Supreme Court of India
H. H. Sudhundra Thirtha Swamiar vs Commissioner For Hindu ... on 20 November, 1962
Equivalent citations: 1963 AIR 966, 1963 SCR Supl. (2) 302
Author: S C.
Bench: Sinha, Bhuvneshwar P.(Cj), Gajendragadkar, P.B., Wanchoo, K.N., Gupta, K.C. Das, Shah, J.C.

PETITIONER:
H. H. SUDHUNDRA THIRTHA SWAMIAR.

Vs.

RESPONDENT:
COMMISSIONER FOR HINDU RELIGIOUS& CHARITABLE ENDOWMENTS,MYSO

DATE OF JUDGMENT:
20/11/1962

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1963 AIR 966 1963 SCR Supl. (2) 302
CITATOR INFO :

R	1965 SC1107	(15,48)
RF	1966 SC 416	(19)
R	1970 SC 181	(5,6)
RF	1970 SC1114	(6)
RF	1971 SC 344	(5,6)
R	1971 SC1182	(8)
R	1975 SC 846	(14)
R	1976 SC1207	(165)
RF	1980 SC 1	(3,13)
E	1980 SC1008	(10)
R	1980 SC1124	(18)
R	1983 SC 617	(5)
F	1983 SC1246	(30)
RF	1985 SC 218	(9)
R	1989 SC 100	(26)
RF	1989 SC 317	(34)
RF	1992 SC1383	(14)

ACT:
Hindu Religious Endowments-Maths-Commissioner's power to bring a suit for removal of truatees-Whether infringes fundamental right-Pathakanika given to the Mahant as head of

Muth given personally to the Math-Only the former need be used for Math-Annual contribution-Levy of-Whether tax or fee-Retrospective Legislation-Power of State Legislature-Constitution of India, Art. 19(f)25 , 26, 27- Seventh Schedule, List II, Items 28, 47-Madras Religious Endowments Act, 1951 (Madras XIX of 1951), as amended by Act XXVII of 1953, ss.52(1) (f), 55, 76(1) and (2), 80, 81, 82.

HEADNOTE:

At Udipi in the South Kanara District there are eight Maths Each Math is presided over by a Mathadhepathi or Swamee. There is a nineth Math the administration of. which had been traditionally carried on by each of the Swamis of the other eight Maths in turn. There is a tenth Math which 'is presided over by Shri Shankaracharya Swamigal.

The Swami of Shirur Math, one of the eight Maths had challenged the vires of the Hindu Religious Endowments Act 1951 (Act XIX) in the High Court of Madras and in the appeal therefrom this Court had declared certain sections of the Act ultra vires inasmuch as they infringed Article 19 (1) (f), 25, 26 and 27 of the Constitution. Subsequently by Act XXVII of 1954 the Madras Legislature omitted or amended the sections declared by this Court ultra vires. Petitions were filed in the High Court challenging various sections of the amended Act. The High Court declared ultra vires sections 21, 30(2), 31 and 76(5) and Rule 10 framed under section 100(2). and upheld the validity of sections 51 (1) (f), 55, 76 (1) and (2), 80, 81 and 82. The Mahant appealed to this Court with Certificate granted by the High Court.

Held, that a Mahant is not a mere manager or custodian. By= though he is not a trustee in the strict sense, he is by

303

virtue of his office under an obligation to discharge the duties of his office as a trustee and is answerable as such for the property. The property is attached to the office and the Mahant cannot incur expenditure for personal luxury or objects incongruous with his position as Mahant. The right of a Mahant over the property of the Math is undoubtedly property and unreasonable restrictions placed upon his rights which are not in the interest of the general public would by virtue of Art. 19(1)(f) read with cl. (5) be void.

Arunachallam Chetti v. Venkata Chalapathi Guruswamigal, (1919) L.R. 46 I.A. 204, Vidyavaruthi Thirtha v. Baluswami Ayyar, (1921) L.R. 48 I.A. 302, Commissioner Hindu Religious Endowments, Madras v. Lakshmi Tirtha Swamiar of Sirur Math, [1954] S.C.R. 1005, followed.

Held, that s. 52 (1) (f) does not in effect seek to cut down the authority of the Mahant which is traditionally recognized. It only implies that by virtue of his position and the limited character of his powers, he cannot waste the property of the Math or utilise it for his personal

enjoyment or luxury or for objects incongruous with his position or for purposes wholly unconnected with the Math. Such a restriction on his power is in the interest of general public and cannot be said to be unreasonable.
Section 55 as amended will not apply to Pathakanikas which are proved to be gifts personal to the Mahant and it applies only to Paaokarikas gifted to him as the bead of the Math.
The annual contributions levied under the amended s. 16(1) go into a separate fund and not the consolidated fund of the state and are earmarked for defraying the expenses for rendering services : they are not even payable to the Government but are payable to the Commissioner and they are levied not as a tax but only as fee. A fee does not cease to be of that character merely because there is an element of compulsion in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered. Absence of uniformity is not a criterion on which alone it can be said that the levy is of the. nature of a tax. The Legislature has power to enact appropriate retrospective legislation declaring these levies as fees by denuding them of the characteristics of tax.
M/s. J. K. Jute Mills Co. Ltd. v. State of Uttar Pradesh, [1962] 2 S.G.R. 1, followed.
The State Legislature has power to levy a fee under the Seventh Schedule, List II, Item 28 read with item 47,
304

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeals Nos. 551 to 560 of 1961.

Appeals from the judgment and order dated December 9, 1955 of the Madras High Court in Writ Petitions Nos. 323, 324, 351 to 357 and 359 of 1955.

Purshottam Trikumdas, R. Ganapathy Iyer and G. Gopalakrishnan, for the appellants (in C. As. Nos. 551- 559/61).

A. V. Viswanatha Sastri and M. S. K. Sastri, for the appellant (in C. A. No. 560/61).

G. S. Pathak, B. R. L. Iyengar and P. D. Menon, for the respondent No. 1 (in C. A. No. 551/61) and for the respondents in (C. As. Nos. 552 to 559 of 1961). A. Ranganadham Chetty and A. V. Rangam, for the respondents (in C. A. No. 560/61).

1962. November 20. The judgment of the Court was delivered by.

SHAH., J.-In this group of appeals certified by the High Court of Madras under Art. 132 (1) of the constitution the validity of ss.52(1)(f), 55, 76(1) & (2), 80, 81 and 82 of the Madras Hindu Religious

Endowments Act XIX of 1951 asamended by Act XXVII of 1954 is impugned. At Udipi in the South Kanara District there are eight Maths which are reputed to be founded by Shree Madhvacharya, an exponent of the dualistic philosophy. Each of these Maths is presided over by a Mathadhipati or Swami who is invariably a Brahmin Sanyasin. There exists another Math known as Shri Krishna Devaru Math of which the administration is carried on according to long-standing usage by the Swamis of the eight Maths in turn, each Swami administering for two years. There is also the Sri Kanchi Kamakoti Peetam Math of which Shree Sank- aracharya Swamigal is the presiding head. These ten appeals are directed against orders passed by the High Court of Madras refusing to declare the provisions aforesaid ultra vires the State Legislature. In order to ensure proper management of Hindu religious endowments, the Provincial Legislature of Madras enacted the Hindu Religious Endowments Act. II of 1927. The Act made divers provisions for enforcing supervision over the management of Hindu endowments, and a Board was constituted for that purpose. In exercise of the authority under the Act several restrictions were placed upon the powers of the trustees of religious endowments, schemes were framed for administration thereof and executive officers were appointed to administer Maths and other religious endowments. An enquiry was commenced before the Hindu Religious Endowments Board for ascertaining whether in the interests of the Shirur Math (one of the eight maths at Udipi) a scheme for the administration of the Math be framed, it being alleged that the affairs of the Math were mismanaged by the Swami. The Board being satisfied that a case for settling a scheme was made out served upon the Swami of the Math a draft scheme and called upon him to file his objections thereto. The Swami filed a petition in the High Court of Madras challenging the vires of Act II of 1927, and especially the provisions under which the scheme was sought to be framed. During the pendency of that petition, Act 11 of 1927 was repealed by the Madras Legialature and was substituted by Act XIX of 1951, enacting diverse provisions relating to the governance, management and administration of Hindu Religious Endowments. The Swami of Shirur.Math obtained leave to amend the petition and challenged the validity of Act XIX of 1951 on the ground that the provisions thereof infringed his fundamental rights and that in any event certain provisions were beyond the legislative competence of the State Legislature.

The High Court of Madras declared several provisions of the Act ultra vires, as infringing Arts. 19 (1) (f), 25, 26 and 27 of the Constitution. The Court also declared s. 76 (1) ultra vires because the State Legislature had thereby assumed powers to legislate for levy of a tax on the income of religious endowments which the State Legislature was incompetent to exercise. The State of Madras appealed against the order of the High Court. This Court declared invalid s. 21 (provision authorising the Commissioner and his subordinates to enter premises of religious endowments or places of worship in the exercise of powers conferred or duties imposed by or under the Act), s. 30 (2) (requiring the swamis to be guided by the instructions of the Commissioner or the Area Committee in the matter of incurring expenditure), s. 31 (relating to expenditure of surplus income with the sanction of the Commissioner), s. 55 (dealing with Mahant's powers over pathakanikas personal gifts), S. 55 (dealing with Commissioner's authority to require the trustees of the Endowments to appoint a Manager) and ss. 63 to 69 (relating to notification of religious institutions and invoking thereby certain penal consequences.) This Court also held that s. 76 (1) whichauthorised levy of contributions at the rate not exceeding five per cent of the income of the endowments was beyond the power of the State Legislature to enact. The judgment of this Court in that case is reported as :

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur mutt (1).

The Madras Legislature amended Act XXVII of 1954 which received the President's sanction on (1) [1954] S. C. R. 1005.

September 22, 1954, and thereby provisions which were declared by this Court ultra vires, were altered or omitted and some new provisions were enacted with a view to make the enactment consistent with the law declared by this Court. Petitions were then filed by the appellants-heads of ten maths--challenging the validity of diverse provisions of the amended Act. The High Court by its order dated April 25, 1955 declared ss. 21, 30 (2), 31 and 76 (5), and Rule 10 framed under s. 100(2) invalid. The High Court, however, upheld the validity of ss. 52 (1) (f), 55, 76 (1) & (2), 80, 81 and 82. In these appeals the Swamis of the maths contend that the provisions declared valid by the High Court infringe the fundamental rights of the Swamis or are beyond the authority of the State Legislature.

It may be observed initially that we are dealing with the validity of the impugned provisions in their application to maths and not to religious institutions such as temples or other endowments. It may also be observed that Act XIX of 1951 has been repealed by the Madras State Legislature and has been substituted by Act XXII of 1959, but we are not called upon to adjudicate upon the validity of the provisions of the new Act because the territory in which these maths are situated has, by the provisions of the States Reorganisation Act, 1956 been integrated with the State of Mysore as from November 1, 1956 and by virtue of s. 119 of the States Reorganisation Act these maths continue to be governed by Act XIX of 1951 till that Act is modified or repealed by the Mysore State Legisture.

Section 52 (1) of the Act as amended provides :

> "The Commissioner or any two or more persons having interest and having obtained the consent in writing of the Commissioner, may institute a suit in the Court to obtain a decree for removing the trustee of a Math or a specific endowment attached to a Math for any one or more of the following reasons, namely
>
> (a) the trustee being of unsound mind-,
>
> (b) his suffering from any physical or mental defect or infirmity which renders him unfit to be a trustee ;
>
> (c) his having ceased to profess the Hindu religion or the tenets of the math ;
>
> (d) his conviction for any offence involving moral turpitude ;
>
> (e) breach by him of any trust created in respect of any of the properties of the Religious institutions ;

(f) waste of the funds or properties of the institution or the application of such funds or properties for purposes unconnected with the institution ;

(g) the adoption of devices to convert the income of the institution or the funds or properties thereof into 'pathakanikas'

(h) leading an immoral life or otherwise leading a life which is likely to bring the office of the head of the math into contempt ;

(i) persistent and wilful default by him in discharging his duties or functions under this Act or any other law."

This section authorises the Commissioner or two or more persons interested in the endowment with the consent of the Commissioner to institute a suit for a decree for removal of the trustee of a Math or a specific endowment attached to a Math on any of the grounds. mentioned therein. the section is similar to S. 92 of the Code of Civil. Procedure though somewhat restricted in its operation as to the reliefs which may be claimed : it merely enumerates the grounds on which the Court may, in a suit instituted thereunder, remove the trustee of a Math or of a specific endowment, if the Conrt is satisfied that the grounds set up exist and also that it is in the interest of the institution to remove the trustee. Grounds (a), (b), (c), (d) and (h) are grounds of personal infirmity of the trustee; grounds (e), (f), (i) and (i) deal with conduct inconsistent with the exercise of the duties of a trustee. Clauses (f), (g) and (h) were inserted by Madras Act XXVII of 1954. Apart from cl. (c) which regards breach of trust as entailing liability for removal, cls. (f), (g), and (i) have been enacted by the Legislature with a view to entail such liability when the trustee of a math is guilty of improper conduct qua property of the math notwithstanding his special rights in that property.

It is urged by counsel for the appellants that s. 52(1)(f) which enables a suit to be filed on the score of waste of funds or properties of the institution or application of such funds or properties for purposes unconnected with the institution, infringes the fundamental right of the Mathadhipati under Art. 19(1)(f) of the Constitution. In order to ascertain the true scope of s. 52(1) (f)it is necessary to state the position of a Mathadhipati, qua the property of the math. In Arunachallam Chetty v. Venkatachalapathi Guruswamigal (1) dealing with the title which a Mahant of a math has in the property of the math, the judicial Committee of the Privy Council observed "two propositions may be cited as now express- ing the general state of the law. with regard to (1) (1919) L. R. 46 I. A. 204, 224, these institutions. In the first place, the nature of the ownership is an ownership in trust for the institution itself. Secondly, while it may no doubt be true that the ownership in the general case is with the spiritual head of the 'institution, still to use the language of Sir Charles Turnver in Sammanatha Pandara v. Sellapa Chetti (I.L.R. 2 Madras 179) 'We do not, of course, mean to lay it down that..... the property may not in some cases be held on different conditions and subject' to different incidents.' As pointed out in Ram Parkaah Das v. Anand Das there are varieties of circumstances and tenure, and in respect to these the usage and custom of the math fall to be determined.

Once that usage and custom are clear they form the law of the math.

In Vidya Varuthi Thirtha v. Balusami Ayyangar (1) the judicial Committee dealing with the application of Arts. 134 and 144 to suits for recovery of property alienated by a former Mathadhipati observed:

> "It is also to be remembered that a "trust' in the sense in which the expression is used in English law, is unknown in the Hindu System, pure and simple. Hindu piety found expression in gifts to idols and images consecrated and installed in temples, to religious institutions of every kind, and for all purposes considered meritorious in the Hindu social and religious system; to brahmans, goswamis, sanyasis, etc. When the gift was to a holy person, it carried with it in terms or by usage and custom certain obligations. x x x x x In many cases in Southern India, especially where the diffusion of Aryan Brahmanism was essential for bringing the Dravidian peoples, under the religious rule of the Hindu system, colleges and monasteries under the names of math were (1) (1921) L R. 48 I. A. 302.
>
> founded under spiritual teachers of recognised sanctity. These men had and have ample discretion in the application of the funds of the institution, but always subject to certain obligations and duties, equally governed by custom and usage."

In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1) (to which we have already referred in setting out the history of this case) Mukherjea, J., speaking for the Court, observed :

> "He is certainly not a trusteee in the strict sense. He may be as the Privy Council says, a manager or custodian of the 'institution who has to discharge the duties of a trustee and is answerable as such; but he is not a mere manager and it would not be right to describe Mahantship as a mere office. A superior of a Math has not only duties to discharge in connection with the endowment but he has a personal interest of a beneficial character which is sanctioned by custom and is much larger than that of a Shebait in the debutter property. x x x x x x x x x Thus in the conception of Mahantship, as in Shebaitship, both the elements of the office and property, or duties and personal interest are blended together and neither can be detached from the other. The personal or beneficial interest of the Mahant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect to endowed properties; and these and other rights of a similar character of proprietary right which, though anomalous to some extent, is still a genuine legal right."

A Mahant is not a mere manager or custodian, nor is he trustee in the strict sense: holding the office of (1)[1954] S. C. R. 1005.

a Mahant by custom and usage of the institution he has beside large powers of management and disposal certain proprietary rights over the property of the Math. But he is by virtue of his office under an obligation to discharge the duties as a trustee and is answerable as such. The Mahant of a

Math is generally a Sanyasin who has renounced worldly affairs: he has no family ties either by blood or by marriage, and in a theoretical sense he has taken a vow of not owning any property. He has undoubtedly, for the benefit of the institution of which he is the head, large powers : he has to incur expenditure for the maths i. e. for carrying on the religious worship, for the desciples and for maintaining the dignity of his office. But the property is attached to the office, and is devoted to the endowment. He cannot therefore iucur expenditure for personal luxury or objects ircongruous with his position as a Mahant. Power to waste the property or the income of the institution is therefore not claimed by the appellants and rightly so. But counsel for the appellants says that over the income, the Mahant has absolute powers of disposal, and s. 52 (1)

(f) which authories his removal on the ground that he has applied the funds or properties of the institution for purposes unconnected with the institution places an unreasonable restriction upon the right of property vested in the Mahant. In the Commissioner, Hindu Endownents, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1) Mukherjea, J., observed at p. 1019 :

> "There is no reason why the word 'property' as used in article 19 (1) (f) of the constitution, should not be given a liberal and wide connotation and should not be extended to those welt recognized types of interest which have the insignia or characteristics of proprietary right."

The right of a Mahant over property of the math is, therefore, undoubtedly 'property' and (1)[1954] S. C. R. 1005.

unreasonable restrictions placed upon right of the Mahant which is not in the interest of the general public would, by virtue of Art. 19 (1) (f) read with cl. (5) be void. Reasonableness of the restrictions which may be placed upon that right must be adjudged in the light of the character and the extent of that right, and the general interest of the public which may be served by the restrictions. In Arunachallam Chetty v. Venkatachalapathi Guruswamigal (1) the Judicial Committee of the Privy Council observed that the Mahant is under an obligation not to utilise the surplus income after defraying the expenses of the math for personal enjoyment but is bound to add the same to the capital of the estate administered. At p. 226 the judicial Committee dealing with the accummulated income in the hands of the receiver who had been appointed during the pendency of a suit observed :

> "Under the decree quoted the gurukkal would be entitled to instant possession and entire beneficial enjoyment of that sum. If the present purposes of the math did not consume it, he could employ it for his personal use quite apart from the dignity of his office. It is plain to their Lordships that this would be not only a subversion of the usage and custom of the math, but would be a violation of the Law applicable to such institutions. A fair test to be applied in such cases is to demand what is the true principle or nature of the administration of surplus income. It is, of course,, the duty of a trustee to refrain from the personal enjoyment of such surplus and to add the same to the capital of the estate to be administered ; and this Law also applied to the property of a math or asthal, and that whether the title to the same is in the gurukkal

(1) (1919) L. R. 46 I.A. 204,224.

as spiritual head of the institution-which is an ordinary case-or is in trustees like the Chettys according to the usage and custom of the institution as in the present case."

The power of the Mahant over the income does not therefore differ in quality from the power he has over the property of the Math. The property and the income belong to the math, and must therefore be applied for the purposes of the math, and con. sistently with the usage and custom of the endowment. By s. 52 (1) (f) application of funds or pro- perties for purposes unconnected with the institution, i. e. purposes for which the custom of the institution does not warrant application, is a ground for removal. It cannot be said that by enacting a provision which enables a Court, in an appropriate case, to remove a Mahant if it be found that he has applied the funds or the properties of the institution for purposes unconnected with the institution, any unreasonable restriction is sought to be placed. This provision does not in effect seek to cut down the authority of the Mahant which is traditionally recognised. It merely implies that by virtue of his position and the limited character of his powers he may not waste the property of the Math or utilise the property for personal enjoyment or luxury or for objects incongruous with his position or for purposes wholly unconnected with the Math : if he does so, he may by order of the Court be liable to be removed. Such a restriction on the power is in the interest of the general public, and cannot be said to be unreasonable. We may, however, say that the observations made by the learned judges of the High Court that it was decided by this Court in the Commissioner, Hindu Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1) that "the real limitations on the Mathadhipathi are that he should not spend any of the monies of the Math for (1) [1954] S.C.R. 1005.

wicked or immoral purposes" does not seem to be war-ranted by anything contained in the judgment of this Court. The observation is founded on a dictum of the High Court in the judgment under appeal in that case, but there is no indication that this Court approved that view. This Court has instead pointed out that the Mahant has to discharge the duties of a trustee qua the institution and is answerable as such. We deem it necessary also to state that having regard to the larg e powers which the Mahant has over the application of the funds not only for the maintenance of the dignity of his office, and expenses for the maintenance of the math but also for such purposes religious or charitable as are not inconsistent with the usage and custom of the endowment, application of the funds for personal enjoyment or luxury by the Mathadhipati or for purposes wholly unconnected with the institution, would alone be covered by the second part of s. 52 (1) (f). In our view the provision which authorises the institution of a suit for removal of a Mahant where he is found to have wasted the funds or properties of the institution or has applied such funds or properties for purposes wholly unconnected with the institution does not amount to an unreason. able restriction upon the fundamental right of the Mahant in the property under his management.

Section 55, before it was amended, was challenged in the earlier proceeding as being invalid on the ground that it sought to place an unreasonable restriction upon the powers of the Mahant over gifts personal to him. It was provided by s. 55 (1) as originally enacted by Act XIX of 1951 that :

> "The trustee of a Math shall be entitled to spend at his discretion, for purposes connected with the Math any 'Pathakanika' that is to say any gift or property or money made as a personal gift to him as the head of the Math."

By sub-section (2) the trustee had to maintain regular accounts of receipts and disbursements of the nature referred to in subsection (1). The Mahant was therefore enjoined by the Act to spend 'Pathakanika' for the purposes of the math, and that amounted in the view of the Court as an unwarranted restriction of the property right of the Mahant. Pathakanikas are as expressly stated in sub-section (1) personal gifts to the Mahant, and normally such gifts would be at the disposal of the Mahant. It was observed by this Court in the earlier case "It may be that according to customs prevailing in a particular institution, such personal gifts are regarded as gifts to the institution itself and the Mahant receives them only as the representative of the institution: but the general rule is otherwise. As section 55 (1) does not say that this rule will apply only when there is a custom of that nature in a particular institution, we must say that the provision in this unrestricted form is an unreasonable encroachment upon the fundamental right of the Mahant. The same objection can be raised against clause (2) of the section; for if the Pathakanikas constitute the property of a Mahant. There is no justification for compelling him to keep accounts of the receipts and expenditure of such personal gifts. As said already if the Mahant dies without disposing of these personal gifts, they may form part of the assets of the Math, but that is no reason for restricting the powers of the Mahant over these gifts so long as he is alive."

The Legislature of the Madras State thereafter repealed both the sub-sections of s. 55, and has reenacted a new clause "The trustee of a math shall keep regular accounts of receipts of 'pathakanika' that is to say, any gift of property made to him as the head of the math and shall be entitled to spend the said 'pathakanika in 'accordance with the customs and usages of the institution'."

By express enactment the expression 'pathakanikas' for the purpose of s. 55 as amended, means gifts of property made to a Mahant as the head of the Math. By that section, the Mahant is required to keep regular accounts of receipts of such gifts and is entitled to spend the same in accordance with lie customs and usages of the institution, for such pathakanikas received by the Mahant are gifts to the Mahant as the head of the math and therefore in trust gifts to the Math. Obligations imposed upon the Mahant to maintain regular accounts of the receipts of pethakanikas of the character defined in s. 55 and to utilise the same in Accordance with the customs and usages of the institution cannot be regarded as an unreasonable restriction upon the fundamental right of the Mahant. A Mahant being bound to discharge the duties of a trustee and being answerable as such, a provision requiring him to maintain accounts of such pathakanikas would conduce to the effective exercise of the control over him and imposing an obligation to spend the same in accordance with the customs and usages of the institution is not inconsistent with his position as a Mnhant even though lie has a beneficial interest therein. Section 55 as amended will not apply to pathakanikas which are proved to be gifts personal to the Mahant. Our attention was invited by counsel for the appellants to cl. (g) of s. 52 (1) in which I adoption of devices to convert the income of the institution or of the funds or properties thereof into pathakanikas is one of the grounds on which a suit for removal of a Mahant may lie. But the expression 'pathakanika' as used in s. 52 (1) (g) appears to have the larger meaning

in which that expression is traditionally understood. In the context of s. 52 (1) (g), 'pathakanika' would mean personal gifts to the Mahant. If the Mahant resorts to devices to convert the income of the institution or of the funds or properties thereof into personal gifts made to him that would be improper conduct for which he would be liable to be removed in a suit under s. 52. But under s. 55 the Legislature has expressly restricted the meaning of the expression "pathakanika' by using the words, 'that is to say, any gift of property made to him as the head of he math. We are therefore unable to hold that the expression 'Pathakanika' in s. 55 means personal gifts and the Legislature by enacting that section was attempting to re-enact s. 55 as it originally stood in a different garb. The next section challenged is s. 76 (1). The section, as it originally stood before it was amended, provided :

> "76 (1) In respect of the services rendered by the Government and their officers, every religious institution shall, from the income derived by it, pay to the Government annually such contribution not exceeding five per centum of its income as may be prescribed. (2) Every religious institution, the annual income of which for the fasli year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is not less than one thousand rupees, shall pay to the Government annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income as the Commissioner may determine.
>
> (3) The annual payments referred in sub- sections (1) and (2) shall be made, notwith-standing anything to the contrary contained in any scheme settled or deemed to be settled under this Act for the religious institution concerned.

(4) The Government shall pay the salaries, allowances, pensions and other beneficial remu

-

> neration of the Commissioner, Deputy Commi- ssioners, Assistant Commissioners and other officers and servants (other than executive officers of religious institutions) employed for the purposes of this Act and the other expenses incurred for such purposes, including the expenses of Area Committees and the cost of auditing the accounts of religious institutions."

The Court in the earlier case pointed out that the levy of an annual contribution permitted by s. 76(1) on a religious institution was in the nature of a tax. The Court observed that in so far ass. 76 spoke of the contribution being levied in respect of the services, it had the appearance of a fee, but the contribution levied was made dependent upon the capacity of the payer and not upon the quantum of benefit that was supposed to be conferred on any particular religious institution, that the institutions which came under the lower income group and had income less than Rs. 1,000/- annually were excluded from liability to pay the additional charges under cl. (2) of the section lending thereby to it one of the characteristics of a tax which bore a close analogy to income-tax, and that the amount "raised by the levy of the contribution was not ear-marked or specified for defraying

expenses that the Government had to incur in performing the services". All the collections went into the Consolidated Fund of the State and all the. expenses had to be met not out of those collections but out of the general revenues by a proper method of appropriation as was done in case of other Government expenses. There was again a total absence of any co-relation between the expenses incurred by the Government and the amount raised by the levy of contribution and therefore the theory of a return or quid pro quo could not have any possible application. The Court accordingly held that the contribution levied under s. 76 was a tax and not a fee and such a tax it was beyond the power of the State Legislature to levy.

altered the scheme of s. 76. The Madras High Court has declared the newly enacted cl. (5) ultra vires and that part of the decision of the Court is not challenged before us. By the impugned cl. (1) the defects in the original section have been remedied by the Legislature. Contributions are now payable to the Commissioner and not to the Government, and they are to be levied expressly in respect of services rendered by the Government and their officers, and for defraying the expenses incurred on account of such services. By sub-section (2) every religious institution, the annual income of which is not less than one thousand rupees, has to pay to the Commissioner annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income as the Commissioner may determine. By sub-section (4) the Government is required to pay the salaries, allowances, pensions and other 'beneficial remuneration' of the Commissioner, Deputy Commissioner, Assistant Commissioners and other Officers and servants employed for the purposes of the Act and also to defray the other expenses incurred for such purposes, including the expenses of Area Committees and the cost of auditing the accounts of religious institutions. The section manifestly provides for levy of contribution at a rate not exceeding five per cent of its income from all religious institutions, and audit fee from religious institutions of which the income is Rs. 1,000/- or more, but all the amounts collected under cls. (1) and (2) have to be spent for meeting the expenses in connection with the performance of the duties rendered to the religious institutions and for no other purposes. By section 81 (1) a separate Fund called "'The Madras Hindu Religious and Charitable Endowments Administration Fund" is constituted and that Fund vests in the Commissioner, and by cl. (2) of that section the contributions payable under s. 76 (1) and the audit fee payable under s. 76 (2) when realized are credited in the said Fund. The two principal objections against the levy of the contribution under s. 76 before it was amended were (1) that the money raised by levy of the contribution was not earmarked or specified for defraying the expenses that the Government had to incur in performing services. All the collections went to the Consolidated Fund of the State and all the expenses were not met out of the collections but out of the general revenues by a proper method of appropriation as is done in case of other Government expenses, and (2) that there was a total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution under the provision of s. 76. The Legislature has by the amendment of s. 76 (1) and (4) and the constitution of a separate Fund under s. 81 rectified both these defects. The amounts raised are specifically ear-marked for defraying expenses for rendering services : they do not go into the Consolidated fund of the State, but are included in a separate Fund. The Contributions are not even payable to the Government they are payable to the Commissioner.

It was urged that there was no co-relation between the expenses incurred and the amounts collected as contributions, but there is no reliable evidence on the record in support of this plea. Our attention

was invited to Ex. 'A' referred to in paragraph-2 of the supplemental counter-affidavit of the State of Madras in Writ Petition No. 323 of 1955, in which an abstract of the receipts and charges was set out. It was stated in that document:

> "During the period from 30th September 1951 to 30th June 1952 the total receipts under the head XXXVI Miscellaneous-(c.) Miscellaneous Administration of Madras Hindu Religious and Charitable Endowments Act, 1951" amounts to Rs. 3,16,013-1-3 and the total receipts under "XLVI-Miscellaneous (d) fees for Government Audit" by way of contribution recovered from the religious institutions amounted to Rs. 2,27,531-4-10. The total expenditure during the said period towards salary and allowances of the officers and staff contingencies and fees paid to private auditors for auditing the accounts of religious institutions amounted to Rs. 6,93,539-10-3."

Then followed a chart for fasli years 1361, 1362, 1363 and 1364 setting out different heads such as Arrear Demand, Current Demand, Total Demand and, Write off, Net Demand, Collection and Balance. J appears from the Chart that there were large arrears in the collection of contributions and by the end of the fasli year 1364 the arrears exceeded 15.50 lakhs. An abstract at the foot of the chart shows that the total actual collections amounted to Rs. 19.74 lakhs and the balance recoverable for the four fasli years was Rs. 15.75 lakhs. The total expenditure for 31 out of the four years was Rs. 26.4 lakhs. It is difficult to draw an inference from this document that the demand of contribution was wholly unrelated to the expenditure incurred out of the accumulations. No attempt was made before the High Court to establish that the levy of contribution at the rate of five per cent was so exorbitant that it could be said to have no true relation to the value of the services rendered to the endowments by the administration. Our attention was also invited to a statement of account showing that the Commissioner received when the Act of 1951 was brought into force a total investment in fixed deposits, Government stock certificates, debentures of co-operative land mortgage bank, national savings certificates and in banks a total account exceeding Rs. 18 lakhs. But this is the accummulation during a period of nearly 25 years when the Act of 1927 was in operation. There is no evidence on the record as to the sources from which the fund was accummulated. From this statement of account it would not be possible to infer that the contributions under s. 76(1) of the Act of 1951 were wholly disproportionate to the value of the services to be rendered. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to individual who (btains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax. It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said that it is of the nature of a tax. A fee being a levy in consideration of rendering service of a particular type, corelation between the expenditure by the Government and the levy must undoubtedly exist, bat a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may.

Section 80 makes the Commissioner a corporation sole with perpetual succession and s. 81 provides for the constitution of the Madras Hindu Religious and Charitable Endowments Administration Fund. These sections have been enacted with the object of establishing a distinct Fund out of the income of the endowments totally unrelated to the general revenues of the State. By s. 82 contributions which had been levied under the Act XIX of 1951 before it was amended by the Act XXVII of 1954 under s. 76(1) and (2) have been validated. Section 82 provides :-

> "82. (1) Contributions under section 76(1) and the further sums payable under section 76(2) shall be payable with effect from the commencement of this Act. For the period from the commencement of this Act until the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, the rate prescribed by the Government under section 76(1), or determined by the Commissioner under section 76(2), shall be deemed to be the rate prescribed or determined under section 76(1) or section 76(2), as the case may be,_ as amended by the Madras Hindu Religious and Charitable Endowments (Amend- ment) Act, 1954, and contributions and further sums paid to the Government shall be deemed to be contributions and further sums, as the case may be, paid to the Commissioner under section 76(1) and section 76(2) as amended by the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954. (2)The Government shall pay to the Commissioner the balance, if any, remaining out of the aggregate of the contributions and further sums paid or realized before the com- mencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, in pursuance of section 76(1) and section 76(2), after deducting therefrom sums paid by the Government under section 76(4)."

It is true that the contributions levied under s. 76(1) of the Act before it was amended had the characteristic of a tax, and the levy thereof was accordingly struck down. But the Legislature had power to enact appropriate retrospective legislation declaring these levies as fees by denuding them of the characteristics which went to make the levies of the nature of a tax. By the express provision contained in sub- section (1) of s. 82 the rates prescribed under s. 76(1) or determined by the Commissioner under s.76(2), under the Act as originally enacted were to be deemed rates prescribed under ss. 76(1) or determined under s. 76(2) as amended by the Act XXVII of 1954, and contributions and other sums paid to the Government were to be deemed as contributions and other sums paid to the Commissioner under ss. 76(1) and (2) as amended. Retrospectively the payments received by the Government were dissociated from the general governmental revenues and by sub-section (2) account was to be made on the footing that these payments constituted a distinct and separate fund and all payments were deemed to be received by the Commissioner and not by the Government. That retrospective legislation may be enacted is not now open to question. In M/s. J. K. Jute Mills Co. Ltd. v. State of Uttar Pradesh it was held by this Court :

> "The power of a legislature to enact a law with reference to a topic entrusted to it, is x x x unqualified subject only to any limit- ation imposed by the Constitution. In the exercise of such a power it will. be competent for the legislature to enact a law, which is (1)[1962] 2 S.C.R. 1 either prospective or retrospective. In Union of India v. Madan

> Gopal, 1954, SCR 541: it was held by this Court that the power to impose ,tax on income under entry 82 of List 1 in Schedule VII to the Constitution, comprehended the power to impose income-tax with retrospective operation even for a period prior to the Constitution. The position will be the same as regards laws imposing tax on sale of goods. In M. P. V. Sundraramier & Co. v. State of Andhra Pradesh, 1958 S.C.R. 1422, this Court had occasion to consider the validity of a law enacted by Parliament giving retrospectively operation to laws passed by the State legislatures imposing a tax on certain sales in the course of inter-State trade. One of the contentions raised against the validity of this legislation was that, having regard to the terms of Art. 286 (2), the retrospective legislation was not within the competence of Parliament. In rejecting this contention, the court observed: 'Article 286 (2) merely provides that no law of a State shall impose tax on inter-state sales "except in so far as Parliament may by law otherwise provide'. It places no restriction on the nature of the law to be passed by Parliament. On the other hand, the words "in so far as' clearly leave it to Parliament to decide on the form and nature of the law to be enacted by it. What is material to observe is that the power conferred on Parliament under Art. 286(2) is a legislative power, and such a power conferred on a Sovereign Legislature carries with it authority to enact a law either prospectively or retrospectively, unless there can be found in the Constitution itself a limitation on that power.' And it was held that the law was within the competence of that Legislature. We must therefore hold that the Validation Act is not ultra vires the powers of the legislature under entry 54, for the reason that it operates retrospectively."

The State Lagislature has power to levy a fee under the Seventh Schedule, List III, Item 28 read with item 47. The Legislature was, therefore, competent to levy a fee for rendering services in connection with the maintenance, supervision and control over the religious institutions and it was competent to levy the fee retrospectively. If the amounts received by the State have been expressly regarded as fee collected by the Commissioner tinder the provisions as amended and account has to be made on that footing between the Government and the Commissioner, challenge to the vires of s. 82 (2) must fail.

In our view the High Court was right in declaring ss. 52(1)(f), 55, 76(1) & (2), 80, 81.,and 82 intra vires. The appeals therefore, fail and are dismissed with costs. One hearing fee.

Appeals dismissed.