IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 27TH DAY OF FEBRUARY 2024/8TH PHALGUNA, 1945

WP(C) NO. 26003 OF 2017

PETITIONER:

VISHNUNARAYANAN,
AGED 37 YEARS
SREENIKETHANAM, MOOLAVATTOM,
KOTTAYAM DISTRICT, PIN-686012.

BY ADVS.
B.G.HARINDRANATH
AMITH KRISHNAN H.
LEJO JOSEPH GEORGE

RESPONDENTS:

1 **THE SECRETARY,**
DEPARTMENT OF REVENUE & DEVASWOM, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2 **THE DEVASWOM COMMISSIONER**
TRAVANCORE DEVASWOM BOARD, NANDANCODE,
THIRUVANANTHAPURAM, PIN-695003.

3 **THE SECRETARY**
TRAVANCORE DEVASWOM BOARD, NANDANCODE,
THIRUVANANTHAPURAM, PIN-695003.

***ADDL. R4 TO R6 IMPLEADED**

4 **YOGESH NAMBOODIRI T.K,**
S/O KESAVAN NAMBOODIRI, THEKKEDOM MANA,
TC7/1217(8), KOORA 204 C, KOOTTAMVILA ROAD NO.4,
KARUTHANKUZHY, VATTIYOORKAVU PO,
THIRUVANANTHAPURAM.

***(ADDL R4 IS IMPLEADED AS PER ORDER DATED 21.08.2017 IN IA 13341 OF 2017 IN WP(C) NO.26003 OF 2017).**

**5 K.S.KRISHNAN NAMBOOTHIRI,
KARAKKAT MANA, PERAMANGALAM P.O,
THRISSUR- 680 545.**

***(ADDL R5 IS IMPLEADED AS PER ORDER DATED 29.08.2017 IN IA 13548 OF 2017 IN WP(C) NO. 26003 OF 2017)**

**6 AKHILA KERALA TANTHRI MANDALAM,
REGISTRATION NO.Q700/2010, KOLLAM, REPRESENTED BY IT'S GENERAL SECRETARY, S.RADHAKRISHNAN POTTY,
S/O LATE M.SANKARAN POTTY, AGED 60 YEARS,
KIDAKKOTTU ILLAM, KAPPIL WEST, KRISHNAPURAM P.O.,
ALAPPUZHA DISTRICT, 690533**

***(ADDL R6 IMPLEADED AS PER ORDER DATED 29.08.2017 IN IA 13772 OF 2017)**

**BY ADVS.
SRI.S.RAJ MOHAN, SR. GOVERNMENT PLEADER
SRI.KRISHNA MENON, SC, TRAVANCORE DEVASWOM BOARD
SHRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD
G.SUDHEER
P.N.DAMODARAN NAMBOODIRI
N.P.ASHA
P.UNNIKRISHNAN**

SRI. K.B.PRADEEP, AMICUS CURIAE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23.08.2023, ALONG WITH W.P(c)NO.13823 OF 2021 AND CONNECTED CASES, THE COURT ON 27.02.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 27TH DAY OF FEBRUARY 2024 / 8TH PHALGUNA, 1945

WP(C) NO. 13823 OF 2021

PETITIONER:

M. VIJU,
AGED 49 YEARS
S/O. MANIYAPPAN, R/O. ASSARIPARAMBIL HOUSE,
KUNNUMKAL (H), SL PURAM P.O., ALAPPUZHA.
BY ADV B.G.HARINDRANATH

RESPONDENTS:

1 **TRAVANCORE DEVASWOM BOARD,**
NANDANCODE, TRIVANDRUM-695003,
REPRESENTED BY ITS SECRETARY.

2 **DEVASWOM COMMISSIONER,**
TRAVANCORE DEVASWOM BOARD, NANDANCODE,
TRIVANDRUM-695003.

3 **THE STATE OF KERALA,**
REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE, DEVASWOM GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, KERALA-695001.

SRI.S.RAJMOHAN, SR. GOVT. PLEADER FOR R3
SRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD FOR R1 & R2
SRI. K.B.PRADEEP, AMICUS CURIAE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23.08.2023, ALONG WITH W.P.(C)NO.26003 OF 2027 AND CONNECTED CASES, THE COURT ON 27.02.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 27TH DAY OF FEBRUARY 2024 / 8TH PHALGUNA, 1945

WP(C) NO. 13834 OF 2021

PETITIONER:

C.A.SHAJIMON,
AGED 42 YEARS
S/O. ARAVINDAN, R/O. CHANIVELIYIN, 4/305,
PANAVELLI, ALLEPPY 688 526.
BY ADV B.G.HARINDRANATH

RESPONDENTS:

1 **TRAVANCORE DEVASWOM BOARD,**
NANDANCODE, TRIVANDRUM 695 003,
REPRESENTED BY ITS SECRETARY.

2 **DEVASWOM COMMISSIONER,**
TRAVANCORE DEVASWOM BOARD NANDANCODE,
TRIVANDRUM 695 003.

3 **THE STATE OF KERALA,**
REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE, DEVASWOM, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, KERALA 695 001.

SRI.S.RAJMOHAN, SR. GOVT. PLEADER FOR R3
SRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD FOR R1 & R2
SRI. K.B.PRADEEP, AMICUS CURIAE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23.08.2023, ALONG WITH W.P.(C)NO.26003 OF 2017 AND CONNECTED CASES, THE COURT ON 27.02.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 27TH DAY OF FEBRUARY 2024 / 8TH PHALGUNA, 1945

WP(C) NO. 14067 OF 2021

PETITIONER:

RAJEESH KUMAR A.R,
AGED 38 YEARS
S/O.RAVEENDRAN, R/O.ASSARIPARAMPIL(H),
KUMARAKOM.P.O, KOTTAYAM.

BY ADVS.
B.G.HARINDRANATH
SANTHOSH MATHEW

RESPONDENTS:

1 **TRAVANCORE DEVASWOM BOARD - TDB**
NANDANCODE, TRIVANDRUM-695003,
REPRESENTED BY ITS SECRETARY.

2 **DEVASWOM COMMISSIONER,**
TRAVANCORE DEVASWOM BOARD,
NANDANCODE, TRIVANDRUM-695003.

3 **STATE OF KERALA,**
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE, DEVASWOM GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM,
KERALA, PIN-695001.

SRI.S.RAJMOHAN, SR. GOVT. PLEADER FOR R3
SRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD FOR R1 & R2
SRI. K.B.PRADEEP, AMICUS CURIAE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23.08.2023, ALONG WITH W.P.(C)NO.26003 OF 2017 AND CONNECTED CASES, THE COURT ON 27.02.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 27TH DAY OF FEBRUARY 2024 / 8TH PHALGUNA, 1945

WP(C) NO. 14136 OF 2021

PETITIONERS:

1 SIJITH T.L, AGED 36 YEARS
S/O. LOHITHAKSHAN T.A., THAIPPURAYIL HOUSE,
NETHAJI ROAD, ANTHIKKAD, THRISSUR KERALA 680 641.

2 VIJEESH P R, AGED 38 YEARS
S/O. RAVI P V., PANIKKASSERY HOUSE, KUNNAPPILLY
P.O. CHALAKUDY, THRISSUR, KERALA 680 311.

BY ADVS.
T.R.RAJESH
AUGUSTUS BINU
ABHIJITH.K.ANIRUDHAN
GOPALAN MOHAN GOPAL

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO
GOVERNMENT, REVENUE DEVASWOM DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
KERALA-695 001.

2 THE TRAVANCORE DEVASWOM BOARD,
REPRESENTED BY ITS SECRETARY, NANTHANCODE
THIRUVANANTHAPURAM, KERALA 695 003.

3 THE DEVASWOM COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, NANTHANCODE
THIRUVANANTHAPURAM, KERALA 695003.

BY ADVS.
SHRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD
SRI. K.B.PRADEEP, AMICUS CURIAE

SRI.S.RAJMOHAN, SR.GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23.08.2023, ALONG WITH W.P.(C)NO.26003 OF 2017 AND CONNECTED CASES, THE COURT ON 27.02.2024 DELIVERED THE FOLLOWING:

N THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 27TH DAY OF FEBRUARY 2024 / 8TH PHALGUNA, 1945

WP(C) NO. 14283 OF 2021

PETITIONER:

RAJEESH A.S.
AGED 40 YEARS
S/O.SREEDHARAN, ALOOTHADATHIL HOUSE, NAIKETTY P.O., SULTHAN BATHERY - 673 592.
BY ADV SANTHOSH MATHEW

RESPONDENTS:

1 **TRAVANCORE DEVASWOM BOARD - TDB, NANDANCODE, TRIVANDRUM - 695 003, REPRESENTED BY ITS SECRETARY.**

2 **DEVASWOM COMMISSIONER, TRAVANCORE DEVASWOM BOARD, NANDANCODE, TRIVANDRUM - 695003.**

3 **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF REVENUE, DEVASWOM, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN - 695 001.**

SRI.S.RAJMOHAN, SR.GOVT. PLEADER
SHRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD
SRI. K.B.PRADEEP, AMICUS CURIAE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23.08.2023, ALONG WITH W.P.(C)NO.26003 OF 2017 AND CONNECTED CASES, THE COURT ON 27.02.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRAN

&

THE HONOURABLE MR. JUSTICE P.G. AJITHKUMAR

THURSDAY, THE 27TH DAY OF FEBRUARY 2024 / 8TH PHALGUNA, 1945

WP(C) NO.14484 OF 2021

PETITIONER:

VISHNUNARAYANAN C.V,
AGED 41 YEARS
S/O. VISWAMBHARAN, SRINIKETHANAM,
MOOLAVATTOM P.O., KOTTAYAM-686012.

BY ADVS.
B.G.HARINDRANATH
SANTHOSH MATHEW

RESPONDENTS:

1 **TRAVANCORE DEVASWOM BOARD,**
NANDANCODE, TRIVANDRUM-695003, REPRESENTED BY ITS SECRETARY.

2 **DEVASWOM COMMISSIONER,**
TRAVANCORE DEVASWOM BOARD, NANDANCODE,
TRIVANDRUM-695003.

3 **STATE OF KERALA,**
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
DEPARTMENT OF REVENUE DEVASWOM, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, KERALA, PIN-695001.

***ADDL. R4 TO R10 IMPLEADED**

4 **ADDL.R4: YOGAKSHEMA SABHA,**
OUTER RING ROAD, GURUVAYOOR,
THRISSUR-680101, REPRESENTED BY ITS SECRETARY,
M. V SUBRAHMANIAN.

***(IMPLEADED AS ADDL R4 AS PER ORDER DATED 17.12.2022 IN IA 1 OF 2021)**

5	**ADDL.R5: N. VISHNU NAMBOOTHIRI **** **AGED 46 YEARS, S/O S.NARAYANAN NAMBOOTHIRI, RESIDING AT VISHNU NILAYAM, KANDIYOOR, TATTARAMBALAM, MAVELIKKARA, ALAPPUZHA-690 103** ***(IMPLEADED AS ADDL R4 AS PER ORDER DATED 12-10-2021 IN IA 2 /2021.** ****(STATUS OF ADDL R4 IS SUO MOTU CORRECTED AS ADDL R5 AS PER ORDER DATED 17/12/2022 IN WP(C) 14484/2021)**
6	**ADDL.R6: EZHIKKODU SASI NAMBOOTHIRI** **EZHIKKOD SASI NAMBOOTHIRI, AGED 72 YEARS, S/O.LATE ARYAN NAMBOOTHIRI, EZHIKKODE MANA, PAINKULAM P.O., CHERUTHURUTHY, THRISSUR DISTRICT, PIN-679 531.**
7	**ADDL.R7:P.J.NARAYANAN NAMBOOTHIRI** **AGED 64 YEARS, S/O.JANARDHANAN NAMBOOTHIRI, MARAMATTATH MANA, ULLALA, THALYAZHAM P.O., VAIKOM, KOTTAYAM DISTRICT, PIN-686 607.**
8	**ADDL.R8:M.S.PARAMESWARAN NAMBOOTHIRI** **AGED 60 YEARS, S/O.SANKARAN NAMBOOTHIRI, MADAVANA MANA, PULIYANAM P.O., ANGAMALY, ERNAKULAM DISTRICT, PIN-683 577.**
9	**ADDL.R9: EDAMANA N. DAMODARAN POTTY** **AGED 57 YEARS, S/O.E.NARAYANAN POTTY, 'PRANAVAM', ARATTUKULANGARA, THEKKE NADA P.O., VAIKOM, KOTTAYAM DISTRICT, PIN-686 142** ***(ADDL.R6 TO R9 ARE IMPLEADED AS PER ORDER DATED 17-12-2022 IN IA 1 OF 2021)**
10	**ADDL.R10 PEOPLE FOR DHARMA TRUST** **1G, ABHIRAMI APARTMENTS, SOUTH SECTOR, FIRST STREET, ADAMBAKKAM, CHENNAI-600 088 REPRESENTED BY ITS TRUSTEE, K P MADHUSOODHANAN** ***(IMPLEADED AS ADDL R10 AS PER ORDER DATED 17-12-2022 IN IA 2/2022)**
	BY ADVS. **SHRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD** **P.N.DAMODARAN NAMBOODIRI** **P.B.KRISHNAN** **SRADHAXNA MUDRIKA** **SABU GEORGE** **B.ANUSREE** **MANU VYASAN PETER** **KURIAKOSE VARGHESE**

V.SHYAMOHAN
GEORGE J.NALAPPAT
HRITHWIK D. NAMBOOTHIRI

SRI.S.RAJMOHAN, SR.GOVT. PLEADER
SHRI.G.BIJU, SC, TRAVANCORE DEVASWOM BOARD
SRI. K.B.PRADEEP, AMICUS CURIAE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23.08.2023, ALONG WITH W.P.(C)NO.26003 OF 2017 AND CONNECTED CASES, THE COURT ON 27.02.2024 DELIVERED THE FOLLOWING:

JUDGMENT

Anil K. Narendran, J.

'Melsanthies' of Sabarimala Devaswom (Sabarimala Sree Dharma Sastha Temple) and Malikappuram Devaswom (Malikappuram Temple) are appointed for a period of one year. Every year, the Travancore Devaswom Board invites applications for appointment of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom and makes appointments following the procedure prescribed. The notification issued for the year 1193ME (2017-18) is in question in W.P.(C)No.26003 of 2017. The notification issued for the year 1197ME (2021-22) is in question in the other writ petitions, i.e., W.P.(C)Nos. 13823, 13834, 14067, 14136, 14283 and 14484 of 2021. In all the writ petitions, the challenge is against the eligibility criteria prescribed in those notifications that the applicant shall be a 'Malayala Brahmin'. Since the questions involved are common, these writ petitions were heard together.

1.1. Going by the averments in the writ petitions, the petitioner in W.P.(C)No.26003 of 2017 is working as Melsanthi at Sree Subramanian Swamy Temple, Pallom, Kottayam District; the petitioner in W.P.(C)No.13823 of 2021 is working as Melsanthi at

Valavanad Puthenkavu Devi Temple, Pollethai, Alappuzha District; the petitioner in W.P.(C)No.13834 of 2021 is working as Melsanthi at Sree Ambikavilasom Arayankavu Devi Temple, Panavally, Alappuzha District; the petitioner in W.P.(C)No.14067 of 2021, who is a qualified Priest, is working at Sree Mahadeva Temple, Nagambadom, Kottayam District; the 1st petitioner in W.P.(C)No.14136 of 2021 is working as Melsanthi at Sree Chidambara Temple, Kanjani, Thrissur District and the 2nd petitioner is working as Melsanthi at Vishnupuram Sree Narasimhamoorthy Temple, Chalakkudy, Thrissur District; the petitioner in W.P.(C)No.14283 of 2021 is working as Melsanthi at Thekkumkara Sree Ardhanariswara Temple, Kumarakom, Kottayam District; and the petitioner in W.P.(C)No.14484 of 2021 is working as Melsanthi at Sree Subramanian Swamy Temple, Pallom, Kottayam District. Going by the averments in the writ petitions none of the petitioners are working as Melsanthies in any temple under the Management of Travancore Devaswom Board.

1.2. Similar are the contentions of the petitioners in W.P.(C)No.26003 of 2017 and W.P.(C)Nos.13823, 13834, 14067, 14283 and 14484 of 2021. In W.P.(C)No.26003 of 2017, it is contended that Malayala Brahmin does not have any special

privilege for being appointed as Melsanthi of Sabarimala Devaswom. The grant of such reservation or privilege in Ext.P1 notification for appointment as Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom for the year 1193ME, to the extent of restricting applications from persons who are Malayali Brahmins is arbitrary and illegal. The Travancore Devaswom Board, being a statutory body created under the Travancore-Cochin Hindu Religious Institutions Act, 1950, the issuance of Ext.P1 notification by the 2nd respondent Devaswom Commissioner, inviting application to the post of Melsanthi only from Malayali Brahmins, by excluding all other castes from Hindu religion, violates Article 14, 15 and 16 of the Constitution of India. The exclusive reservation for Malayali Brahmin in the matter of appointment of Melsanthi in Sabarimala Devaswom and Malikappuram Devaswom is against the objectives of the Constitution of India. Article 17 of the Constitution strikes at a caste-based practice built on superstitions and beliefs that have no rationale or logic. Article 13 of the Constitution of India lays down that all laws, including pre-constitutional laws, which are inconsistent with or in derogation of the fundamental rights guaranteed by Part III, are void. Such laws include ordinance,

order, bye-law, rule, regulation, notification as well as any custom or usage in force in India. In view of the law laid down by this Court in **Adithyan v. Travancore Devaswom Board [(2002) 8 SCC 106]**, there is no justification for insisting that a person of a particular caste alone can conduct pooja in the temple. Any such appointment should not be based on the criteria of caste or pedigree or any other criteria. The word 'Brahmin' means the person who knows about 'Brahma'. The famous Paliam Proclamation on 26.08.1987 proclaimed that one cannot acquire 'Brahmaniam' by birth. But it can be acquired by 'Karmas' and all Hindus who acquired it can become priests. It is also specified that all Hindus can have 'Shodasa karmas'.

1.3. In W.P.(C)No.26003 of 2017, the petitioner is seeking a writ of certiorari to call for the records leading to Ext.P1 notification dated 20.07.2017 issued by the 2nd respondent Devaswom Commissioner calling for applications for the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom, for the year 1193ME (2017-18) to the extent of restricting applications from persons, who are Malayali Brahmins, to the post of Melsanthies in those Devaswoms under the Travancore Devaswom Board. The petitioner has also sought

for a writ of mandamus commanding the respondents to consider Ext.P7 application dated 31.07.2017 made by the petitioner pursuant to Ext.P1 notification for the post of Melsanthi in Sabarimala and Malikappuram Devaswoms; a declaration that the petitioner is eligible to apply and hold the post of Melsanthi in Sabarimala Temple under the Travancore Devaswom Board; and a declaration that all persons of Hindu religion having the other qualifications specified in clauses 2 to 11 of the conditions, which form part of Ext.P1 notification dated 20.07.2017, are entitled to be appointed as Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom under the Travancore Devaswom Board.

1.4. On 24.10.2017, when W.P.(C)No.26003 of 2017 came up for consideration, a Division Bench of this Court, by a detailed order, declined the interim relief sought for, on the ground that the interim relief is as good as the main relief sought for in prayer No.(ii).

1.5. W.P.(C)Nos.13823 of 2021, 13834 of 2021, 14067 of 2021, 14283 of 2021 and 14484 of 2021 are filed challenging the notification dated 27.05.2021 issued by the Devaswom Commissioner, inviting applications for appointment as Melsanthies of Sabarimala Devaswom and Malikappuram

Devaswom for the year 1197ME (2021-22), to the extent of restricting applications from persons who are Malayali Brahmins. A writ of mandamus and declaratory reliefs similar to that sought for in W.P.(C)No.26003 of 2017 are sought for in these writ petitions. The petitioners in W.P.(C)Nos.13823, 13834, 14067, 14283 and 14484 of 2021 would contend that the Revenue (Devaswom) Department of the State have administrative control over Sabarimala Devaswom and Malikappuram Devaswom and that the Travancore Devaswom Board is fully controlled by the State.

1.6. Relying on the judgment of the Apex Court in **Seshammal v. State of Tamil Nadu [(1972) 2 SCC 11]**, it is contended that Archaka is a priest in a temple who performs essential poojas or Archana. The appointment of Archaka is secular and there is no law that the appointment of Archaka is governed by the usage of hereditary succession. The fact that in some temples the hereditary principle was followed in making the appointment would not make successive appointments is nothing but secular. This being the settled legal position, any reservation in the matter of appointment of a priest in Sabarimala Devaswom and Malikappuram Devaswom, exclusively reserving those posts

for any caste, be it Malayali Brahmin or otherwise, would be directly contrary to Article 14 of the Constitution of India. The petitioners would also contend that as long as the appointment of Santhikaran is from among persons well versed, fully qualified and trained in their duties, mantras, tantras and necessary vedas, irrespective of their caste, Articles 25 and 26 cannot be said to have been infringed. In **Adithyan [(2002) 8 SCC 106]** the Apex Court noticed that caste is not a barrier for a person to become a priest in the temples administered by the Travancore Devaswom Board. In **Kailash Sonkar v. Maya Devi [(1984) 2 SCC 91]**, the Apex Court held that the Constitution envisages that all distinctions made on caste and creed are abolished which is the dream of the Father of the Nation. The notification dated 27.05.2021 issued by the Devaswom Commissioner violates all canons of Constitutional propriety and is in direct conflict with the salutary principles enunciated in **Adithyan [(2002) 8 SCC 106]** and **Kailash Sonkar [(1984) 2 SCC 91]**.

1.7. In W.P.(C)No.14136 of 2021, the petitioners have sought for a writ of certiorari to quash Ext.P13 notification dated 27.05.2021 issued by the Devaswom Commissioner for the appointment of Melsanthies in Sabarimala Devaswom and

Malikappuram Devaswom for the year 1197ME, to the extent it restricts applications only from Malayali Brahmins; a declaration that the stipulation in Ext.P13 notification to the extent it prescribes that persons who are Malayali Brahmins alone are entitled to apply for the post of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom is violative of Articles 14, 15(1) and 16(2) of the Constitution of India.

1.8. By the order in I.A.No.1 of 2021, W.P.(C)No.14136 of 2021 was amended by incorporating additional statement of facts, grounds and reliefs. By way of that amendment, the petitioners have sought for a writ of certiorari to quash Exts.P16 and P17 communications dated 14.07.2021 issued by the Devaswom Commissioner, since the same are issued in violation of Articles 14, 15 and 16 of the Constitution of India. The petitioners have also sought for a writ of mandamus commanding the Travancore Devaswom Board and the Devaswom Commissioner to issue a fresh notification inviting applications to the post of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom, by deleting the condition that only Malayali Brahmins are entitled to apply to that post.

1.9. In W.P.(C)No.14136 of 2021, the petitioners would contend that Ext.P13 notification, to the extent it insists that only a Malayali Brahmin of Kerala origin is entitled to apply for the post of Melsanthi in Sabarimala Devaswom and Malikappuram Devaswom, is violative of the fundamental rights guaranteed to them under Articles 14, 15(1) and 16(2) of the Constitution of India. The right to offer pooja in Sabarimala Devaswom and Malikappuram Devaswom cannot be said to be either a hereditary right or karanma right so as to claim any exemption as contemplated under the provisions of Travancore-Cochin Hindu Religious Institutions Act, 1950. The very fact that a notification has been issued by the Devaswom Commissioner itself would indicate that such a notification was necessitated since it is neither a hereditary right nor a Karanma right. Even if it is accepted for the sake of argument that the same is a hereditary right, still the Travancore Devaswom Board and the Devaswom Commissioner cannot issue a notification in the nature of Ext.P13, stipulating a caste criterion that only Malayala Brahmin is entitled to apply for the post of Melshanti in Sabarimala Devaswom and Malikappuram Devaswom, since it goes against the letter and spirit of Articles 14, 15(1) and 16(2) of the Constitution. The petitioners would rely

on the law laid down by the Apex Court in **Adithyan [(2002) 8 SCC 106]** in order to contend that appointment of any person fully qualified, other than a Malayali Bharamin to the post of Santikaran/Poojari in a particular temple will not offend the fundamental right of any person under Article 25 of the Constitution. The petitioners would also rely on the law laid down by the Apex Court in **Adi Saiva Sivachariyargalnali Sangam v. Government of Tamil Nadu [(2016) 2 SCC 725]** to contend that the exclusion of some and inclusion of a particular segment or denomination for appointment as Archakas would not violate Article 14 so long as such inclusion/exclusion is not based on the criteria of cast, birth or any other constitutionally acceptable parameters.

1.10. As per Exts.P15 and P17, the applications made by the petitioners in W.P.(C)No.14136 of 2021, were rejected for the reason that they do not satisfy condition No.1 in Ext.P13 notification, which stipulates that the applicant must be a Malayala Brahmin. The action of the Devaswom Commissioner in rejecting the petitioners' application on the ground of cast is highly illegal and arbitrary and is against the provisions contained in Articles 14, 15(1) and 16(2) of the Constitution.

2. The Travancore Devaswom Board and the Devaswom Commissioner are common respondents in all the writ petitions. They filed counter affidavits in W.P.(C)No.26003 of 2017 and W.P.(C)Nos. 13823, 14136 and 14484 of 2021. They contend that the selection of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom are to be completed before the first of Thulam (Malayalam Era) every year. The selection process is as directed by this Court as well as the Apex Court in various decisions. There were disputes as regards the constitution of the selection committee and guidelines framed by the Board regarding the process of appointment. The guidelines for appointment, which contain the eligibility criteria, were under challenge in various proceedings before this Court. This Court approved the guidelines containing eligibility criteria for the selection of Melsanthies in the order dated 03.04.2002 in R.P.No. 94 of 2002 in O.P.No.28670 of 2000. It was modified from time to time and lastly, as per the order dated 24.06.2009 in Report No.76 of 2008 in O.P.No.3821 of 1990. The constitution of the Selection Committee was also as ordered by this Court. The constitution of the selection was revised by this Court many times. When the matter was taken up before the Apex Court by filing Civil Appeal

Nos.2570-71 of 2003, the question regarding the constitution of the Selection Committee was resolved through mediation and the report of the Mediator was approved by the Apex Court, as per the order dated 06.09.2011 in the aforesaid Civil Appeals. The guidelines also stand approved by the Apex Court, in view of the order in Civil Appeal Nos.2570-71 of 2003. Therefore, the petitioner cannot question the said eligibility criteria in these writ petitions.

2.1. The Travancore Devaswom Board and the Devaswom Commissioner would contend that Melsanthies in Sabarimala Devaswom (Sabarimala Sree Dharma Sastha Temple) and Malikappuram Devaswom (Malikappuram Temple) are appointed following the religious practices being followed from time immemorial. It is not a caste-based selection. Even the other sects of Brahmin are not allowed to apply. The appointment is for a period of one year only. Unlike the Santhies in other temples, Melsanthies in Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple are 'Purappeda Santhies', who are obliged to be at Sabarimala for the whole period of one year, whereas tenure of santhies in other temples is till superannuation. The posts of Melsanthies in Sabarimala Devaswom and Malikappuram

Devaswom cannot be filled in terms of the Kerala Devaswom Recruitment Board Rules, 2015 framed under the Kerala Devaswom Recruitment Board Act, 2015, which are applicable to the appointments to the other posts only. The appointment of the Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom can be made only as per the custom, usage and mode of worship, which have been in force from time immemorial. The said appointments are not one of qualification, but a matter of religious practice in the temples. Being a matter of religious practice, the opinion of the Tantri of the temple is binding. The law laid down by the Apex Court in **Adithyan [(2002) 8 SCC 106]** and that laid down in **Seshammal [(1972) 2 SCC 11]** are concerning the selection of regular Santhikars in various temples. The petitioners cannot rely upon the said decisions to claim a right for appointment in Sabarimala Devaswom and Malikappuram Devaswom.

3. Additional Respondent Nos.4, 5 and 6 were impleaded in W.P.(C)No.26003 of 2017 as per different orders. The additional respondents, however, did not file any written objections. Additional respondents 4 to 10 are impleaded in W.P.(C)No.14484 of 2021 as per different orders. Besides the Travancore Devaswom

Board and the Devaswom Commissioner, additional respondents 4 and 10 in W.P.(C)No.14484 of 2021 have filed counter affidavits, opposing the reliefs sought for.

4. The additional 4th respondent in W.P.(C)No.14484 of 2021 would contend that the deity of Sabarimala Sree Dharma Sastha Temple is the manifestation of Lord Ayyappa, a 'naishtika brahmachari' practicing strict penance. Lord Ayyappa is believed to have taken a human sojourn at Pandalam and was following the severest form of celibacy. Lord Ayyappa himself explained how the pilgrimage to Sabarimala should be. It is, therefore, that the pilgrims observe 41-day penance before having darshan in the temple. The Tantri of the temple decides what shall be the religious practice. Similarly, the temple practices are formulated after considering the opinion of the Pandalam Royal Family. Since the Tantri and the representative of the Pandalam Royal Family are not made parties, the writ petition is bad for non-joinder of necessary parties. The appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom is not a matter of public employment. Hence, the petitioner cannot have a grievance of violation of Articles 14 and 16 of the Constitution of India. Even other sects of Brahmins are excluded from the zone of

consideration, which stands as testimony to the fact that only Malayala Brahmins are eligible, being a religious practice followed from time immemorial. It is not at all caste-based selection and therefore, it is not a ground for alleging discrimination.

4.1. The additional 4th respondent in W.P.(C)No.14484 of 2021 – Yoga Kshema Sabha - would contend that the law laid down by the Apex Court in **Adithyan [(2002) 8 SCC 106]** cannot be considered to be a precedent, in the facts of the cases on hand. In Civil Appeal No.2570-71 of 2003, the Apex Court, after accepting the mediation settlement, approved the constitution of the Selection Committee and the guidelines for the appointment of the Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom. Therefore, the said question is not available for the scrutiny of this Court. Moreover, the Apex Court has seisin of the question regarding the interplay between freedom of religion under Articles 25 and 26 of the Constitution of India and the provisions in Part III, particularly Article 14 and connected issues in the review petition in women's entry at Sabarimala case - **Kantaru Rajeevaru v. Indian Young Lawyers Association [(2020) 3 SCC 52]**. Since the said question is under the

consideration of the Apex Court, the issue involved in these writ petitions is *sub judice* and cannot be decided by this Court.

4.2. The additional 4th respondent in W.P.(C)No.14484 of 2021 would contend that Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple open only for a few days in a year. The nature of pooja, naivedyam, etc. in the temples are in accordance with a particular 'sambrathaya', which is totally different from other temples. Melsanthies have to undergo a special procedure of ordination under the auspices of Tantri. When such religious practices and rites are to be followed, even for enabling the Melsanthies to commence Pooja in the temples, it is the Tantri who has to take the final decision in the matter of selection of Melsanthies. Accordingly, it is contended that the claims of the petitioners are untenable. Additional respondents 6 to 9 in W.P.(C)No.14484 of 2021, who had worked as Priests either at Sabarimala Devaswom or Malikappuram Devaswom, raised similar contentions.

5. The contentions of the additional 10th respondent in W.P.(C)No.14484 of 2021 – People for Dharma Trust - are similar to those set out by additional respondent No.4 in his counter affidavit. Further, it is contended by the said respondent that

Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple are not arms of the State Government and, therefore, the petitioners cannot claim that the rules for public employment being followed by the Travancore Devaswom Board shall apply to the selection of Melsanthies in those temples. For that reason, the writ petition is not maintainable. Members of Malayala Brahmins alone can be appointed as Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom. It is in terms of long-standing religious practice, which received judicial recognition by pronouncements by this Court and the Apex Court. Therefore, the writ petition is not maintainable before this Court. The requirement that the applicants should be Malayala Brahmins is prescribed since the same is a recognised age-old ritual, practice and tradition in the temple. Such a criteria came into force in relation to the consecration of the deity in the Temple and, therefore, the same cannot be changed at all. Such a practice cannot be interfered with and shall remain free from secular interference. The devotees of Lord Ayyappa of Sabarimala Sree Dharma Sastha Temple constitute a religious denomination within the meaning of Article 26 of the Constitution of India and, therefore, the religious practices in that temple prevails over the

right of the petitioner. Such a question, however, is pending consideration before the Apex Court in the review petition in **Kantaru Rajeevaru [(2020) 3 SCC 52]**. Therefore, this Court cannot decide the said question. Further, the law laid down in **Adithyan [(2002) 8 SCC 106]** and **Seshammal [(1972) 2 SCC 11]** is not available in aid of the petitioners. Applying the law as it now stands, the selection of a particular individual or a group for appointment to religious posts in religious institutions is not a secular activity. What is allowed under Articles 25 and 26 of the Constitution of India is only to regulate economic, financial, political or other secular activities associated with the religious practice. Appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom is not secular activity and, therefore, there cannot be any interference with such appointments under the guise of secular activity. For that reason, the petitioners cannot claim any right in the matter of selection of the Melsanthies in Sabarimala Temples.

6. The petitioners in W.P.(C)Nos.14136 of 2021 and 14484 of 2021 filed reply affidavits. Apart from refuting the contentions in the respective counter affidavits, they reiterated the grounds in support of their claim that they are also entitled to

be considered for selection to the post of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom. The contention that the posts of Melsanthies in those Devaswoms are excluded from the Kerala Devaswom Board Recruitment Act, 2015 and the Rules made thereunder is incorrect. What is excluded is only hereditary posts, and the posts of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom are not hereditary posts going by the provisions of Section 2(e) of the Act. The contention that the writ petitions are not maintainable owing to the pendency of the review petition in **Kantaru Rajeevaru [(2020) 3 SCC 52]** is untenable. The decision of the Apex Court in Civil Appeal Nos.2570-71 of 2003 does not bind the petitioner, since it is a compromise judgment. Similarly, orders of this Court formulating guidelines for the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom do not contain any adjudication and hence those orders do not constitute *res judicata*.

7. On 04.03.2023, the petitioner in W.P.(C)No.26003 of 2017 filed I.A.No.1 of 2023 seeking an order to amend the writ petition, by incorporating Ground H, in order to contend that, after the coming into force of the Kerala Devaswom Recruitment Board Act, 2015, the Travancore Devaswom Board has no authority to

appoint Melsanthi at Sabarimala and Malikappuram temples. After the commencement of the said Act, appointments in all posts under the Travancore Devaswom Board have to be made by the Kerala Devaswom Recruitment Board. The Travancore Devaswom filed a counter affidavit dated 10.04.2023, opposing the relief sought for in that interlocutory application. People for Dharma Trust - the additional 10th respondent in W.P.(C)No.14484 of 2021 – also opposed the application for amendment, which was filed only in W.P.(C)No.26003 of 2017. On 21.07.2023, when the writ petitions came up for consideration, the learned counsel for the petitioner in W.P.(C)No.26003 of 2017 submitted that the petitioner does not want to prosecute I.A.No.1 of 2023 filed for amendment. Based on the submission made by the learned counsel for the petitioner, by the order dated 21.07.2023, I.A.No.1 of 2023 in W.P.(C)No.26003 of 2017 was dismissed as withdrawn.

7.1. Heard Adv. B.G.Harindranath, the learned counsel for the petitioners in W.P.(C)No.26003 of 2017, 13823, 13834, 14067, 14283 and 14484 of 2021, Adv. G.Mohan Gopal and Adv. T.R.Rajesh, the learned counsel for the petitioners in W.P.(C)No.14136 of 2021, Sri. S.Rajmohan, the learned Senior Government Pleader, Adv. G.Biju, the learned Standing Counsel

for Travancore Devaswom Board, Adv. P.N.Damodaran Nampoothiri, the learned counsel for the additional 4th respondent in W.P.(C)No.14484 of 2021, Adv. P.B.Krishnan, the learned counsel for additional respondents 6 to 9 in W.P.(C)No.14484 of 2021, Adv. J.Sai Deepak, the learned counsel for the additional 10th respondent in W.P.(C)No.14484 of 2021 and Adv. K.B.Pradeep, the learned Amicus Curiae.

8. Sabarimala Sree Dharma Sastha Temple is situated inside Periyar Tiger Reserve, which is a prominent pilgrim centre in Kerala, where lakhs of pilgrims trek the rugged terrains of Western Ghats to have darshan of Lord Ayyappa. Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple come under the Travancore Devaswom Board. Pamba Ganapathy Temple also comes under the Travancore Devaswom Board, which is a holy spot on the way from Pamba to Sannidanam, dedicated to Lord Ganesha, where the pilgrims offer prayer for safe trekking to Sannidanam.

9. Travancore-Cochin Hindu Religious Institutions Act, 1950 enacted by the State Legislature, makes provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious

Endowments and Funds. As per sub-section (3) of Section 1 of the Act, substituted by the Kerala Adaptation of Laws Order, 1956, Part I of the Act shall extend to Travancore, Part II of the Act shall extend to Cochin and Part III of the Act shall extend to the whole of the State of Kerala, excluding the Malabar District.

9.1. Clause (a) of Section 2 of the Act defines the term 'Board' to mean the Travancore Devaswom Board constituted under Chapter II of the Act in accordance with the covenant. Clause (c) of Section 2 defines the term 'incorporated Devaswoms' to mean the Devaswoms mentioned in Schedule I, and 'unincorporated Devaswoms' to mean those Devaswoms including Hindu Religious Endowments whether in or outside Travancore which were under the management of the Ruler of Travancore and which have separate accounts of income and expenditure and are separately dealt with. Sabarimala Devaswom is an incorporated Devaswom mentioned in Schedule I of the Act, under Chengannur Group, Pathanamthitta Taluk.

9.2. Chapter II of the Act deals with the Travancore Devaswom. Section 3 of the Act deals with the vesting of administration in the Board. As per Section 3, the administration of incorporated and unincorporated Devaswoms and of Hindu

Religious Endowments and all their properties and funds as well as the fund constituted under the Devaswom Proclamation, 1097ME and the surplus fund constituted under the Devaswom (Amendment) Proclamation, 1122ME which were under the management of the Ruler of Travancore prior to the first day of July, 1949, except the Sree Padmanabhaswamy Temple, Sree Pandaravaka properties and all other properties and funds of the said temple, and the management of all institutions which were under the Devaswom Department shall vest in the Travancore Devaswom Board.

9.3. Section 4 of the Act deals with the constitution of the Travancore Devaswom Board. As per sub-section (2) of Section 4, the Board shall be a body corporate having perpetual succession and a common seal with power to hold and acquire properties for and on behalf of the incorporated and unincorporated Devaswoms and Hindu Religious Institutions and Endowments under the management of the Board.

9.4. Section 15 of the Act deals with vesting of jurisdiction in the Board. As per sub-section (1) of Section 15, subject to the provisions of Chapter III of Part I, all rights, authority and jurisdiction belonging to or exercised by the Ruler of Travancore

prior to the first day of July, 1949, in respect of Devaswoms and Hindu Religious Endowments shall vest in and be exercised by the Board in accordance with the provisions of this Act. As per sub-section (2) of Section 15, the Board shall exercise all powers of direction, control and supervision over the incorporated and unincorporated Devaswoms and Hindu Religious Endowments under their jurisdiction.

9.5. Section 15A of the Act, inserted by Act 5 of 2007, with effect from 12.04.2007, deals with the duties of the Board. As per Section 15A, it shall be the duty of the Board to perform the following functions, namely, (i) to see that the regular traditional rites and ceremonies according to the practice prevalent in the religious institutions are performed promptly; (ii) to monitor whether the administrative officials and employees and also the employees connected with religious rites are functioning properly; (iii) to ensure proper maintenance and upliftment of the Hindu religious institutions; (iv) to establish and maintain proper facilities in the temples for the devotees.

9.6. Section 24 of the Act deals with the maintenance of Devaswoms, etc., out of the Devaswom Fund. As per Section 24, the Board shall, out of the Devaswom Fund constituted under

Section 25, maintain the Devaswoms mentioned in Schedule I [i.e. incorporated Devaswoms], keep in a state of good repair the temples, buildings, and other appurtenances thereto, administer the said Devaswoms in accordance with recognised usages, make contributions to other Devaswoms in or outside the State and meet the expenditure for the customary religious ceremonies and may provide for the educational upliftment, social and cultural advancement and economic betterment of the Hindu community.

9.7. Section 27 of the Act deals with Devaswom properties. As per Section 27, immovable properties entered or classed in the revenue records as Devaswom Vaga or Devaswom Poramboke and such other Pandaravaga lands as are in the possession or enjoyment of the Devaswoms mentioned in Schedule I after the 30th Meenam, 1097 corresponding to the 12th April, 1922, shall be dealt with as Devaswom properties. The provisions of the Land Conservancy Act of 1091 shall be applicable to Devaswom lands as in the case of Government lands.

9.8. Section 31 of the Act deals with the management of Devaswoms. As per Section 31, subject to the provisions of Part I and the rules made thereunder, the Board shall manage the properties and affairs of the Devaswoms, both incorporated and

unincorporated as heretofore, and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage.

9.9. The provisions under the Travancore-Cochin Hindu Religious Institutions Act referred to hereinbefore would make it explicitly clear that the role assigned to the Travancore Devaswom Board in the administration, supervision and control of incorporated and unincorporated Devaswoms is that of a trustee in the management of the properties vested in the deity. The Board is bound to administer, supervise and control incorporated and unincorporated Devaswoms in accordance with the provisions under the said Act. The Board and its officials are duty-bound to function within the framework of the statute by scrupulously following the stipulations contained therein and acting strictly in accordance with the settled legal principles relating to the administration of Hindu religious trust. The Board, being a trustee in the management of Devaswom properties, is legally bound to perform its duties with utmost care and caution.

9.10. In view of the provisions under the Travancore-Cochin Hindu Religious Institutions Act referred to hereinbefore, the administration of incorporated and unincorporated Devaswoms

which were under the management of the Ruler of Travancore prior to the first day of July, 1949, except the Sree Padmanabhaswamy Temple, shall vest in the Travancore Devaswom Board. The Board is duty-bound to see that the regular traditional rites and ceremonies, according to the practice prevalent in the religious institutions, are performed promptly and to establish and maintain proper facilities in the temples for the devotees. The Board is duty-bound to manage the properties and affairs of the Devaswoms, both incorporated and unincorporated and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage.

9.11. In view of the provisions under the Travancore-Cochin Hindu Religious Institutions Act referred to hereinbefore, the Travancore Devaswom Board is duty-bound to see that the regular traditional rites and ceremonies, according to the practice prevalent in Sabarimala Devaswom and Malikappuram Devaswom, are performed promptly and to establish and maintain proper facilities in Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple for the devotees. The Board is duty-bound to manage the properties and affairs of Sabarimala Devaswom and Malikappuram Devaswom and arrange for the conduct of the daily

worship and ceremonies and of the festivals in Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple according to its usage. The Board, being a trustee in the management of Sabarimala Devaswom and Malikappuram Devaswom, is legally bound to perform its duties with utmost care and caution.

10. The learned counsel for the petitioners in W.P.(C)Nos.13823, 13834, 14067, 14283 and 14484 of 2021, who is also the counsel for the petitioner in W.P.(C)No.26003 of 2017, would contend that the State of Kerala, through the Revenue (Devaswom) Department, have administrative control over Sabarimala Devaswom and Malikappuram Devaswom and that, the Travancore Devaswom Board is fully controlled by the State.

10.1. The Travancore-Cochin Hindu Religious Institutions Act was enacted to make provision for the administration, supervision and control of incorporated and unincorporated Devaswoms and of other Hindu Religious Endowments and Funds. In view of the provisions under sub-clause (i) of clause (b) of Section 2, 'Hindu Religious Endowment' shall include every Hindu temple or shrine or other religious endowment dedicated to, or used as of right by, the Hindu community or any section thereof; but shall not include

any Hindu religious institution belonging to and under the sole management of a single family.

10.2. In **Shri Kalanka Devi Sansthan v. Maharashtra Revenue Tribunal [(1969) 2 SCC 616]**, a Three-Judge Bench of the Apex Court noticed that, when a property is given absolutely for the worship of an idol, it vests in the idol itself as a juristic person. As pointed out in Mukherjea's Hindu Law of Religious and Charitable Trust [@pages 142-143], this view is in accordance with Hindu ideas and has been uniformly accepted in a long series of judicial decisions. The idol is capable of holding property in the same way as a natural person. It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir.

10.3. Section 4 of the Travancore-Cochin Hindu Religious Institutions Act deals with the constitution of the Travancore Devaswom Board. In view of the provisions under sub-section (1) of Section 4, as substituted by Act 5 of 2007, the Travancore Devaswom Board shall consist of three Hindu members, two of

whom shall be nominated by the Hindus among the Council of Ministers and one elected by the Hindus among the members of the Legislative Assembly of the State of Kerala. As per sub-section (2) of Section 4, the Board shall be a body corporate having perpetual succession and a common seal with power to hold and acquire properties for and on behalf of the incorporated and unincorporated Devaswoms and Hindu Religious Institutions and Endowments under the management of the Board.

10.4. A reading of sub-section (1) of Section 4 of the Travancore-Cochin Hindu Religious Institutions Act, as substituted by Act 5 of 2007, would make it explicitly clear that, the said provision is intended to ensure that persons who have faith in temple worship alone are nominated as members of the Travancore Devaswom Board. The provisions under Sections 15, 15A, 24 and 31 of the Act referred to hereinbefore would show that the duties of the Travancore Devaswom Board and its members, which are purely administrative in character, are to ensure that the regular traditional rights and ceremonies according to the practice prevalent in the religious institutions are performed promptly and to administer the Devaswoms in accordance with the recognised usages. The duties of the

Travancore Devaswom Board and its members do not in any way touch upon the religious affairs of the Devaswoms, which have to be performed according to the practice prevalent in the religious institutions and in accordance with the recognised usages. Chapter IV of Travancore Devaswom Manual Volume II (Office Manual) deals with Tantries. As per clause (1) of Chapter IV, the Tantries are responsible for the proper conduct of the Pooja and other religious ceremonies in the temple in accordance with the Sasthras. In the above circumstances, we find absolutely no merits in the contention of the learned counsel for the petitioners in W.P.(C)Nos.13823, 13834, 14067, 14283 and 14484 of 2021 that the State of Kerala, through the Revenue (Devaswom) Department, have administrative control over Sabarimala Devaswom and Malikappuram Devaswom and that, the Travancore Devaswom Board is fully controlled by the State.

11. The stand taken in the counter affidavit filed by the Travancore Devaswom Board is that the selection and appointment of Melsanthies in Sabarimala Devaswom (Sabarimala Sree Dharma Sastha Temple) and Malikappuram Devaswom (Malikappuram Temple) are not the same as the appointment of Santhi in other temples under the management of the Board. The

norms of selection of Melsanthies are made considering the specialised form of worship peculiar to the custom, rituals and practice of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple. Both Melsanthies are 'Purappeda Santhies', who have to remain at Sannidhanam for the full tenure of one year, starting from the 1st of Vrischikam to 31st of Thulam next year. The selection has to be completed before the 1st of Thulam of each year. The age limit for applying for appointment as Melsanthi in the above Devaswoms is 35 to 60 years. The Melsanthies are selected from Malayala Brahmins as per the custom and rituals of the temple followed from time immemorial, in terms of the Agamas of the temple, considering the construction of the temple, installation of the idol and conduct of the worship of the deity. The above prescription is nothing but one of the qualifications in terms of the usage and religious practice of the temple.

11.1. In the counter affidavit filed by the Travancore Devaswom Board, it is stated that the Board has a statutory duty to enforce the usage prevalent in its temples and it has no right to alter or modify the same. The Devaswom Board has laid down clear guidelines for the selection of Melsanthies at Sabarimala

Devaswom and Malikappuram Devaswom, keeping in view of the above aspects and the same is approved by the Division Bench of this Court and recorded by the Apex Court. The selection to the post of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom is not a regular selection, which cannot be treated as a selection merely for the purpose of public employment and hence the reservation principles as such will not be applicable. As per Section 31 of the Travancore-Cochin Hindu Religious Institutions Act, the Board can arrange worship in its temples only in accordance with its custom, usage and rituals. In a writ petition questioning the religious practices being followed in the temple, the Tantri is a necessary party.

11.2. In the counter affidavit filed by the Travancore Devaswom Board, it is stated that the State Government enacted Kerala Devaswom Recruitment Board Act, 2015, to provide for the constitution of Kerala Devaswom Recruitment Board for preparing the select list for appointment to various posts in the Devaswom Boards in the State, including the Travancore Devaswom Board. In the exercise of the powers under Section 18 of the Act, the State Government made the Kerala Devaswom Recruitment Board Rules, 2015, prescribing the procedure for the selection. As per

the said Rules, in all cases of direct recruitment, subject to the provisions of sub-section (3) of section 6 of the Act, the rules of reservation and rotation as provided in Rules 14 to 17 Part II of the Kerala State and Subordinate Service Rules, 1958 shall *mutatis mutandis* apply. Appointments shall be made in the order of rotation as specified in the Annexure to these rules in every cycle of 100 vacancies, and out of every 100 appointments, 50 shall be from open competition and 50 shall be reserved for Hindu communities, including economically backward candidates from forward communities. The Board makes appointments to the post of Santhies in its temples from the list prepared by the Kerala Devaswom Recruitment Board. Such appointments are made in accordance with the said Act and the Rules.

12. The learned counsel for the petitioners in W.P.(C)No.26003 of 2017 and W.P.(C)Nos.13823, 13834, 14067, 14283 and 14484 of 2021 would contend that the notifications dated 20.07.2017 and 27.05.2021 issued by the Devaswom Commissioner, calling for applications for the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom, for the years 1193ME (2017-18) and 1197ME (2021-22), to the extent of restricting applications from persons, who are

Malayali Brahmins, is in violation of Articles 14, 15 and 16 of the Constitution of India. All persons of the Hindu religion having the other qualifications specified in clauses 2 to 11 of the conditions, which form part of the notifications dated 20.07.2017 and 27.05.2021 are entitled to be considered for appointment as Melsanthies of Sabarimala Devaswom and Malikappuram Devaswoms. After the enactment of the Kerala Devaswom Recruitment Act, 2015 and the framing of the Kerala Devaswom Recruitment Rules, 2015, appointment to all posts in Travancore Devaswom Board, except hereditary posts, shall be made from a select list prepared by the Devaswom Recruitment Board. Since the posts of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom are not hereditary posts, going by the provisions under Section 2(e) of the Kerala Devaswom Recruitment Act, appointments to those posts can only be made from a select list prepared by the Devaswom Recruitment Board. The learned counsel would contend that the order of the Apex in Civil Appeal Nos.2570-71 of 2003 does not bind the petitioners, since it is a compromise judgment. Similarly, the orders of this Court formulating the guidelines for the appointment of Melsanthies of Sabarimala Devaswom and Malikappuram

Devaswom do not contain any adjudication and hence those orders do not constitute *res judicata*.

12.1. The learned counsel for the petitioners in W.P.(C)No.14136 of 2021 would contend that the notification dated 27.05.2021 issued by the Devaswom Commissioner, calling for applications for the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom, for the year 1197ME (2021-22), to the extent of restricting applications from persons, who are Malayali Brahmins, is in violation of Articles 14, 15 and 16 of the Constitution of India. The posts of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom are not hereditary posts, going by the provisions under Section 2(e) of the Kerala Devaswom Recruitment Act. Therefore, in view of the provisions under Section 3 of the said Act, appointments to those posts can only be made from a select list prepared by the Devaswom Recruitment Board. The orders of this Court framing guidelines for appointment to the post of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom or the compromise order of the Apex in Civil Appeal Nos.2570-71 of 2003 does not bind the petitioners. Neither the guidelines nor the terms and settlement can be made applicable in the appointment to the

post of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom after the enactment of the Kerala Devaswom Recruitment Act, 2015 and the framing of the Kerala Devaswom Recruitment Rules, 2015. The learned counsel would also contend that clause 1 of the notification dated 27.05.2021 cannot be sustained, in view of the law laid down by the Apex Court in **Adithyan [(2002) 8 SCC 106]**.

12.2. The learned Standing Counsel for Travancore Devaswom Board, the learned Senior Government Pleader for the State and the learned counsel for the additional 4th respondent in W.P.(C)No.14484 of 2021 would contend that once the constitution of the selection committee and the guidelines for the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom is approved by this Court and the Apex Court, the petitioner cannot challenge the selection process in terms of that guidelines and the terms of settlement before this Court. The learned counsel for the additional 10th respondent in W.P.(C)No.14484 of 2021 would contend that the selection process for the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom, in terms of the long-standing religious practice received judicial recognition by the aforesaid orders of the

Apex Court and this Court. Such religious practice cannot be interfered with, which has to remain as such. The learned counsel would submit that the law laid down by the Apex Court in **Adithyan [(2002) 8 SCC 106]** is not available in aid of the petitioners.

13. In **Mohandas Embranthiri v. Travancore Devaswom Board [2001 (1) KLT 203]**, in the context of selection of Melsanthi of Sabarimala Sree Dharma Sastha Temple, a Division Bench of this Court held that the Travancore Devaswom Board, being a State under Article 12 of the Constitution of India, cannot choose any person as Melsanthi without any guidelines. Every year, the choosing of Melsanthi has to be done only after proper selection. The Division Bench noticed that the notification issued by the Travancore Devaswom Board inviting applications for the selection of Melsanthi of Sabarimala Sree Dharma Sastha Temple, for one year from the 1st of Vrischikam to 31st Thulam, 1176, mentions the basic qualifications necessary for being selected and that, those who have got basic qualifications will be interviewed by the Committee, which will include the Tantri. The purpose of the interview is to get the best person for the appointment as Melsanthi at Sabarimala Temple.

14. This Court, in the judgment dated 10.11.2000 in O.P. No.28670 of 2000 directed the Travancore Devaswom Board to frame guidelines with respect to the selection of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom as well as for constitution of a committee for the selection, which should only consist of experts in the field. Subsequently, the members of the Thazhamon Illam, who have the hereditary right to perform the duties of Thanthri at Sabarimala Temple, filed O.P.No.26374 of 2001 before this Court challenging the constitution of the selection committee for the selection of Melsanthi and the guidelines framed by the Board. By Ext.R1(a) judgment dated 19.09.2001, this Court disposed of O.P.No.26374 of 2001, observing that the guidelines that were produced before the Court be treated as one for that year alone and that for the subsequent years, a fresh guideline would have to be framed, after issuing a revised questionnaire with due publicity.

14.1. The Board filed R.P.No.94 of 2002 in O.P. No.28670 of 2000, seeking to review the observations contained in the last paragraph of Ext.R1(a) judgment, which directed it to frame fresh guidelines and further directed that the selection committee should only consist of experts in the field. This Court, while

disposing of R.P.No.94 of 2002 by Ext.R1(b) order dated 03.04.2002, observed that there was nothing wrong in the members of the Board being part of the selection committee but that they should ask only general questions and the maximum marks to be obtained should not exceed 1/3rd of the total marks and that the members should not give marks for the questions asked by the other experts. This Court further observed that the Board could consider the issue as to whether the two Thanthries of Thazhaman Illam should be made members of the selection committee. Similarly, the question as to whether the members of the Pandalam Royal Family should also be made members of the selection committee was left to be considered by the Board. This Court observed further that the selection committee should consist of experts in religious matters.

14.2. In compliance with the directions contained in the judgment in O.P.Nos.28670 of 2000, 26374 of 2001 and R.P. No.94 of 2002, the Board framed Ext.R1(c) guidelines on 26.07.2002 for the selection of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom. The request of the representative of the Pandalam Royal Family to include a representative of their family in the selection committee was rejected by the Board. The

representative of the Pandalam Royal Family approached this Court in O.P.No.19832 of 2002 to quash the decision of the Board rejecting their request for including their representative as well as the guidelines framed by the Board. In Ext.R1(d) judgment dated 14.08.2002, this Court ordered that the selection committee should consist of the President and Members of the Board, three Thanthries, which includes the Thanthri of the Thazhaman Illam for that year and two other Thanthries as well as a Melsanthi, who had performed at Sabarimala 5 years back from the period for which the selection is made. This Court noticed that prescribing minimum qualification of SSLC need not be insisted upon. But, if the Board finds that the total number of applicants is large and it will be difficult to interview all the applicants, then the Board needs to invite for interview only persons having SSLC qualifications.

14.3. By Ext.R1(d) judgment dated 14.08.2002 in O.P.No.19832 of 2002, this Court constituted the selection committee for the selection of Melsanthi for the year 1178ME. This Court considered the guidelines framed by the Board and approved condition No.1 therein, by observing in the judgment as follows; "Regarding the other conditions, we make it clear that Santhikkars belonging to Malayala Brahmins hailing from Kerala

will be eligible for appointment". Paragraph 8 of Ext.R1(d) judgment dated 14.08.2002 in O.P. No.19832 of 2002 reads thus;

> "8. So far as the question of the inclusion of Pandalam Raja is concerned, it is true that the Pandalam Royal family is closely associated with Sabarimala Sree Dharmasastha Temple. But we don't think, any member of the family should be included in the selection committee. Regarding the other conditions, we make it clear that Santhikkars belonging to Malayala Brahmins hailing from Kerala will be eligible for appointment. So far as the basic qualification is concerned, the condition prescribes SSLC as basic qualification and 10 years of continuous service as Santhi in any of the important temples in Kerala. According to us, the basic qualification SSLC may not be insisted. All Santhis who have continuous service of 10 years in any temple in Kerala where pooja is performed daily, will be eligible to apply. But, if the Board finds that the total number of applicants is large and will be very difficult to interview all those persons, then the Board need to invite for interview persons having only SSLC qualifications." (underline supplied)

14.4. The then Head of Thazhaman Illam approached the Apex Court challenging Ext.R1(d) Judgment in O.P.No.19832 of 2002, by filing SLP(C)No.17644 of 2002. The Apex Court, by an interim order dated 16.09.2002, stayed the operation of Ext.R1(d) Judgment in O.P.No.19832 of 2002. On account of the order of stay, the selection committee as mentioned in the guidelines framed by the Board prior to that, i.e., 2 members of the

Thazhaman Illam along with the President and Members of the Board, had to conduct the selection.

14.5. The learned Ombudsman for Travancore and Cochin Devaswom Boards submitted Ext.R1(e) Report No.67 in O.P.No.3821 of 1990, wherein an order was sought for to direct the Board to follow the recommendations in the report of Hon'ble Mr.Justice Paripoornan Commission in the matter of selection of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom, by including such persons as referred to by the Commission in the interview board, as contained in paragraph 13 of the report of the Commission.

14.6. This Court, after considering Ext.R1(e) report, passed Ext.R1(f) order dated 03.10.2008 in Report No.67 in O.P.No.3821 of 1990, whereby certain changes were ordered to be made in respect of the selection committee, in terms with the recommendations in the report of Justice Paripoornan Commission. This Court appointed Hon'ble Mr.Justice K. Padmanabhan Nair (Retd.) as an Observer for the selection to be held in 2008 for appointing Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom. The Observer submitted an interim report and final report after the selection in 2008.

14.7. This Court, after considering all aspects, passed Ext.R1(g) order dated 24.06.2009 in Report No.67 in O.P.No.3821 of 1990, whereby the Board was directed to incorporate certain additional clauses in the guidelines to be followed in the matter of selection of Melsanthi in Sabarimala Devaswom and Malikappuram Devaswom. The guidelines framed as Annexure C stand modified as stated in paragraph 36 of Ext.R1(g) order. Those modifications are in respect of clauses 4, 10, 11 and 14 of the guidelines. The Division Bench directed the Board to prescribe a format for submitting the application. In paragraph 38 of Ext.R1(g) order dated 24.06.2009, the Division Bench made it clear that the revised guidelines prepared and adopted in accordance with the directions contained in that order will be in force till appropriate statutory rules are framed by the Board.

14.8. The Apex Court, while considering Civil Appeal Nos.2570-71 of 2003, arising out of SLP(C)No.17644 of 2002 and connected matter, which was in respect of the constitution of the selection committee for the selection of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom, referred the issues to Hon'ble Mr. Justice K.T. Thomas, to resolve through mediation. The issue was settled through mediation. Accordingly, by Ext.R1(h)

order dated 06.09.2011, the Apex Court disposed of Civil Appeal Nos.2570-71 of 2003 in terms of the settlement arrived between the parties. The Apex Court recorded the report with erratum note, and the terms of settlement arrived at between the parties, which was annexed with that report. Ext.R1(d) judgment dated 14.08.2002 in O.P.No.19832 of 2002 was modified accordingly. The terms of the settlement, which form part of Ext.R2(h) order of the Apex Court dated 06.09.2011, deal with the composition of the selection committee, the preparation of a select list of the candidates after the interview and the final choice of the candidate by draw of lots, in the manner specified in the terms of settlement, for appointing Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom.

15. In **Krishnan Namboothiri S. v. Travancore Devaswom Board and others [2015 (5) KHC 829]**, in the context of selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple, a Division Bench of this Court held that, selection to the post of Melsanthi cannot be treated as a selection merely for public employment and the canvas in which grounds relating to Articles 14, 16, etc., of the Constitution of India would be etched, will not necessarily be

carried, as a whole, into such matters. The scheme of the settlement and purpose of the selection to provide Melsanthies of Sabarimala Sannidhanam and Malikappuram temples have to be borne in mind and cohesively treated while assimilating and applying the terms of the settlement. The Division Bench, though declined interference with the selection process, indicated before parting with the case that, once the terms of mediation settlement came to be in operation, the guarantee to the pilgrims, believers, worshippers and faithful followers is that the selection process once carried through the system of the terms of that settlement will give them two persons who will occupy the adorable status of being the Melsanthies of Sabarimala Sannidhanam and Malikappuram temples.

15.1 In **Rajesh J. Potty v. Travancore Devaswom Board [2018 (5) KHC 220]** a Division Bench of this Court noticed that the prescriptions stipulated in the notification for selection of Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple are not to discriminate among persons; but solely to ensure that only a person with the stature and experience behooving the sanctity and divinity of Sabarimala, which is one of the most or perhaps the most prominent temples in the country,

is identified and appointed. On the prescription of the qualifications mentioned in the notification, the Division Bench held that the attempt of the Travancore Devaswom Board should always be to find the best among the Santhis so that he will be able to perform as a 'Purappada Santhi' of Sabarimala Temple for a continuous period of one year. His devotion, his competence, his experience and his devoutness are all imperatively relevant criteria, which will require to be specifically and pointedly examined and assessed by the competent authorities; and in order to find the person most suitable for the post, the prescription that he should have served as a Melsanthi for a continuous period of 10 years in the 12 years period of experience as a Santhi cannot be found to be perverse in any manner.

15.2. In **N. Unnikrishnan Namboodiri v. Travancore Devaswom Board and others [2022 (5) KHC 467]** a Division Bench of this Court, in which both of us were parties, was dealing with a case in which the writ petitioner sought for a declaration that the condition prescribed in the norms attached to the notification dated 06.07.2022 issued by the Devaswom Commissioner, Travancore Devaswom Board, for being selected as the Melsanthi of Sabarimala Devaswom and Malikappuram

Devaswom, for the year 1198ME (2022-23), that the age of the applicants for selection to the post of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom shall not exceed 60 years as on the date of completion of the term of the appointment, i.e., as on 30th Thulam 1198ME, is unreasonable and such condition is not in accordance with the qualification prescribed in that notification. The Division Bench noticed that the Melsanthies of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple are 'Purappada Santhies', who are not allowed to leave Sannidhanam, on the closure of the shrine after the festivals or monthly pooja, till the completion of their tenure. They are selected for one year. As per the notification dated 06.07.2022 issued by the Devaswom Commissioner, Travancore Devaswom Board, for being selected as the Melsanthi of Sabarimala Devaswom and Malikappuram Devaswom, for the year 1198 ME (2022-23), as on 1st Chingam, 1198ME, the applicants shall be aged between 35 years and 60 years. The Division Bench held that the condition prescribed in the norms attached to the notification dated 06.07.2022 that the age of the applicants for selection to the post of Melsanthiies of Sabarimala Devaswom and Malikappuram Devaswom shall not exceed 60 years as on the date

of completion of the term of the appointment, i.e., as on 30th Thulam 1198ME, is made since they are 'Purappada Santhies'. In that view of the matter, the Division Bench found no reason to interfere with the aforesaid clause in the norms attached to the notification dated 06.07.2022.

16. As already noticed hereinbefore, in W.P.(C)No.26003 of 2017, the petitioner is seeking a writ of certiorari to quash notification dated 20.07.2017 issued by the Devaswom Commissioner, calling for applications for the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom, for the year 1193ME (2017-18), to the extent of restricting applications from persons, who are Malayali Brahmins, to the post of Melsanthies in those Devaswoms under the Travancore Devaswom Board. The petitioners have also sought for a declaration that all persons of Hindu religion having the other qualifications specified in clauses 2 to 11 of the conditions, which form part of the notification dated 20.07.2017, are entitled to be appointed as Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom under the Travancore Devaswom Board. In W.P.(C)Nos.13823, 13834, 14067, 14283 and 14484 of 2021, the petitioners have sought for similar reliefs in respect of

notification dated 27.05.2021 issued by the Devaswom Commissioner, calling for applications for the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom, for the year 1197ME (2021-22).

17. Similarly, in W.P.(C)No.14136 of 2021, the petitioners are seeking a writ of certiorari to quash notification dated 27.05.2021 issued by the Devaswom Commissioner for the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom for the year 1197ME (2021-22), to the extent it restricts applications only from Malayali Brahmins. The petitioners have also sought for a declaration that the stipulation in the notification to the extent it prescribes that persons who are Malayali Brahmins alone are entitled to apply for the post of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom is violative of Articles 14, 15(1) and 16(2) of the Constitution of India; a writ of certiorari to quash communications dated 14.07.2021 issued by the Devaswom Commissioner, since those communications are issued in violation of Articles 14, 15 and 16 of the Constitution of India; and a writ of mandamus commanding the Travancore Devaswom Board and the Devaswom Commissioner to issue a fresh notification inviting applications to

the post of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom, by deleting the condition that only Malayali Brahmins are entitled to apply to that post.

18. In **Bharat Singh v. State of Haryana [(1988) 4 SCC 534]** the Apex Court held that, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the Court will not entertain the point. Further, there is a distinction between a pleading under the Code of Civil Procedure Code, 1908 and a writ petition or a counter affidavit. While in a pleading, i.e., a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

18.1. In **Larsen and Toubro Ltd. v. State of Gujarat [(1998) 4 SCC 387]** the Apex Court was dealing with a case arising out of the proceedings initiated for the acquisition of land

for M/s. Larsen and Toubro Ltd. under the provisions of the Land Acquisition Act, 1894. The Apex Court noticed that in the absence of any allegation that Rule 3 of the Land Acquisition (Companies) Rules, 1963 had not been complied with and there being no particulars in respect of non-compliance of Rule 4, it is difficult to see as to how the High Court could have reached the finding that statutory requirements contained in these Rules were not fulfilled before issuance of notification under Section 4 and declaration under Section 6 of the Land Acquisition Act. High Court did not give any reason as to how it reached the conclusion that Rules 3 and 4 had not been complied with in the face of the record of the case. Rather, it returned a finding which is unsustainable that it was "not possible on the basis of the material on record to hold that there was compliance with Rules 3 and 4". The Apex Court held that it is not enough to allege that a particular Rule or any provision has not been complied with. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non-compliance with a statutory requirement. Ordinarily, no notice can be taken on such an allegation which is devoid of any particulars. No issue can be raised on a plea, the foundation of which is lacking. Even where *rule nisi* is issued, it is not always

for the department to justify its action when the court finds that a plea has been advanced without any substance, though ordinarily department may have to place its full cards before the court. On the facts of the case, the Apex Court found that the State has more than justified its stand that there has been compliance not only with Rule 4 but with Rule 3 as well, though there was no challenge to Rule 3 and the averments regarding non-compliance with Rule 4 were sketchy and without any particulars whatsoever. High Court was, therefore, not right in quashing the acquisition proceedings.

18.2. In **Narmada Bachao Andolan v. State of Madhya Pradesh [(2011) 7 SCC 639]** a Three-Judge Bench of the Apex Court held that it is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the pleas. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned about the questions in issue, so that the parties may adduce appropriate

evidence on the said issue. It is a settled legal proposition that as a rule relief not founded on the pleadings should not be granted. Therefore, a decision in a case cannot be based on grounds outside the pleadings of the parties. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice.

19. Though the learned counsel for the petitioners in W.P.(C)No.26003 of 2017 and W.P.(C)Nos.13823, 13834, 14067, 14283 and 14484 of 2021 and the learned counsel for the petitioners in W.P.(C)No.14136 of 2021 raised various contentions regarding the illegality of the selection process for the appointment of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom, in terms of the eligibility criteria prescribed in the notifications dated 20.07.2017 and 27.05.2021 issued by the Devaswom Commissioner, for the appointment of

Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom for the year 1193ME (2017-18) and 1197ME (2021-22), based on the orders of this Court formulating the guidelines and the order of the Apex Court approving the terms of settlement, we notice total lack of pleadings on that aspect in the statement of facts and grounds of the writ petitions.

19.1. The common challenge made in the writ petitions is confined to clause 1 of the conditions, which forms part of the notifications to the extent of restricting applications from persons, who are Malayali Brahmins to the post of Melsanthies in those Devaswoms under the Travancore Devaswom Board. The common case of the petitioners is that all persons of Hindu religion having the other qualifications specified in clauses 2 to 11 of the conditions, which form part of the said notifications, are eligible to be appointed as Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom.

19.2. The grounds raised by the petitioners during the course of arguments, challenging the selection process for the appointment of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom, in terms of the eligibility criteria prescribed in the notifications dated 20.07.2017 and 27.05.2021,

based on the orders of this Court formulating the guidelines and the order of the Apex Court in Civil Appeal No.2570-71 of 2003 approving the terms of the settlement, which are outside the pleadings in the writ petitions, cannot be entertained by this Court, due to total lack of pleadings, especially when the common challenge made in the writ petitions is confined to clause 1 of the conditions, which forms part of those notifications, to the extent of restricting applications from persons, who are Malayali Brahmins to the post of Melsanthies in those Devaswoms.

20. The learned counsel for the petitioners in W.P.(C)No.26003 of 2017 and W.P.(C)Nos.13823, 13834, 14067, 14283 and 14484 of 2021 and the learned counsel for the petitioners in W.P.(C)No.14136 of 2021 would contend that, after the enactment of the Kerala Devaswom Recruitment Act, 2015 and the framing of the Kerala Devaswom Recruitment Rules, 2015, neither the guidelines formulated by the orders of this Court nor the terms and settlement approved by the Apex Court can be made applicable in the appointment to the post of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom.

20.1. It is not in dispute that after the enactment of the Kerala Devaswom Recruitment Board Act, 2015 and framing of the

Kerala Devaswom Recruitment Board Rules, 2015, the Travancore Devaswom Board makes appointments to the post of Santhies in its temples from the list prepared by the Kerala Devaswom Recruitment Board. As per the said Rules, in all cases of direct recruitment, subject to the provisions of sub-section (3) of section 6 of the Act, the rules of reservation and rotation as provided in Rules 14 to 17 Part II of the Kerala State and Subordinate Service Rules, 1958 shall *mutatis mutandis* apply. Appointments shall be made in the order of rotation as specified in the Annexure to these rules in every cycle of 100 vacancies, and out of every 100 appointments, 50 shall be from open competition and 50 shall be reserved for Hindu communities, including economically backward candidates from forward communities.

20.2. The common contention of the Travancore Devaswom Board and the party respondents is that the selection and appointment of Melsanthies in Sabarimala Devaswom (Sabarimala Sree Dharma Sastha Temple) and Malikappuram Devaswom (Malikappuram Temple) are not the same as the appointment of Santhi in other temples under the management of the Board. The norms of selection of Melsanthies are made considering the specialised form of worship peculiar to the custom, rituals and

practice of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple. Both Melsanthies are 'Purappeda Santhies', who have to remain at Sannidhanam for the full tenure of one year, starting from the 1st of Vrischikam to 31st of Thulam next year. The selection has to be completed before the 1st of Thulam of each year. The age limit for applying for appointment as Melsanthi in the above Devaswoms is 35 to 60 years. The Melsanthies are selected from Malayala Brahmins as per the custom and rituals of the temple followed from time immemorial, in terms of the Agamas of the temple.

20.3. As already noticed hereinbefore, as per clause (1) of Chapter IV of Travancore Devaswom Manual Volume II (Office Manual) the Tantries are responsible for the proper conduct of the Pooja and other religious ceremonies in the temple in accordance with the Sasthras. In none of these writ petitions the Tantri of Sabarimala Sree Dharma Sastha Temple and Malikappuram Temple is made a party.

20.4. Section 35 of the Travancore-Cochin Hindu Religious Institutions Act deals with the rule-making power of the Travancore Devaswom Board. As per sub-section (1) of Section 35, the Board may make rules to carry out all or any of the

purposes of the Act not inconsistent therewith. In view of the provisions under clause (e) of sub-section (2) of Section 35, the Board shall have the power to make rules with reference to the method of recruitment and qualifications, the grant of salaries and allowances, the discipline and conduct of officers and servants of the Board and the Devaswom Department and generally the conditions of their service. In the writ petitions, the petitioners have no case that the Travancore Devaswom Board has framed any statutory rules for the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom, in the exercise of its rule-making powers under Section 35(2)(e) of the Act.

20.5. During the pendency of these writ petitions, in the exercise of the rule-making powers under Section 35(2)(e) of the Act, the Travancore Devaswom Board made the Travancore Devaswom Board Officers' and Servants' Service Rules, 2022, which provides for direct recruitment to the post of Part-time Santhi and promotion to the post of Santhi. The Service Rules of 2022 do not deal with the appointment of Melsanthies in Sabarimala Devaswom and Malikappuram Devaswom, who are

'Purappeda Santhies', for a tenure of one year, starting from the 1st of Vrischikam to 31st of Thulam next year.

20.6. In paragraph 38 of Ext.R2(g) order dated 24.06.2009 in Report No.67 in O.P.No.3821 of 1990, the Division Bench made it clear that the revised guidelines prepared and adopted in accordance with the directions contained in that order will be in force till appropriate statutory rules are framed by the Board. Therefore, till statutory rules are framed by the Travancore Devaswom Board in the exercise of the rule-making powers under Section 35(2)(e) of the Act, in the matter of the appointment of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom, the guidelines formulated by the orders of this Court and the terms of settlement approved by the Apex Court shall govern the field.

20.7. In the absence of a rule framed by the Travancore Devaswom Board, in the exercise of the rule-making power under Section 35(2)(e) of the Act, in the matter of the appointment of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom, the petitioners cannot contend that since the posts of Melsanthies of those Devaswoms are not 'hereditary posts', going by the provisions under Section 2(e) of the Kerala Devaswom

Recruitment Act, appointment to those posts can be made only from a select list prepared by the Kerala Devaswom Recruitment Board. We notice that the exercise of the rule-making power under Section 35(2)(e) of the Act by the Travancore Devaswom Board will certainly be subject to the provisions under the Act, which casts a statutory duty on the Board to administer Sabarimala Devaswom and Malikappuram Devaswom in accordance with recognised usages and to see that the regular traditional rites and ceremonies, according to the practice prevalent in those Devaswoms, are performed promptly.

21. The learned counsel for the petitioners in W.P.(C)No.26003 of 2017 and W.P.(C)Nos.13823, 13834, 14067, 14283 and 14484 of 2021 and the learned counsel for the petitioners in W.P.(C)No.14136 of 2021 would contend that clause 1 of the conditions, which form part of the notifications dated 20.07.2017 and 27.05.2021 issued by the Devaswom Commissioner for the appointment of Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom for the year 1193ME (2017-18) and 1197ME (2021-22), to the extent it restricts applications only from Malayali Brahmins, is violative of Articles 14, 15(1) and 16(2) of the Constitution of India and the law laid

down by a Two-Judge Bench of the Apex Court in **Adithyan [(2002) 8 SCC 106]**, taking note of the law laid down by a Constitution Bench in **Seshammal [(1972) 2 SCC 11]**.

22. The learned Standing Counsel for the Travancore Devaswom Board, the learned Senior Government Pleader for the State and the learned counsel for the additional 4th respondent, the learned counsel for additional respondents 5 to 9 and the learned counsel for the additional 10th respondent in W.P.(C)No.14484 of 2021 would contend that the law laid down in **Seshammal [(1971) 2 SCC 11]** and that laid down in **Adithyan [(2002) 8 SCC 106]** do not in any manner support the case of the petitioners.

23. The learned Amicus Curiae and also the learned counsel for the party respondents would point out that the question regarding the interplay between freedom of religion under Articles 25 and 26 of the Constitution of India and the provisions in Part III, particularly Article 14, and connected issues have been referred to a Larger Bench of the Apex Court in **Kantaru Rajeevaru (Sabarimala Temple Review-5 J.) v. Indian Young Lawyers Association [(2020) 2 SCC 1]**, in the review petitions arising out of the judgment of the Constitution

Bench in **Indian Young Lawyers Association v. State of Kerala [(2019) 11 SCC 1]**.

24. In **Kantaru Rajeevaru (Right to Religion, In re-9 J.) v. Indian Young Lawyers Association [(2020) 3 SCC 52]** the Larger Bench reframed the issues as follows;

> "(1) What is the scope and ambit of right to freedom of religion under Article 25 of the Constitution of India?
> (2) What is the interplay between the rights of persons under Article 25 of the Constitution of India and rights of religious denomination under Article 26 of the Constitution of India?
> (3) Whether the rights of a religious denomination under Article 26 of the Constitution of India are subject to other provisions of Part III of the Constitution of India apart from public order, morality and health?
> (4) What is the scope and extent of the word "morality" under Articles 25 and 26 of the Constitution of India and whether it is meant to include constitutional morality?
> (5) What is the scope and extent of judicial review with regard to a religious practice as referred to in Article 25 of the Constitution of India?
> (6) What is the meaning of the expression "sections of Hindus" occurring in Article 25(2)(b) of the Constitution of India?
> (7) Whether a person not belonging to a religious denomination or religious group can question a practice of that religious denomination or religious group by filing a PIL?"

25. In **Kantaru Rajeevaru (Right to Religion, In re-9 J.) (2) v. Indian Young Lawyers Association [(2020) 9 SCC 121]** the Larger Bench gave reasons in support of the reference order in **Kantaru Rajeevaru (Right to Religion, In re-9 J.) [(2020) 3 SCC 52]**.

26. Article 25 of the Constitution of India deals with the right to freedom of religion and Article 26 deals with the freedom to manage religious affairs. Articles 25 and 26 read thus;

> Right to Freedom of Religion
>
> 25. Freedom of conscience and free profession, practice and propagation of religion.- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
>
> (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -
>
> (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
>
> (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
>
> Explanation I. - The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.
>
> Explanation II. - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist

religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.- Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

27. In **Seshammal v. State of Tamil Nadu [(1972) 2 SCC 11]** the Constitution Bench (Five Judge Bench) of the Apex Court was dealing with the writ petitions filed under Article 32 of the Constitution of Inda, by the hereditary Archakas and Mathadhipatis of certain ancient Hindu public temples in State of Tamil Nadu, which are Saivite and Vaishnavite temples, challenging the validity of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1970, principally on the ground that it violates their right to freedom of religion secured under Articles 25 and 26 of the Constitution of India. Though the validity of the Amendment Act, 1970 had also been impugned on the ground that it interfered with certain other fundamental rights of the petitioners, that case was not pressed at the time of the

hearing. The State Legislature enacted the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which came into force on 02.12.1959. The provisions of the Principal Act of 1959 applied to all Hindu public religious institutions and endowments, including incorporated and unincorporated Devaswoms in the State of Tamil Nadu. The Principal Act of 1959 repealed several Acts, which previously governed the administration of Hindu public religious institutions. Section 55 of that Act provided for the appointment of office-holders and servants in religious institutions and Section 56 provided for the punishment of office-holders and servants in religious institutions.

27.1. Section 55 of the Act gave power to the trustee of the temple to appoint the office-holders and servants of the temple and provided that where the office or service is hereditary, the person 'next in the line' of succession shall be entitled to succeed. In only exceptional cases the trustee was entitled to depart from the principle of 'next in the line' of succession, but even so, the trustee was under an obligation to appoint a fit person to perform the functions of the office or perform the service, after having due regard to the claims of the members of the family.

27.2. Section 106 of the Act deals with the removal of discrimination in the matter of distribution of Prasadam or Theertham, which provides that, notwithstanding anything in this Act or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law or in any other law or in any decree of court, there shall be no discrimination in the distribution of any Prasadam or Theertham in any religious institution on grounds only of caste, sex, place of birth or any of them. Section 107 of the Act emphasised that nothing contained in the Act shall, save as otherwise provided in Section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution. In Seshammal [(1972) 2 SCC 11], before the Constitution Bench, it was conceded that the Act, as a whole, did not interfere with the religious usages and practices of the temples. [Para.5 @ Page 15 of SCC]

27.3. Section 116 of the Act deals with the power of the Government to make Rules. As per clause (xxiii) of sub-section (2) of Section 116 of the Act, it was open to the Government to make rules providing for the qualifications to be possessed by the

officers and servants for appointment to non-hereditary offices in religious institutions, the qualifications to be possessed by hereditary servants for succession to office and the conditions of service of all such officers and servants.

27.4. In the exercise of the rule-making power under clause (xxiii) of sub-section (2) of Section 116 of the Act, the Government made the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. Under the Rules, an Archak or Pujari of the deity came under the definition of 'Ulthurai servant', which is defined as a servant whose duties relate mainly to the performance of rendering assistance in the performance of pujas, rituals and other services to the deity, the recitation of mantras, vedas, prabandams, thevarams and similar invocations and the performance of duties connected with such performance of recitation. Rule 12 provided that every 'Ulthurai servant', whether hereditary or non-hereditary, whose duty is to perform pujas and recite mantras, vedas, prabandams, thevarams and other invocations shall, before succeeding or appointment to an office, obtain a certificate of fitness for performing his office, from the head of an institution imparting instructions in Agamas and ritualistic matters and recognised by the Commissioner, by general

or special order, or from the head of a math recognised by the Commissioner, by general or special order, or such other person as may be designated by the Commissioner, from time to time, for the purpose. By Rule 12, proper worship in the temple was secured, whether the Archaka or Pujari was a hereditary Archaka or Pujari or not. The Principal Act of 1959 was amended in certain respects by the Amendment Act of 1970, which came into force on 08.01.1971. Amendments were made to Sections 55, 56 and 116 of the Principal Act of 1950 and some consequential provisions were made in view of those amendments.

27.5. The Constitution Bench noticed in Seshammal [(1972) 2 SCC 11] that the Amendment Act of 1970 was enacted as a step towards social reform on the recommendation of the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes, as stated in the statement of objects and reasons, which were reiterated in the counter affidavit filed by the State of Tamil Nadu. [Para.6 @ Page 15 of SCC] The statement of objects and reasons of the Amendment Act of 1970, which was reiterated in the counter affidavit filed by the State of Tamil Nadu, read thus;

> "In the year 1969, the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes has suggested in its report that the hereditary priesthood in the Hindu Society should be abolished, that the system can be replaced by an ecclesiastical organisation of men possessing the requisite educational qualifications who may be trained in recognised institutions in priesthood and that the line should be open to all candidates irrespective of caste, creed or race. In Tamil Nadu Archakas, Gurukkals and Poojaries are all 'Ulthurai servants' in Hindu temples. The duties of 'Ulthurai servants' relate mainly to the performance of poojas rituals and other services to the deity, the recitation of mantras, vedas, prabandas, thevarams and similar invocations and the performance of duties connected with such performances and recitations. Sections 55 and 56 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 provide for appointment of office-holders and servants in the religious institutions by the trustees by applying the rule of hereditary succession also. As a step towards social reform Hindu temples have already been thrown open to all Hindus irrespective of caste. ……" (underline supplied)

In the light of the recommendations of the Committee and in view of the decision of the Constitution Bench in **Gazula Dasaratha Rama Rao v. State of Andhra Pradesh [AIR 1961 SC 564]** and also as a further step towards social reform, the Government considered that the hereditary principle of appointment of all office-holders in Hindu temples should be abolished and

accordingly it proposed to amend Sections 55, 56 and 116 of the Principal Act of 1959.

27.6. In Seshammal [(1972) 2 SCC 11], before the Constitution Bench, the petitioners contended that by purporting to introduce social reform in the matter of appointment of Archakas and Pujaris, the State has really interfered with the religious practices of Saivite and Vaishnavite temples, and instead of introducing social reform, taken measures which would inevitably lead to defilement and desecration of the temples. To appreciate the effect of the Amendment Act of 1970, the Constitution Bench quoted [Para.9 @ Page 16 of SCC] the original Sections 55, 56 and 116 of the Principal Act and the same sections as they stand after the amendment. The Constitution Bench noticed that the Amendment Act of 1970 does away with the hereditary right of succession to the office of Archaka, even if the Archaka was qualified under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964.

27.7. In Seshammal [(1972) 2 SCC 11], before the Constitution Bench, the petitioners contended that, as a result of the Amendment Act of 1970, their fundamental rights under Article 25(1) and Article 26(b) of the Constitution of India are

violated. According to the petitioners, the effect of the amendment was as follows;

> "(a) The freedom of hereditary succession to the office of Archaka is abolished although succession to it is an essential and integral part of the faith of the Saivite and Vaishnavite worshippers.
>
> (b) It is left to the Government in power to prescribe or not to prescribe such qualifications as they may choose to adopt for applicants to this religious office, while the Act itself gives no indication whatever of the principles on which the qualifications should be based. The statement of objects and reasons which is adopted in the counter-affidavit on behalf of the State makes it clear that not only the scope but the object of the Amendment Act is to override the exclusive right of the denomination to manage their own affairs in the matter of religion by appointing Archakas belonging to a specific denomination for the purpose of worship.
>
> (c) The Amendment Act gives the right of appointment for the first time to the trustee who is under the control of the Government under the provisions of the Principal Act and this is the very negation of freedom of religion and the principle of non-interference by the State as regards the practice of religion and the right of a denomination to manage its own affairs in the matter of religion."
>
> (underline supplied)

27.8. In Seshammal [(1972) 2 SCC 11], [Para.11 @ Pages 18 to 20 of SCC] the Constitution Bench referred to certain concepts of Hindu religious faith and practices to understand and

appreciate the position in law. The Apex Court noticed that the authority of 'Agamas', which are treatises on rituals, is recognised in several decided cases. In the decision of the Constitution Bench in **Sri Venkataramana Devaru v. State of Mysore [1958 SCR 895 : AIR 1958 SC 255]** 'Agamas' are described as treatises of ceremonial law dealing with such matters as the construction of temples, installation of idols therein and conduct of the worship of the deity. Where the temple was constructed as per directions of the 'Agamas' the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting of mantras and devotional songs appropriate to the deity. On the consecration of the image in the temple, the Hindu worshippers believe that the Divine Spirit has descended into the image and from then on the image of the deity is fit to be worshipped. Rules with regard to daily and periodical worship have been laid down for securing the continuance of the Divine Spirit. The rituals have a two-fold object. One is to attract the lay worshipper to participate in the worship carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in the worship a particular attitude of aspiration and devotion is developed and confers great spiritual benefit. The second object

is to preserve the image from pollution, defilement or desecration. It is part of the religious belief of a Hindu worshipper that when the image is polluted or defiled the Divine Spirit in the image diminishes or even vanishes. That is a situation which every devotee or worshipper looks upon with horror. Pollution or defilement may take place in a variety of ways. According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship. In fact, purificatory ceremonies have to be performed for restoring the sanctity of the shrine [1958 SCR 895 (910)]. Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu religious faith and cannot be dismissed as either irrational or superstitious. The Apex Court noticed that the idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the image which must be avoided at all costs. That is also the rationale for preserving the sanctity of the Garbhagriha or the sanctum sanctorum. In all these temples in which the images are consecrated, the 'Agamas' insist that only the qualified Archaka or Pujari shall step inside the sanctum sanctorum and that too after

observing the daily disciplines which are imposed upon him by the 'Agamas'. As an Archaka he has to touch the image in the course of the worship and it is his sole right and duty to touch it. The touch of anybody else would defile it. Thus under the ceremonial law pertaining to temples even the question as to who is to enter the Garbhagriha or the sanctum sanctorum and who is not entitled to enter it and who can worship and from which place in the temple are all matters of religion as shown in the above decision of the Apex Court. Paragraph 11 of the decision in Seshammal [(1972) 2 SCC 11] read thus;

> "11. Before we turn to these questions, it will be necessary to refer to certain concepts of Hindu religious faith and practices to understand and appreciate the position in law. The temples with which we are concerned are public religious institutions established in olden times. Some of them are Saivite temples and the others are Vaishnavite temples, which means that in these temples, God Shiva and Vishnu in their several manifestations are worshipped. The image of Shiva is worshipped by his worshippers, who are called Saivites, and the image of Vishnu is worshipped by his worshippers, who are known as Vaishnavites. The institution of temple worship has an ancient history and according to Dr. Kane, temples of deities existed even in the 4th or 5th century B.C. [See: History of Dharmasastra Vol. II, Part II, Page 710]. With the construction of temples, the institution of Archakas also came into existence, the

Archakas being professional men who made their livelihood by attending on the images. Just when the cult of worship of Siva and Vishnu started and developed into two distinct cults is very difficult to say, but there can be no doubt that in the times of the Mahabharata, these cults were separately developed and there was keen rivalry between them to such an extent that the Mahabharata and some of the Puranas endeavoured to inculcate a spirit of synthesis by impressing that there was no difference between the two deities. [See: Page 725 supra] With the establishment of temples and the institution of Archakas, treatises on rituals were compiled and they are known as 'Agamas'. The authority of these 'Agamas' is recognised in several decided cases and by this Court in **Sri Venkataramana Devaru v. State of Mysore [1958 SCR 895 : AIR 1958 SC 255]**. 'Agamas' are described in the last case as treatises of ceremonial law dealing with such matters as the construction of temples, installation of idols therein and conduct of the worship of the deity. There are 28 Agamas relating to the Saiva temples, the most important of them being the Kamikagama, the Karanagama and the Suprabedagama. The Vaishnavas also had their own Agamas. Their principal Agamas were the Vikhanasa and the Pancharatra. The 'Agamas' contain elaborate rules as to how the temple is to be constructed, where the principal deity is to be consecrated, where the other Devatas are to be installed and where the several classes of worshippers are to stand and worship. Where the temple was constructed as per directions of the 'Agamas' the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting

of mantras and devotional songs appropriate to the deity. On the consecration of the image in the temple, the Hindu worshippers believe that the Divine Spirit has descended into the image and from then on the image of the deity is fit to be worshipped. Rules with regard to daily and periodical worship have been laid down for securing the continuance of the Divine Spirit. The rituals have a two-fold object. One is to attract the lay worshipper to participate in the worship carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in the worship a particular attitude of aspiration and devotion is developed and confers great spiritual benefit. The second object is to preserve the image from pollution, defilement or desecration. It is part of the religious belief of a Hindu worshipper that when the image is polluted or defiled the Divine Spirit in the image diminishes or even vanishes. That is a situation which every devotee or worshipper looks upon with horror. Pollution or defilement may take place in a variety of ways. According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship. In fact, purificatory ceremonies have to be performed for restoring the sanctity of the shrine [1958 SCR 895 (910)]. Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu religious faith and cannot be dismissed as either irrational or superstitious. An illustration of the importance attached to minor details of ritual is found in the case of **His Holiness Peria Kovil Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu v.**

Prathivathi Bhavankaram Venkatacharlu [73 IA 156] which went up to the Privy Council. The contest was between two denominations of Vaishnava worshippers of South India, the Vadagalais and Tengalais. The temple was a Vaishnava temple and the controversy between them involved the question as to how the invocation was to begin at the time of worship and which should be the concluding benedictory verses. This gives the measure of the importance attached by the worshippers to certain modes of worship. The idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the image which must be avoided at all costs. That is also the rationale for preserving the sanctity of the Garbhagriha or the sanctum sanctorum. In all these temples in which the images are consecrated, the 'Agamas' insist that only the qualified Archaka or Pujari shall step inside the sanctum sanctorum and that too after observing the daily disciplines which are imposed upon him by the 'Agamas'. As an Archaka he has to touch the image in the course of the worship and it is his sole right and duty to touch it. The touch of anybody else would defile it. Thus under the ceremonial law pertaining to temples even the question as to who is to enter the Garbhagriha or the sanctum sanctorum and who is not entitled to enter it and who can worship and from which place in the temple are all matters of religion as shown in the above decision of this Court."

27.9. In Seshammal [(1972) 2 SCC 11], [Para.12 @ Pages 20 and 21 of SCC] the Constitution Bench noticed that according

to the texts of the Vaikhanasa Shastra (Agama), persons who are the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vaishnavites. They only can touch the idols and perform the ceremonies and rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the Garbha Griha. Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. It is, therefore, manifest that the Archaka of such a temple besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any circumstance, the Archaka undoubtedly occupies an important place in the matter of temple worship. The Constitution Bench noticed that any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorised

by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be prima facie invalid under Article 25(1) of the Constitution. Paragraph 12 of the decision in Seshammal [(1972) 2 SCC 11] read thus;

> "12. The 'Agamas' have also rules with regard to the Archakas. In Saivite temples only a devotee of Siva, and there too, one belonging to a particular denomination or group or sub-group is entitled to be the Archaka. If he is a Saivite, he cannot possibly be an Archaka in a Vaishnavite Agama temple to whatever caste he may belong and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple. Indeed, there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or vice versa. What the 'Agamas' prohibit is his appointment as an Archaka in a temple of a different denomination. Dr.Kane has quoted the Brahmapurana on the topic of Punah-pratistha (Re-consecration of images in temples) at Page 904 of his History of Dharmasastra referred to above. The Brahmapurana says that "when an image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, has ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other deities or is rendered impure by the touch of outcastes and the like - in these ten contingencies, God ceases to indwell therein". The Agamas appear to be more severe in this respect. Shri R.

Parthasarathy Bhattacharya, whose authority on Agama literature is unquestioned, has filed his affidavit in Writ Petition No. 442 of 1971 and stated in his affidavit, with special reference to the Vaikhanasa Sutra to which he belongs, that according to the texts of the Vaikhanasa Shastra (Agama), persons who are the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vaishnavites. They only can touch the idols and perform the ceremonies and rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the Garbha Griha. Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. It is, therefore, manifest that the Archaka of such a temple besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any circumstance, the Archaka undoubtedly occupies an important place in the matter of temple worship. Any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorised by the Agamas would violently interfere with the religious faith and practices of the Hindu

worshipper in a vital respect, and would, therefore, be prima facie invalid under Article 25(1) of the Constitution."

27.10. In Seshammal [(1972) 2 SCC 11] the Apex Court noticed the law laid down by the Constitution Bench in **Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [1962 Supp (2) SCR 496 : AIR 1962 SC 853]**, wherein the position of law has been summarised [at Pages 531 and 532 of SCR] as follows;

"The content of Articles 25 and 26 of the Constitution came up for consideration before this Court in **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Math [1954 SCR 1005]**, **Mahant Jagannath Ramanuj Das v. State of Orissa [1954 SCR 1046 : AIR 1954 SC 282]**, **Sri Venkataramana Devaru v. State of Mysore [1958 SCR 895]**, **Durgah Committee, Ajmer v. Syed Hussain Ali [(1962) 1 SCR 383]** and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief. They extend also to acts done in pursuance of religion and, therefore, contain a guarantee for rituals and observances, ceremonies and modes of worship, which are integral parts of religion. The second is that what constitutes an essential part of a religious or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and

include practices which are regarded by the community as a part of its religion." (underline supplied)

27.11. In Seshammal [(1972) 2 SCC 11], before the Constitution Bench, the writ petitioners pointed out that the innocent-looking amendment brought the State right into the sanctum sanctorum through the agency of the trustee and the Archaka. The result of the amendment would be that any person, whether he is a Saivite or Vaishnavite or not, or whether he is proficient in the rituals appropriate to the temple or not, would be eligible for appointment as an Archaka and the trustee's discretion in appointing the Archaka, without reference to personal and other qualifications of the Archaka, would be unbridled. As held in **Mohan Lalji v. Gordhan Lalji Maharaj [35 All (PC) 283 : 15 Bom. L.R. 606]** where the ritual in a temple cannot be performed except by a person belonging to a denomination, the purpose of worship will be defeated. On the other hand, the learned Advocate General of Tamil Nadu contended that the power given to the trustee under the amended Section 55 was not an unqualified power because that power had to be read in the context of Section 28 which controlled it. Sub-section (1) of Section 28 provides that, subject to the provisions of the Tamil Nadu Temple Entry Authorisation Act, 1947, the trustee of every religious institution

is bound to administer its affairs and to apply its funds and properties in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties if they were his own. The learned Advocate-General argued that the trustee was bound under this provision to administer the affairs of the temple in accordance with the terms of the trust and the usage of the institution. If the usage of the institution is that the Archaka or Pujari of the temple must be of a particular denomination, then the usage would be binding upon him and he would be bound to make the appointment under Section 55 in accordance with the usage of appointing one from the particular denomination. There was nothing in Section 55, which released him from his liability to make the appointment in accordance with the said usage. It was true that the principle of the next-in-line of succession was not binding on him when making the appointment of a new Archaka, but that principle is no part of the usage, the real usage being to appoint one from the denomination. Moreover, the amended Section does not require the trustee to exclude in every case the hereditary principle if a

qualified successor is available and there was no reason why the trustee should not make the appointment of the next heir if found competent. There was no such legal obligation on the trustee under that Section. If the-next-in-line of succession principle is regarded as a usage of any particular temple, it would be merely a secular usage on which legislation was competent under Article 25(2)(a) of the Constitution. If the hereditary principle was regarded as a religious practice, that would also be amenable to legislation under Article 25(2)(b), which permits legislation for the purpose of social welfare and reform.

27.12. In Seshammal [(1972) 2 SCC 11] the Constitution Bench agreed with the learned Advocate General that Section 28(1) of the Principal Act, which directs the trustee to administer the affairs of the temple in accordance with the terms of the trust or the usage of the institution, would control the appointment of the Archaka to be made by him under the amended Section 55 of the Act. In a Saivite or a Vaishnavite temple the appointment of the Archaka will have to be made from a specified denomination, sect or group in accordance with the directions of the Agamas governing those temples. Failure to do so would not only be contrary to Section 28(1), which requires the trustee to follow the

usage of the temple but would also interfere with a religious practice, the inevitable result of which would be to defile the image.

27.13. In Seshammal [(1972) 2 SCC 11], on the question whether the trustee, while making appointment from the specified denomination, sect or group in accordance with the Agamas, will be bound to follow the hereditary principle as a usage peculiar to the temple, before the Constitution Bench, the learned Advocate General contended that there is no such invariable usage. It may be that, as a matter of convenience, an Archaka's son, being readily available to perform the worship, may have been selected for appointment as an Archaka from times immemorial. But that was not a usage. The principle of next-in-line of succession failed when the successor was a female or refused to accept the appointment or was under some disability. In all such cases, the Archaka was appointed from the particular denomination, sect or group and the worship was carried on with the help of such a substitute.

27.14. In Seshammal [(1972) 2 SCC 11], the Constitution Bench noticed that it was too late in the day to contend that the hereditary principle in appointment was not a usage. For whatever

reasons, whether of convenience or otherwise, this hereditary principle might have been adopted, there can be no doubt that the principle had been accepted from antiquity and had also been fully recognised in the unamended Section 55 of the Principal Act. Sub-section (2) of Section 55 provided that where the office or service is hereditary, the person next in the line of succession shall be entitled to succeed, and only a limited right was given under sub-section (3) to the trustee to appoint a substitute. Even in such cases, the explanation to sub-section (3) provided that in making the appointment of the substitute the trustee should have due regard to the claims of the members of the family, if any, entitled to the succession. Therefore, it cannot be denied as a fact that there are several temples in Tamil Nadu where the appointment of an Archaka is governed by the usage of hereditary succession. Therefore, the real question is whether such a usage should be regarded either as a secular usage or a religious practice. If it is a secular usage, it is obvious, legislation would be permissible under Article 25(1)(a), and if it is a religious usage, it would be permissible as it falls squarely under Section 25(1)(b).

27.15. In Seshammal [(1972) 2 SCC 11], before the Constitution Bench, the learned Senior Counsel for the writ

petitioners contended that the appointment of a person to a religious office in accordance with the hereditary principle is itself a religious usage and amounted to a vital religious practice and hence falls within Articles 25 and 26. The priests, who are to perform religious ceremonies may be chosen by a temple on such basis as the temple chooses to adopt. It may be election, selection, competition, nomination, or hereditary succession. Any law which interferes with the aforesaid basis of appointment would violate religious freedom guaranteed by Articles 25 and 26 of the Constitution. The right to select a priest has an immediate bearing on religious practice and the right of a denomination to manage its own affairs in matters of religion. The priest is more important than the ritual, and nothing could be more vital than choosing the priest. Under the pretext of social reform, the State cannot reform a religion out of existence and if any denomination has accepted the hereditary principle for choosing its priest, that would be a religious practice vital to the religious faith and cannot be changed on the ground that it leads to social reform.

27.16. In Seshammal [(1972) 2 SCC 11], the Constitution Bench noticed that it is true that a priest or an Archaka, when appointed, has to perform some religious functions. But the

question is whether the appointment of a priest is by itself a secular function or a religious practice. The Apex Court noticed that the Archaka has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. The assumption that the Archaka may be chosen in a variety of ways is not correct. The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. As held in **K. Seshadri Aiyangar v. Ranga Bhattar [ILR 35 Mad 631]** even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee, as recognised by the unamended Section 56 of the Principal Act, which provides "all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust,

incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause". That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebaits and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office. See: **Kali Krishan Ray v. Makhan Lal Mookerjee [ILR 50 Cal 233]**, **Nanabhai Narotamdas v. Trimbak Balwant Bhandare** [(1878-80) Vol. 4, Unreported printed Judgments of the Bombay High Court, Page 169] and **Maharanee Indurjeet Kooer v. Chundemun Misser [16 WR 99]**. Thus, the appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next

heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion.

27.17. In Seshammal [(1972) 2 SCC 11], the Constitution Bench noticed that in view of sub-section (2) of Section 55, as it now stands amended, the choice of the trustee in the matter of appointment of an Archaka is no longer limited by the operation of the rule of next-in-line of succession in temples where the usage was to appoint the Archaka on the hereditary principle. The trustee is not bound to make the appointment on the sole ground that the candidate, is the next-in-line of succession to the last holder of office. To that extent, and to that extent alone, the trustee is released from the obligation imposed on him by Section 28 of the Principal Act to administer the affairs in accordance with that part of the usage of a temple, which enjoined hereditary appointments. The legislation in this respect, does not interfere with any religious practice or matter of religion and, therefore, is not invalid. The other changes effected in the other provisions of the Principal Act are merely consequential. Since the hereditary principle was done away with the words "whether the office or service is hereditary or not" found in Section 56 of the Principal Act have been omitted

by Section 3 of the Amendment Act. By Section 4 of the latter Act clause (xxiii) of sub-section (2) in Section 116 is suitably amended with a view to deleting the reference to the qualifications of hereditary and non-hereditary offices which was there in clause (xxiii) of the Principal Act. The change is only consequential on the amendment of Section 55 of the Principal Act. Sections 5 and 6 of the Amendment Act are also consequential on the amendment of Sections 55 and 56. These are all the sections in the Amendment Act and the Amendment Act as a whole must be regarded as valid.

27.18. In Seshammal [(1972) 2 SCC 11], before the Constitution Bench, it was contended that the State had taken power under clause (xxiii) of Section 116(2), to prescribe qualifications to be possessed by the Archakas and, in view of the avowed object of the State Government to create a class of Archakas irrespective of caste, creed or race, it would be open to the Government to prescribe qualifications for the office of an Archaka which were in conflict with Agamas. The Apex Court noticed that under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 proper provision has been made for qualifications of the Archakas and the petitioners have no objection to that rule. The rule still continues

to be in force. But the petitioners apprehend that it is open to the Government to substitute any other rule for Rule 12 and prescribe qualifications which were in conflict with Agamic injunctions. For example, at present the Ulthurai servant whose duty it is to perform pujas and recite vedic mantras, etc., has to obtain the fitness certificate for his office from the head of institutions, which impart instructions in Agamas and ritualistic matters. The Government, however, may hereafter change its mind and prescribe qualifications, which take no note of Agamas and Agamic rituals and direct that the Archaka candidate should produce a fitness certificate from an institution which does not specialise in teaching Agamas and rituals. The Act does not provide guidelines to the Government in the matter of prescribing qualifications with regard to the fitness of an Archaka for performing the rituals and ceremonies in these temples and it will be open to the Government to prescribe a simple standardised curriculum for pujas in the several temples ignoring the traditional pujas and rituals followed in those temples. The Apex Court found that the apprehensions of the petitioners were unfounded. Rule 12, referred to above, still holds the field and there is no good reason to think that the State Government wants to revolutionise temple worship by introducing

methods of worship not current in the several temples. The rule-making power conferred on the Government by Section 116 is only intended with a view to carry out the purposes of the Act which are essentially secular. The Act nowhere gives the indication that one of the purposes of the Act is to effect a change in the rituals and ceremonies followed in the temples. On the other hand, Section 107 of the Principal Act emphasises that nothing contained in the Act would be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution. Similarly, Section 105 provides that nothing contained in the Act shall (a) save as otherwise expressly provided in the Act or the rules made thereunder, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any religious institution, or its established usage in regard to any other matter. Moreover, if any rule is framed by the Government which purports to interfere with the rituals and ceremonies of the temples, the same will be liable to be challenged by those who are interested in temple worship. Therefore, the Apex Court found that the apprehensions expressed by the petitioners were groundless and premature.

28. In Seshammal [(1972) 2 SCC 11], on the question as to whether the trustee, while making appointment from the specified denomination, sect or group in accordance with the Agamas, will be bound to follow the hereditary principle as a usage peculiar to the temple, the Constitution Bench (Five-Judge Bench) noticed that it was too late in the day to contend that the hereditary principle in appointment was not a usage. For whatever reasons, whether of convenience or otherwise, this hereditary principle might have been adopted, there can be no doubt that the principle had been accepted from antiquity and had also been fully recognised in the unamended Section 55 of the Principal Act. Sub-section (2) of Section 55 provided that where the office or service is hereditary, the person next in the line of succession shall be entitled to succeed, and only a limited right was given under sub-section (3) to the trustee to appoint a substitute. Even in such cases, the explanation to sub-section (3) provided that in making the appointment of the substitute the trustee should have due regard to the claims of the members of the family, if any, entitled to the succession. Therefore, it cannot be denied as a fact that there are several temples in Tamil Nadu where the appointment of an Archaka is governed by the usage of hereditary succession.

Therefore, the real question is whether such a usage should be regarded either as a secular usage or a religious usage. If it is a secular usage, it is obvious, legislation would be permissible under Article 25(1)(a), and if it is a religious usage, it would be permissible if it falls squarely under Section 25(1)(b).

28.1. In Seshammal [(1972) 2 SCC 11], before the Constitution Bench, the learned Senior Counsel for the writ petitioners contended that the appointment of a person to a religious office in accordance with the hereditary principle is itself a religious usage and amounted to a vital religious practice and hence falls within Articles 25 and 26. The Apex Court noticed that a priest or an Archaka, when appointed, has to perform some religious functions. But the question is whether the appointment of a priest is by itself a secular function or a religious practice. Archaka is a servant of the temple. Even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebaits and Managers of temples exercise essentially a secular function in

choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office. The appointment of an Archaka is a secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion.

28.2. In Seshammal [(1972) 2 SCC 11], the Constitution Bench noticed [Para.11 @ Pages 18 to 20 of SCC] that the authority of 'Agamas', which are treatises on rituals, is recognised in several decided cases. In the decision of the Constitution Bench in **Sri Venkataramana Devaru [AIR 1958 SC 255]** 'Agamas' are described as treatises of ceremonial law dealing with such matters as the construction of temples, installation of idols therein

and conduct of the worship of the deity. Where the temple was constructed as per directions of the 'Agamas' the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting of mantras and devotional songs appropriate to the deity. On the consecration of the image in the temple, the Hindu worshippers believe that the Divine Spirit has descended into the image and from then on the image of the deity is fit to be worshipped. Rules with regard to daily and periodical worship have been laid down for securing the continuance of the Divine Spirit. The rituals have a two-fold object. One is to attract the lay worshipper to participate in the worship carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in the worship a particular attitude of aspiration and devotion is developed and confers great spiritual benefit. The second object is to preserve the image from pollution, defilement or desecration. It is part of the religious belief of a Hindu worshipper that when the image is polluted or defiled the Divine Spirit in the image diminishes or even vanishes. That is a situation which every devotee or worshipper looks upon with horror. Pollution or defilement may take place in a variety of ways. According to the Agamas, an image becomes defiled if there is any

departure or violation of any of the rules relating to worship. In fact, purificatory ceremonies have to be performed for restoring the sanctity of the shrine [1958 SCR 895 (910)]. Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu religious faith and cannot be dismissed as either irrational or superstitious. The Apex Court noticed that the idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the image which must be avoided at all costs. That is also the rationale for preserving the sanctity of the Garbhagriha or the sanctum sanctorum. In all these temples in which the images are consecrated, the 'Agamas' insist that only the qualified Archaka or Pujari shall step inside the sanctum sanctorum and that too after observing the daily disciplines which are imposed upon him by the 'Agamas'. As an Archaka he has to touch the image in the course of the worship and it is his sole right and duty to touch it. The touch of anybody else would defile it. Thus under the ceremonial law pertaining to temples even the question as to who is to enter the Garbhagriha or the sanctum sanctorum and who is not entitled to enter it and who can worship and from which

place in the temple are all matters of religion as shown in the decision of the Apex Court in Sri Venkataramana Devaru [AIR 1958 SC 255].

28.3. In Seshammal [(1972) 2 SCC 11], the Constitution Bench noticed [Para.12 @ Pages 20 and 21 of SCC] that according to the texts of the Vaikhanasa Shastra (Agama), persons who are the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vaishnavites. They only can touch the idols and perform the ceremonies and rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the Garbha Griha. Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. It is, therefore, manifest that the Archaka of such a temple besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should

be no pollution or defilement of the image under any circumstance, the Archaka undoubtedly occupies an important place in the matter of temple worship. The Constitution Bench noticed that any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorised by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be prima facie invalid under Article 25(1) of the Constitution.

28.4. In Seshammal [(1972) 2 SCC 11], the Constitution Bench agreed with the learned Advocate General that Section 28(1) of the Principal Act, which directs the trustee to administer the affairs of the temple in accordance with the terms of the trust or the usage of the institution, would control the appointment of the Archaka to be made by him under the amended Section 55 of the Act. In a Saivite or a Vaishnavite temple the appointment of the Archaka will have to be made from a specified denomination, sect or group in accordance with the directions of the Agamas governing those temples. Failure to do so would not only be contrary to Section 28(1), which requires the trustee to follow the usage of the temple but would also interfere with a religious

practice, the inevitable result of which would be to defile the image.

29. In **N. Adithyan v. Travancore Devaswom Board [(2002) 8 SCC 106]** the question that came up for consideration before a Two-Judge Bench of the Apex Court was as to whether the appointment of a person, who is not a Malayala Brahmin, as "Santhikaran" or Poojari (priest) of Kongorpilly Neerikode Siva Temple at Alangad is violative of the constitutional and statutory rights of the appellant, who claims himself to be a Malayala Brahmin and a worshipper of that temple. The administration of the Temple vests with the Travancore Devaswom Board. One K.K. Mohanan Poti was working as a temporary Santhikaran at that temple. Due to complaints with reference to performance and conduct, his services were not regularised and came to be dispensed with by an order dated 06.08.1993. In his place, the 3rd respondent, who figured at Rank No.31 in the list prepared on 28.04.1993, was ordered to be appointed as a regular Santhikaran and the Devaswom Commissioner also confirmed the same on 20.09.1993. The 2nd respondent did not allow him to join in view of a letter said to have been received from the head of the Vazhaperambu Mana, for the reason that the 3rd respondent was

a non-Brahmin. The Devaswom Commissioner replied that since under the rules regulating the appointment, there is no restriction for the appointment of a non-Brahmin as a Santhikaran, the appointment was in order and directed the 2nd respondent to allow him to join and perform his duties. Though, on 12.10.1993, the 3rd respondent was permitted to join by an order passed on the same day, the appointment was stayed by a learned Single Judge of this Court. One Sreenivasan Poti came to be engaged on a daily basis to perform the duties of Santhikaran, pending further orders. The main grievance and ground of challenge in the writ petition filed was that the appointment of a non-Brahmin Santhikaran in the temple in question offends and violates the alleged long-followed mandatory custom and usage of having only Malayala Brahmins for such jobs of performing poojas in the temples and this denies the right of the worshippers to practise and profess their religion in accordance with its tenets and manage their religious affairs as secured under Articles 25 and 26 of the Constitution of India. It was contended that the Tantri of the temple is the final authority in such matters and the appointment in question was not only without his consultation or approval but against his wish, too. Before the Apex Court, it was contended by

the State that the acceptance of claims to confine the appointment of Santhikarans in temples to Malayala Brahmins would violate Articles 15 and 16 as well as Article 14 of the Constitution of India. As long as appointments of Santhikarans were of persons well versed, fully qualified and trained in their duties and mantras, tantras and necessary Vedas, irrespective of their caste, Articles 25 and 26 cannot be said to have been infringed.

29.1. In N. Adithayan [(2002) 8 SCC 106] the Two-Judge Bench noticed the law laid down by the Constitution Bench in **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Math [1954 SCR 1005 : AIR 1954 SC 282]**, a decision relied on by the Constitution Bench in **Seshammal [(1972) 2 SCC 11]**, wherein it was observed that Article 25 of the Constitution of India secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. It was also observed that what is protected is the propagation of belief, no matter whether the propagation takes place in a church

or monastery or in a temple or parlour meeting. While elaborating the meaning of the words, "its own affairs in matters of religion" in Article 26(b) it has been observed that in contrast to secular matters relating to the administration of its property the religious denomination or organisation enjoys complete autonomy in deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters.

29.2. In N. Adithayan [(2002) 8 SCC 106] the Two-Judge Bench noticed the law laid down by the Constitution Bench in **Venkataramana Devaru v. State of Mysore [AIR 1958 SC 255 : 1958 SCR 895]**, another decision relied on by the Constitution Bench in **Seshammal [(1972) 2 SCC 11]**, wherein it was held that though Article 25(1) of the Constitution of India deals with rights of individuals, Article 25(2) is wider in its contents and has reference to rights of communities and controls both Articles 25(1) and 26(b) of the Constitution, though the rights recognised by Article 25(2)(b) must necessarily be subject to some limitations or regulations and one such would be inherent in the process of harmonising the right conferred by Article 25(2)(b) with that protected by Article 26(b).

29.3. In N. Adithayan [(2002) 8 SCC 106] the Two-Judge Bench noticed the law laid down by the Constitution Bench in **Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan [(1964) 1 SCR 561 : AIR 1963 SC 1638]**, dealing with the nature and extent of protection ensured under Articles 25(1) and 26(b) of the Constitution of India, the distinction between a practice which is religious and one which is purely secular, wherein it was held that what is protected under Articles 25(1) and 26(b) respectively are the religious practices and the right to manage affairs in matters of religion. If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Article 25(1) or Article 26(b) has been contravened. The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion. Therefore, whenever a claim is made on behalf of an individual citizen that the impugned statute contravenes his fundamental right to practise religion or a claim is made on behalf of the denomination that the fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, it is necessary to consider whether the practice in question is religious or the affairs in

respect of which the right of management is alleged to have been contravened are affairs in matters of religion. If the practice is a religious practice or the affairs are the affairs in matters of religion, then, of course, the rights guaranteed by Article 25(1) and Article 26(b) cannot be contravened. It is true that the decision of the question as to whether a certain practice is a religious practice or not, as well as the question as to whether an affair in question is an affair in matters of religion or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because as is well known, under the provisions of ancient Smritis, all human actions from birth to death and most of the individual actions from day to day are regarded as religious in character. As an illustration, we may refer to the fact that the Smritis regard marriage as a sacrament and not a contract. Though the task of disengaging the secular from the religious may not be easy, it must nevertheless be attempted in dealing with the claims for protection under Articles 25(1) and 26(b). If the practice which is protected under the former is a religious practice, and if the right which is protected under the latter is the right to manage affairs in matters of religion, it is

necessary that in judging about the merits of the claim made in that behalf the Court must be satisfied that the practice is religious and the affair is in regard to a matter of religion. In dealing with this problem under Articles 25(1) and 26(b), Latham, C.J.'s observation in **Adelaide Co. of Jehovah's Witnesses Incorporated v. Commonwealth [(1943) 67 CLR 116, 123 : 1943 ALR 193]** that 'what is religion to one is superstition to another', on which Mr Pathak relies, is of no relevance. If an obviously secular matter is claimed to be a matter of religion, or if an obviously secular practice is alleged to be a religious practice, the Court would be justified in rejecting the claim because the protection guaranteed by Article 25(1) and Article 26(b) cannot be extended to secular practices and affairs in regard to denominational matters which are not matters of religion, and so, a claim made by a citizen that a purely secular matter amounts to a religious practice, or a similar claim made on behalf of the denomination that a purely secular matter is an affair in matters of religion, may have to be rejected on the ground that it is based on irrational considerations and cannot attract the provisions of Article 25(1) or Article 26(b). This aspect of the matter must be

borne in mind in dealing with the true scope and effect of Article 25(1) and Article 26(b).

29.4. In N. Adithayan [(2002) 8 SCC 106] the Two-Judge Bench noticed the law laid down in **Seshammal [(1972) 2 SCC 11]**, whereby the Constitution Bench reviewed the principles underlying the protection engrafted in Articles 25 and 26 of the Constitution of India, in the context of a challenge made to abolition of hereditary right of Archaka, and reiterated the position. In Paragraph 9 of the judgment, the Two-Judge Bench quoted the law laid down by the Constitution Bench in **Sardar Syedna Taher Saifuddin Saheb v. State of Bombay [1962 Supp (2) SCR 496 : AIR 1962 SC 853]**, a decision relied on by the Constitution Bench in **Seshammal [(1972) 2 SCC 11]**. In Paragraphs 10 and 11 of the judgment, the Two-Judge Bench quoted the law laid down by the Constitution Bench in paragraphs 11, 12 15 and 16 of the decision in **Seshammal [(1972) 2 SCC 11]**.

29.5. In paragraph 12 of the decision in N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed the law laid down in **Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya [AIR 1966 SC 1119 : (1966) 3 SCR 242]**, whereby the

Constitution Bench repelled the challenge to the provisions in the Bombay Hindu Places of Public Worship (Entry Authorisation) Act, 1956 and quoted with approval the observation of Monier Williams, a reputed and recognised student of Indian sacred literature for more than forty years, who played an important role in explaining the religious thought and life in India, that 'Hinduism is far more than a mere form of theism resting on Brahmanism' and that 'it has ever aimed at accommodating itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested and assimilated something from all creeds.' (SCR page 261) In that decision, the Apex Court ultimately repelled the challenge, after adverting to the changes undergone in the social and religious outlook of the Hindu community as well as the fundamental change as a result of the message of social equality and justice proclaimed by the Constitution and the promise made in Article 17 to abolish 'untouchability', observing that as long as the actual worship of the deity is allowed to be performed only by the authorised Poojaris of the temple and not by all devotees permitted to enter the temple, there can be no grievance made.

29.6. In paragraph 13 of the decision in N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed the law laid down in **Bhuri Nath v. State of Jammu and Kashmir [(1997) 2 SCC 745]**, while dealing with the validity of the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988, and the abolition of the right of Baridars to receive a share in the offerings made by pilgrims to Shri Mata Vaishno Devi, wherein, the Two-Judge Bench observed their right to perform pooja was only a customary right coming from generations, which the State can and has by legislation abolished and that the rights seemed under Articles 25 and 26 are not absolute or unfettered but subject to legislation by the State limiting or regulating any activity, economic, financial, political or secular which are associated with the religious belief, faith, practice or custom and that they are also subject to social reform by suitable legislation. The Apex Court reiterated that though religious practices and performances of acts in pursuance of religious beliefs are, as much a part of religion, as further belief in a particular doctrine, that by itself is not conclusive or decisive as to what are essential parts of religion or belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question arises

on the basis of materials - factual or legislative or historic if need be giving a go-by to claims based merely on supernaturalism or superstitious beliefs or actions and those which are not really, essentially or integrally matters of religion or religious belief or faith or religious practice.

29.7. In paragraph 14 of the decision in N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed the decision in **Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P. [(1997) 4 SCC 606]**, wherein a Three-Judge Bench repelled the challenge made to the U.P. Sri Kashi Vishwanath Temple Act, 1983 and a claim asserted by a group of Saivites to the exclusive right to conduct worship and manage the temple in question. While taking note of the aim of the Constitution to establish an egalitarian social order proscribing any discrimination on grounds of religion, race, caste, sect or sex alone by Articles 15 to 17 in particular, the Apex Court once again reiterated that the religious freedom guaranteed by Articles 25 and 26 is intended to be a guide to community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of the right to religious belief and faith and their intrinsic

restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his cosmos/creator and realise his spiritual self.

29.8. In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed that sometimes, practices religious or secular are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day to day are regarded as religious in character in one facet or another. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon a constitutional religious model, and another diametrically more on a traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity.

29.9. In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed that law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his ‘Judicial Process’,

life is not logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination all be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether particular matters of religion or religious practices or beliefs are an integral part of the religion. It must be decided whether the practices or matters are considered

integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. The crucial question is whether hereditary Archaka is an essential and integral part of the Hindu religion.

29.10. In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed that Justice B.K. Mukherjea in his 'Tagore Law Lectures on Hindu Law of Religious and Charitable Trust' (at page 1) observed that "the popular Hindu religion of modern times is not the same as the religion of the Vedas though the latter is still held to be the ultimate source and authority of all that is held

sacred by the Hindus. In the course of its development, the Hindu religion underwent several changes, which reacted on the social system and introduced corresponding changes in the social and religious institutions. But whatever changes were brought about by time - and it cannot be disputed that they were sometimes of a revolutionary character - the fundamental moral and religious ideas of the Hindus which lie at the root of their religious and charitable institutions remained substantially the same; and the system that we see around us can be said to be an evolutionary product of the spirit and genius of the people passing through different phases of their cultural development.

29.11. In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed that, as observed in **Kailash Sonkar v. Maya Devi [(1984) 2 SCC 91]** in view of the categorical revelations made in the Gita and the dream of the Father of the Nation Mahatma Gandhi that all distinctions based on caste and creed must be abolished and man must be known and recognised by his actions, irrespective of the caste to which he may on account of his birth belong, a positive step has been taken to achieve this in the Constitution and the message conveyed thereby got engrafted in the form of Articles 14 to 17 and 21 of the Constitution of India,

and paved the way for the enactment of the Protection of Civil Rights Act, 1955. It is now well settled that Article 25 secures to every person, subject of course to public order, health and morality and other provisions of Part III, including Article 17, freedom to entertain and exhibit by outward acts as well as propagate and disseminate such religious belief according to his judgment and conscience for the edification of others. The right of the State to impose such restrictions as are desired or found necessary on grounds of public order, health and morality is inbuilt in Articles 25 and 26 itself.

29.12 In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed that Article 25(2)(b) ensures the right of the State to make a law providing for social welfare and reform besides throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus and any such rights of the State or of the communities or classes of society were also considered to need due regulation in the process of harmonising the various rights. The vision of the founding fathers of the Constitution to liberate society from blind and ritualistic adherence to mere traditional superstitious beliefs sans reason or rational basis has found expression in the form of Article 17. The legal

position that the protection under Articles 25 and 26 extends a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion and as to what really constitutes an essential part of religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion or practices regarded as parts of religion, came to be equally firmly laid down.

29.13. In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed that where a temple has been constructed and consecrated as per Agamas, it is considered necessary to perform the daily rituals, poojas and recitations as required to maintain the sanctity of the idol and it is not that in respect of any and every temple, any such uniform rigour of rituals can be sought to be enforced, dehors its origin, the manner of construction or method of consecration. No doubt only a qualified person well versed and properly trained for the purpose alone can perform poojas in the temple since he has not only to enter into the sanctum sanctorum but also touch the idol installed therein. It, therefore, goes without saying that what is required and expected of one to perform the rituals and conduct poojas is to know the rituals to be performed and mantras, as necessary, to be recited for the particular deity

and the method of worship ordained or fixed therefor. For example, in Saivite temples or Vaishnavite temples, only a person who learnt the necessary rites and mantras conducive to be performed and recited in the respective temples and appropriate to the worship of the particular deity could be engaged as an Archaka.

29.14. In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed that if traditionally or conventionally, in any temple, all along a Brahmin alone was conducting poojas or performing the job of Santhikaran, it may not be because a person other than the Brahmin is prohibited from doing so because he is not a Brahmin, but those others were not in a position and, as a matter of fact, were prohibited from learning, reciting or mastering Vedic literature, rites or performance of rituals and wearing sacred thread by getting initiated into the order and thereby acquire the right to perform homa and ritualistic forms of worship in public or private temples. Consequently, there is no justification to insist that a Brahmin or Malayala Brahmin in this case, alone can perform the rites and rituals in the temple, as part of the rights and freedom guaranteed under Article 25 of the Constitution and

further claim that any deviation would tantamount to violation of any such guarantee under the Constitution.

29.15. In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed (at para.17) that there can be no claim based upon Article 26 so far as the temple under its consideration is concerned. Apart from the principle enunciated above, as long as anyone well versed and properly trained and qualified to perform the pooja in a manner conducive and appropriate to the worship of the particular deity is appointed as Santhikaran dehors his pedigree based on caste, no valid or legally justifiable grievance can be made in a court of law. On the facts, the Two-Judge Bench noticed that there has been no proper plea or sufficient proof also in the case on hand of any specific custom or usage specially created by the founder of the Temple or those who have the exclusive right to administer the affairs - religious or secular of the temple in question, leave alone the legality, propriety and validity of the same in the changed legal position brought about by the Constitution and the law enacted by Parliament. The Temple also does not belong to any denominational category with any specialised form of worship peculiar to such denomination or to its credit. For the said reason, it becomes, in a sense, even

unnecessary to pronounce upon the invalidity of any such practice being violative of the constitutional mandate contained in Articles 14 to 17 and 21 of the Constitution of India.

29.16. In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed that, it is on record that an institution has been started to impart training to students joining the institution in all relevant Vedic texts, rites, religious observances and modes of worship by engaging reputed scholars and Tantries and the students, who ultimately pass through the tests, are being initiated by performing the investiture of sacred thread and Gayatri. That apart, even among such qualified persons, selections based upon merit are made by the committee, which includes, among other scholars, a reputed Tantri also and the quality of the candidate as well as the eligibility to perform the rites, religious observances and modes of worship are once again tested before appointment. While that be the position, to insist that the person concerned should be a member of a particular caste born of particular parents of his caste can neither be said to be an insistence upon an essential religious practice, rite, ritual, observance or mode of worship nor has any proper or sufficient

basis for asserting such a claim been made out either on facts or in law, in the case on hand.

29.17. In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed that the decision in **Shirur Mutt [AIR 1954 SC 282]** and the subsequent decisions had to deal with the broad principles of law and the scope of the scheme of rights guaranteed under Articles 25 and 26 of the Constitution, in the peculiar context of the issues raised therein. The invalidation of a provision empowering the Commissioner and his subordinates as well as persons authorised by him to enter any religious institution or place of worship in any unregulated manner by even persons who are not connected with spiritual functions as being considered to violate rights secured under Articles 25 and 26 of the Constitution of India, cannot help the appellant to contend that even persons duly qualified can be prohibited on the ground that such person is not a Brahmin by birth or pedigree. None of the earlier decisions rendered before **Seshammal [(1972) 2 SCC 11]** related to consideration of any rights based on caste origin and even **Seshammal [(1972) 2 SCC 11]** dealt with only the facet of rights claimed on the basis of hereditary succession.

29.18. In N. Adithayan [(2002) 8 SCC 106], the Two-Judge Bench noticed the attempted exercise by the learned Senior Counsel for the appellant to read into the decisions in **Shirur Mutt [AIR 1954 SC 282]** and others something more than what it actually purports to lay down as if they lend support to assert or protect any and everything claimed as being part of the religious rituals, rites, observances and method of worship and make such claims immutable from any restriction or regulation based on the other provisions of the Constitution or the law enacted to implement such constitutional mandate, deserves only to be rejected as merely a superficial approach by purporting to deride what otherwise has to have really an overriding effect, in the scheme of rights declared and guaranteed under Part III of the Constitution of India. Any custom or usage, irrespective of even any proof of their existence in pre-constitutional days, cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by courts in the country.

For the reasons stated supra, the Two-Judge Bench found that no exception could be taken to the conclusions arrived at by the Full Bench of the High Court and no interference was called for with the same. The appeal was consequently dismissed.

30. In N. Adithayan [(2002) 8 SCC 106] the Two-Judge Bench noticed [Para.16 @ Page 122 and 123 SCC] that Article 25 secures to every person, subject of course to public order, health and morality and other provisions of Part III, including Article 17 freedom to entertain and exhibit by outward acts as well as propagate and disseminate such religious belief according to his judgment and conscience for the edification of others. The right of the State to impose such restrictions as are desired or found necessary on grounds of public order, health and morality is inbuilt in Articles 25 and 26 itself. Article 25(2)(b) ensures the right of the State to make a law providing for social welfare and reform besides throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus and any such rights of the State or of the communities or classes of society were also considered to need due regulation in the process of harmonizing the various rights. The vision of the founding fathers of the Constitution to liberate society from blind and ritualistic adherence

to mere traditional superstitious beliefs sans reason or rational basis has found expression in the form of Article 17. The legal position that the protection under Articles 25 and 26 extends a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion and as to what really constitutes an essential part of religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion or practices regarded as parts of religion, came to be equally firmly laid down.

30.1. In N. Adithayan [(2002) 8 SCC 106] the Two-Judge Bench noticed [Para.17 @ Page 123 SCC] that where a temple has been constructed and consecrated as per Agamas, it is considered necessary to perform the daily rituals, poojas and recitations as required to maintain the sanctity of the idol and it is not that in respect of any and every temple any such uniform rigour of rituals can be sought to be enforced, dehors its origin, the manner of construction or method of consecration. No doubt only a qualified person well versed and properly trained for the purpose alone can perform poojas in the temple since he has not only to enter into the sanctum sanctorum but also touch the idol installed therein. It, therefore, goes without saying that what is required and

expected of one to perform the rituals and conduct poojas is to know the rituals to be performed and mantras, as necessary, to be recited for the particular deity and the method of worship ordained or fixed therefor. For example, in Saivite temples or Vaishnavite temples, only a person who learnt the necessary rites and mantras conducive to be performed and recited in the respective temples and appropriate to the worship of the particular deity could be engaged as an Archaka. If traditionally or conventionally, in any temple, all along a Brahmin alone was conducting poojas or performing the job of Santhikaran, it may not be because a person other than the Brahmin is prohibited from doing so because he is not a Brahmin, but those others were not in a position and, as a matter of fact, were prohibited from learning, reciting or mastering Vedic literature, rites or performance of rituals and wearing sacred thread by getting initiated into the order and thereby acquire the right to perform homa and ritualistic forms of worship in public or private temples. Consequently, there is no justification to insist that a Brahmin or Malayala Brahmin in this case, alone can perform the rites and rituals in the temple, as part of the rights and freedom guaranteed under Article 25 of the Constitution and further claim that any

deviation would tantamount to violation of any such guarantee under the Constitution. The Apex Court noticed that there can be no claim based upon Article 26 so far as the temple under its consideration is concerned. Apart from this principle enunciated above, as long as anyone well versed and properly trained and qualified to perform the pooja in a manner conducive and appropriate to the worship of the particular deity, is appointed as Santhikaran dehors his pedigree based on caste, no valid or legally justifiable grievance can be made in a court of law.

30.2. In N. Adithayan [(2002) 8 SCC 106], on the facts of the case on hand, the Two-Judge Bench noticed [Para.17 @ Page 123 SCC] that there has been no proper plea or sufficient proof also in the case on hand of any specific custom or usage specially created by the founder of the Temple or those who have the exclusive right to administer the affairs - religious or secular of the temple in question, leave alone the legality, propriety and validity of the same in the changed legal position brought about by the Constitution and the law enacted by Parliament. The Temple also does not belong to any denominational category with any specialised form of worship peculiar to such denomination or to its credit. For the said reason, it becomes, in a sense, even

unnecessary to pronounce upon the invalidity of any such practice being violative of the constitutional mandate contained in Articles 14 to 17 and 21 of the Constitution of India.

31. In **Indian Young Lawyers Association v. State of Kerala [(2019) 11 SCC 1]**, the 4th respondent drew the attention of the Constitution Bench (Five Judge Bench), the opinion of another Constitution Bench in **Seshammal [(1972) 2 SCC 11]**, wherein it was observed that on the consecration of the image in the temple, the Hindu worshippers believe that the divine spirit has descended into the image and from then on, the image of the deity is fit to be worshipped and the rules with regard to daily and periodical worship have been laid down for securing the continuance of the divine spirit and as per the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship. The applicant/intervenor has also submitted that the respondents, by referring to the practice as a custom with aberrations, have themselves suggested that there has been no continuity in the applicability of the said custom and that it has also been established in the evidence before the High Court that women irrespective of their age were permitted to enter the Sabarimala for the first rice feeding ceremony of their children

and it is only since the last 60 years after the passing of the Notification in 1955 that women between the age of 10 to 50 years were prohibited from entering the temple. The applicant/ intervenor has also pointed out that even if the said practice is considered to be a custom, it has to still pass the test of constitutional morality and constitutional legitimacy and the applicant/intervenor has relied upon the decision in **Adi Saiva Sivachariyargal Nala Sangam v. State of Tamil Nadu [(2016) 2 SCC 725]**, wherein it was observed: (SCC pp. 754-55, Para 48)

> "48. **Seshammal [(1972) 2 SCC 11]** is not an authority for any proposition as to what an Agama or a set of Agamas governing a particular or group of temples lay down with regard to the question that confronts the court, namely, whether any particular denomination of worshippers or believers have an exclusive right to be appointed as Archakas to perform the poojas. Much less, has the judgment taken note of the particular class or caste to which the Archakas of a temple must belong as prescribed by the Agamas. All that it does and says is that some of the Agamas do incorporate a fundamental religious belief of the necessity of performance of the poojas by Archakas belonging to a particular and distinct sect/group/ denomination, failing which, there will be defilement of deity requiring purification ceremonies. Surely, if the Agamas in question do not proscribe any group of citizens from being

> appointed as Archakas on the basis of caste or class the sanctity of Article 17 or any other provision of Part III of the Constitution or even the Protection of Civil Rights Act, 1955 will not be violated. What has been said in **Seshammal [(1972) 2 SCC 11]** is that if any prescription with regard to the appointment of Archakas is made by the Agamas, Section 28 of the Tamil Nadu Act mandates the trustee to conduct the temple affairs in accordance with such custom or usage. The requirement of constitutional conformity is inbuilt and if a custom or usage is outside the protective umbrella afforded and envisaged by Articles 25 and 26, the law would certainly take its own course. The constitutional legitimacy, naturally, must supersede all religious beliefs or practices."

31.1 In **Indian Young Lawyers Association [(2019) 11 SCC 1]**, the Apex Court noticed that in **Seshammal [(1972) 2 SCC 11]** the validity of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1970 was questioned by hereditary Archakas and Mathadhipatis of some ancient temples of Tamil Nadu, as the Amendment Act did away with the hereditary right of succession to the office of Archaka even if the Archaka was otherwise qualified. The Court repelled such challenge but in doing so, spoke of the importance of the consecration of an idol in a Hindu temple and the rituals connected therewith, as follows : (SCC p. 19, para 11)

> "11. … On the consecration of the image in the temple the Hindu worshippers believe that the Divine Spirit has descended into the image and from then on the image of the deity is fit to be worshipped. Rules with regard to daily and periodical worship have been laid down for securing the continuance of the Divine Spirit. The rituals have a twofold object. One is to attract the lay worshipper to participate in the worship carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in the worship a particular attitude of aspiration and devotion is developed and confers great spiritual benefit. The second object is to preserve the image from pollution, defilement or desecration. It is part of the religious belief of a Hindu worshipper that when the image is polluted or defiled the Divine Spirit in the image diminishes or even vanishes. That is a situation which every devotee or worshipper looks upon with horror. Pollution or defilement may take place in a variety of ways. According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship. In fact, purificatory ceremonies have to be performed for restoring the sanctity of the shrine **Shri Venkataramana Devaru v. State of Mysore [1958 SCR 895 : AIR 1958 SC 255]** SCR @ Page 910. Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu religious faith and cannot be dismissed as either irrational or superstitious."

Ultimately, it was held that <u>since the appointment of an Archaka is a secular act</u>, the Amendment Act must be regarded as valid.

31.2. In **Indian Young Lawyers Association [(2019) 11 SCC 1]**, the Apex Court noticed that in **N. Adithayan v. Travancore Devaswom Board [(2002) 8 SCC 106]**, the Court very succinctly laid down as to what should be the approach of the Court for deciding what constitutes an essential practice of a religion in the following words: (SCC p. 123, para 16)

> "16. … The legal position that the protection under Articles 25 and 26 extend a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion and as to what really constitutes an essential part of religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion or practices regarded as parts of religion…."

In **Adithayan [(2002) 8 SCC 106]** the Two-Judge Bench was seized with the issue of whether the Travancore Devaswom Board could appoint a non-Malayala Brahmin as priest of the Kongorpilly Neerikode Siva Temple. Doraiswamy Raju, J., writing for the Court, held that there was no evidence on record to demonstrate that only Brahmins were entitled to serve as priests. Rejecting the claim that **Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005 : AIR 1954 SC 282]** laid down the proposition that all practices arising out of religion are afforded constitutional

protection, the Court held: **Adithayan [(2002) 8 SCC 106]**, SCC pp. 124-25, para 18.

> "18. … The attempted exercise by the learned Senior Counsel for the appellant to read into the decisions of this Court in **Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [AIR 1954 SC 282]** and others something more than what it actually purports to lay down as if they lend support to assert or protect any and everything claimed as being part of the religious rituals, rites, observances and method of worship and make such claims immutable from any restriction or regulation based on the other provisions of the Constitution or the law enacted to implement such constitutional mandate, deserves only to be rejected as merely a superficial approach by purporting to deride what otherwise has to have really an overriding effect, in the scheme of rights declared and guaranteed under Part III of the Constitution of India. Any custom or usage irrespective of even any proof of their existence in pre-constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by courts in the country."

31.3. As already noticed hereinbefore, in the review petitions arising out of the judgment of the Constitution Bench in **Indian**

Young Lawyers Association [(2019) 11 SCC 1], the question regarding the interplay between freedom of religion under Articles 25 and 26 of the Constitution of India and the provisions in Part III, particularly Article 14, and connected issues have been referred to a Larger Bench of the Apex Court in **Kantaru Rajeevaru (Sabarimala Temple Review-5 J.) v. Indian Young Lawyers Association [(2020) 2 SCC 1]**. The Larger Bench reframed the issues in **Kantaru Rajeevaru (Right to Religion, In re-9 J.) v. Indian Young Lawyers Association [(2020) 3 SCC 52]**. In **Kantaru Rajeevaru (Right to Religion, In re-9 J.) (2) v. Indian Young Lawyers Association [(2020) 9 SCC 121]** the Larger Bench gave reasons in support of the reference order.

31.4. As already noticed hereinbefore, in all the writ petitions the challenge is against the eligibility criteria prescribed in the notifications dated 20.07.2017 and 27.05.2021 issued by the Devaswom Commissioner inviting applications for appointment as Melsanthies of Sabarimala Devaswom and Malikappuram Devaswom for the year 1193ME (2017-18) and 1197ME (2021-22), to the extent it prescribes that the applicant shall be a 'Malayali Brahmin'. The petitioners would contend that the

exclusion of all other castes from Hindu religion would violate Articles 14, 15 and 16 of the Constitution of India. The petitioners would rely on the law laid down by the Apex Court in **Adithyan [(2002) 8 SCC 106]** and that laid down in **Seshammal [(1972) 2 SCC 11]**. The judgment of the Apex Court in **Indian Young Lawyers Association [(2019) 11 SCC 1]** is a decision rendered by the Constitution Bench of the Apex Court after referring to the law laid down in the aforesaid decisions. The question regarding the interplay between freedom of religion under Articles 25 and 26 of the Constitution and the provisions in Part III, particularly Article 14, and connected issues have been referred to a Larger Bench in **Kantaru Rajeevaru (Sabarimala Temple Review-5 J.) [(2020) 2 SCC 1]** and the Larger Bench reframed the issues in **Kantaru Rajeevaru (Right to Religion, In re-9 J.) [(2020) 3 SCC 52]**. There is total lack of pleadings in the statement of facts and grounds of the writ petitions, though the learned counsel for the petitioners in the writ petitions addressed arguments with reference to the provisions under Articles 25 and 26 of the Constitution of India and also the law on that point. The challenge made in these writ petitions are mainly against the process of selection for Melsanthies in Sabarimala Devaswom and

Malikappuram Devaswom, for the year 1193ME (2017-18) and 1197ME (2021-22). In the absence of proper pleadings in the statement of facts and grounds on the above aspects, with reference to the provisions under Article 25 and 26 of the Constitution of India, we are of the view that it is not necessary to keep these writ petitions pending, awaiting the decision of the Larger Bench of the Apex Court in **Kantaru Rajeevaru (Right to Religion In-Re 9 J [(2020) 3 SCC 52]**. We make it clear that the arguments advanced by both sides on the above aspect are left open to be raised in an appropriate proceedings, at appropriate stage.

32. Article 17 of the Constitution of India deals with abolition of untouchability. As per Article 17, 'untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law.

33. In **Sri Venkataramana Devaru v. State of Mysore [AIR 1958 SC 255]** the substantial question of law, which came up for consideration before a Constitution Bench of the Apex Court was as to whether the right of a religious denomination to manage its own affairs in matters of religion guaranteed under Article

26(b) of the Constitution of India is subject to, and can be controlled by, a law protected by Article 25(2)(b), throwing open a Hindu public temple to all classes and sections of Hindus. The main point of determination was the validity of Section 3 of the Madras Temple Entry Authorisation Act, 1947.

33.1. Section 2(2) of the Act defines 'temple' as a place by whatever name known, which is dedicated to or for the benefit of or used as of right by the Hindu community in general as a place of public religious worship. As per Section 3(1), notwithstanding any law, custom or usage to the contrary, persons belonging to the excluded classes shall be entitled to enter any Hindu temple and offer worship therein in the same manner and to the same extent as Hindus in general; and no member of any excluded class shall, by reason only of such entry or worship, whether before or after the commencement of this Act, be deemed to have committed any actionable wrong or offence or be sued or prosecuted therefor. As per Section 6, if any question arises as to whether a place is or is not a temple as defined in this Act, the question should be referred to the Provincial Government and their decision shall be final, subject however to any decree passed by a

competent civil court in a suit filed before it within six months from the date of the decision of the Provincial Government.

33.2. In Sri Venkataramana Devaru [AIR 1958 SC 255] the Apex Court noticed that the true intent of this enactment, as manifest in the provisions contained in Sections 3 and 6, was to remove the disability imposed on Harijans from entering into temples, which were dedicated to the Hindu public generally. Apprehending that action might be taken to put the provisions of this Act in operation with reference to the suit temple, the trustees thereof sent a memorial to the Government of Madras claiming that it was a private temple belonging exclusively to the Gowda Saraswath Brahmins and that it, therefore, did not fall within the purview of the Act. On this, the Government passed an order on 25.06.1948 that the temple was one which was open to all Hindus generally and that the Act would be applicable to it.

33.3. Thereupon, the trustees filed the suit, out of which the Civil Appeal arose, for a declaration that the Sri Venkataramana Temple at Moolky was not a temple as defined in Section 2(2) of the Act. It was alleged in the plaint that the temple was founded for the benefit of the Gowda Saraswath Brahmins in Moolky Petah, that it had been at all times under their management, that they

were the followers of the Kashi Mutt, and that it was the head of the Mutt that performed various religious ceremonies in the temple, and that the other communities had no rights to worship therein.

33.4. The Madras Legislature enacted the Madras Temple Entry Authorisation (Amendment) Act of 1949, which came into force on 28.06.1949, amending the definition of 'temple' in Section 2(2) of Act 5 of 1947, and making consequential amendments in the preamble and in the other provisions of the Act. As per the amended definition, a temple is a place which is dedicated to or for the benefit of the Hindu community or any section thereof as a place of public religious worship.

33.5. In the written statement, the Government denied that the temple was founded exclusively for the benefit of the Gowda Saraswath Brahmins and contended that the Hindu public generally had a right to worship therein. Therefore, it fell within the definition of temple as originally enacted. It further pleaded that, at any rate, it was a temple within the definition as amended by Act 13 of 1949, even if it was dedicated for the benefit of the Gowda Saraswath Brahmins, inasmuch as they were a section of

the Hindu community, and that, in consequence, the suit was liable to be dismissed.

33.6. On 26.01.1950, the Constitution of India came into force, and thereafter, on 11.02.1950, the plaintiffs raised further contention by way of amendment of the plaint that, in any event, as the temple was a denominational one, they were entitled to the protection of Article 26, that it was a matter of religion as to who were entitled to take part in worship in a temple and that Section 3 of the Act, insofar as it provided for the institution being thrown open to communities other than Gowda Saraswath Brahmins, was repugnant to Article 26(b) of the Constitution and was, in consequence, void.

33.7. The Sub Court of South Kanara, which tried the suit, held that though the temple had been originally founded for the benefit of certain immigrant families of Gowda Saraswath Brahmins, in the course of time it came to be resorted to by all classes of Hindus for worship, and accordingly it must be held to be a temple even according to the definition of 'temple' in Section 2(2) of the Act, as it originally stood. Dealing with the contention that the plaintiffs had the right under Article 26(b) to exclude all persons other than Gowda Saraswath Brahmins from worshipping

in the temple, the Sub Court held that 'matters of religion' in that Article had reference to religious beliefs and doctrines, and did not include rituals and ceremonies, and that, in any event, Articles 17 and 25(2) which had been enacted on grounds of high policy must prevail. The Sub Court accordingly dismissed the suit with costs. Against this decision, the plaintiffs preferred an appeal to the High Court of Madras as A.S.No.145 of 1952.

33.8. On a review of the entire materials on record, the High Court of Madras held that Sri Venkataramana Temple was founded for the benefit of the Gowda Saraswath Brahmin community and that it was, therefore, a denominational one. Then, dealing with the contention that Section 3 of the Act was in contravention of Article 26(b) of the Constitution of India, the High Court held that as a denominational institution would also be a public institution, Article 25(2)(b) applied, and that, thereunder, all classes of Hindus were entitled to enter into the temple for worship. But the High Court also held that the evidence established that there were certain religious ceremonies and occasions during which the Gowda Saraswath Brahmins alone were entitled to participate and that that right was protected by Article 26(b) of the Constitution. The High Court, accordingly, reserved the rights of the appellants

to exclude all members of the public during those ceremonies and on those occasions, and these were specified in the decree. Subject to this modification, the High Court dismissed the appeal. Against this judgment, the plaintiffs have preferred Civil Appeal No. 403 of 1956 on a certificate granted by the High Court. While the appeal was pending, there was a reorganisation of the States, and the District of South Kanara in which the temple is situated, was included in the State of Mysore. The State of Mysore has accordingly come on record in the place of the State of Madras.

33.9. In Sri Venkataramana Devaru [AIR 1958 SC 255], on the question as to whether Sri Venkataramana Temple at Moolky is a temple as defined in Section 2(2) of Madras Act 5 of 1947, the Apex Court agreed with the finding of the Sub Court and the High Court that Sri Venkataramana Temple at Moolky is a public temple, which falls within the operation of Act 5 of 1947. On the question as to whether Sri Venkataramana Temple at Moolky is a denominational temple, the Apex Court noticed that the facts found are that the members of the community, i.e., Gowda Saraswath Brahmins migrated from Gowda Desa first to the Goa region and then to the south, that they carried with them their idols, and that when they were first settled in Moolky, a temple

was founded and these idols were installed therein. From the evidence of PW1, it appears that the Gowda Saraswath Brahmins have three Gurus, that those in Moolky Petah are followers of the head of the Kashi Mutt, and that it is he that performs some of the important ceremonies in the temple. Exhibit A, a document of the year 1826-27, shows that the head of the Kashi Mutt settled the disputes among the Archakas and that they agreed to do the puja under his orders. The uncontradicted evidence of PW1 also shows that during certain religious ceremonies, persons other than Gowda Saraswath Brahmins have been wholly excluded. This evidence leads irresistibly to the conclusion that the temple is a denominational one, as contended by the appellants. On the findings of the High Court that the foundation was originally for the benefit of the Gowda Saraswath Brahmin community, the fact that other classes of Hindus were admitted freely into the temple would not have the effect of enlarging the scope of the dedication into one for the public generally, on a consideration of the evidence, the Apex Court found no grounds for differing from the finding given by the High court below that the suit temple is a denominational temple founded for the benefit of the Gowda Saraswath Brahmins.

33.10. In Sri Venkataramana Devaru [AIR 1958 SC 255], on the question as to whether the plaintiffs are entitled to exclude all Hindus other than Gowda Saraswath Brahmins from entering into the temple for worship, on the ground that it is a matter of religion within the protection of Article 26(b) of the Constitution, it was argued by the learned Solicitor-General that exclusion of persons from entering into a temple cannot *ipso facto* be regarded as a matter of religion, that whether it is so must depend on the tenets of the particular religion which the institution in question represents, and that there was no such proof in the case on hand.

33.11. In Sri Venkataramana Devaru [AIR 1958 SC 255] the Apex Court noticed that the precise connotation of the expression 'matters of religion' came up for consideration by that Court in **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954) SCR 1005]** and it was held therein that it embraced not merely matters of doctrine and belief pertaining to the religion but also the practice of it, or to put it in terms of Hindu theology, not merely its 'Gnana' but also its 'Bhakti' and 'Karma Kandas'. In that decision, Mukherjea, J., (as he then was) observed that, in the first place, what constitutes the essential part of a religion is

primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be a daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve an expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b).

33.12. Since it is settled that matters of religion in Article 26(b) include even practices which are regarded by the community as part of its religion, in Sri Venkataramana Devaru [AIR 1958 SC 255], the Apex Court considered whether the exclusion of a person from entering into a temple for worship is a matter of religion according to Hindu Ceremonial Law. The Apex Court noticed that there had been a difference of opinion among the writers as to whether image worship had a place in the religion of the Hindus,

as revealed in the Vedas. On the one hand, we have hymns in praise of Gods, and on the other, we have highly philosophical passages in the Upanishads describing the Supreme Being as omnipotent, omniscient and omnipresent and transcending all names and forms. When we come to the Puranas, we find a marked change. The conception had become established of Trinity of Gods, Brahma, Vishnu and Siva as manifestations of the three aspects of creation, preservation and destruction attributed to the Supreme Being in the Upanishads, as, for example, in the following passage in the Taittiriya Upanishad, Brigu Valli, First Anuvaka:

> "That from which all beings are born, by which they live and into which they enter and merge."

30.13. In Sri Venkataramana Devaru [AIR 1958 SC 255], the Apex Court the Gods have distinct forms ascribed to them and their worship at home and in temples is ordained as certain means of attaining salvation. These injunctions have had such a powerful hold over the minds of the people that daily worship of the deity in temple came to be regarded as one of the obligatory duties of a Hindu. It was during this period that temples were constructed all over the country dedicated to Vishnu, Rudra, Devi, Skanda, Ganesha and so forth, and worship in the temple can be said to

have become the practical religion of all sections of the Hindus ever since. With the growth in importance of temples and of worship therein, more and more attention came to be devoted to the ceremonial law relating to the construction of temples, installation of idols therein and conduct of worship of the deity, and numerous are the treatises that came to be written for its exposition. These are known as Agamas, and there are as many as 28 of them relating to the Saiva temples, the most important of them being the Kamikagama, the Karanagama and the Suprabhedagama, while the Vikhanasa and the Pancharatra are the chief Agamas of the Vaishnavas. These Agamas contain elaborate rules as to how the temple is to be constructed, where the principal deity is to be consecrated and where the other Devatas are to be installed and where the several classes of worshippers are to stand and worship. The following passage from the judgment of Sadasiva Aiyar, J., in **Gopala Muppanar v. Subramania Aiyar [(1914) 27 MLJ 253]** gives a summary of the prescription contained in one of the Agamas:

> "In the Nirvachanapaddhathi it is said that Sivadwijas should worship in the Garbhagriham, Brahmins from the ante chamber or Sabah Mantabam, Kshatriyas, Vysias and Sudras from the Mahamantabham, the dancer and the

> musician from the Nrithamantabham east of the Mahamantabham and that castes yet lower in scale should content themselves with the sight of the Gopuram."

The other Agamas also contain similar rules.

33.13. In Sri Venkataramana Devaru [AIR 1958 SC 255] the Apex Court noticed that according to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship and purificatory ceremonies (known as Samprokshana) have to be performed for restoring the sanctity of the shrine. Vide judgment of Sadasiva Aiyar, J., in **Gopala Muppanar v. Subramania Aiyar [(1914) 27 MLJ 253]**. In **Sankaralinga Nadan v. Raja Rajeswara Dorai [(1908) LR 35 IA 176]** it was held by the Privy Council affirming the judgment of the Madras High Court that a trustee who agreed to admit into the temple persons who were not entitled to worship therein, according to the Agamas and the custom of the temple was guilty of breach of trust. Thus, under the ceremonial law pertaining to temples, who are entitled to enter into them for worship and where they are entitled to stand and worship and how the worship is to be conducted are all matters of religion. The conclusion is also implicit in Article 25, which after declaring that all persons are entitled freely to profess, practise and propagate

religion, enacts that this should not affect the operation of any law throwing open Hindu religious institutions of a public character to all classes and sections of Hindus. The Apex Court dealt with this question at some length in view of the argument of the learned Solicitor-General that the exclusion of persons from temple has not been shown to be a matter of religion with reference to the tenets of Hinduism. The Apex Court, accordingly held that if the rights of the appellants have to be determined solely with reference to Article 26(b), then Section 3 of Act 5 of 1947, should be held to be bad as infringing it.

33.14. In Sri Venkataramana Devaru [AIR 1958 SC 255] the Apex Court closely examined the main question as to whether the right guaranteed under Article 26(b) of the Constitution of India is subject to a law protected by Article 25(2)(b) throwing the suit temple open to all classes and sections of Hindus, after examining closely the terms of the two Articles. The Apex Court held that matters of religion in Article 26(b) include the right to exclude persons who are not entitled to participate in the worship according to the tenets of the institution. Under this Article, therefore, the appellants would be entitled to exclude all persons other than Gowda Saraswath Brahmins from entering into the

temple for worship. Article 25(2)(b) enacts that a law throwing open public temples to all classes of Hindus is valid. The word "public" includes, in its ordinary acceptation, any section of the public, and the suit temple would be a public institution within Article 25(2)(b), and Section 3 of the Act would therefore be within its protection. Thus, the two Articles appear to be apparently in conflict. Before the Apex Court, it was contended that this conflict could be avoided if the expression "religious institutions of a public character" is understood as meaning institutions dedicated to the Hindu community in general, though some sections thereof might be excluded by custom from entering into them, and that, in that view, denominational institutions founded for the benefit of a section of Hindus would fall outside the purview of Article 25(2)(b) as not being dedicated for the Hindu community in general. The learned counsel sought support for this contention in the law relating to the entry of excluded classes into Hindu temples and in the history of legislation with reference thereto, in Madras.

33.15. In Sri Venkataramana Devaru [AIR 1958 SC 255] the Apex Court noticed that according to the Agamas, a public temple enures, where it is not proved to have been founded for the benefit of any particular community, for the benefit of all Hindus including

the excluded classes. But the extent to which a person might participate in the worship therein would vary with the community in which he was born. In **Venkatachalapathi v. Subbarayadu [(1890) ILR 13 Mad 293]** the following statement of the law was quoted by the learned Judges with apparent approval:

> "Temple, of course, is intended for all castes, but there are restrictions of entry. Pariahs cannot go into the court of the temple even. Sudras and Baniyas can go into the hall of the temple. Brahmins can go into the holy of the holies."

In **Gopala Muppanar v. Subramania Aiyar [(1914) 27 MLJ 253]** Sadasiva Aiyar, J., observed as follows at p. 258:

> "It is clear from the above that temples were intended for the worship of people belonging to all the four castes without exception. Even outcastes were not wholly left out of the benefits of temple worship, their mode of worship being however made subject to severe restrictions as they could not pass beyond the Dwajastambam (and some times not beyond the temple outer gate) and they could not have a sight of the images other than the procession images brought out at the times of festivals."

33.16. In Sri Venkataramana Devaru [AIR 1958 SC 255] the Apex Court noticed that the true position, therefore, is that the excluded classes were all entitled to the benefit of the dedication, though their actual participation in the worship was insignificant. It was to remove this anomaly that legislation in Madras was

directed for near a decade. First came the Malabar Temple Entry Act (Madras 20 of 1938). Its object was stated to be 'to remove the disabilities imposed by custom and usage on certain classes of Hindus in respect of their entry into, and offering worship in, Hindu temples'. Section 2(4) defined 'temple' as 'a place which is used as a place of public worship by the Hindu community generally except excluded classes.' Sections 4 and 5 of the Act authorised the trustees to throw such temples open to persons belonging to the excluded classes under certain conditions. This Act extended only to the District of Malabar. Next came the Madras Temple Entry Authorisation and Indemnity Act (Madras Act 22 of 1939). The preamble to the Act states that 'there has been a growing volume of public opinion demanding the removal of disabilities imposed by custom and usage on certain classes of Hindus in respect of their entry into and offering worship in Hindu temples', and that 'it is just and desirable to authorise the trustees in charge of such temples to throw them open to the said classes'. Section 3 of the Act authorised the trustees to throw open the temples to them. This Act extended to the whole of the Province of Madras. Then, Act 5 of 1947, which gave rise to the litigation before the Apex Court was enacted. Its object was to lift the ban on the entry

into temples of communities which are excluded by custom from entering into them, and 'temple' was also defined as a place dedicated to the Hindus generally.

33.17. In Sri Venkataramana Devaru [AIR 1958 SC 255] it was argued before the Apex Court that Article 25(2)(b) of the Constitution must be interpreted in the background of the law as laid down in **Gopala Muppanar v. Subramania Aiyar [(1914) 27 MLJ 253]** and the definition of 'temple' given in the statutes mentioned above, and that the expression 'religious institutions of a public character' must be interpreted as meaning institutions which are dedicated for worship to the Hindu community in general, though certain sections thereof were prohibited by custom from entering into them, and that, in that view, denominational temples will fall outside Article 25(2)(b). The Apex Court found that there is considerable force in this argument. The Apex Court noticed that one of the problems which had been exercising the minds of the Hindu social reformers during the period preceding the Constitution was the existence in their midst of communities which were classed as untouchables. A custom which denied large sections of Hindus the right to use public roads and institutions to which all the other Hindus had a right of access,

purely on grounds of birth could not be considered reasonable and defended on any sound democratic principle, and efforts were being made to secure its abolition by legislation. This culminated in the enactment of Article 17, which is as follows: 'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law. Construing Article 25(2)(b) in the light of Article 17, it is arguable that its object was only to permit entry of the excluded classes into temples which were open to all other classes of Hindus, and that that would exclude its application to denominational temples. Now, denominational temples are founded, ex hypothesi, for the benefit of particular sections of Hindus, and so long as the law recognises them as valid - and Article 26 clearly does that - what reason can there be for permitting entry into them of persons other than those for whose benefit they were founded? If a trustee diverts trust funds for the benefit of persons who are not beneficiaries under the endowment, he would be committing a breach of trust, and though a provision of the Constitution is not open to attack on the ground that it authorises such an act, is it to be lightly inferred that Article 25(2)(b) validates what would,

but for it, be a breach of trust and for no obvious reasons of policy, as in the case of Article 17? There is, it should be noted, a fundamental distinction between excluding persons from temples open for purposes of worship to the Hindu public in general on the ground that they belong to the excluded communities and excluding persons from denominational temples on the ground that they are not objects within the benefit of the foundation. The contention of the appellants was that the former will be hit by Article 17 and the latter protected by Article 26, and that Article 25(2)(b) should not be interpreted as applicable to both these categories and that it should be limited to the former. The argument was also advanced as further supporting this view, that while Article 26 protects denominational institutions of not merely Hindus but of all communities such as Muslims and Christians, Article 25(2)(b) is limited in its operation to Hindu temples, and that it could not have been intended that there should be imported into Article 26(b), a limitation which would apply to institutions of one community and not of others. It was contended that Article 26 should, therefore, be construed as falling wholly outside Article 25(2)(b) which should be limited to institutions other than denominational ones. The Apex Court found that it is impossible

to read any such limitation into the language of Article 25(2)(b). It applies in terms to all religious institutions of a public character without qualification or reserve. Public institutions would mean not merely temples dedicated to the public as a whole but also those founded for the benefit of sections thereof, and denominational temples would be comprised therein. The language of the Article being plain and unambiguous, it is not open to the Court to read into it limitations which are not there, based on a priori reasoning as to the probable intention of the legislature. Such intention can be gathered only from the words actually used in the statute; and in a court of law, what is unexpressed has the same value as what is unintended. Therefore, the Apex Court held that denominational institutions are within Article 25(2)(b).

33.18. In Sri Venkataramana Devaru [AIR 1958 SC 255] it was argued before the Apex Court that if the expression 'religious institutions of a public character' in Article 25(2)(b) of the Constitution is to be interpreted as including denominational institutions, it would clearly be in conflict with Article 26(b), and it was argued that in that situation, Article 26(b) must, on its true construction, be held to override Article 25(2)(b). Three grounds were urged in support of this contention. It was firstly argued that

while Article 25 was stated to be 'subject to the other provisions of this Part' (Part III), there was no such limitation on the operation of Article 26, and that, therefore, Article 26(b) must be held to prevail over Article 25(2)(b). But the limitation 'subject to the other provisions of this Part' occurs only in clause (1) of Article 25 and not in clause (2). Clause (1) declares the rights of all persons to freedom of conscience and the right freely to profess, practise and propagate religion. It is this right that is subject to the other provisions in the Fundamental Rights Chapter. One of the provisions to which the right declared in Article 25(1) is subject to Article 25(2). A law, therefore, which falls within Article 25(2)(b) will control the right conferred by Article 25(1), and the limitation in Article 25(1) does not apply to that law.

33.19. In Sri Venkataramana Devaru [AIR 1958 SC 255] it was argued before the Apex Court that while the right conferred under Article 26(d) of the Constitution is subject to any law which may be passed with reference thereto, there is no such restriction on the right conferred by Article 26(b). It is accordingly argued that any law which infringes the right under Article 26(b) is invalid, and that Section 3 of Act 5 of 1947 must accordingly be held to have become void. Reliance was placed on the observations of the

Apex Court in **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954) SCR 1005]** at p. 1023, in support of this position. The Apex Court noticed that the right conferred under Article 26(b) cannot be abridged by any legislation, but the validity of Section 3 of Act 5 of 1947 does not depend on its own force but on Article 25(2)(b) of the Constitution. The very Constitution which is claimed to have rendered Section 3 of the Madras Act void as being repugnant to Article 26(b) has, in Article 25(2)(b), invested it with validity, and, therefore, the appellants can succeed only by establishing that Article 25(2)(b) itself is inoperative as against Article 26(b).

33.20. In Sri Venkataramana Devaru [AIR 1958 SC 255] it was argued before the Apex Court that whereas Article 25 of the Constitution deals with the rights of individuals, Article 26 protects the rights of denominations, and that as what the appellants claim is the right of the Gowda Saraswath Brahmins to exclude those who do not belong to that denomination, that would remain unaffected by Article 25(2)(b). The Apex Court noticed that this contention ignores the true nature of the right conferred by Article 25(2)(b). That is a right conferred on 'all classes and sections of

Hindus' to enter into a public temple, and on the unqualified terms of that Article, that right must be available, whether it is sought to be exercised against an individual under Art 25(1) or against a denomination under Article 26(b). The fact is that though Article 25(1) deals with the rights of individuals, Article 25(2) is much wider in its contents and has reference to the rights of communities, and controls both Article 25(1) and Article 26(b).

33.21. In Sri Venkataramana Devaru [AIR 1958 SC 255] the Apex Court noticed that the result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to

Article 26(b) in all matters of religion, subject only to this that as regards one aspect of them, entry into a temple for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put wholly out of operation, in the latter, the effect can be given to both that provision and Article 26(b). The Apex Court accordingly held that Article 26(b) must be read subject to Article 25(2)(b).

33.22. In Sri Venkataramana Devaru [AIR 1958 SC 255], on the question as to whether the modifications made in the decree of the High Court in favour of the appellants are valid, the Apex Court noticed that those modifications refer to various ceremonies relating to the worship of the deity at specified times each day and on specified occasions. The evidence of PW1 establishes that on those occasions, all persons other than Gowda Saraswath Brahmins were excluded from participation thereof. That evidence remains uncontradicted and has been accepted by the High Court and the correctness of their finding on this point has not been challenged before the Apex Court. It is not in dispute that the modifications aforesaid relate, according to the view taken in **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [(1954)**

SCR 1005] to matters of religion, being intimately connected with the worship of the deity. On the finding that the suit temple is a denominational one, the modifications made in the High Court decree would be within the protection of Article 26(b). The learned Solicitor-General for the respondents assailed that portion of the decree on two grounds. He firstly contended that the right to enter into a temple which is protected by Article 25(2)(b) is a right to enter into it for purposes of worship, that that right should be liberally construed, and that the modifications in question constitute a serious invasion of that right, and should be set aside as unconstitutional. The Apex Court agreed that the right protected by Article 25(2)(b) is a right to enter into a temple for purposes of worship and that further it should be construed liberally in favour of the public. But it does not follow from this that, that right is absolute and unlimited in character. No member of the Hindu public could, for example, claim as part of the rights protected by Article 25(2)(b) that a temple must be kept open for worship at all hours of the day and night, or that he should personally perform those services, which the Archakas alone could perform. It is again a well-known practice of religious institutions of all denominations to limit some of its services to persons who

have been specially initiated, though, at other times, the public in general are free to participate in the worship. Thus, the right recognised by Article 25(2)(b) must necessarily be subject to some limitations or regulations, and one such limitation or regulation must arise in the process of harmonising the right conferred by Article 25(2)(b) with that protected by Article 26(b).

33.23. In Sri Venkataramana Devaru [AIR 1958 SC 255] the Apex Court held that the right of a denomination to wholly exclude members of the public from worshipping in the temple, though comprised in Article 26(b), must yield to the overriding right declared by Article 25(2)(b) in favour of the public to enter into a temple for worship. But where the right claimed is not one of general and total exclusion of the public from worship in the temple at all times but of exclusion from certain religious services, they being limited by the rules of the foundation to the members of the denomination, then the question is not whether Article 25(2)(b) overrides that right so as extinguish it, but whether it is possible - so to regulate the rights of the persons protected by Article 25(2)(b) as to give effect to both the rights. If the denominational rights are such that to give effect to them would substantially reduce the right conferred by Article 25(2)(b), then

of course, Article 25(2)(b) prevails as against Article 26(b), the denominational rights must vanish. But where that is not the position, and after giving effect to the rights of the denomination what is left to the public of the right of worship is something substantial and not merely the husk of it, there is no reason why we should not so construe Article 25(2)(b) as to give effect to Article 26(b) and recognise the rights of the denomination in respect of matters which are strictly denominational, leaving the rights of the public in other respects unaffected.

33.24. In Sri Venkataramana Devaru [AIR 1958 SC 255] the Apex Court considered the question as to whether the rights claimed by the appellants are strictly denominational in character, and whether, after giving effect to them, what is left to the public of the right of worship is substantial. The Apex Court noticed that that the rights allowed by the High Court in favour of the appellants are purely denominational, as clearly appear from the evidence on record. PW1 put forward two distinct rights on behalf of the Gowda Saraswath Brahmins. He firstly claimed that no one except members of his community had at any time the right to worship in the temple except with their permission; but he admitted that the members of the public were, in fact, worshipping

and that permission had never been refused. This right will be hit by Article 25(2)(b) and cannot be recognised. PW1 put forward another and distinct right, namely, that during certain ceremonies and on special occasions, it was only members of the Gowda Saraswath Brahmin community that had the right to take part therein and that on those occasions, all other persons would be excluded. This would clearly be a denominational right. Then, the question is whether if this right is recognised, what is left to the public of their right under Article 25(2)(b) is substantial. Before the Apex Court, the learned Solicitor-General himself conceded that even apart from the special occasions reserved for Gowda Saraswath Brahmins, the other occasions of worship were sufficiently numerous and substantial. Therefore, on the facts, the Apex Court found that it is possible to protect the rights of the appellants on those special occasions, without affecting the substance of the right declared by Article 25(2)(b); and the decree passed by the High Court strikes a just balance between the rights of the Hindu public under Article 25(2)(b) and those of the denomination of the appellants under Article 26(b) and is not open to objection.

33.25. In Sri Venkataramana Devaru [AIR 1958 SC 255] it was argued that the members of the public are not parties to the litigation and that they may not be bound by the result of it, and that, therefore, the matter should be set at large. The Apex Court held that even if the members of the public are necessary parties to this litigation, that cannot stand in the way of the rights of the appellants being declared as against the parties to the action. Moreover, the suit was one to challenge the order of the Government holding that all classes of Hindus are entitled to worship in the suit temple. While the action was pending, the Constitution came into force, and as against the right claimed by the plaintiffs under Article 26(b), the Government put forward the rights of the Hindu public under Article 25(2)(b). There has been a full trial of the issues involved, and a decision has been given, declaring the rights of the appellants and of the public. When the appellants applied for leave to appeal to the Apex Court, that application was resisted by the Government *inter alia* on the ground that the decree of the High Court was a proper decree recognising the rights of all sections of the public. In that view of the matter, the Apex Court found no force in the objection that the public are not, as such, parties to the suit. It is their rights

that have been agitated by the Government and not any of its rights. In the result, both the appeal and the application for special leave to appeal were dismissed by the Apex Court.

34. In **Adithyan [(2002) 8 SCC 106]** the Two-Judge Bench noticed [Para.11 @ Page 119] that it has been recognised for a long time that where the ritual in a temple cannot be performed except by a person belonging to a denomination, the purpose of worship will be defeated. See: **Mohan Lalji v. Gordhan Lalji Maharaj [ILR (1913) 35 All 283 (PC)]**. In that case the claimants to the temple and its worship were Brahmins and the daughter's sons of the founder and his nearest heirs under the Hindu law. But their claim was rejected on the ground that the temple was dedicated to the sect following the principles of Vallabh Acharya in whose temples only the Gossains of that sect could perform the rituals and ceremonies and, therefore, the claimants had no right either to the temple or to perform the worship. In view of the Amendment Act and its avowed object there was nothing, in the petitioner's submission, to prevent the Government from prescribing a standardized ritual in all temples ignoring the Agamic requirements, and Archakas being forced on temples from denominations unauthorized by the Agamas. Since such a

departure, as already shown, would inevitably lead to the defilement of the image, the powers thus taken by the Government under the Amendment Act would lead to an interference with religious freedom guaranteed under Articles 25 and 26 of the Constitution.

34.1. In **Adithyan [(2002) 8 SCC 106]** the Two-Judge Bench noticed [Para.12 @ Page 120] that the Court repelled a challenge to the provisions in the Bombay Hindu Places of Public Worship (Entry Authorisation) Act, 1956, in **Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya [1966 (3) SCR 242 : AIR 1966 SC 1119]** and quoted with approval the observation of Monier Williams (a reputed and recognized student of Indian sacred literature for more than forty years and played an important role in explaining the religious thought and life in India) that "Hinduism is far more than a mere form of theism resting on Brahmanism" and that

> "it has ever aimed at accommodating itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested and assimilated something from all creeds." (SCR p. 261)

The Apex Court ultimately repelled the challenge, after adverting to the changes undergone in the social and religious outlook of the

Hindu community as well as the fundamental change as a result of the message of social equality and justice proclaimed by the Constitution and the promise made in Article 17 to abolish "untouchability", observing that as long as the actual worship of the deity is allowed to be performed only by the authorized Poojaris of the temple and not by all devotees permitted to enter the temple, there can be no grievance made.

35. As held by the Constitution Bench of the Apex Court in **Sri Venkataramana Devaru [AIR 1985 SC 255]** the right protected by Article 25(2)(b) of the Constitution is the right to enter into a temple for the purpose of worship. It does not follow from this that, this right is absolute and unlimited in character. No member of Hindu public could claim as part of the rights protected by Article 25(2)(b) that a temple must be kept open for worship at all hours of the day and night or that he should personally perform those services, which the Archakas alone could perform. Therefore, we find absolutely no merit in the contention of the learned counsel for the petitioner in W.P.(C)No.14136 of 2021 that the condition stipulated in clause 1 of the notification issued by the Devaswom Commissioner, that the applicant for appointment as Melsanthies of Sabarimala Devaswom and Malikappuram

Devaswom shall be a 'Malayali Brahmin' would amount to untouchability abolished under Article 17 of the Constitution of India.

In the above circumstances, these writ petitions fail and they are accordingly, dismissed, subject to the observations contained hereinbefore at paragraph No.31.4.

Sd/-
ANIL K. NARENDRAN, JUDGE

Sd/-
P.G. AJITHKUMAR, JUDGE

bkn/AV

APPENDIX OF WP(C) 26003/2017

PETITIONER'S EXHIBITS

Exhibit P1	**TRUE COPY OF THE NOTIFICATION DATED 20.07.2017 ISSUED BY THE 2ND RESPONDENT INVITING APPLICATION TO THE POST OF MELSHANTI.**
Exhibit P2	**TRUE COPY OF THE LETTER DATED 29.04.2014 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.**
Exhibit P3	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE ERAMALLOOR UPENDRAN THANTHRI DATED 29.07.2017.**
Exhibit P4	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY SNDP BRANCH, PEROOR DATED 31.07.2017.**
Exhibit P5	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY, KUTIKKATTU DEVASWA YOGAM, MOOLAVATTOM DATED 30.07.2017.**
Exhibit P6	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRESIDENT SNDP YOGAM, PALLOM DATED 31.07.2017.**
Exhibit P7	**TRUE COPY OF THE APPLICATION DATED 31.07.2017 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT TO THE POST OF MELSANTHI IN SABARIMALA/ MALIKAPPURAM TEMPLE.**
Exhibit P8	**TRUE COPY OF THE ORDER NO.M4.5990/14 DATED 11.09.2014 ISSUED BY THE COCHIN DEVASWOM.**

RESPONDENT EXHIBITS

Exhibit R2 (A)	**TRUE COPY OF THE JUDGMENT IN O.P.NO.26374 OF 2001.**
Exhibit R2 (B)	**TRUE COPY OF THE ORDER IN RP NO.94 OF 2002 IN O P NO.28670 OF 2000.**
Exhibit R2(C)	**TRUE COPY OF THE GUIDELINES.**
Exhibit R2(D)	**TRUE COPY OF THE JUDGMENT IN O.P.NO.19832 OF 2002 DATED 14.08.2002.**
Exhibit R2(E)	**TRUE COPY OF THE REPORT NO. 67 IN O.P. NO.3821 OF 1990.**
Exhibit R2 (F)	**TRUE COPY OF THE ORDER DATED 3.10.2008.**
Exhibit R2(G)	**TRUE COPY OF THE ORDER DATED 24.06.2009.**

Exhibit R2(H) **TRUE COPY OF THE JUDGMENT IN CIVIL APPEAL NOS.2570 AND 2571 OF 2003.**

APPENDIX OF WP(C) 13823/2021

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE NOTIFICATION ISSUED BY RESPONDENT NO.1, CALLING FOR APPLICATIONS FOR THE POST OF SHANTHIKKARAN DATED 27.05.2021.**
Exhibit P2	**TRUE COPY OF THE NOTIFICATION ISSUED BY RESPONDENT NO.1, EXTENDING THE LAST DATE FOR SUBMISSION OF APPLICATIONS FOR THE POST OF SHANTHIKKARAN DATED 17.06.2021.**
Exhibit P3	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE SREENARAYANA PATANA KENDRA, MARARIKULAM, CHERTHALA.**
Exhibit P4	**TRUE COPY OF THE CERTIFICATE SHOWING THAT THE PETITIONER HAD BEEN PRIEST AT VALAVANADU, PUTHANKAVU SREEDEVI TEMPLE.**
Exhibit P5	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY, VALAVANADU, PUTHANKAVU SREEDEVI TEMPLE.**
Exhibit P6	**TRUE COPY OF THE CERTIFICATE/MARK SHEET ISSUED REGARDING PASSING OF SSLC EXAMINATION.**
Exhibit P7	**TRUE COPY OF THE CERTIFICATE OF FITNESS ISSUED BY THE CIVIL SURGEON, DISTRICT HOSPITAL, CHERTHALA.**
Exhibit P8	**TRUE COPY OF THE POLICE CLEARANCE CERTIFICATE ISSUED BY THE SHO, MARARIKULAM.**
Exhibit P9	**TRUE COPY OF THE POSTAL RECEIPT WITH REGARD TO SENDING OF THE APPLICATION PURSUANT TO EXHIBIT P1.**

APPENDIX OF WP(C) 13834/2021

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE NOTIFICATION ISSUED BY THE RESPONDENT NO. 1, CALLING FOR APPLICATIONS FOR THE POST OF SHANTHIKKARAN DATED 27/05/2021.**
Exhibit P2	**TRUE COPY OF THE NOTIFICATION ISSUED BY THE RESPONDENT NO. 1, EXTENDING THE LAST DATE FOR SUBMISSION OF APPLICATIONS FOR THE POST OF SHANTHIKKARAN DATED 17/06/2021.**
Exhibit P3	**TRUE COPY OF THE DEGREE CERTIFICATE ISSUED BY THE SREE NARAYANA VAIDIKA SANGHOM FOR SUCCESSFUL COMPLETION OF TWO-YEAR COURSE OF POUROHITYA STUDIES.**
Exhibit P4	**TRUE COPY OF CERTIFICATE SHOWING THAT THE PETITIONER HAS EBEN THE PRIEST OF SREE AMBIKAVILASOM ARAYANKAVU TEMPLE, ISSUED BY SECRETARY OF THE TEMPLE COMMITTEE.**
Exhibit P5	**TRUE COPY OF THE SSLC PASS CERTIFICATE OF PETITIONER.**
Exhibit P6	**TRUE COPY OF THE POLICE CLEARANCE CERTIFICATE ISSUED BY THE SUB INSPECTOR OF POLICE.**
Exhibit P7	**TRUE COPY OF THE CERTIFICATE OF FITNESS ISSUED BY THE CIVIL SURGEON MEDICAL OFFICER, COMMUNITY HEALTH CENTRE, PERUMBALAM.**
Exhibit P8	**TRUE COPY OF THE BIRTH CERTIFICATE OF PETITIONER.**
Exhibit P9	**TRUE COPY OF THE CASTE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, PERUMBALAM PANCHAYATH.**
Exhibit P10	**TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE TRAVANCORE DEVASWOM BOARD.**
Exhibit P11	**TRUE COPY OF THE DEMAND DRAFT OF THE APPLICATION FEE PAID ALONG WITH THE EXHIBIT P10 APPLICATION.**

APPENDIX OF WP(C) 14067/2021

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE NOTIFICATION ISSUED BY THE RESPONDENT NO.1, CALLING FOR APPLICATIONS FOR THE POST OF SHANTHIKKARAN DATED 27/05/2021.**
Exhibit P2	**TRUE COPY OF THE NOTIFICATION ISSUED BY THE RESPONDENT NO.1, EXTENDING THE LAST DATE FOR SUBMISSION OF APPLICATIONS FOR THE POST OF SHANTHIKKARAN DATED 17/06/2021.**
Exhibit P3	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE RASHTRIYA SANSKRIT SANSTHAN, NEW DELHI.**
Exhibit P4	**TRUE COPY OF THE CERTIFICATE SHOWING THAT THE PETITIONER PASSED INTERMEDIATE IN SANSKRIT.**
Exhibit P5	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE MRITUNJAYA TANTRIK PEEDUM INDICATING THAT THE PETITIONER PASSED THE PRESCRIBED EXAMINATION FOR TANTRA VIDYA.**
Exhibit P6	**TRUE COPY OF THE POLICE CLEARANCE CERTIFICATE ISSUED BY THE POLICE STATION, KUMARAKOM.**
Exhibit P7	**TRUE COPY OF THE CERTIFICATE ISSUED REGARDING PASSING OF SSLC EXAMINATION.**
Exhibit P8	**TRUE COPY OF THE CERTIFICATE OF FITNESS ISSUED BY THE ASSISTANT SURGEON, GENERAL HOSPITAL, KOTTAYAM.**

APPENDIX OF WP(C) 14136/2021

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE SSLC CERTIFICATE OF THE IST PETITIONER.**
Exhibit P2	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE SREENARAYANA GUPTHA SAMAJAM, KANJANI DATED 10.06.2021**
Exhibit P3	**TRUE COPY OF THE CERTIFICATE DATED 10.10.2005 ISSUED BY THE RASHTRIYA SANSKRIT SANSTHANAM, AN AUTONOMOUS BODY UNDER THE UNION MINISTRY OF HOME RESOURCE DEVELOPMENT DEPARTMENT.**
Exhibit P4	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE RASHTRIYA SANSKRIT VIDHYAPEETHA, THIRUPATHI DATED 28.01.2009.**
Exhibit P5	**TRUE COPY OF THE CERTIFICATE ISSUED IN FAVOUR OF THE IST PETITIONER FROM THE RASHTRIYA SANSKRIT SANSTHAN, NEW DELHI DATED 29.11.2011.**
Exhibit P6	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY OF SREE NARAYANA DHARMA SANGAM TRUST VARKALA, DATED 16.06.2021.**
Exhibit P7	**TRUE COPY OF THE CERTIFICATE ISSUED BY THANTHRARATNAM BRAHMASREE RANJITH RAJAN DATED 09.06.2021.**
Exhibit P8	**TRUE COPY OF THE SSLC CERTIFICATE OF THE 2ND PETITIONER.**
Exhibit P9	**TRUE COPY OF THE CERTIFICATE DATED 26.04.2004 ISSUED FROM THE RASHTRIYA SANSKRIT SANSTHANAM A DEEMED UNIVERSITY UNDER THE UNION MINISTRY OF HUMAN RESOURCES DEVELOPMENT.**
Exhibit P10	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE SECRETARY OF VISHNUPURAM TEMPLE TRUST.**
Exhibit P11	**TRUE COPY OF THE CERTIFICATE EVIDENCING THAT THE 2ND PETITIONER HAS SUCCESSFULLY COMPLETED THE PRESCRIBED COURSE OF STUDY IN ASTROLOGY.**
Exhibit P12	**TRUE COPY OF THE CERTIFICATE ISSUED BY THANTHRARAJARATNAM BRAHMASRE RANJITH RAJAN DATED 09.06.2021 IN FAVOUR OF 2ND PETITIONER.**

Exhibit P13	**TRUE COPY OF THE NOTIFICATION ISSUED BY THE 3RD RESPONDENT INVITING APPLICATION FOR APPOINTMENT OF MELSANTHI IN SABARIMALA MALIKAPPURAM TEMPLES FOR THE YEAR 1197 (ME) DATED 27.05.2021.**
Exhibit P14	**TRUE COPY OF THE DULY FILLED UP APPLICATION FORM SUBMITTED BY THE IST PETITIONER DATED 16.06.2021.**
Exhibit P15	**TRUE COPY OF THE DULY FILLED UP APPLICATION FORM SUBMITTED BY THE 2ND PETITIONER DATED 16.06.2021.**
Exhibit P16	**TRUE COPY OF THE COMMUNICATION ISSUED BY THE 3RD RESPONDENT BEARING NO. ROC 61/21/S DATED 14.07.2021 TO THE 1ST PETITIONER.**
Exhibit P17	**TRUE COPY OF THE COMMUNICATION ISSUED BY THE 3RD RESPONDENT BEARING NO.ROC.61/21/S DATED 14.07.2021 TO THE 2ND PETITIONER.**
Exhibit P18	**TRUE COPY OF THE ANSWER GIVEN BY THE HON'BLE MINISTER FOR SC/ST/OBC AND DEVASWOM DATED 06.08.2021 IN THE STATE LEGISLATIVE ASSEMBLY.**

RESPONDENT EXHIBITS

Exhibit R2 (A)	**TRUE COPY OF THE JUDGMENT IN O.P. NO. 26374 OF 2001 DATED 19.09.2001 OF THIS HON'BLE COURT.**
Exhibit R2 (B)	**TRUE COPY OF THE ORDER IN R.P. NO. 94 OF 2002 IN O.P. NO.28670 OF 2000 OF THIS HON'BLE COURT.**
Exhibit R2(C)	**TRUE COPY OF THE GUIDELINES FRAMED BY THE BOARD ON 26.07.2002.**
Exhibit R2(D)	**TRUE COPY OF THE JUDGMENT IN O P NO. 19832 OF 2002 DATED 14.08.2002 OF THIS HON'BLE COURT.**
Exhibit R2(E)	**TRUE COPY OF THE REPORT NO.67 DATED 25.09.2008 OF THE LEARNED OMBUDSMAN IN O P NO.3821/1990, W P (C) NO. 19571/2007 & DBP NO.1/2006.**
Exhibit R2 (F)	**TRUE COPY OF THE ORDER DATED 03.10.2008 IN REPORT NO. 67 IN O.P.NO. 3821/1990 OF THIS HON'BLE COURT.**
Exhibit R2(G)	**TRUE COPY OF THE ORDER DATED 24.06.2009 IN REPORT NO.67 IN O.P. NO.3821/1990 OF THIS HON'BLE COURT.**

Exhibit R2(H)	**TRUE COPY OF THE COMMON JUDGMENT IN CIVIL APPEAL NOS.2570 AND 2571 OF 2003 OF THE SUPREME COURT OF INDIA.**

APPENDIX OF WP(C) 14283/2021

PETITIONERS' EXHIBITS

Exhibit P1	**TRUE COPY OF THE NOTIFICATION ISSUED BY THE RESPONDENT NO.1, CALLING FOR APPLICATIONS FOR THE POST OF SHANTHIKKARAN DATED 27/05/2021.**
Exhibit P2	**TRUE COPY OF THE NOTIFICATION ISSUED BY THE RESPONDENT NO.1, EXTENDING THE LAST DATE FOR SUBMISSION OF APPLICATIONS FOR THE POST OF SHANTHIKKARAN DATED 17/06/2021.**
Exhibit P3	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE MRITUNJAYA TANTRIK PEEDUM INDICATING THAT THE PETITIONER PASSED THE PRESCRIBED EXAMINATION FOR TANTRA VIDYA.**
Exhibit P4	**TRUE COPY OF THE CERTIFICATE ISSUED REGARDING PASSING OF SSLC EXAMINATION.**
Exhibit P5	**TRUE COPY OF THE CERTIFICATE OF FITNESS ISSUED BY THE MEDICAL OFFICER, DEPARTMENT OF HEALTH SERVICES, KERALA.**
Exhibit P6	**TRUE COPY OF THE POLICE CLEARANCE CERTIFICATE ISSUED BY THE POLICE STATION, SULTHANBATHERY.**
Exhibit P7	**TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER IN PURSUANCE TO EXHIBIT P1.**

APPENDIX OF WP(C) 14484/2021

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE NOTIFICATION ISSUED BY THE RESPONDENT NO.1, CALLING FOR APPLICATIONS FOR THE POST OF SHANTHIKKARAN DATED 27.5.2021.**
Exhibit P2	**TRUE COPY OF THE NOTIFICATION ISSUED BY THE RESPONDENT NO.1, EXTENDING THE LAST DATE FOR SUBMISSION OF APPLICATIONS FOR THE POST OF SHANTHIKKARAN DATED 17.6.2021.**
Exhibit P3	**TRUE COPY OF THE CERTIFICATE 29.7.2017 ISSUED BY ERAMALIOOR USHENDRAN TANTRI IN FAVOUR OF THE PETITIONER.**
Exhibit P4	**TRUE COPY OF THE CERTIFICATE DATED 31.7.2017 ISSUED BY THE SNDP BRANCH NO.1251 IN FAVOUR OF THE PETITIONER.**
Exhibit P5	**TRUE COPY OF THE CERTIFICATE DATED 30.7.2017 ISSUED BY THE SECRETARY, KUTTIKATTU DEVASWA YOGAM DATED 30.7.2017 IN FAVOUR OF THE PETITIONER.**
Exhibit P6	**TRUE COPY OF THE CERTIFICATE OF THE SNDP YOGAM BRANCH NO.28A DATED 31.7.2017.**
Exhibit P7	**TRUE COPY OF THE CASTE CERTIFICATE ISSUED IN FAVOUR OF THE PETITIONER.**
Exhibit P8	**TRUE COPY OF THE DEGREE CERTIFICATE ISSUED BY THE MG UNIVERSITY IN ENGLISH LITERATURE.**
Exhibit P9	**TRUE COPY OF THE PRATHAMA DHIKSHA CERTIFICATE OF THE RASHTRIYA SANSKRIT SANSTHAN.**
Exhibit P10	**TRUE COPY OF THE CERTIFICATE ISSUED BY THE PRASARAM SANSKRIT SAMAJAM.**
Exhibit P11	**TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER IN PURSUANCE TO EXHIBIT P1.**
Exhibit P12	**TRUE COPY OF THE ACKNOWLEDGEMENT RECEIPT DATED 18.6.2021 SHOWING REMITTANCE OF APPLICATION FEE BY THE PETITIONER.**
Exhibit P13	**TRUE COPY OF THE ORDER NO.M4.5990/14 DATED 11.9.2014 ISSUED BY THE COCHIN DEVASWOM BOARD.**

RESPONDENTS' EXHIBITS

Exhibit R1 (a)	**TRUE COPY OF THE JUDGMENT IN O.P. NO. 26374 OF 2001 DATED 19.9.2001 OF THIS HON'BLE COURT.**
Exhibit R1(b)	**TRUE COPY OF THE ORDER IN R.P. NO.94 OF 2002 IN O.P. NO. 28670 OF 2000 OF THIS HON'BLE COURT.**
Exhibit R1 (c)	**TRUE COPY OF THE GUIDELINES FRAMED BY THE BOARD ON 26.07.2002.**
Exhibit R1 (d)	**TRUE COPY OF THE JUDGMENT IN O.P NO. 19832 OF 2002 DATED 14.08.2002 OF THIS HON'BLE COURT.**
Exhibit R1 (e)	**TRUE COPY OF THE REPORT NO. 67 DATED 25.09.2008 OF THE LEARNED OMBUDSMAN IN O.P. NO. 3821/1990, WP(C) NO. 19571/2007 & DBP NO. 1/2006.**
Exhibit R1 (f)	**TRUE COPY OF THE ORDER DATED 03.10.2008 IN REPORT NO. 67 IN O.P. NO. 3821/1990 OF THIS HON'BLE COURT.**
Exhibit R1(g)	**TRUE COPY OF THE ORDER DATED 24.06.2009 IN REPORT NO.67 IN O.P. NO 3821/1990 OF THIS HON'BLE COURT.**
Exhibit R1 (h)	**TRUE COPY OF THE COMMON JUDGMENT IN CIVIL APPEAL NOS. 2570 AND 2571 OF 2003 OF THE SUPREME COURT OF INDIA.**
Exhibit R4 (a)	**TRUE COPY OF THE APPLICATION DATED 18.06.2021 MADE BY THE IMPLEADING PEITIONER.**