutions of every kind. The word `charity' in a legal sense includes every gift for educational, a general public use, to be applied consistent with existing laws for the benefit of an indefinite number of persons and designed to benefit them from a religious, moral, physical or social stand-point - vide Black's Law Dictionary at page 233. Therefore, every Hindu imbued with religious or charitable disposition and pious wish would create or establish a charitable or religious institution or endowment or specific endowments for general public use to be applied consistent with the law for the benefit of an indefinite number of people or persons and designed to benefit the religious, moral and social stand-point equally of educational stand- point. Therefore, a Hindu who has founded a religious or charitable institution or endowment has a fundamental right to administer it in accordance with law; and so, the law must leave the right of administration to the religious denomination or general body itself, subject to the restrictions and regulations as the law might chose to impose. In Shirur Mutt case (supra), this Court held at page 1029 that a law which takes away the right to administration to the 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. So. A law would not totally divest the administration of a religious institution or endowment, but the State has general right to regulate the right to administration of a religious or charitable institution or endowment; and such a law may chose to impose such restrictions whereof as are felt most acute and provide a remedy therefor.

In Ratilal Panachand Gandhi vs. The State of Bombay & Ors. [(1954) S.C.R. 1055 at page 1063], this Court further had pointed out the distinction between clauses (b) and (d) of Article 26 thus: in regard to 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 administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the 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 or general body of religion itself which has been given the right to administer its property in accordance with any 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 by Article 26(d) of the Constitution. In that case, the Court found that the exercise of the power by the Charity Commissioner or the Court to divert the trust property or funds for purposes which he or it considered expedient or proper, although the original objects of the founder can still be carried out, was an unwarranted encroachment on the freedom of religious institutions in regard to the management of their religious affairs.

It would thus be clear that the right to establish a religious institution or endowment is a part of religious belief or faiths, but its administration is a secular part which would be regulated by law appropriately made by the legislature. The regulation is only in respect of the administration of the secular part of the religious institution or endowment, and not of beliefs, tenets, usages and practices, which are integral part of that religious belief or faith.

It is true that Section 16 of the Act, which has been reproduced earlier, abolishes the hereditary right in trusteeship but not the right to trusteeship itself. It is obvious that Section 18 itself recognises the right to management of a religious or charitable institution or endowment or specific endowment by one of the members belonging to the family of the founder as trustee; but, of course, as a member of the board of non-hereditary trustees. Though hereditary right is a part of the right to administer the Hindu religious or charitable Institution or endowment under the predecessor Act 1966, it is seen that Justice Challa Kondaiah Commission, which is a store-house for the legislature to find the existence of evils or mischief in the administration and governance of charitable and Hindu religious institutions or endowments and which the legislature has taken cognizance of while making the law at hand, had pointed out the acute need to provide remedy. Words are the skin of the language. The language opens up the bey of the maker's mind. The Legislature gives its own meaning and interpretation of the law. It does so employing appropriate psephology to attain the object of legislative policy which it seeks to achieve.

Section 16 with a non obstante clause abolishes the hereditary right in trusteeship of a charitable and Hindu religious institutions or endowments. It is settled law that the legislature within its competence, may amend the law. The language in Section 16 seeks to alter the pre-existing operation of the law. The alteration in language may be the result of many factors. It is settled legislative device to employ non obstante clause to sustaibility alter the pre- existing law consistent with the legislative policy under the new Act to provide the remedy for the mischief the legislature felt most acute. Section 16, therefore, applying non obstante clause, altered the operation of any compromise, agreement entered into or a scheme framed or a judgment, decree or order passed by any court, tribunal or other authority or any deed or other document prior to the Act. The pre-existing hereditary right in trusteeship in the office of the hereditary trustee, mutawalli, dharmakartha or muntazim or by whatever name it is called and abolished the same prospectively from the date of the commencement of the Act. Article 15 [1] of the Constitution prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Section 17 to 19 recognise general right to every qualified Hindu to claim appointment as trustee. Section 16 intends to remove discrimination on grounds of heredity which otherwise is violative of Article 15(1). Article 13 declares such inconsistent custom as void. The predecessor Act 1966 recognised customary right, which the legislature has power to take away such recognition and order every eligible Hindu to be considered for appointment as trustee in the manner prescribed by law. Hereditary principle being inconsistent with Article 15(1), the legislature thought it fit to abolish the same. Moreover, by reason of hereditary nature of succession to trusteeship or mutawalli etc. inherently visited with mismanagement or misappropriation of the property of the charitable or Hindu religious institutions or endowments, the object of the endowment etc. thereby getting

defeated. With a view to remedy the same and to effectuate proper and efficient management and governance of charitable and Hindu religious institutions and endowments, the Act was enacted. Instead of management by a single person Chapter III introduced in Sections 15, 17, 18 and 19 as a composite scheme prescribing disqualifications and qualifications for trusteeship, procedure for appointment of trustees and appointment and constitution of the board of trustees so as to have collective proper and efficient administration and governance of the institution and endowment. The abolition of the right to hereditary trusteeship, therefore, cannot be declared to be unconstitutional.

Chapter III relates to administration and management of charitable and Hindu religious institutions and endowments, as its heading indicates. By operation of Section 14 all properties belonging to or given or endowed to a charitable or religious situation or endowment shall vest in that institution. A scheme has been evolved therein first to abolish the hereditary right in trusteeship. That has been accomplished under Section 16. As a corollary, the management and governance was entrusted to the trustees and the board of trustees as a representative body. It is already held that the scheme for appointment of the trustees and constitution of the board of trustees is to effectuate the legislative object of efficient and proper administration and management of charitable and Hindu religious institutions and endowments. The Act entrusted the collective responsibility to the board of trustees appointed under Section 15. Section 15 makes a distinction in respect of the charitable or religious institutions or endowments covered by clauses (a) to (c) of Section 6 as distinct classes. In respect of the charitable or religious institutions or endowments covered by clause (a) of Section 6 whose annual income is Rs. 10 lakhs and above, the board of trustees consisting of 9 persons shall be appointed under clause (a) of sub-section (1) of Section 15. The appointing authority of such board of trustees shall be the Government. In case the income does not exceed Rs.10 lakhs, the Commissioner has been given power to appoint board of trustees consisting of 7 persons. In respect of charitable or religious institutions or endowments included in the list published under clause (b) of Section 6, the Deputy Commissioner having jurisdiction has been empowered to constitute a board of trustees consisting of 7 persons as envisaged under sub-section (2) of Section 15. In the case of charitable or religious institutions or endowments included in the list published under clause (c) of Section 6, the Assistant Commissioner having jurisdiction has been empowered to appoint trustees and constitute board of trustees consisting of five persons. In the case of charitable or religious institutions or endowment covered by clause (c) of Section 6, obviously based upon the factual matrix, in the interest of the institution or endowment or for any other sufficient cause after recording reasons in writing, the Assistant Commissioner is empowered by the proviso to sub-section (3) of Section 15 to appoint a single trustee to a charitable or religious institution or endowment instead of appointing and constituting a board of trustees. It could be seen that the scheme of appointment of the trustees and appointment and constitution of the board of the trustees being an integral part and having evolved policy to entrust collective responsibility of management and administration of charitable and religious institution or endowment instead of entrusting such responsibility to a single individual, Section 15 was brought on statute to effectuate the said policy. The legislative competence is not questioned. The policy involved cannot be faulted nor can it be assailed as unconstitutional when it seeks to achieve a public purpose, viz., secular management of the charitable or religious institutions or endowments to effectuate efficient and proper management and governance of the said institutions. Accordingly, we are of the considered

view that abolition of the hereditary right in trusteeship is unexceptionable, it being a part of due administration, which is a secular activity. Being a permissible law under Article 25(2), it is not violative of Article 25(1) of the Constitution. It cannot further be held that either Section 15 or Section 16 of the Act is ultra vires the Constitution.

But immediate question is whether taking away of the management and vesting the same in the board of non- hereditary trustees, constituted under Section 15, is valid in law. It is seen that the perennial and perpetual source to establish or create any religious or charitable institution or endowment of a specific endowment is the charitable disposition of a pious persons or other benevolent motivating factors, but to the benefit of indeterminate number of people having the common religious faith and belief which the founder espouses. Even a desire to perpetuate the memory of an philanthropist or a pious person or a member of the family or founder himself may be the motive to establish a religious or charitable institution or endowment or specific endowment. Total deprivation of its establishment and registration and take over of such bodies by the State would dry up such sources or acts of pious or charitable disposition and act as disincentive to the common detriment.

Hindus are majority in population and Hinduism is a major religion. While Articles 25 and 26 granted religious freedom to minority religions like Islam, Christianity and Judaism, they do not intend to deny the same guarantee to Hindus. Therefore, protection under Articles 25 and 26 is available to the people professing Hindu religion, subject to the law therein. The right to establish a religious and charitable institution is a part of religious belief or faith and, though law made under clause (2) of Article 25 may impose restrictions on the exercise of that right, the right to administer and maintain such institution cannot altogether be taken away and vested in other party; more particularly, in the officers of a secular Government. The administration of religious institution or endowment or specific endowment being a secular activity, it is not an essential part of religion and, therefore, the legislature is competent to enact law, as in Part III of the Act, regulating the administration and governance of the religious or charitable institutions or endowment. They are not part of religious practices or customs. The State does not directly undertake their administration and expend any public money for maintenance and governance thereof. Law regulates appropriately for efficient management or administration or governance of charitable and Hindu religious institutions or endowments or specific endowments, through its officers or officers appointed under the Act.

The question then is whether legislative declaration of the need for maintenance, administration and governance of all charitable and Hindu religious institutions or endowments or specific endowments and taking over the same and vesting the management in a trustee or board of trustees is valid in law. It is true, as rightly contended by Shri P.P. Rao, that the legislature acting on the material collected by Justice Challa Kondaiah Commission amended and repealed the predecessor Act 1966 and brought the Act on statute. Section 17 of the predecessor Act of 1966 had given power to a hereditary trustee to be the chairman of the board of non-hereditary trustee. Though abolition of hereditary right in trusteeship under Section 16 has already been upheld, the charitable and religious institution or endowment owes its existence to the founder or members of the family who would resultantly evince greater and keener responsibility and interest in its proper and efficient

management and governance. The autonomy in this behalf is an assurance to achieve due fulfillment of the objective with which it was founded unless, in due course, foul in its management is proved. Therefore, so long as it is properly and efficiently managed, he is entitled to due freedom of management in terms of the deed of endowment or established practice or usage. In case a board of trustees is constituted, the right to preside over the board given to the founder or any member of his family would generate feeling to actively participate, not only as a true representative of the source, but the same also generate greater influence in proper and efficient management of the charitable or religious institution or endowment. Equally, it enables him to persuade other members to follow the principles, practices, tenets, customs and sampradayams of the founder of the charitable or religious institution or endowment or specific endowment. Mere membership along with others, many a times, may diminish the personality of the member of the family. Even in case some funds are needed for repairs, improvement, expansion etc., the board headed by the founder or his family member may raise funds from the public to do the needful, while the executive officer, being a Government servant, would be handicapped or in some cases may not even show interest or inclination in that behalf. With a view, therefore, to effectuate the object of the religious or charitable institution or endowment o r specific endowment and to encourage establishment of such institutions in future, making the founder or in his absence a member of his family to be a chairperson and to accord him major say in the management and governance would be salutary and effective. The founder or a member of his family would, thereby, enable to effectuate the proper, efficient and effective management and governance of charitable or religious institution or endowment or specific endowment thereof in future. It would add incentive to establish similar institutions.

Keeping this pragmatic perspective in consideration, the question that emerges is: whether Sections 17 and 29(5) are valid in law. Reading down the provisions of an Act is a settled principle of interpretation so as to sustain their constitutionality, as well as for effectuation of the purpose of the statute. With the above in mind, we may examine the validity of Section 17 and 29(5). These statutory provisions are grounded on the findings of the report of Challa Kondaiah Commission, which indicated mismanagement and misutilisation of funds of charitable and Hindu religious institutions and endowments in a big way. This is, however, a general finding; and we are prepared to agree with the learned counsel for the petitioners that all the charitable and religious institutions may not be painted with the same brush. We have no doubt that there would be charitable or religious institutions in the State which are neither mismanaged nor there is misutilisation of funds. Even so, if the legislature acted on the general findings recorded by the Commissioner, due weightage has to be given to the same. Our view that the board of trustees should be headed either by the founder or a member of his family, would go a long way in seeing the fulfillment of the wishes and desires of the founder.

Sections 17 and 29(5) cannot, therefore, be faulted. Whatever rigor these sections have, would be duly get softened by the requirement of the board being headed by the founder or any of his family members, as the case may be. Subject to this rider, we uphold the validity of these two Sections.

The question then is: whether abolition of the emoluments under Section 144 is unconstitutional? It is seen that the object of the Act is to prevent misuse of the trust for personal benefit. It is founded

on the report of the aforesaid Commission. It is a matter of legislative wisdom and policy. It is not the contention that the legislature has no competence to abolish the system of payment. As stated earlier, it is a legislative judgment reflective of the will of the sovereign people. The Court would give respect and primacy to the legislative judgment, rather than to judicial conclusion. So, we are of the considered view that Section 144 is not unconstitutional in relation to its application to charitable and religious institutions and endowments. The scope and ambit of Section 144 would be fully discussed in Archaka cases, i.e., W.P. No. 638/87 & batch.

So, we uphold the validity of Sections 15, 16, 17, 29(5) and 144, subject to the rider mentioned earlier qua Sections 17 and 29(5). The writ petitions and the transfer cases are disposed of accordingly. No costs.