Guruvayur Devaswom Managing Commit. & ... vs C.K. Rajan & Others on 14 August, 2003

Equivalent citations: AIR 2004 SUPREME COURT 561, 2003 (7) SCC 546, 2003 AIR SCW 6039, (2003) 4 KHCACJ 67 (SC), (2003) 3 KER LT 618, 2003 (4) KHCACJ 67, 2003 (6) SCALE 401, 2003 (3) LRI 713, 2003 (7) ACE 350, (2004) 14 ALLINDCAS 299 (SC), (2003) 7 JT 312 (SC), 2003 (8) SRJ 495, 2003 (7) JT 312, 2003 (7) SLT 421, (2004) 1 MAD LW 197, (2003) 6 SUPREME 107, (2003) 6 SCALE 401, (2003) 9 INDLD 521

Author: S.B. Sinha

Bench: Chief Justice, S.B. Sinha, G.P. Mathur

CASE NO.:
Appeal (civil) 2148 of 1994

PETITIONER:
Guruvayur Devaswom Managing Commit. & Anr.

RESPONDENT:
Vs.

C.K. Rajan & Others

DATE OF JUDGMENT: 14/08/2003

BENCH:
CJI, S.B. Sinha & G.P. Mathur.

JUDGMENT:

J U D G M E N T With C.A. Nos. 2149/1994, 2150/1994, & 2151/1994 S.B. SINHA, J :

Scope and ambit of a Public Interest Litigation in the matter of management of a temple governed by the provisions of a statutory enactment is the primal question involved in these appeals. INTRODUCTORY REMARKS:

Sree Krishna Temple, Guruvayur draws millions of people all over the country. This ancient temple of unique importance is worshipped and held in great reverence by lakhs of devotees. The temple owns extensive movable and immovable properties and endowments. It has its own heritages and traditions.

The State of Kerala having regard to importance of the said temple with a view to make suitable provision for the proper administration of the Guruvayoor Devaswom enacted the Guruvayoor Devaswom Act, 1978 (Act 14 of 1978) (for short 'the Act'). The management of the temple is carried out in terms of the provisions of the said Act.

RELEVANT PROVISIONS OF THE STATUTE: Some of the relevant provisions of the said Act inter alia are: "6. Dissolution and supersession of Committee:

1) If, in the opinion of the Government, the Committee is not competent to perform or makes default in performing the duties imposed on it under this Act or abuses or exceeds its powers; the Government may after such inquiry as may be necessary, by notification in the Gazette, supersede the Committee for such period, not exceeding six months, as the Government may deem fit.

2) Before issuing a notification under sub-

section (1) the Government shall communicate to the Committee the grounds on which they propose to do so, fix a reasonable time for the Committee to show cause against the proposal and consider its explanations and objections, if any.

3) Any member of the Committee may, within a period of one month from the date of publication of the notification under sub-section (1), institute a suit in the court to set aside the notification.

4) Where the Committee is superseded under this section the Commissioner shall exercise the powers and perform the functions of the Committee until the expiry of the period of supersession. Provided that the period during which the Committee remains superseded shall not have the effect of extending the maximum term of office of a member nominated under clause (d) or clause (e) of sub-section (1) of section 4 beyond a period of two years.

17. Powers and duties of Administrator:

(1) The Administrator shall be the secretary to the Committee and its chief executive officer and shall, subject to the control of the Committee, have powers to carry out its decisions in accordance with the provisions of this Act.

(2) The Administrator shall arrange for the proper collection of offerings made in the Temple.

(3) The Administrator shall have power to incur expenditure not exceeding five thousand rupees to meet unforeseen contingencies during the interval between two meetings of the Committee.

18. Establishment schedule:

1) The Administrator may, as soon as may be after the commencement of this Act, prepare and submit to the Committee a schedule setting forth the duties, designations and grades of the officers and employees who may in his opinion constitute the establishment of the Temple and embodying his proposals with regard to the salaries and allowances payable to them.

2) The Committee shall forward the schedule submitted to it under sub-section (1) with its recommendations thereon to the Commissioner for approval.

3) The Commissioner shall, after considering the recommendations of the Committee, approve such schedule either without modification or with such modifications as he deems necessary, and there upon such schedule as approved by the Commissioner shall come into force.

4) No change shall be effected in the schedule except with the approval of the Commissioner.

5) Subject to such exceptions as the Committee may by general or special order direct, the officers and employees of the Devaswom in the service of the Devaswom immediately before the commencement of this Act shall continue as such, and the conditions of their service shall be such as may be prescribed by regulations made under this Act.

6) A person who does not profess the Hindu Religion or believe in Temple worship shall be disqualified for being appointed as, or for being, an officer or employee of the Devaswom.

23. Accounts and Audit:

1) The Committee shall keep regular accounts of all receipts and disbursements.

2) The accounts of the Devaswom shall be subject to concurrent audit, that is to say, the audit shall take place as and when expenditure is incurred.

3) The audit shall be made by auditors appointed in the prescribed manner, who shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).

24. Authority to whom audit report is to be submitted:

After completing the audit for any year or shorter period or for any transactions as he deems fit, the auditor shall send a report to the Commissioner.

33. Power of Government to call for records and pass orders:

1) The Government may call for and examine the record of the Commissioner or of the Committee in respect of any proceeding, not being a proceeding in respect of which a suit or application to the court is provided by this Act, to satisfy themselves that the provisions of this Act have not been violated or the interests of the Devaswom have been safeguarded and if, in any case, it appears to the Government that any decision or order passed in such proceeding has violated the provisions of this Act or is not in the interest of the Devaswom, they may modify, annual or reverse such decision or order or remit such decision or order for reconsideration:

Provided that the Government shall not pass any order prejudicial to any party unless he has had a reasonable opportunity of making his representations.

2) The Government may stay the execution of any such decision or order pending the exercise of their powers under sub-

section (1) in respect thereof.

36. Removal of difficulties:

If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order do anything not inconsistent with this Act or the rules made thereunder, which appears to them necessary for the purpose of removing the difficulty.

38. Rules:

1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for -

(a) the publication of the administration report under section 13;

(b) the custody of the records and properties of the Devaswom;

(c) the payment of contributions towards the leave allowances, pension and provident fund of the Administrator;

(d) any other matter which is required to be, or may be, prescribed under this Act.

3) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if,

before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

The State of Kerala in exercise of its power conferred under Section 38 of the Act made rules known as The Guruvayoor Devaswom Rules, 1980 (for short 'the Rules'). Rule 10 of the Rules provides for publication of Administration Report and is in the following terms:

"10. Committee to submit Administration Report:

The Committee shall prepare and submit to the Commissioner, a report on the administration of the affairs of the Devaswom relating to each calendar year within three months of the completion of the year.

2) The Commissioner shall forward such report with his comments to Government within 30 days of its receipt by him.

3) The Administration report shall among other things contain details about, (i) the working of the Act, (ii) the income and expenditure, (iii) the amenities provided to the worshippers, (iv) the works undertaken, (v) the festivals conducted, (vi) special features or incidents during the year, (vii) financial position, (viii) working of subordinate temples and other institutions under the management of the Devaswom and (ix) such other matters of public interest.

4) The report shall be published on the notice board of the Devaswom and in the Kerala Gazette.

5) Abstract of the report shall be published at least in one Malayalam daily having wide circulation in the area."

The statutory provisions contained in the said Act and the rules framed thereunder are of wide amplitude as would appear from the following:

(a) Section 5C read with section 5(3)(c) of the Act read with section 5(4) permits the State Government to initiate proceedings against, and remove, any member of the Managing Committee if they are satisfied that he has been guilty of corruption or misconduct in the administration of the temple;

(b) Section 6 permits the State Government to dissolve and supersede the Managing Committee as a whole for incompetence or default in performing its duties imposed on it under Section 10 of the Act after giving it an opportunity to show cause;

(c) Section 13 read with rule 10 permits the monitoring of the Managing Committees functioning by requiring it to submit and public a report on the administration of the affairs of the temple;

(d) Section 23 read with rule 17 provides for the Committee keeping regular accounts of receipts and disbursements and concurrence audit of those accounts, i.e., an audit that takes as and when an expenditure is incurred, by auditors appointed in the prescribed manner;

(e) Section 25 provides that the auditor shall specify in its report all cases of irregular, illegal or improper expenditure or failure to recover money or rather properties to the Devaswom or loss or waste of money or other property thereof, caused by neglect or misconduct;

(f) Section 26(2) permits the Commissioner appointed under Section 2(b) of the Act to pass an order of surcharge against the Managing Committee or any officer or employee if he is satisfied that they are guilty of misappropriation or willful waste or of gross neglect resulting in loss to the temple after giving them an opportunity to show cause why an order of surcharge should not be passed; and

(g) Under Section 33, the State Government in turn is empowered to call for and modify, annul or reverse decision of the Commissioner or of the Managing Committee after calling for and examining the record if the government is satisfied that the decision has violated the provisions of the Act or is not in the interest of the temple after giving a reasonable opportunity to any party that may be prejudiced by such order.

GENESIS OF THE PUBLIC INTEREST LITIGATION:

One Shri C.K. Rajan addressed a letter dated 3.2.1993 to one of the Hon'ble Judges of the High Court of Kerala and thereby bringing to his notice purported serious irregularities, corrupt practices, mal- administration and mismanagement prevailing in the temple. He was called by the High Court and its Registrar recorded his statement on 11.2.1993. The said letter was treated as an original petition under Article 226 of the Constitution of India. The High Court in its order dated 12.2.1993 highlighted 23 aspects of the matter which had been brought to its notice and appointed one Shri S. Krishnan Unni, District Judge Officiating as the Director of Training, High Court of Kerala as the Commissioner to make a general enquiry and in particular make a study on the various aspects highlighted in the said complaint.

The Commissioner pursuant to the order of the High Court seized all the records of the temple, examined 85 witnesses and submitted as many as 15 interim reports on 15.2.1993, 10.3.1993, 30.3.1993, 3.4.1993, 16.4.1993, 12.5.1993, 9.6.1993, 26.6.1993, 20.7.1993, 21.7.1993, 4.8.1993, 11.8.1993, 13.8.1993, 2.9.1993, 2.9.1993. It submitted its final report on 25.9.1993.

An order passed by the High Court on 12.2.1993 was the subject matter of a Special Leave Petition before this Court being SLP (Civil)…/93 CC 20040 wherein this Court suggested in its order dated 26.3.1993 the following guidelines for consideration of the Court:

> "(i)It is not disputed that the management of the Guruvayur temple is governed by the Guruvayur Devaswom Act, 1978. There may be other State legislations governing the functioning of religious institution in the State. The High Court shall take into consideration the relevant provisions of these enactments.
>
> (ii) The Guruvayur Devaswom Managing Committee and the State of Kerala are necessary parties in this public interest litigation. The High Court shall take into consideration the objections including of preliminary nature raised/ to be raised by these parties.
>
> (iii)The appointment, tenure of office and other conditions of service of the Administrator and other officers connected with the Guruvayur, as are provided by law shall be kept in view while passing any orders concerning these officers.

The High Court is requested to conclude the proceedings expeditiously and if possible, within six months from today."

Another Special Leave Petition was filed praying for an order restraining the Enquiry Commissioner from submitting his final report being SLP (Civil) NO. 3231/93 but the same was dismissed vide this Court's order dated 10.5.1993 observing:

> "Learned counsel for the petitioner urged and vehemently pleaded for restraining the Enquiry Commissioner from submitting his final report as in that case the High Court may not decide the preliminary objection raised on their behalf that there being a detailed procedure provided in the Statute, the High Court should not have exercised its extraordinary jurisdiction. We do not find any justification for such apprehension.
>
> In the result, this petition fails and is dismissed."

Pursuant to or in furtherance of the observations made by this Court, an application was filed for determining the maintainability of the matter as a preliminary issue. However, in the meantime, the Commissioner had submitted 10 interims reports, examined a number of persons and a large number of persons were also impleaded as parties in the writ petition.

Mr. V.R. Reddy appearing for the State of Kerala allegedly conceded that the plea regarding want of jurisdiction raised did not merit consideration at that stage and the same had become infructuous. The Bench noticed that the reports contained various observations and recommendations as regard the interim reports. Some statements were filed in respect of some of the reports by some of the respondents only. Correctness or otherwise of various reports and suggestions made therein were,

however, not questioned. The third respondent had filed the following statements to the following interim reports:

> No. of the interim reports Date of the statement 5.4.1993 17.10.1993 17.10.1993 17.10.1993 17.10.1993 17.10.1993 17.10.1993 17.10.1993 17.10.1993 17.10.1993 18.9.1993 17.10.1993 The first respondent - State of Kerala had filed the following statements in relation to the following interim reports :
>
> "1. Statement filed by the Commissioner and Secretary (Finance) dated 15.10.1993
>
> 2. Statement filed by the Government Pleader dated 2.12.1993
>
> 3. Preliminary objections dated 29.5.1993"

As noticed hereinbefore, the Commissioner filed his final report on 25.9.1993.

The State of Kerala prayed for time for filing objections to the Commissioner's final report and was granted time thrice but it ultimately failed to respond thereto. No affidavit by way of an objection to the said reports was filed by any party. During hearing of the matter, the Chairman, The Guruvayur Devaswom Managing Committee (for short 'the Committee'), and the State agreed with many of the recommendations made by the Commissioner. Appellant herein also substantially agreed with various recommendations of the Commissioner. The Court specifically asked for objections to the recommendations of the Commissioner. The fifth respondent - M.P. Gopalakrishnan and the third respondent - Chairman of the Committee filed objections but at the argument stage only a few of the matters stated in the statements were highlighted or pressed. Upon considerations of the various matters the High Court in its impugned judgment arrived at its findings on the recommendations of the Commission, the summary whereof has been stated in para 64 thereof. The High Court lamented:

> "The temple and the idol of Guruvayur is the very Brahman itself, so easily obtained, which can, in the ordinary course, be obtained only after undergoing all trials and tribulations. That is the greatness of this Lord of Guruvayur (Sree Krishna), the temple sought by millions all over and about which every Hindu holds a candle, but alas! Its administration has sunk to low levels, to be ashamed of; we hope and pray that this litigation will give a turning point for the improvement and better administration of the Devaswom."

SUBMISSIONS:

> Mr. K.K. Venugopal and Mr. V.R. Reddy, the learned senior counsels appearing on behalf of the appellant and the State of Kerala respectively, at the outset invited our attention to the orders of this Court dated 26.3.1993 passed in SLP (C) No..../93 CC 20040, and orders dated 26.4.1993 as well as 10.5.1993 passed in SLP (C) No. 3231/93 and submitted that keeping in view of the fact that this Court was

approached at least on three different occasions wherein the jurisdiction of the Court to initiate a public interest litigation was questioned, the High Court committed a manifest error in not deciding the same as a preliminary issue.

The learned counsels further drew our attention to the order passed in CMP No. 10669 of 1993 requesting the High Court to consider the maintainability as a preliminary issue. It was submitted that a wrong statement has further been recorded in the said order to the effect that the Managing Committee has unanimously resolved welcoming the enquiry and they would not take steps assailing the same. The High Court was further wrongly opined that the said CMP has become infructuous having regard to the fact that 10 interim reports have been submitted by the Enquiry Commissioner and the work of the Commissioner was practically nearing completion. Mr. Venugopal would urge that the High Court misdirected itself in not only entertaining the letter of the Fifth Respondent as a public interest litigation but also by appointing a commissioner and directing seizure of all the documents resulting in serious adverse publicity against the appellant-committee, purported to be relying on or on the basis of the statement of Respondent No.1 that some of the allegations made by him would be borne out from the records maintained by the temple.

Drawing our attention to the provisions of Commission of Enquiry Act, 1952 and the Kerala Public Men's Corruption (Investigations and Inquiries) Act, 1987 (Act 24 of 1988), the learned counsel would submit that for all intent and purport the High Court exercised its jurisdiction in terms thereof and, thus, assumed a jurisdiction which it did not have. A full-fledged enquiry akin to the provisions of the 1952 Act and Kerala Public Men's Corruption (Investigations and Inquiries) Act, 1987 is unknown in a public interest litigation and in this behalf our attention has been drawn to the appointment of amicus as also the appointment of lawyers for the Commissioner. The learned counsel, in particular, drew our attention to the order dated 17th February, 1993 passed in O.P. No. 2071 of 1993 and submitted that a perusal thereof would show that the High Court even directed the Director of Public Relations for wide publication of these matters and invited complaints and suggestions from the public in general.

By reason of the said order, the High Court also appointed M/s. Menon & Menon, Chartered Accountants, Ernakulam as auditors. The Enquiry Commissioner was given accommodation at the High Court as also at Guruvayur. The Registrar of the High Court was directed to depute appropriate and necessary staff to the Enquiry Commissioner. Even a police officer was appointed to assist the Enquiry Commissioner in the field work.

The High Court also, the learned counsel would submit, must be held to have committed a manifest error in taking over the administration of the temple for all intent and purport; even by going to the extent of directing that the Administrator

would not be transferred.

Mr. Venugopal would urge that the said Act contains provisions for effective management of the temple and the purported assumption of jurisdiction by the High Court must be held to be bad in law. Further contention of the learned counsel was that the Commissioner examined 85 witnesses but their names and particulars, although asked for, were not supplied nor were they allowed to be cross-examined. It was pointed out that the names of the witnesses and the documents which were marked as Exhibits were indicated only in the Final Report and despite the fact that no opportunity was given to the affected parties to cross- examine the witnesses, strictures were passed against them relying on or on the basis of their unsworn testimony. The learned counsel would urge that the High Court acted illegally and without jurisdiction in passing the impugned directions purported to be acting as a parens patriae inasmuch as the statutory acts governed the field. There is no reason, the learned counsel would contend, to by-pass the provisions of the Act as also the Code of Civil Procedure.

The learned counsel would argue that a roving enquiry is not contemplated in a public interest litigation. Mr. Venugopal would further submit that when the management of a temple is governed by a statutory enactment wherein power has been conferred upon the Government to look into the grievances and pass an appropriate orders thereupon, the High Court must be held to have exceeded its jurisdiction in issuing the impugned directions inasmuch as before embarking thereupon it was obligatory on its part to ask the Government to remedy the defects. It is not a case, the learned counsel would contend, where the complainant belonged to a weaker section or was not in a position to take recourse of the said Act or initiate a proceeding in terms of Section 92 of the Code of Civil Procedure. Mr. Venugopal would contend that indisputably the High Court has inherent powers but such inherent powers cannot be exercised in defiance of law. Once such a power is exercised by an organ of the State, the same would be against the rule of law. Mr. Reddy appearing on behalf of the State of Kerala drew our attention to the affidavit filed by the State and submitted that the High Court misunderstood his submissions to the effect that he had not pressed the High Court to decide the maintainability of the petitioner as a preliminary issue. According to the learned counsel, as by the time the order of this Court dated 12.2.1993 was communicated; 10 interim reports had been submitted, a submission was made only to the effect that the merit of those reports may be directed to be considered by the State. The learned counsel would contend that the very fact that the parties agitated the question of jurisdiction second time before this Court is a clear pointer to show that the question as regards jurisdiction of the High Court to entertain such application was not given up.

Mr. Subba Rao, the learned counsel appearing on behalf of the respondent No. 5, on the other hand, would submit that there are precedents wherein enquiries were directed to be made through a Commission for finding out the correctness or

otherwise of the allegations made in a writ petition. It was submitted that even provisions of the Commission of Enquiry Act was resorted to for the purpose of enquiry as regard management of temples. Reference in this connection has been made on Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others [1964 (1) SCR 561] and Sri Sri Sri Lakshmana Yatendrule and Others Vs. State of A.P. and Others [(1996) 8 SCC 705].

Mr. Subba Rao would argue that devotees who are mostly conservatives would expect that the management of the temple is carried out strictly in terms of the heritage and tradition of the temple and tenets and practices relating to offering of puja and matters ancillary thereto and connected therewith should scrupulously be followed. Any deviation or departure from the established practices and tenets would hurt the sentiments of the devotees and as such they would be entitled to bring the same to the notice of the High Court which is conferred with the jurisdiction to investigate into the matter not only in exercise of its power under Article 226 of the Constitution but also in terms of various statutes as also under the Code of Civil Procedure, 1908. Referring to the decision of this Court in Bandhua Mukthi Morcha Vs. Union of India and Others [(1984) 2 SCR 67], Mr. Subba Rao would submit that therein this Court has laid down the procedure for making enquiry into the allegations or causing the same to be made for the purpose of gathering necessary facts so as to grant appropriate reliefs to the needy and poor. Mr. Subba Rao would urge that the High Court has merely followed the procedure laid down by this Court in Bandhua Mukti Morcha (supra) and, thus, the question of giving an opportunity to cross-examine the witnesses or their particulars be disclosed does not arise. Only when a report is submitted, the concerned parties were entitled to file affidavits thereagainst. But in this case, even no such affidavit has been filed.

Mr. Subba Rao has drawn our pointed attention to the following orders:

(i) Order dated 25.8.1993 of the High Court in C.M.P. No. 10669 of 1993 filed by Guruvayur Devasom Managing Committee;

(ii) Judgment dated 10.1.1994

(iii) Order dated 25th August, 1993 in C.M.P. No. 10699/93 in O.P. No. 2071 of 1993.

The learned counsel would submit, in view of the aforesaid it does not lie in the mouth of any of the learned counsels to contend that the High Court had no jurisdiction to initiate the proceedings. Reliance in this connection has also been placed on State of Maharashtra Vs. Ramdas Shrinivas Nayak & Anr. [1983 (1) SCR 8]. Mr. Subba Rao would further urge that only because a floodgate of litigation would be opened if a public interest litigation is entertained, the same itself cannot be a ground for holding that public interest litigation should be entertained. Our attention in this connection has been drawn on Woolwich Building Society Vs. Inland Revenue Commissioners (No.2) [(1992) 3 All ER 737] and Johnson Vs. Unisys Ltd. [(2001) 2 All ER 801].

Mr. Subba Rao would urge that the High Court is a parens patriae in relation to the devotees is neither in doubt nor in dispute. Reliance in this behalf has been placed on State of Kerala & Anr. Vs. N.M. Thomas & Others [(1976) 1 SCR 906 at 951] and Charan Lal Sahu etc. etc. Vs. Union of India and Others [(1989) Supp. 2 SCR 597 at 638]. Power of the High Court and this Court under Articles 226 and 32 of the Constitution of India remain untrammeled despite existence of statutory provisions controlling the power of executive and, thus, it was argued that the High Court and this Court cannot be stripped of its constitutional powers to look into the omissions and commissions on the part of the administrators of the temple. A proceeding initiated as a public interest litigation would lie before the High Court or this Court, according to Mr. Subba Rao, when it is found that despite existence of statutory provisions the State or the other statutory functionaries were not taking recourse to the provisions thereof for remedying the grievances of the devotees. In any event, as a Hindu temple is a juristic person the very fact that Section 92 of the Code of Civil Procedure seeks to protect the same, for the self-same purpose Articles 226 and 32 could also be taken recourse to. Our attention in this behalf has been drawn on Yogendra Nath Naskar Vs. Commissioner of Income-Tax, Calcutta [(1969) 1 SCC 555] and Manohar Ganesh Tambekar Vs. Lakhmiram Govindram [ILR (1888) 12 Bom 247]. SCOPE OF PUBLIC INTEREST LITIGATION:

> The Courts exercising their power of judicial review found to its dismay that the poorest of the poor, depraved, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other down trodden have either no access to justice or had been denied justice. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete justice to the aforementioned classes of persons. It expanded its wings in course of time. The Courts in pro bono publico granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to by pass the real issues on the merits by suspect reliance on peripheral procedural shortcomings. (See Mumbai Kamgar Sabha, Bombay Vs. M/s. Abdulbhai Faizullabhai & Others (1976) 3 SCR 591). The Court in pro bono publico proceedings intervened when there had been callous neglect as a policy of State, a lack of probity in public life, abuse of power in control and destruction of environment. It also protected the inmates of persons and homes. It sought to restrain exploitation of labour practices. The court expanded the meaning of life and liberty as envisaged in Article 21 of the Constitution of India. It jealously enforced Article 23 of the Constitution. Statutes were interpreted with human rights angle in view. Statutes were interpreted in the light of international treatises, protocols and conventions. Justice was made available having regard to the concept of human right even in cases where the State was not otherwise apparently liable. (See Kapila Hingorani Vs. State of Bihar reported in JT 2003 (5) SC 1) The people of India have turned to courts more and more for justice whenever there had been a legitimate grievance against the State's statutory authorities and other public organizations. People come to courts as the final resort, to protect their rights and to

secure probity in public life.

Pro bono publico constituted a significant state in the present day judicial system. They, however, provided the dockets with much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. Public interest litigation has come to stay and its necessity cannot be overemphasized. The courts evolved a jurisprudence of compassion. Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of locus standi was diluted. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice. But with the passage of time, things started taking different shapes. The process was sometimes abused. Proceedings were initiated in the name of public interest litigation for ventilating private disputes. Some petitions were publicity oriented. A balance was, therefore, required to be struck. The Courts started exercising greater care and caution in the matter of exercise of jurisdiction of public interest litigation. The Court insisted on furnishing of security before granting injunction and imposing very heavy costs when a petition was found to be bogus. It took strict action when it was found that the motive to file a public interest litigation was oblique. The decisions rendered by this Court in different types of public interest litigations are varied.

The principles evolved by this Court in this behalf may be suitably summarized as under :

(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.

The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfill its constitutional promises. (See S.P. Gupta Vs. Union of India [1981 (supp) SCC 87], People's Union for Democratic Rights and Others Vs. Union of India (1982) 2 SCC 494, Bandhua Mukti Morcha Vs. Union of India and Others (1984) 3 SCC 161 and Janata Dal Vs. H.S. Chowdhary and Others (1992) 4 SCC 305)

(ii) Issues of public importance, enforcement of fundamental rights of large number of public vis-à-vis the constitutional duties and functions of the State, if raised, the Court treat a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. (See Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi (1978) 4 SCC 104 and Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar (1980) 1 SCC 81).

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial. In Mrs. Mankeka Sanjay Gandhi and Another Vs. Miss Rani Jethmalani, AIR 1979 SC 468, it was held:

> "2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant, environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances."

(See also Dwarka Prasad Agarwal (D) By LRs. and Anr. Vs. B.D. Agarwal and Ors. 2003 (5) SCALE 138).

(iv) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, depraved, illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. (See Fertilizer Corporation Kamagar Union Vs. Union of India, AIR 1981 SC 344, S.P. Gupta (supra), People's Union for Democratic Rights (supra), Dr. D.C. Wadhwa Vs. State of Bihar (1987) 1 SCC 378 and Balco Employees' Union (Regd.) Vs. Union of India and Others [(2002) 2 SCC 333]).

(v) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition. (See Bandhua Mukti Morcha (supra)).

(vi) Although procedural laws apply on PIL cases but the question as to whether the principles of res judicata or principles analogous thereto would apply depend on the nature of the petition as also facts and circumstances of the case. (See Rural Litigation and Entitlement Kendra Vs. State of U.P. 1989 Supp (1) SCC 504 and Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and others (1986) 1 SCC 100).

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation. (See Ramsharan Autyanuprasi and Another Vs. Union of India and Others 1989 Supp (1) SCC 251).

(viii)However, in an appropriate case, although the petitioner might have moved a Court in his private interest and for redressal of the personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil Vs. Dr. Mahesh Madhav Gosavi and Others (1987) 1 SCC

227).

(ix) The Court in special situations may appoint Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such committee. (See Bandhua Mukti Morcha (supra), Rakesh Chandra Narayan Vs. State of Bihar 1989 Supp (1) SCC 644 and A.P. Pollution Control Board Vs. M.V. Nayudu (1999) 2 SCC 718). In Sachidanand Pandey and Another Vs. State of West Bengal and Others [(1987) 2 SCC 295], this Court held:

> "61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action on when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such is required. But this does mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

In Janata Dal Vs. H.S. Chowdhary and Others (1992) 4 SCC 305, this Court opined :

> "109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will along have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold."

The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated. In Narmada Bachao Andolan Vs. Union of India & Others [(2000) 10 SCC 664], it was held:

> "229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of latches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not

mean that ordinary principles applicable to litigation will not apply. Latches is one of them.

232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction."

(x) The Court would ordinarily not step out of the known areas of judicial review. The High Courts although may pass an order for doing complete justice to the parties, it does not have a power akin to Article 142 of the Constitution of India.

(xi) Ordinarily the High Court should not entertain a writ petition by way of Public Interest Litigation questioning constitutionality or validity of a Statute or a Statutory Rule. In M.C. Mehta Vs. Kamal Nath [(2000) 6 SCC 213, it was held:

"20. The scope of Article 142 was considered in several decisions and recently in Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409 by which the decision of this Court in Vinay Chandra Mishra, Re (1995) 2 SCC 584 was partly overruled, it was held that the plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are "COMPLEMENTARY" to those powers which are specifically conferred on the Court by various statutes. This power exists as a separate and independent basis of jurisdiction apart from the statutes. The Court further observed that though the powers conferred on the Court by Article 142 are curative in nature, they cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant. The Court further observed that this power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby achieve something indirectly which cannot be achieved directly."

(See also Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409) This Court in Balco Employees' Union (Regd.) (supra) succinctly opined:

"Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the Judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker

> sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. "litigation in the interest of the public".

While PIL initially was invoked mostly in cases connected with the relief to the people and the weaker sections of the society and in areas where there was violation of human rights under Article 21, but with the passage of time, petitions have been entertained in other spheres. Prof. S. B. Sathe has summarised the extent of the jurisdiction which has now been exercised in the following words :

> "PIL may, therefore, be described as satisfying one or more of the following parameters. These are not exclusive but merely descriptive :
>
> - Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, undertrial prisoners, prison inmates).
>
> - Where the affected persons belong to the disadvantaged sections of society (women, children, bonded labour, unorganised labour etc.).
>
> - Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes).
>
> - Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of the judiciary, existence of grievances redressal forums).
>
> - Where administrative decisions related to development are harmful to the environment and jeopardize people's right to natural resources such as air or water."

There is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive.

PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. There, have been, in recent times, increasingly instances of abuse of PIL. Therefore, there is a need to re-emphasize the parameters within which PIL can be resorted to by a petitioner and entertained by the court. This aspect has come up for consideration before this Court and all we need to do is to recapitulate and re-emphasize the same." We do not intend to say that the dicta of this Court in Balco Employees Union (supra) contains the last words. But the same may be considered to be in the nature of guidelines for entertaining public interest litigation.

Incidentally, on administrative side of this Court, certain guidelines have been issued to be followed for entertaining Letters/ Petitions received by this Court as Public Interest Litigation. We do not intend to lay down any strict rule as to the scope and extent of Public Interest Litigation, as each case has to be judged on its own merits. Furthermore, different problems may have to be dealt with differently.

THE PRESENT CONTROVERSY:

The case at hand does not fall in any of the aforementioned categories, where a PIL could be entertained. No reported decision has also been brought to our notice where a Public Interest Litigation was entertained in similar matter. We have also not come across any case so far where the functions required to be performed by statutory functionaries had been rendered redundant by a Court by issuing directions upon usurpation of statutory power. The right of a person belonging to a particular religious denominations may sometimes fall foul of Articles 25 and 26 of the Constitution of India. Only whence the fundamental right of a person is infringed by the State an action in relation thereto may be justified. Any right other than the fundamental rights contained in Articles 25 and 26 of the Constitution of India may either flow from a statute or from the customary laws. Indisputably a devotee will have a cause of action to initiate an action before the High Court when his right under statutory law is violated. He may also have a cause of action by reason of action or inaction on the part of the State or a statutory authority; an appropriate order is required to be passed or a direction is required to be issued by the High Court. In some cases, a person may feel aggrieved in his individual capacity, but the public at large may not.

It is trite, where a segment of public is not interested in the cause, public interest litigation would not ordinarily be entertained. It is possible to contend that the Hindus in general and the devotees visiting the temple in particular are interested in proper management of the temple at the hands of the statutory functionaries. That may be so but the Act is a self-contained Code. Duties and functions are prescribed in the Act and the rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance. The State should be asked to look into the grievances of the aggrieved devotees, both as parens patriae as also in discharge of its statutory duties. In State of W.B. and Others Vs. Nuruddin Mallick and Others [(1998) 8 SCC 143], it has been held:

"28. It is not in dispute in this case that after the management sent its letter dated 6-8- 1992 for the approval of its 31 staff, viz., both teaching and non-teaching staff, both the District Inspector of Schools and the Secretary of the Board sought for certain information through their letters dated 21-9-1992. Instead of sending any reply, the management filed the writ petition in the High Court, leading to passing of the impugned orders. Thus, till this date the appellant-authorities have not yet

exercised their discretion. Submission for the respondents was that this Court itself should examine and decide the question in issue based on the material on record to set at rest the long-standing issue. We have no hesitation to decline such a suggestion. The courts can either direct the statutory authorities, where it is not exercising its discretion, by mandamus to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter.

(Emphasis Supplied) Existence of certain gray areas may not be ruled out but such a case was required to be made out before the High Court which has not been done in the instant case. For any court of law including this Court, it is difficult to draw a strict line of demarcation as to which matters and to what extent a public interest litigation should be entertained but, as noticed hereinbefore, the decisions of this Court render broad guidelines. This Court and the High Court should, unless there exists strong reasons to deviate or depart therefrom, not undertake an unnecessary journey through the public interest litigation path.

The High Court should not have proceeded simply to supplant, ignore or by-pass the statute. The High Court has not shown any strong and cogent reasons for an Administrator to continue in an office even after expiry of his tenure. It appears from the orders dated 7th February, 1993 that the High Court without cogent and sufficient reason allowed Administrator to continue in office although his term was over and he was posted elsewhere. He also could not have been conferred powers wider than Section 17 of the Act. The High Court took over the power of appointment of the Commissioner bypassing the procedure set out in the Act by calling upon the Government to furnish the names of 5 IAS Officers to the Court so that it could exercise the power of appointment of the Commissioner.

The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what practices should be followed by the temple authorities. There may be dispute as regard the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the people may heart the sentiments of the other. The Courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the Courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be a welcome step. Where access to justice poses a fundamental problem facing the third world today, its importance in India has increased. Laws are designed to improve the socio-economic conditions of the poor but making the law is not enough, it must be implemented. The core issues which have been highlighted by the learned counsels by the party must be considered from that angle. Administration of temple by entertaining complaints does not lead to a

> happy state of affairs. Roving enquiry is not contemplated. Principles of natural justice and fair play ought to be followed even in the pro bono public proceedings. The Courts undoubtedly would be parens patriae in relation to idols, but when the statute governs the field and the State takes over the management, ordinarily the Courts would not step in. In Charan Lal Sahu (supra) the history of the doctrine of parens patriae was traced. This Court stated: "36. Therefore, conceptually and from the jurisprudential point of view, especially in the background of the Preamble to the Constitution of India and the mandate of the Directive Principles, it was possible to authorise the Central Government to take over the claims of the victims to fight against the multinational corporation in respect of the claims. Because of the situation the victims were under disability in pursuing their claims in the circumstances of the situation fully and properly. On its plain terms the State has taken over the exclusive right to represent and act in place of every person who has made or is entitled to make a claim for all purposes connected with such claim in the same manner and to the same effect as such person. Whether such provision is valid or not in the background of the requirement of the Constitution and the Code of Civil Procedure, is another debate. But there is no prohibition or inhibition, in our opinion, conceptually or jurisprudentially for the Indian State taking over the claims of the victims or for the State acting for the victims as the Act has sought to provide. The actual meaning of what the Act has provided and the validity thereof, however, will have to be examined in the light of the specific submissions advanced in this case."

Mr. Subba Rao referred to N.M. Thomas (supra) for the proposition that court is also a 'State' within the meaning of Article 12 but that would not mean that in a given case the court shall assume the role of the Executive Government of the State. Statutory functions are assigned to the State by the Legislature and not by the Court. The Courts while exercising its jurisdiction ordinarily must remind itself about the doctrine of separation of powers which, however, although does not mean that the Court shall not step-in in any circumstance whatsoever but the Court while exercising its power must also remind itself about the rule of self-restraint. The Courts, as indicated hereinbefore, ordinarily is reluctant to assume the functions of the statutory functionaries. It allows them to perform their duties at the first instance.

The court steps in by Mandamus when the State fails to perform its duty. It shall also step in when the discretion is exercised but the same has not been done legally and validly. It steps in by way of a judicial review over the orders passed. Existence of alternative remedy albeit is no bar to exercise jurisdiction under Article 226 of the Constitution of India but ordinarily it will not do so unless it is found that an order has been passed wholly without jurisdiction or contradictory to the constitutional or statutory provisions or where an order has been passed without complying with the principles of natural justice. (See Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others (1998) 8 SCC 1).

It is trite that only because floodgates of cases will be opened, by itself may not be no ground to close the doors of courts of justice. The doors of the courts must be kept open but the Court cannot shut

its eyes to the ground realities while entertaining a public interest litigation.

Exercise of self-restraint, thus, should be adhered to, subject of course to, just exceptions.

The High Court in this case adopted an unusual procedure. It directed seizure of the records only on the premise that the writ petitioner contended that the allegations can be verified with reference to the records.

Concededly, in view of decision of this Court in Bandhua Mukthi Morcha (supra) the Court may appoint a Commissioner or amicus for finding out the truth but what has been overlooked by the High Court was that it could take recourse thereto when truth cannot be found out otherwise. It should have at the outset called upon the State as also the Managing Committee to express their view points. Reliance placed by Mr. Subba Rao on Bandhua Mukthi Morcha (supra) is not apposite as therein the purpose was to activate the statutory machinery for protecting the basic fundamental right of any person under Article 21 and 23 of the Constitution of India. If the allegations are verifiable on records, the courts could have itself examined the same. Before doing so, it must give an opportunity to the parties to explain things. Only because the Court arrives at prima facie finding that "all is not well", the same would not necessarily mean that it must appoint a Commissioner and thereby purporting to exercise jurisdiction akin to the provisions of the Commission of Enquiry Act, 1952 or Kerala Public Men's Corruption (Investigations and Inquiries) Act, 1987. The power under the said statute is to be exercised by the State if an exigency of situation arises therefor.

The expression "public men" has been defined in Kerala Public Men's Corruption (Investigations and Inquiries) Act, 1987. The said definition includes the Chairman and members of the Appellant Management Committee. Their alleged acts of omission or commission could, therefore, be a subject matter of inquiry under the said Act. The High Court further assumed the jurisdiction akin to the Commission of Enquiry Act by appointing a Commissioner to engage in a wide range inquiry into the affairs of an institution. Such a course of action was also uncalled for in absence of any allegation that the persons in charge of the documents would destroy or tamper with the evidence. No reason was assigned by the High Court as to why such an extreme step was necessary. No emergent situation has been pointed out by the Fifth Respondent to act in such a hurry.

The very fact that our attention has been drawn that the State in a given situation can take recourse to the Commission of Enquiry Act, 1952 for the purpose of enquiring into the alleged irregularities in the matter of management of temple is itself a pointer to the fact that the State may take recourse thereto if such a course of action may be found to be necessary by the State itself. In this connection, it may be noticed:

> (a) Under Section 3 of the Commission of Enquiry Act, where the appropriate government is of the opinion that it is necessary so to do and resolutions are passed by the concerned legislatures, it may appoint a Commission of Inquiry for the purpose of making inquiry into any definite matter of public importance.

(b) Under Section 3(4), the report of the Commission, along with the action taken report of the Government, is laid before the concerned legislature.

(c) Under Section 4, the powers of the Commission include summoning and examining a witness, requiring production of any document, requisitioning any public record and the like. Under Section 5, the Commission may authorise a Gazetted Officer to enter any place or building and seize documents, which in the opinion of the Commission would be useful for the purposes of the enquiry.

(d) Under Sections 5A and 5B, the Commission may utilize the services of officers, investigation agencies or assessors for the purposes of the inquiry.

(e) Under Sections 8B and 8C, the Commission provides an opportunity of hearing to all persons who may be prejudicially affected by the inquiry, including the opportunity to cross-examine the witnesses.

[See Tilkayat Shri Govindlalji Maharaj Vs. State of Rajasthan [1963] 1 SCR 561 and Pannalal Pitti Vs. State of A.P. (1996) 2 SCC 498].

When the administration of the temple is within its control and it exercises the said power in terms of a Statute, the State, it is expected, normally would itself probe into the alleged irregularities. If the State through its machinery as provided for in one Act can arrive at the requisite finding of fact for the purpose of remedying the defects, it may not find it necessary to take recourse to the remedies provided for in another statute. It is trite that recourse to a provision to another statute may be resorted to when the State finds that its powers under the Act governing the field is inadequate. The High Courts and the Supreme Court would not ordinarily issue a writ of mandamus directing the State to carry out its statutory functions in a particular manner. Normally, the Courts would ask the State to perform its statutory functions, if necessary within a time frame and undoubtedly as and when an order is passed by the State in exercise of its power under the Statute, it will examine the correctness or legality thereof by way of judicial review. Keeping these principles in mind, we do not also think that the High Court rightly exercised its jurisdiction in appointing a police officer to help the Commissioner, asking the State not to transfer the administrator against whom allegedly there were serious allegations or whose term was over or appoint a administrator from the panel of names furnished by the State. The question has been raised as to whether having regard to the fact that Sree Krishna temple can be visited by any devotee who has a right to worship Lord Vishnu can enjoy any denominational right to manage temple. We may, however, notice that this Court in Sri Adi Visheshwara Kashi Vishwanath Temple Vs. State of U.P. (1997) 4 SCC 606 at 633, held:

"...Every Hindu....has a right of entry into the Hindu temple and worship the deity.

Therefore, the Hindu believers of Shaiva form of worship are not denominational worshippers. They are part of the Hindu religious form of worship.. They are not entitled to the protection, in particular, of clauses (b) and

> (d) of Article 26 as a religious denomination in the matter of management, administration and the governance of the temples."

(See also Sri Kanyaka Satram Committee Vs. Commissioner, H.R.C. & Others (1997) 5 SCC 303 at 304).

We do not intend to say anything further, as at present advised. We further do not intend to enter into the controversy as to whether the complaint of the first respondent was actuated by any person's ill-will or bias towards the appellant. EFFECT OF THE IMPUGNED JUDGMENT:

> Mr. Reddy submitted a status report on the action which has already been taken or yet to be taken or not possible to be taken which is reproduced below:
>
> Para 65 of the judgment of the High Court Action taken/ reply U(i) Vigilance enquiry to be ordered against Shri Rajan, former Member of the Managing Committee to find out whether he is holding income disproportionate to his income.
>
> Vigilance enquiry was conducted and the allegation was not substantiated in the enquiry.
>
> (ii) "Production of film Guruvayoor Mahathmyam" Action to be taken to levy the loss.

Action is underway to make use of the prints of the film and to recover the loss, if any, from the persons responsible after ascertaining the actual loss.

(iii) Follow up action regarding Ooottupura and Western Gopuram Devaswom has taken action

(iv) Works at Vengad estate, Loss of 142 bags of cement Devaswom has taken action.

(v) Obtaining 4 Kgs of Gold lying with the Reserve Bank of India.

The gold has been received back by the Devaswom as Gold lockets of "Guruvayoorappan"

V Part-I, Chapter 3 of final report

(i)Politicisation in the nomination of the members of Guruvayoor Devaswom Managing Committee should be avoided.

This issue is pending before the Supreme Court of India in another Civil Appeal No. 6675/99. At present persons who are not members of any political party alone are appointed as members of the Committee.

(ii) Remedial measures in the 'Devaprasanam' to be performed.

Devaswom is taking action in consultation with the 'Thanthri'.

X Part-1 Chapter 4 of final report

(i) Method for quality checking of goods Devaswom has already taken action

(ii) Special arrangements for Darshan to sick, handicapped, disabled, etc. Devaswom is doing this regularly.

Y Rules to be framed for free accommodation in the Guest Houses This has been framed by the Devaswom.

Z Part I Chapter 8 of the Final report Recommendations regarding movable & immovable properties Devaswom has implemented this.

Z(1) Recommendation regarding management of finance.

This has been implemented. A senior officer from the Accountant General's Office has been appointed as Chief Finance & Accounts Officer on deputation basis and two Assistant Audit Officers from the Accountant General's Office have also been on deputation basis.

Depositing the funds in Guruvayoor Branches of the Banks This has been implemented.

But there have been practical difficulties due to lack of competitive demands for deposits.

Comments regarding the performance of Devaswom Commissioner Government consider the observation as totally unfortunate and not justifiable. The Commissioner who is the Secretary to Government was holding additional charge of the Commissioner. The Commissioner was in fact discharging his duties to the satisfaction of the Government and taking steps to strengthen the Devaswom administration. The Hon'ble High Court did not appreciate these facts while commending on his performance.

Z(2) Construction of Sree Padmam building Explanation of the Devaswom obtained and remedial action taken.

Z(3)& Appointment of District Judge as Law Officer cum disciplinary authority Government are not agreeable with this recommendation/ direction. As per the Guruvayoor Devaswom Act and the Regulations there-under, Guruvayoor Devaswom Managing Committee is the appointing and disciplinary authority in respect of the employees of the Devaswom. Government do not consider it necessary to have a District Judge as disciplinary authority. As far as Law Officer is concerned, there is a team of Lawyers to attend the legal matters of the Devaswom. In view of these facts, Government do not consider it necessary to post a District Judge as suggested by the Hon'ble High Court.

Z(5) Functioning of the Devaswom Commissioner and the Government While commenting on the statutory powers of the Commissioner, the Court has adversely commented on the performance of the Commissioners, past and present. It is submitted that the specific comments of the High Court against the Commissioner are totally unfortunate and not justified. The Commissioner who is a Secretary to Government was holding the additional charge of the Commissioner. The Commissioner was in fact discharging his duty to the satisfaction of the Government and had taken all steps to rejuvenate and strengthen the Devaswom administration. The Hon'ble High Court did not appreciate these facts and in fact adversely commented on his performance.

The High Court has also adversely commented on the performance of the Devaswom Commissioners since the inception of the Act. The Court has observed that the Devaswom Commissioner during the period of Judgment and his predecessors since the Act came into being in 1978 have been mere 'spectators, not involved, not concerned seriously with the administration.

The observation cannot be justified in anyway. The Commissioner as well as the Government take interest in the matters relating to the Devaswom in order to ensure that the functioning of the Managing Committee and the Administrator is in accordance with the provisions of the Act and Rules. Proper directions are also given as and when needed, exercising the provisions of the Act.

Z(6) Recommendation regarding politicisation and administrative disfunction (para 55 of the judgment) & recommendations regarding accommodation facilities to pilgrims and acquisition of land (para 57 of the judgment) The question regarding politicisation is now being considered by the Hon'ble Supreme Court in another Civil Appeal No. 6675/99.

However, at present, persons who are not members of any political party alone are appointed as members of the Committee. Regarding the suggestion to make the term of the Managing Committee as four years, the Legislature, after considering the entire matter had decided that the term of nominated members shall be two years only.

However, they can be renominated after the period, if the Government desire so.

Regarding direction to construct cheap lodging houses for devotees, Devaswom has already initiated action on this. As regards the direction to acquire lands within a radius of 100 mts.

from the outer wall of the temple, action has been initiated for acquisition of land as a phased programme.

Z(7) There should be a technical audit in every five years (para 58 of the judgment) There is already an audit conducted by the Local Fund Audit Department. They take care of the technical matters also. Government do not consider that a special technical audit in every five years is necessary.

Z(9) Recommendation to conduct a study by the Institute of Management in Government on the administrative reforms to be carried out in the Devaswom.

A detailed study has been conducted by the Centre for Management Development.

Their report is under consideration of the Devaswom.

Z(10) The post of Commissioner, Guruvayoor Devaswom and the Secretary to Government, Devaswom Department should be held by two persons.

These posts are now held by two separate persons.

Z(11) Direction to submit a panel of five senior IAS Officers (Secretaries to Government) to the High Court to enable the Court to select one person as Devaswom Commissioner.

Not implemented as the Hon'ble Supreme Court has stayed this direction.

Government cannot agree to this direction, as the direction is against the statutory provision.

Appointing the Commissioner for Guruvayoor Devaswom is as per section 2(b) of the Guruvayoor Devaswom Act, 1978. Furnishing a panel of names and selection by the Court are matters extraneous to the provisions of the Act.

We will advert to this issue a little later. RE: PRELIMINARY ISSUE ABOUT MAINTAINABILITY OF THE WRIT PETITION:

> The learned counsel for the parties have addressed us at great length on this issue. But in our opinion the question of examining the maintainability of the writ petition as a preliminary issue by the High Court has become academic. Parties addressed the High Court on the merit of the matter and upon considering the rival submissions, the impugned order has been passed.
>
> In its order disposing C.M.P. No. 10669 of 1993, the High Court recorded:
>
> "As we stated earlier, our function herein is only to record and not to adjudicate. The rival submissions made before us pose interesting questions on varied matters which are of far reaching and wide consequences. We are of the view that the weighty submissions made by counsel to the extent they are relevant when the final report comes up for consideration may be considered in depth then. Some of the pleas raised by Mr. Kelu Nambiar have not so far been highlighted or adjucated in any decision of this Court. All that we want to say is that at least some of them will require very serious consideration in evaluating the final report and in moulding the final relief to be afforded in this litigation. As was made clear even from the beginning of the arguments, it is not our function to adjudicate the above pleas at this stage. We make that position clear and leave the point there."

For the reasons stated therein, the High Court has proceeded in the matter on merit. We do not find any illegality therein. Furthermore, in this case the appellant and the State took part in the proceedings. The State advisedly did so having regard to the fact that before the question of maintainability of the writ petition could be decided, the enquiry had reached almost a closing point. We are not impressed with the submission of Mr. Reddy that he while conceding that the Court may proceed with the matter represented before the High Court that the suggestions and observations made by the Commissioner in the said interim reports could be considered by the State. This Court would only go by the records of the High Court. It will not ordinarily entertain any doubt as regards correctness or otherwise of the proceedings of the High Court. This is the state of law which is firmly established. (See Ramdas Shrinivas Nayak (supra). In Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. and Others [(2003) 2 SCC 111] a three-judge Bench of this Court, of which one of us (Sinha, J.) is a member held:

> "Before parting with the case, we may notice that Mr. Tanna appearing on behalf of the South Gujarat University in C.A. No.1540 of 2002 submitted that various other contentions had also been raised before the High Court. We are not prepared to go into the said contentions inasmuch assuming the same to be correct, the remedy of the appellants would lie in filing appropriate application for review before the High Court. Incidentally, we may notice that even in the special leave petition no substantial question of law in this behalf has been raised nor any affidavit has been affirmed by the learned advocate who had appeared before the High Court or by any officer of the appellant who was present in court that certain other submissions were made before the High Court which were not taken into consideration. In State of Maharashtra v. Ramdas Shrinivas Nayak & Anr. [AIR 1982 SC 1249], this Court observed :-
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> "When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submission made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done.
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> Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation".

(Per Lord Atkinson in Somasundaran v. Subramanian, AIR 1926 PC 136). We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well- settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of

the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges, who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in Madhusudan v. Chandrabati, AIR 1917 PC

30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment." The said decision has been followed by this Court recently in Roop Kumar Vs. Mohan Thedani [2003(3) Supreme 296]. It held:

> "10. It would be logical to first deal with the plea relating to absence of forum of appeal. It is to be noted that the parties agreed before the High Court that instead of remanding the matter to trial Court, it should consider materials on record and render a verdict. After having done so, it is not open to the appellant to turn round or take a plea that no concession was given. This is clearly a case of sitting on the fence, and is not to be encouraged. If really there was no concession, the only course open to the appellant was to move the High Court in line with what has been said in State of Maharashtra v. Ramdas Shrinivas Nayak & Anr. (1982(2) SCC 463). In a recent decision Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. & Ors. (2002 AIR SCW 4939) the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary."

The conduct of the appellant is also not wholly free from blemish. It did not take a firm stand. It passed different resolutions at different points of time. It evidently prevaricated its stand from stage to stage. Before us a purported minute of the meeting dated 27.10.1993 has been placed which is in the following terms:

> "It was decided that objection/ submission are to be given before the Krishnaunni Commission appointed by the Hon'ble High Court of Kerala and it may be filed jointly or severally by the members of the Managing Committee after consulting with Devaswom Advocate Shri K.P. Dandapani of Ernakulam. If the Managing Committee members find it necessary, they may engage separate Advocate.

> It is decided that the members jointly or severally shall file objections/ submission against the final report submitted by Krishnan Unni Commission appointed by the Kerala High Court after consulting the Devaswom Advocate Mr. K.P. Dandapani, Ernakulam. It is also decided that if the Managing Committee members so choose can approach the Advocate separately. XXXXX Mr. M.N. Sukumaran Nayar, Senior Advocate, has been appearing for Shri A.P. Mohandas and Shri P.N. Narendranathan Nair, Members of the Managing Committee in the case O.P. No. 2071 of 1993 of the Hon'ble High Court of Kerala in which Krishnan Unni Commission is appointed to enquire into allegations of corruption in Guruvayur Devaswom. It was decided to pass bills of Advocates fee as and when received."

Nothing stated in the said minutes run counter to the observations made by the High Court in its order dated 25.8.1993. The High Court itself invited objections to the reports, as would appear from its impugned judgment. The impugned judgment of the High Court shows that the appellant did file its objections in relation to certain reports which have been considered. CONCLUSION:

> The curtain of this litigation must be drawn here and now. The State admittedly implemented many of the suggestions of the high Court. They would not be reopened. Some suggestions of the High Court are pending consideration at the hands of the State. They may be considered. The State shall, however, as regard the directions of the High Court which according to it cannot be complied with, pass appropriate orders recording sufficient and cogent reasons therefor as expeditiously as possible and not beyond a period of three months from the date of communication of this order. The High Court, if any proceeding is initiated in relation thereto, may deal therewith in accordance with law. The administration of the temple, it is stated, has been taken over by the State and the other statutory functionaries. They shall, we have no doubt in our mind, having regard to the fact that special treatment has been accorded to the temple by the State Legislature, carry out its activities in true letter and spirit thereof. The State and the statutory functionaries would be well advised to give full credence to the tenets and practices subject of course to the provisions of the statute. The State should furthermore make all endeavours to see that the sentiments of the devotees are respected. In view of our findings aforementioned, the adverse remarks made in the impugned judgment against the appellant in C.A. No. 2151/1994 shall stand expunged.
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> Before parting with this case, however, we must complement the High Court about the gigantic task undertaken by it leading to discovery of a number of irregularities in the matter of management of temple detected in the process. We hope and trust that the judgment of the High Court would prove to be an eye-opener to the State and now onwards it will be able to fulfill the hopes and aspirations of millions of devotees of Lord Krishna.
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> These Appeals are disposed of on the aforementioned terms. No order as to costs.