



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF SEPTEMBER, 2021

PRESENT

THE HON'BLE MR.SATISH CHANDRA SHARMA,  
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO.8926/2021 (GM-R/C-PIL)

BETWEEN

- 1 . P LATHAVYA ACHARYA  
SECRETARY AND MANAGING TRUSTEE  
SRI SHIROOR MUTT BHAKTHASAMITHI  
S/O LATE VITTALACHARYA,  
AGED 54 YEARS,  
R/AT "LAXMIVITTALA"  
VIDWAAN VITTALACHARYA MARG  
VOLAKADU  
UDUPI-576 101.
- 2 . P.SRINIVASA ACHARYA  
JOINT SECRETARY,  
SRI SHIROOR MUTT BHAKTHASAMITHI  
S/O LATE VITTALACHARYA  
AGED 62 YEARS,  
R/AT "SHRIVASA", BEHIND PPC  
VOLAKADU  
UDUPI-576 101.
- 3 . ARJUN ACHARYA P  
JOINT TREASURER,  
SRI SHIROOR MUTT BHAKTHASAMITHI  
S/O P SRINIVASA ACHARYA,  
AGED 25 YEARS,  
R/AT "SHRIVASA", BEHIND PPC  
VOLAKADU  
UDUPI-576 101.

- 4 . AKSHOBHYA ACHARYA  
TREASURER  
SRI SHIROOR MUTT BHAKTHASAMITHI  
S/O P LATHAVYA ACHARYA  
AGED 24 YEARS,  
R/AT "LAXMIVITTALA"  
VIDWAAN VITTALACHARYA MARG,  
VOLAKADU,  
UDUPI-576 101.

..PETITIONERS

(BY SRI D.R. RAVISHANKAR, ADV.,  
FOR LEX NEXUS)

AND

- 1 . STATE OF KARNATAKA  
REP. BY THE CHIEF SECRETARY  
VIDHANA SOUDHA  
DR.B.R.AMBEDKAR VEEDHI  
BANGALORE-560 001.
- 2 . HONBLE MINISTER FOR MUZARI  
GOVERNMENT OF KARNATAKA,  
REP. BY THE PRINCIPAL SECRETARY,  
VIDHANA SOUDHA  
DR.B.R.AMBEDKAR VEEDHI  
BANGALORE-560 001.
- 3 . COMMISSIONER,  
KARNATAKA HINDU RELIGIOUS  
INSTITUTIONS AND CHARITABLE  
ENDOWMENTS DEPARTMENT,  
GOVERNMENT OF KARNATAKA,  
3<sup>RD</sup> FLOOR, MINTO ANJENAYA BHAVAN,  
AV ROAD, CHAMARAJPET  
BANGALORE-560 018.
- 4 . KARNATAKA STATE COMMISSION  
FOR PROTECTION OF CHILD RIGHTS  
REPRESENTED BY ITS SECRETARY,  
KRISHI BHAVANA,  
HUDSON CIRCLE, NRUPATHUNGA ROAD,  
BANGALORE-560 002.

- 5 . SRI SODE VADIRAJA MUTT  
CAR STREET,  
UDUPI-576 101  
REP BY ITS PEETADHIPATHI  
SRI VISHWAVALLABHA TEERTHA SWAMIJI
- 6 . SRI VISHWAVALLABHA TEERTHA SWAMIJI  
BEFORE INITIATION OF RELIGIOUS  
ORDER KNOWN AS RAGHAVA TANTRI,  
MAJOR IN AGE,  
S/O SRINIVASA TANTRI  
R/AT SRI SODE VADIRAJA MUTT,  
CAR STREET,  
UDUPI-576 101.
- 7 . ANIRUDDHA  
S/O UDAYA KUMARA,  
AGED 16 YEARS,  
R/AT NO.3-52,  
NADU ALEVOOR, ALEVOOR VILLAGE,  
UDUPI TALUK.
8. DEPARTMENT OF WOMEN & CHILD WELFARE  
STATE OF KARNATAKA,  
M.S.BUILDING,  
BENGALURU 560 001  
Prisecy-wc@karnataka.gov.in  
REPRESENTED BY  
THE PRINCIPAL SECRETARY.
9. STATE CHILD PROTECTION UNIT,  
DEPARTMENT OF WOMEN & CHILD WELFARE  
STATE OF KARNATAKA  
M.S.BUILDING,  
BENGALURU 560 001  
Prisecy-wc@karnataka.gov.in  
REPRESENTED BY  
THE PRINCIPAL SECRETARY.
10. UDUPI DISTRICT CHILD PROTECTION UNIT  
1<sup>ST</sup> FLOOR, B-BLOCK,  
RAJATHADRI, D.C.OFFICE,  
MANIPAL 576 104,  
REPRESENTED BY  
THE DISTRICT CHILD PROTECTION

OFFICER AND THE DEPUTY COMMISSIONER  
FOR UDUPI DISTRICT, UDUPI,  
dcpuudupi@smail.com

11. UNION OF INDIA,  
REPRESENTED BY  
THE SECRETARY TO THE  
MINISTRY OF WOMEN AND  
CHILD DEVELOPMENT,  
SHASTRI BHAWAN,  
NEW DELHI 110 001  
nic-mwcd@gov.in
12. SUPERINTENDENT OF POLICE,  
UDUPI DISTRICT,  
BANNANJE ROAD,  
UDUPI 574 101.  
patospudp@ksp.gov.in

...RESPONDENTS

(BY SRI VIJAYKUMAR A PATIL, AGA FOR R1 TO R4,  
R8 TO R10 & P.12  
SMT.VIDYULATHA, ADV. FOR R4  
SRI PRAMOD N. KATHAVI, ADV. FOR R5 AND R6)

(SRI S.S.NAGANAND, SENIOR ADV., AMICUS CURIAE  
ALONG WITH SRI RAGAHVENDRA S SRIVATSA, ADV.  
AND SRI PRASHANTH MURTHY S.G)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT, DIRECTION  
OR ORDER OF APPROPRIATE NATURE DECLARING THAT THE  
SIXTH RESPONDENT DOES NOT HAVE ANY POWERS TO NOMINATE  
OR APPOINT ANY PERSON TO THE SEAT OF THE PEETADHIPATHI  
OF THE SHRI SHIROOR MUTT, UDUPI, ETC.

THIS WRIT PETITION COMING ON FOR ORDERS ON  
23.9.2021 AND HAVING BEEN HEARD AND RESERVED FOR  
ORDERS, THIS DAY, **ACTING CHIEF JUSTICE**, PRONOUNCED  
THE FOLLOWING:

**ORDER**

The petitioners before this Court have filed the present petition by way of a Public Interest Litigation stating that they are the members of Sri Shiroor Mutt Bhaktha Samithi, a Trust duly registered under the provisions of the Indian Trusts Act, 1882. It has been stated that the Trust has been established for the purposes of carrying out the religious, cultural and other activities alongside managing the properties of Sri Shiroor Mutt, which is one of the Ashta Mutts of Udupi responsible for the activities and management of Shri Krishna Temple at Udupi. The petitioners have stated that they are associated with the said Mutt for generations and their ancestors were also associated with Sri Shiroor Mutt.

2. The facts as stated in the writ petition further reveal that Shri Laxmivara Teertha Swamiji, Peetadhipathi of Sri Shiroor Mutt reached his heavenly abode during July, 2018. During his lifetime, he was managing the affairs of the Mutt. After his demise, in order to fill the vacuum and to take charge of the administration and overall control of the affairs of the management of the Mutt, the petitioners have

formed Sri Shiroor Mutt Bhaktha Samithi, which is the consortium of all the persons and Bhakths of Sri Shiroor Mutt, convened with the sole object and purpose of carrying out the affairs and management of the Mutt as well as to further the interests and tenets of the Madhva Philosophy, which is the sole guiding factor and the purpose behind the formation of the Mutt.

3. The petitioners have further stated that after the demise of Sri Laxmivara Teertha Swamiji, respondent No.6 - Sri Vishwavallabha Teertha Swamiji took charge of Sri Shiroor Mutt and started to portray himself as the coroneted Peetadhipathi of the Mutt. It has been stated that respondent No.6 illegally took charge and custody of Sri Vittala Devara Pettige of the Mutt. The Vittala Devara Pettige is an auspicious box containing all the spiritual and highly valuable Idols and precious stones belonging to the Mutt, which have travelled through several generations of the Peetdhipathis of the Mutt.

4. Much has been said in the writ petition about respondent No.6 by the petitioners levelling various allegations against him and it has been further stated that

the petitioners issued a legal notice on 12.3.2021 to respondent No.6 informing him about his alleged illegal acts and to desist from not only indulging in the affairs of the Mutt, but also from portraying himself as the Peetadhipathi of the Mutt. The petitioners have further stated that while all this was going on, respondent No.6 along with his henchmen began to float a news that respondent No.6 will appoint respondent No.7, a minor as Peetadhipathi of the Mutt and it was announced in a Press Conference that said ceremony and appointment will take place in April-May, 2021. It has been stated that a Press Conference was called in April, 2021 by respondent No.6 announcing the nomination of the Peetadhipathi of the Mutt and the petitioners protested in the matter.

5. It has been further stated that respondent No.6 does not have any authority to indulge himself in the affairs of the Mutt and does not have any power to nominate or appoint a person as Peetadhipathi. It has been stated that again a Press Conference took place on 20.4.2021, in which respondent No.6 announced publicly that he would nominate respondent No.7, a minor and a non-disciple of Sri Shiroor

Mutt as Peetadhipathi and the religious ceremony will take place in the month of May 2021.

6. It has been further stated that the petitioners protested in the matter and informed the law enforcement agencies about the alleged illegal acts of respondent No.6. However, the ceremonies were performed to project the nomination of respondent No.7 as Peetadhipathi of Sri Shiroor Mutt. It has been stated that the announcement of respondent No.6 for appointing respondent No.7 as Peetadhipathi of Sri Shiroor Mutt and carrying on the religious rituals are illegal and they could ignite communal violence, pose threat to the maintenance of public health and it is against all tenets and beliefs of the followers of Sri Shiroor Mutt and as such, a direct infringement of the fundamental rights provided under Part III of the Constitution of India to the petitioners and to the public at large.

7. The petitioners have raised a ground that the minor is not capable of exercising free consent and is not competent to contract in terms of Section 11 of the Indian Contract Act, 1872 and even under the scheme of Guardian



and Wards Act, 1890 and as per the provisions of the Hindu Minority and Guardianship Act, 1956, as long as the child does not attain 18 years of age, the natural guardians, who are the parents would continue to be the legal guardians of the minor child unless ordered otherwise.

8. It has been further stated that respondent No.7 is not from an affluent background and there are economic challenges, which the family is faced with. He is the only son of his parents and he has an younger sister. It has been stated that after filing of the present petition, respondent No.6 has declared that religious ceremony for appointment of respondent No.7 would be held between 11.5.2021 and 14.5.2021 and therefore, the petitioners have immediately taken steps to alert the State Machinery and the concerned authorities about the flagrant violation of Covid 19 guidelines and consequential violation of the provisions of the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897.

9. It has been stated that several representations had been given to the District Administration, District Police and those representations have been brought on record. It has been stated that the petitioners have also given

representations to Karnataka State Commission for Protection of Child Rights and the representation dated 27.5.2021 is also on record.

10. It has been further stated that respondent No.4 – Karnataka State Commission for Protection of Child Rights has formulated a detailed policy on child rights including the National Policy for Children. In consonance with the same and for establishing the authorities as envisaged under various policies of the Central Government and that of Ministry of Women and Child Development, respondent No.1 – State of Karnataka and respondent No.8 – Department of Women and Child Welfare have devised the Karnataka Child Protection Policy, 2016 and have set up various authorities under the said Policy.

11. It has been stated and argued before this Court that conferment of Sanyasa on a minor is violative of all the policies issued on the subject. It has been further stated that the petitioners are the persons owing allegiance to Sri Shiroor Mutt and they are deeply interested in ensuring that the religious practices attached are practiced in the same manner in which they are being performed right from the

inception of the Mutt. It has been stated that in respect of the fundamental rights under Articles 25 and 26 of the Constitution of India as to the religious practices attached to the religious denomination, Sri Shiroor Mutt requires to be protected and as respondent No.6 has violated the constitutional and fundamental rights guaranteed under Articles 25 and 26, the only remedy available is to approach the Constitutional Mechanism provided under Article 226 and 32 of the Constitution of India.

12. The petitioners have further stated that they have submitted representations to all the authorities, who are respondents before this Court. However, as nothing has been done, the present petition is being filed to espouse the general public cause, the rights of minors and for protection of the religious practices of Sri Shiroor Mutt.

13. Various grounds have been raised in the present petition and it has been contended that the present petition is maintainable before this Court. On the ground of maintainability, it has been stated that the issue involved in the present petition relates to a public institution and the action of respondent No.6 is violative of fundamental rights

guaranteed to the devotees of Sri Shiroor Mutt under Part III of the Constitution of India, hence, the petition is maintainable.

14. Reliance has been placed upon a judgment delivered in the case of **Shalini Shyam Shetty and Anr., v. Rajendra Shankar Patil**, reported in (2011) 1 CTC 854. Reliance has also been placed upon a judgment delivered in the case of **Sheela Barse v. Union of India**, reported in AIR 1988 SC 2211 in respect of the issue of maintainability of the writ petition. Reliance has also been placed upon a judgment delivered in the case of **C.K.Rajan v. State of Kerala and others**, reported in AIR 1994 Kerala 179; **A.A.Gopalakrishnan v. Cochin Devaswom Board and others**, reported in (2007) 7 SCC 482; and **State of Uttaranchal v. Balwant Singh Chaufal and others**, reported in (2010) 3 SCC 402.

15. In respect of the ground that respondent No.6 has no authority or religious sanction to nominate or appoint Peetadhipathi of Sri Shiroor Mutt, it has been stated by the petitioners that respondent No.6 is the coronate Peetadhipathi of Sri Sode Vadiraja Mutt and has no nexus

whatsoever with Sri Shiroor Mutt and therefore, as he is not the Peetadhipathi of Sri Shiroor Mutt, he does not have power to nominate a Peetadhipathi of Sri Shiroor Mutt. Therefore, the exercise of powers by respondent No.6 to appoint respondent No.7 as Peetadhipathi of Shiroor Mutt is in violation of the fundamental rights guaranteed to the petitioners under Part III of the Constitution of India.

16. Another ground has been raised by the petitioners stating that a minor cannot be appointed as a Matadhipathi of Sri Shiroor Mutt. In respect of the said ground, it has been stated that the appointment of respondent No.7 as Peetadhipathi of Sri Shiroor Mutt is opposed to law and religious tenets. The respondent No.7 is a minor, is incapable of exercising his independent judgment and discretion in the matters of submitting his will to accept the position of Peetadhipathi of the Mutt, let alone use his knowledge and wisdom in dealing with the affairs and management of the activities and properties of the Mutt. It has been further stated that respondent No.7 is an innocent and immature minor, who has not even attained the age nor the independent thinking ability of differentiating the nuances

attached to the life of grihastha and a sanyasa. It has been further stated that respondent No.7 is not even a disciple of Sri Shiroor Mutt and a person who is not disciple of Sri Shiroor Mutt, has been appointed as a Peetadhipathi. He is an alien to Sri Shiroor Mutt.

17. Another ground has been taken by the petitioners stating that respondent No.7 who is a minor cannot be the owner of the properties of the Mutt. The properties of the Mutt are worth crores and crores of rupees and respondent No.7 being a minor, cannot exercise in any manner independent judgment or contractual rights *qua* the properties and as such, respondent No.7 will not be able to exercise the control over the properties of the Mutt.

18. Another ground raised by the petitioners is that respondent No.7 does not have an elder or younger brother – sibling and the religious books and customary practices provide that a person cannot be appointed as a Peetadhipathi unless he is having an elder or younger brother – sibling. Such a practice, is prevalent only to ensure that the parents are taken care of by his elder or younger brother – sibling. It has been further stated that respondent No.7 is the only son

of his parents and his appointment as a Peetadhipathi will leave his parents all alone and he will not be able to discharge the pious obligations of a son towards his parents and therefore, the appointment is bad in law.

19. Another ground has been raised by the petitioners, though it has been raised in earlier paragraphs also, stating that respondent No.6 does not enjoy the religious sanction to nominate a Peetadhipathi of Sri Shiroor Mutt and the appointment is bad on the ground that a minor, who is a non disciple of Sri Shiroor Mutt has been appointed as a Peetadhipathi of Sri Shiroor Mutt.

20. The petitioners by way of an amendment have added another ground and the contention of the petitioners is that the appointment of respondent No.7 as Peetadhipathi of Sri Shiroor Mutt is violative of Article 21 of the Constitution of India and it is also violative of Article 14 of the Constitution of India. It has also been stated that the appointment of respondent No.7 as Peetadhipathi is again contrary to the provisions as contained under Article 39(a) and 39(f) of the Constitution of India.

21. The petitioners have raised other grounds also in respect of violation of the child rights and have placed reliance upon a judgment delivered in the case of **Sheela Barse and Ors., v. Union of India and Ors.**, reported in 1986(3) SCC 596; in the case of **Sheela Barse (II) and Ors., v. Union of India and Ors.**, reported in 1986(3) SCC 632; in the case of **Lakshmi Kant Pandey v. Union of India**, reported in 1984(2) SCC 244; and in the case of **Suo Moto v. State of Karnataka**, W.P.No.4840/2012, decided by the High Court of Karnataka on 5.7.2012.

22. The petitioners have also placed reliance on UNCRC- 1989 and the contention of the petitioners is that various laws have been enacted to protect the rights of the child and appointment of respondent No.7 is again in violation of the Child Rights and is also in violation of the Commission of Protection of Child Rights Act, 2005. It has been further stated that there was a wide coverage of minor rights being violated by imposition of sanyasa upon respondent No.7 and all the authorities have failed to protect the rights of the child. It has been further stated that as no action has been taken against respondent No.6, it lends credence to the statement of the petitioners that respondent



No.6 has been in a position to wield extraneous influence on the concerned authorities and the stakeholders for implementation of law and therefore, the petitioners have filed the present petition before this Court.

23. It has been further stated that various guidelines have been issued by the State Government, Government of India and the guidelines in respect of Covid 19 pandemic have been violated as well as statutory provisions under the Disaster Management Act, 2005 and Epidemic Diseases Act, 1897, by holding a religious ceremony of appointing a Peetadhipathi by respondent No.6 and no action has been taken by the State Government.

24. The petitioners have again and again projected themselves to be the followers of Sri Shiroor Mutt and it has been alleged that the religious rights protected in terms of Articles 25 and 26 including the management of a Religious Institution, have been violated.

25. The petitioners have placed reliance upon a judgment delivered in the case of **The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,**

reported in 1954 SCR 1005; **Adi Saiva Sivachariyargal Nala Sangam and Ors., v. The Government of Tamil Nadu and Ors.**, reported in (2016) 2 SCC 725; **Seshammal v. State of Tamil Nadu**, reported in (1972) 2 SCC 11; and **Indian Young Lawyers Association and Ors., v. The State of Kerala and Ors.**, reported in 2019 11 SCC 1.

26. Another ground has been raised by the petitioners stating that the Balasanyasa as a whole is done away with the common consensus of the Ashtamatas including that of Sri Sode Vadiraja Mutt, of which respondent No.6 is a Pontiff while the seers of Ashtamatas have regarded this practice as obsolete and unnecessary. It has been stated that Sri Vishweshwara Tirtha, the erstwhile pontiff of the Pejawara Mutt, who is highly revered not only by the people owing allegiance to Sri Pejawara Mutt but by the Madhwa Community at large, have also expressed a strong disapproval against the practice of anointing a minor as a Uttaradhikari/Matadhipathi. It has been stated that the Seers of many respective Ashtamatas have also expressed dissatisfaction against the anointment of a minor in place of a Peetadhipathi of Sri Shiroor Mutt and the same has received wide publicity.

27. The petitioners have prayed for an interim relief in the present petition to prohibit respondent No.6 from carrying out any religious events for the appointment of respondent No.7, a minor to the seat of Peetadhipathi. However, as this Court is deciding the matter on merits, the question of granting any interim relief in the matter does not arise.

28. Respondent Nos.5 and 6 have filed their reply and it has been stated that the present petition is not a Public Interest Litigation. It is purely a private and publicity oriented petition. It has been stated that the petitioners have not approached this Court with clean hands and the petitioners in the guise of espousing a public cause have attempted to project their own personal interest and agenda. The petition presented by the petitioners do not involve anything, which even has a semblance of public interest. It has been stated that no resolution has been filed by the so-called Trust empowering the petitioners to file a writ petition on behalf of the Trust. The petition also does not raise any substantial issue relating to any public cause or interest and it has been filed with vested interest.

29. It has been further stated that under the guise of public interest the petitioners have attempted to project and establish their private rights vis-à-vis Sri Shiroor Mutt, one of the AshtaMutts (eight Mutts) established 800 years ago by his Holiness Shriman Madhwacharya, the profounder of the Madhwa Philosophy, known as the 'Dwaita Sidhantha", which is held in great reverence and sanctity, not only by the followers of Madhwacharya throughout India, but by the pious Hindus of the State of Karnataka in particular and various other States of this Country in general.

30. The respondents No.5 and 6 have further stated that the petitioners have not been able to establish violation of any statutory provision of law warranting any reliefs from the hands of this Hon'ble Court. It has been further stated that the Mutts and other religious institutions in the State of Mysore were governed by the Mysore Religious and Charitable Endowments Act. The State of Mysore was formed in 1956 on the reorganization of the States in India by adding some Districts of the then Madras State, the then Andhra Pradesh and Maharashtra States. The undivided Dakshina Kannada District and Udupi District were earlier

governed by the Madras Hindu Religious and Endowments Act. The State of Mysore (Karnataka) has enacted a comprehensive law in the State, including the Districts' merger with the State after reorganization since there was a longstanding public demand to bring about a uniform law to provide for the regulation of all charitable endowments and Hindu Religious Institutions in the State of Karnataka, which were regulated under different enactments having local applications in different parts of the States.

31. The enactments quoted by the respondents No.5 and 6 are as under;

- 1) The Karnataka Religious and Charitable Institutions Act, 1927;
- 2) The Madras Hindu Religious and Charitable Endowments Act, 1951;
- 3) The Bombay Public Trust Act, 1950; and
- 4) The Hyderabad Endowments Act, 1956.

32. The Hindu Religious Institutions and Charitable Endowments Act, 1997 (hereinafter referred to as the Act of 1997) was brought into force by replacing several local laws and to bring uniformity in the matter of regulating the various charitable endowments and Hindu Religious

Institutions. The said Act excluded all the Mutts in the State of Karnataka from its application and the same was challenged before this Court. The petition was initially dismissed by the learned Single Judge, who has upheld the validity of the Act and the matter was taken up before the Division of this Court in the case of **Sri Sahasra Lingeshwara Temple and others v. State of Karnataka and others**, in W.A.No.3440/2005 and other connected matters and the Division Bench of this Court has struck down the Act by judgment dated 8.9.2006. The matter was then taken up in appeal before the Hon'ble Supreme Court and the matter is still pending before the Hon'ble Supreme Court. Thereafter, the Act of 1997 was amended by the State Government in the year 2011 by Amendment Act 27/2011 and the amendment was again challenged before this Court and this Court has struck down the amendment. Thus, in short, as on today, there is no law governing the Religious and Charitable Endowments in the State of Karnataka.

33. The respondents No.5 and 6 have further stated that assuming that earlier Endowment Act applies in the State in the light of the orders passed by the Hon'ble Supreme Court, the said Act in unequivocal terms does not

apply to Mutts and therefore, there is no exclusive right available to the petitioners to challenge under Article 226 of the Constitution of India.

34. The respondents No.5 and 6 in reply to the alleged violation of rights flowing to the Peetadhipathi of Sri Shiroor Mutt under the Commission for Protection of Child Rights Act, 2005, have stated that none of the rights flowing to the Peetadhipathi of Sri Shiroor Mutt, who is below the age of 18 years, are affected by his appointment as Peetadhipathi to the said Mutt. It has been further stated that all the rights flowing to him from or under any statute including those guaranteed to him under Article 39(e) and 39(f) of the Constitution of India or under the Juvenile Justice Act, 2015 or any other law for the time being in force, are not affected or infringed or impaired by his appointment as Peetadhipathi of Sri Shiroor Mutt.

35. It has been further stated that the appointment of Peetadhipathi of Sri Shiroor Mutt is also well within the policies formulated by the Union of India from time to time including National Policy for Children of 2013. It has been further stated that Peetadhipathi of Sri Shiroor Mutt -

respondent No.7 has not been denied or deprived of any of his rights flowing to him under any law or policies of the Union of India. Peetadhipathi pursues education by learning Vedas, Upanishads, Philosophy of Sri Shriman Madhwacharya, to which he had always keen interest, profound love and desire. Peetadhipathi is not abused or forced to do any vocation unsuited to his age or strength nor is forced to carry out the duties attached to the post of Peetadhipathi owing to any economic necessity or need. It has been stated that in Sri Shiroor Mutt he has all the opportunities and facilities for over all development of his person and personality in a most conducive environment and his freedom is not all curtailed. It has been stated that the Peetadhipathi lives under the care and protection of the Peetadhipathi of respondent No.5 and also under the learned Teachers of the said Mutt. His childhood is perfectly protected against all fours, against any sort of exploitation, against moral and material abandonment and the petitioners have raised all baseless allegations in the writ petition.

36. It has been stated by respondents No.5 and 6 that the writ petition lies against the State and the



instrumentalities of the State and in the case on hand, a careful reading of the contentions raised and grounds urged and reliefs sought by the petitioners against private parties, that too after failing to get any reliefs in the Criminal Proceedings instituted by the petitioners with very same allegations, indicate the real intention and motive of the petitioners in filing the present proceedings in the guise of a Public Interest Litigation.

37. It has been stated that the petitioners have not placed proper facts before this Hon'ble Court but have placed distorted version of events. The facts in their proper perspective as stated by respondents No.5 and 6 are as under:

The holy land Bharata, is a leading centre of rich tradition of culture and heritage. The treasure of culture and heritage has its roots in ancient sacred texts i.e., the Vedas, the Upanishads, the Smritis, Ramayana, Maha-Bharata, Purana etc. Ancient sages, who were the seers of truth, preserved this vast literature and blessed the generation. They lived with nature and worshipped it. They had the shelter in caves, leaf huts, etc. Since they enjoyed the

realization of Cosmic Truth, they surpassed the mundane hardships. They roamed around this holy land and sanctified it. They used to initiate the holy texts to the qualified. Thus, the sages accomplished this academic goal in their holy shelters (Ashramas) and also elsewhere. Gradually, the generation of qualified felt the need of academic initiation and hence, flocked to the Ashramas voluntarily. Then, the holy shelters (penance grooves) became the renowned learning centres. The contribution of these centres is significant in all respects. When the number of such centres increased, there occurred amalgamation for meticulous transaction. The number of pupils also got increased. Along with studies, there started distinct practice of observance. Each learning centre systematized the learning and mode of observance and thus, sustained its individuality. Thereafter, such centres were replaced by Mutts. There came the founder of that institution, who was also reckoned as the expounder of the doctrine of particular system. To continue the propagation of doctrines and noble observance, the founder nominated qualified disciples for the purpose mentioned above.

38. Shriman Madhwacharya was a great philosopher and a saint, who professed, propounded, preached and practised Hindu Philosophy popularly known as Dwaitha Philosophy (pluralistic theism of the Hindu religion). Shriman Madhwacharya, established a Mutt called Sri Krishna Mutt in Udupi about 800 years ago, where he installed and consecrated an idol of Lord Shri Krishna said to have been worshiped by Lord Sri Krishna's wife, Rukmini Devi, herself during her life time, and the said Mutt is now popularly known as Shri Krishna Mutt. In the said Shri Krishna Mutt, Shriman Madhwacharya during his life time himself carried out all the rites and rituals associated with the worship of Lord Shri Krishna. Shriman Madhwacharya, during his life time also established Ashta Mutts (8 Mutts) in Udupi town *inter alia* for the purposes of carrying out the worship of Lord Shri Krishna in Shri Krishna Mutt, all other religious rites and rituals connected with the worship of Lord Shri Krishna as also for the propagation, preaching and practice of Dwaitha Philosophy.

39. The eight Mutts so established by Shriman Madhwacharya for the above purposes are as under:

- (1) Shri Pejavara Mutt,
- (2) Shri SodeVadiraja Mutt (the 5<sup>th</sup> Respondent),
- (3) Shri KrishnapuraMutt,
- (4) Shri PuttigeMutt,
- (5) Shri ShirooruMutt,
- (6) Shri KaniyoorMutt,
- (7) Shri PalimaruMutt and
- (8) Shri AdmaruMutt.

To the aforesaid 8 Mutts, Shriman Madhwacharya appointed 8 Peethadhipathis, who were his direct 'Sanyasin-Disciples" and they were:

1. Shri HrishikshaTeertharu-**Shri. Palimaru Mutt**
2. Shri Narasimha Teertharu-**Shri. Admaru Mutt**
3. Shri JanardanaTeertharu-**Shri Krishnapura Mutt**
4. Shri Upendra Teertharu-**Shri Puttige Mutt**
5. Shri Vamana Teertharu-**Shri Shirooru Mutt**
6. Shri Vishnu Teertharu-**Shri Sode Mutt**
7. Shri Rama Teertharu-**Shri Kaniyuru Mutt**
8. Shri AdhokshajaTeertharu-**Shri Pejawara Mutt**

40. It has been stated that Shriman Madhwacharya blessed his 8 disciples mentioned above with the images/idols of the following deities:

1. Shri Rama (Shri. Palimaru Mutt)
2. Chaturbhuj Kalinga Mardhan Krishna (Shri. Admaru Mutt)
3. Shri Kalinga Mardhana Krishna (Shri Krishnapura Mutt)

4. Vithala (Shri Puttige Mutt)
5. Vithala (Shri Shirooru Mutt)
6. BhooVaraha (Shri Sode Mutt)
7. Narasimha (Shri Kaniyuru Mutt)
8. Vithala(Shri Pejawara Mutt)

These 8 Balasanyasi-Disciples were all living in Shri Krishna Mutt at the relevant point in time and carried out the activities associated with the Worship of Lord Shri Krishna as ordained by their teacher Shriman Madhwacharya. The Propounder of the Dwaitha Philosophy, Shriman Madhwacharya, had established these 8 Mutts in pairs. In other words, the Ashta Mutts were grouped into pairs and the set of 4 Pair Mutts are popularly known as Dwandwa Mutts.

41. The arrangements so made by Shriman Madhwacharya of these 8 Mutts are as under :

1. Shri. Palimaru Mutt- Shri. Admaru Mutt
2. Shri. Krishnapura Mutt- Shri Puttige Mutt
3. Shri Shirooru Mutt- Shri. Sode Mutt
4. Shri. Kaniyuru Mutt-Shri Pejawara Mutt

It has been stated that as per the aforementioned arrangements, respondent No.5 - Mutt Shri Sode Mutt is the Dwandwa Mutt of the Shri Shiroor Mutt. The arrangement so

put in place by Shriman Madhwacharya 800 hundred years ago among these 8 Mutts was such that as and when the circumstances as obtaining demanded or presented on account of death or any incapacity of the presiding Peethadhipathi of any of the Ashtamatas, the Peethadhipathi of its Pair Mutt (Dwandwa Mutt) could step in and take care of its affairs and activities. Such was the power conferred on the Peethadhipathi of the Dwandwa Mutt that he had the power to select and appoint a successor not only to the Mutt of which he is the Peethadhipathi, but also a successor to its Pair Mutt (Dwandwa Mutt), whose Peethadhipathi for reasons such as death, impairment-mental or physical, or for any reason whatsoever did not or could not select and appoint his successor.

42. It has been stated that the qualifications for being selected and appointed as a Peethadhipathi of any of the Ashta Mutts are that the person should belong to the Tulu Shivalli Madhwa Brahmin Community and he should be a Brahmachari (Celibate) belonging to a Tulu speaking Brahmin Family from South Canara and a follower or disciple of any of the Ashta Mutts. A person so selected and

appointed would be initiated into "Sanyasa" in accordance with the Hindu scriptures, procedures, religious ceremonies and rituals as are prescribed in that behalf and he shall live with the Peethadhipathi of the Mutt if available, or with the Peethadhipathi of the Pair Mutt (Dwandwa Mutt), if the Swamiji of a particular Mutt is not available due to death, incapacity or impairment or any such reasons. While so living with the Peethadhipathi of the Mutt to which he is appointed or anointed as a Peethadhipathi or with the Peethadhipathi of its Dwandwa Mutt (pair Mutt), he shall learn the Vedas, Upanishads and other religious and spiritual subjects. Primarily he should learn the teachings of Shriman Madhwacharya enshrined in his 37 texts, which are popularly known as "Sarva Moola Granthas".

43. It has been further stated by respondents No.5 and 6 that it is necessary to place on record the incontrovertible fact before this Court that the earlier pontiffs of Shri Shiroor Mutt, namely Shri Shri Lakshmindra Theertha, Shri Shri Lakshmimanojna Theertha and Shri Shri Lakshmivara Theertha, hailed from the same blood family, who are recognized to be the disciples of Shri Sode Vadhiraaja

Mutt. Moreover, the above mentioned three of them were appointed as the Peethadhipathi of Sri Shiroor Mutt, one after the other, by the then Dwandwa Matadhipati, Shri Shri Vishwothama Theertha and the ashrama guru of the present pontiff of Shri Sode Vadiraja Mutt, under the concept of the Dwandwa Mutt, which is prevailing in the customs of the Shri Krishna Mutt since the time of Shriman Madhwacharya.

44. It has been stated that Shriman Madhwacharya having established the above mentioned 8 Mutts and the Krishna Mutt, had ordained that each of the disciples appointed as Peethadhipathis of each of the 8 Mutts should take charge of the affairs of Shri Krishna Mutt from the other, who was in charge of such affairs of the Mutt when his turn would come to an end and preside over the affairs of Sri Krishna Mutt for a period of 2 months and function as "Paryaya Peethadhipathi of Shri Krishna Mutt". The period of 2 months of such charge is called "Paryaya", the duration of which came to be extended later to 2 years by Shri. Vadiraja Teertha of Sri Sode Mutt during his term of Peethadhipathi of that Mutt. The end of each such term is marked by a Festival,



which is celebrated on a grand scale and is attended by lakhs of people.

45. All the 8 Peethadhipathis are the "Joint Trustees" of Shri Krishna Mutt, where the idol of Lord Shri Krishna was installed and consecrated by Shriman Madhwacharya. The Paryaya Swamiji will be the Managing Trustee of Sri Krishna Mutt during his term of 2 years (Paryaya) and will be responsible for carrying out series of rituals and ceremonies associated with the worship of Lord Shri Krishna from early dawn and till late in the night. The religious activities and ceremonies connected with the worship of Lord Shri Krishna will be carried out as per a practice known as "**Tantra Sara Paddathi**", laid down by Shriman Madhwacharya. The Paryaya Peethadhipathi is also required to carry out Car Festival (Rathostava) of Lord Shri Krishna. During Paryaya, Shri Krishna Mutt feeds all the devotees who come to witness the festival from all over the world, from out of the income of Shri Krishna Mutt, the resources of the Paryaya Swamiji and from the borrowings that he may make. The Peethadhipathis of the other 7 Mutts assist the Paryaya Swamiji in the series of rituals and spiritual activities associated with the worship

of Lord Shri Krishna and preach, propagate and spread not only the teachings of Shriman Madhwacharya but also the Vedas, the Upanishads, other Holy Scriptures and Spiritual Sciences associated with Hindu Dharma to the people so as to enable them to lead a pious, honest, truthful and peaceful life and also to earn the merit and grace of the almighty.

46. It has been stated that during the past over 800 years the aforesaid custom, tradition, procedure, system, religious and spiritual activities of Sri. Krishna Mutt and Ashta Mutts are being carried out by their respective Peethadhipatis, as their trustees strictly as ordained by Shriman Madhwacharya and in accordance with other religious scriptures, without any hindrance, obstructions, interruptions, threat, coercion, duress, enticement or inducement from any quarter whatsoever and to the utmost satisfaction of the followers of the 8 Mutts and other devotees. Suffice it to say that the place or premises, where the great saint Shriman Madhwacharya lived with his 8 disciples in the initial period and carried out the worship of Lord Shri Krishna was called and continues to be called and known as Sri Krishna Mutt and is attached to the Ashta Mutts established

by Shriman Madhwacharya, each one of which is presided over by his disciples as Peethadhipathis. It is further stated that the very aim, object and purpose of establishing the Ashta Mutts and grouping them into 4 pairs (Dwandwa Mutts), as detailed herein was to have cordiality, camaraderie, among the Ashta Peethadhipathis so that any complicated circumstances or situations which may arise in any of the Ashta Mutts could be dealt with and solved by the Peethadhipathis of Ashta Mutts and to ensure proper worship of Lord Shri Krishna and other religious ceremonies or activities connected therewith perpetually and without any interruption or obstruction from any quarter whatsoever. It has been further stated that all the pontiffs of Ashta Mutts from their inceptions have had Balasanyasis as Peethadhipathis, who have efficiently and successfully managed and administered the Sri Krishna Mutt and their respective Ashta Mutts, for over 800 years. Shriman Madhwacharya himself was a Balasanyasi and was initiated into Sanyasa at the age of 11 years by his Teacher Shri AchyutaPrekshacharya.

47. It has been stated that, Shri Sode Vadiraja Mutt (5<sup>th</sup> respondent herein) and Shri Shiroor Mutt, as stated earlier, have been paired with each other for the purposes mentioned earlier and are hence called Dwandwa Mutts. By virtue of being Dwandwa Mutts, each of the Peethadhipathis of these two Mutts has the inherent power to take care of the affairs of the other Mutt and carry out the activities associated therewith.

48. It has been stated that Shri Shiroor Mutt is one of the Ashta Mutts established by Shriman Madhwacharya and he appointed his direct disciple Shri Vamana Teertha as its first Peethadhipathi. The pontiff so appointed was handed down an idol of Shri Vithala, the presiding deity of this Mutt, by Shriman Madhwacharya. This Mutt has an adorable and glorious history to its credit. This Mutt has been rendering the yeomen's service to the cause of propagation of Madhwa Sidhanta and Unbroken observance. The Mutt has not lagged behind to respond to the social issues as a matter of obligation. All the pontiffs of this Mutt starting from Shri Vamana Teertha, the founder of the lineage, have contributed to various fields. Even other exalted saints of this lineage, endowed with godly characteristics, readily came

forward to help the whole of mankind. This Mutt has had as many as 30 Peethadhipathis, including the incumbent Shri Vedavardhana Teertha (who has been arrayed herein as respondent No. 7 under the name Aniruddha). This Mutt has been paired with Sri Sode Mutt by Shriman Madhwacharya.

49. In respect of Shri Sode Vadiraja Mutt (5th respondent) it has been stated that Shri Sode Vadiraja Mutt was also established by Shriman Madhwacharya and its first Peethadhipathi was Shri Vishnu Teertha. Shri Vishnu Teertha was the direct brother and disciple of Shriman Madhwacharya. The presiding deity of this Mutt is Shri Bhuvараहा. Shri Vadiraja Teertha was also a pontiff of this Mutt and he was very well read and, erudite saint and toured to the length and breadth of India propagating the Dwaitha philosophy. The 6<sup>th</sup> Respondent is the present pontiff of this Mutt. This Mutt was paired with Shri Shiroor Mutt by Shriman Madhwacharya and that is how these two Mutts have come to be known as Dwandwa Mutts. Among the Ashta Mutts, Sri Sode Vadiraja Mutt (then known as Kumbhasi Mutt) has the adorable and glorious history to its credit. The Mutt has been rendering the yeoman's service to the course of propagation of Siddhanta and unbroken observance. The

Mutt has not lagged behind to respond to the social issues as a matter of obligation. All the pontiffs, starting from Sri Vishnuthirtha - the founder of the lineage, have contributed to various fields. The crest jewel of the lineage Sri Vadiraja Teertha has enriched the dignity of higher rank by his mystic power and extra ordinary contribution. Being Latavya Ruju god incarnated, Vadiraja showed the noble path to the world of qualified souls to set themselves free from the mundane worries. Even other saints of this lineage, endowed with godly characteristics, readily came forward to help the whole of mankind. All of these saints enjoyed the reward and recognition for the services rendered. With safeguarding the greatness tradition, Mutt realized the timely need and also accorded the importance to the modern education. Mutt has the rich collection of rare manuscripts. Mutt is providing better facilities of its branches for devotees.

50. It has been stated that respondent No.7 - Anirudha, is the son of Dr.Uday Kumar Saralathaya and Smt. Srividya Saralathaya. Dr.Uday Kumar Saralathaya has studied Vedanta in Sanskrit College in Udupi, secured B. Ed degree from Rashtriya Sanskrit Vidya Peeta, Tirupathi and

has also obtained a Ph.D degree. He has also passed the National Eligibility Test (NET), conducted by the University Grant Commission (UGC). He has worked in Ayurvedic College at Maniyal and Shri Madhwa Vadiraja Engineering College, Bantakal as a teacher. Presently he is engaged in Paurohitya (Priestly Duties) and giving religious discourses. He has been helping thousands of students in their education. He is a tax payer and his PAN No is: AMKPK2883P. He is living with his wife at a place called Alevoor in Udupi. The mother of Anirudha, Smt.Srividya Saralathaya holds a Bachelor's degree in Arts and having completed her Teacher Certificate Higher (TCH) course, she was working as a teacher in Vakatharu Primary School, Vittala, Dakshina Kannada District and teaching the subjects Maths and Science. Anirudha has a younger sister by name Kum.Hiranmayi Saralathaya and she is pursuing her studies in 8<sup>th</sup> Standard at Vidyodaya Public School at Udupi. The parents of Anirudha come from a decent and reasonable well to do family. The family of Anirudha is a self-sufficient, contented and self-dependant family and live a decent life. Prior to his appointment or anointment as the Peethadhipathi of Shri Shiroor Mutt, Anirudha used to listen to and observe

his father teaching the students who came to his house for tuitions every day in Shriman Mahabharatha, Tatparya Nirnaya, Yukthi Mallika, Rig Veda studies. He was drawn and attracted towards studying these topics and many more. He used to be a part of tuitions with keen interest and exhibited signs of keen interest to learn all the aspects of Hinduism, the Vedas, the Upanishads and expressed his desire to learn all these along with the students, who used to go to his house for tuitions from his father. He also disclosed to his parents his interest in studying and learning all the aspects of Hinduism, the Vedas, the Upanishads and other Dharma Shastras. Having regard to the keen interest shown by Aniruddha, his father taught him the subjects relating to the Vedas, the Upanishads and other Dharma Shastras. In addition, he used to attend his regular classes in Vidyodaya Public School, Udupi and on the day he was appointed as Peethadhipathi of Shri Shiroor Mutt, he had written his Secondary School Leaving Certificate Examination (SSLC) through the said school and has been declared as successful with distinction.

51. It has been further stated that after the appointment of respondent No.7 - Aniruddha as



Peethadhipathi of Shri Shiroor Mutt, in accordance with Shastras, Shri. Vedavardhana Teertha (Aniruddha) is being taught by renowned scholars of Shri Sode Vadiaraja Mutt, at the 5<sup>th</sup> respondent Mutt in the Vedas, the Upanishads, various other texts, treatises & other spiritual sciences. He at Shri Sode Vadiraja Mutt, is studying with his classmate by name Sri Krishna. He is being taught these subjects as are taught to students in Gurukula. Shri Sode Vadiraja Mutt, has all the manifestations of a Gurukula and it is treated as a Gurukula by Brahmin Community in general and Madhwa Brahmins in particular. It is not a Borstal School or a Juvenile Offenders Rehabilitation Centre or a Remand Home so to speak the Mutt is a sacred place with a healthy environment and the students, both minors and adults are imparted with knowledge in the above mentioned subjects. It is a place of learning which is highly respected by Brahmin Community world over. In Shri Sode Vadiraja Mutt there are more than 40 students who are learning the Vedas, the Upanishads, the Dharma Shastras and other Spiritual Sciences from the 6<sup>th</sup> Respondent and other scholars of 5<sup>th</sup> respondent. The present Peethadhipathi of Shri Shiroor Mutt, Shri Vedavardhana Teertha (Aniruddha) is also taught the Vedas,

the Upanishads, and other Spiritual Sciences by the 6<sup>th</sup> Respondent herein and other Scholars, with the other 40 and odd students in an atmosphere congenial for students and studies. In addition to studies in the Vedas, the Upanishads, and Spiritual Shastras, the Peethadhipathi of Shri Shiroor Mutt (Aniruddha) also participates in extra-curricular activities, sports and games along with other children. Presently housed at Shri Sode Vadiraja Mutt, at a place called Sonda, in North Canara District of Karnataka State, where the 6<sup>th</sup> respondent is observing Chaturmasya, the incumbent Peethadhipathi is pursuing his education in the above mentioned subjects, on the lines of education imparted in Gurukulas. In his place of abode, the Peethadhipathi of Shri Shiroor Mutt (Aniruddha) has the following daily routine:

**5.00 AM to 6.00 AM-** Studies.

**6.00 AM to 8.30 AM-** Nithyanusthana-Pooja-seeking Dashan of the principal deity of the Mutt.

**8.30 AM to 9.15 AM-**Parayana along with his classmate Srikrishna.

**9.30 AM to 10.15. AM-**Classes of Mani Manjari imparted by VidhwanShri Vishnu Hatwar.

**10.15 AM to 11.00 AM-**Classes in Baladarsha by Sri V.Pandurangachar.

**11.00 AM to 12.15 PM**-Snana (bathing)  
Anusthana (Practice,Conduct,  
Implementation and Regular  
performance of Meditation  
and Worship)  
Bhiksha (Mendicancy / or Food / Lunch).

**12.15 PM to 1.00 PM**-Swadhya (Self-studies)  
with his classmate.

**1.00 Pm to 2.00 PM**-Lessons in Rigveda  
from Veda Murthy Karthikachar.

**2.00 PM to 2.30 PM**- Rest.

**2.30 PM to 3.15 PM**-Lessons from  
Sri V. SankarshanaAdiga  
on Guruvaracharithamritha.

**3.15 PM to 3.30 PM**-Studies.

**3.30 PM to 4.45 PM**-Classes in Sadacharasmrithi  
by Sode Shri Vishwa VallabhaTheertha Swamiji.

**4.45 PM to 5.45 PM**-Swimming, and other games.

**5.45 PM to 8.15 PM**- Snana(bathing),  
Japa(chanting) & Tarpana,  
Phalahara (supper).

**8.15 PM to 8.45 PM**-Revision of lessons.

**8.45 PM to 9.45 PM**-Chanting and Memorization of  
Vedas

**10.00 PM**-He retires for the day.

52. In this background, it has been stated by  
respondents No.5 and 6 that the petitioners in their writ

petition have questioned the legality or otherwise of the action of respondent No.6 in appointing the Peethadhipathi for Shri Shiroor Mutt on the ground that the same would violate Section 11 of the Indian Contract Act, 1872; the Guardian and Wards Act; Hindu Minority and Guardianship Act, 1956; The Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897; the National Policy for Children 2013; The Karnataka Child Protection Policy, 2016; the Fundamental Rights guaranteed by the Constitution of India under Articles 25 & 26 and that there is violation of Child rights flowing to the person who is now appointed as the Peethadhipathi of Shri Shiroor Mutt (shown as Respondent No7 to these proceedings), and under Article 39(e) & (f) of the Constitution of India. Based on the allegations of violation of these provisions of law, child abuse, material abandonment, denial of freedom, dignity, exploitation of the childhood, the petitioners have contended that the appointment of Anirudha as Peethadhipathi of Shri Shiroor Mutt is illegal, null and void and have sought a declaration as at prayer (ii)(b)& ii(e); a direction to the Respondent Government of Karnataka and the Union of India to curtail the practice of **Balasanyasa** and or imposition of **Sanyas** on

a minor. The petitioners have also sought declaration that the appointment of Anirudha as Peethadhipathi of Shri Shiroor Mutt by the 6<sup>th</sup> Respondent as null and void, illegal and that the same is without jurisdiction. The petitioners have also sought certain directions in the nature of mandamus to the respondents No. 1,10 & 12 vide prayer No. (iid).

53. It has been stated that the petitioners are not entitled for any relief from this Hon'ble Court as the writ petition is highly motivated and actuated by petitioners' desire to have their own person as Peethadhipathi of Shri Shiroor Mutt. Therefore, the relief sought for by the petitioners cannot be granted by this Hon'ble Court and there is absolutely no public interest in the writ petition or in such declarations as are sought by the petitioners. The remedy for such declaration, if any, lies elsewhere and if they are so advised, they are free to pursue the same. Be that as it may, the petitioners cannot abuse the process of this Court in the form of public interest litigation to further their own selfish ends.

54. It has been further stated that the petitioner Nos.1 & 2 are the brothers of the previous Peethadhipathi of Shri Shiroor Mutt, late Laxmivara Teertha who reached his heavenly abode in July, 2018. The petitioner Nos. 3 & 4 are the sons of petitioner Nos.2 & 1 respectively. The Mutt in question, viz. Shri Shiroor Mutt has never been under the control and administration of the petitioners or of Shri Shiroor Mutt Bakhtha Samithi (Samithi for short), which is claimed to be a registered trust under the provisions of Indian Trust Act. The affairs of this Mutt, as is the case with the remaining 7 Mutts established by Shriman Madhwacharya, have always been administered, controlled and managed by the Peethadhipathi of the respective Mutts either personally or through his agents or duly constituted Attorneys. Neither the petitioners nor the Samithi mentioned above has anything to do with Shri Shiroor Mutt or its administration or management. There is absolutely no basis for the claims made by the petitioners to the contrary. None of the Ashta Mutts are under the administration of any trust, association, society or anybody or by whatever name they are called. From their inception or establishment by Shriman Madhwacharya, the Ashta Mutts of Udupi are administered

and managed by the Peethadhipathis of the respective Ashta Mutts strictly in accordance with the procedure laid down therefor by Shriman Madhwacharya or such subsequent Peethadhipathis of these Ashta Mutts who thought it fit to do so from time to time. It has been further contended that the Samithi constituted by the petitioners is totally an alien and Shri Shiroor Mutt has never been in its control nor was it ever administered by the Samithi or any other body or group of persons by whatever name called it at any point in time. In fact, the petitioner Nos.1 to 4 are not the followers or disciples of Shri Shiroor Mutt, but are the followers of Shri Sode Vadiraja Mutt and none of them has anything to do with Shri Shiroor Mutt, its affairs, activities religious or culture, or with the Mutt, its properties both moveable and immoveable or with any aspect of management and administration of this Mutt and these facts are incontrovertible. It has been further stated that Shri Shiroor Mutt and its properties have always been managed and administered by the Peethadhipathis of Shri Shiroor Mutt and has never been assigned to any individual or anybody of individuals. However, for the reasons best known to themselves, these petitioners have claimed to be carrying on the religious or cultural activities of

the said Mutt in addition to managing the properties thereof, through the above mentioned Samithi. It has been further stated that there is absolutely no basis much less any valid basis for claims so made by the petitioners. The affairs, activities, administration and management of Shri Shiroor Mutt have always been with the Peethadhipathi of Shri Shiroor Mutt. However, to the best of the knowledge of the Respondents herein wish to state that the petitioners are in illegal possession of the valuable assets of the Sri Shiroor Mutt and the respondents are initiating appropriate action to recover the said assets.

55. It has been further stated that the "Samithi" mentioned hereinabove as pleaded by the petitioners themselves has come into existence recently only with a view to usurp the charge of the administration and management of Shri Shiroor Mutt. The Samithi *inter alia* consists of 4 office bearers who are petitioner Nos.1 to 4, who are none other than the brothers and nephews respectively of the deceased Peethadhipathi Laxmivara Theertha. The very purpose and aim of this Samithi is to take over the Mutt and its affairs keeping in mind the large valuable properties worth several crores of rupees.



56. It has been further stated the petitioners are not the members of Shri Shiroor Mutt and they along with the deceased Peethadhipathi Laxmivara Teertha always followed the tenets and teachings of Shri Sode Vadiraja Mutt and have never been associated with Shri Shiroor Mutt for any length of time. Their ancestors were the followers and disciples of Shri Sode Vadiraja Mutt and they did not at any point of time associated themselves with Shri Shiroor Mutt, except that the deceased Laxmivara Teertha was appointed as Peethadhipathi of Shri Shiroor Mutt by the Peethadhipathi of its Dwandwa Mutt Shri Sode Vadiraja Mutt. Even the 2 Peethadhipathis preceding Laxmivara Tirtha were not the followers of Shri Shiroor Mutt and were appointed as Peethadhipathi of Shri Shiroor Mutt by the Peethadhipathi of Shri Sode Vadiraja Mutt. Neither the petitioners nor the ancestors of the petitioners have any role to play in the administration or management of Shri Shiroor Mutt and they were the follower and disciple of Shri Sode Vadiraja Mutt. Shri Shiroor Mutt has been developed by its various Peethadhipathis of the said Mutt and has progressed well so far by following the teachings, and the tenets of Shriman Madhwacharya and also the teachings of the past pontiffs of

Shri Shiroor Mutt. It has been further stated that the claim made by the petitioners about their ancestors lending of their blood and sweat for decades for the progress and development of Shri Shiroor Mutt is false, frivolous, veracious, without basis even to the knowledge of the petitioners. The aim, purpose and object of forming the Samithi is well disclosed by the petitioners themselves. None of the Ashta Mutts or its affairs or administration are managed by any third person or body of unconnected persons except by the respective Peethadhipathi. As has been ordained by Shriman Madhwacharya, in the absence of anybody to manage the affairs of a Mutt owing to the death of Peethadhipathi or due to incapacity of the said Peethadhipathi, the Peethadhipathi of Dwandwa Mutt, in the present case Shri Sode Vadiraja Mutt, has managed the administration and management of Shri Shiroor Mutt.

57. It has been further stated that respondent Nos.5 & 6 have not violated any of the provisions of any law cited and relied upon by the petitioners in support of their contentions before this Court in the present writ petition. There is absolutely no basis much less any valid basis for the petitioners to accuse the 5<sup>th</sup> & 6<sup>th</sup> respondents of violation of

the said laws. The allegations of the petitioners made in this behalf are bereft of truth, merit, basis and substance. While there is no quarrel with the proposition that a minor is not capable of entering into a contract in terms of the provisions of Indian Contract Act, 1872, the said situation does not arise in the present case, in as much as the Peethadhipathi of Shri Shiroor Mutt, as he stands now, will not contract with any person or body of persons for any of the requirements of Shri Shiroor Mutt and such contract if need to be entered into shall be entered into by the Swamiji of Shri Sode Vadiraja Mutt, who is the Peethadhipathi of Dwandwa Mutt. By virtue of his being the Peethadhipathi of Dwandwa Mutt the Peethadhipathi of Shri Sode Vadiraja Mutt is empowered, entitled, competent and authorised to enter into any transaction including contracts, if necessary, on behalf of Shri Shiroor Mutt. This power and authority of the Peethadhipathi of Shri Sode Vadiraja Mutt (Dwandwa Mutt) is unassailable or incontrovertible. Such power has been exercised by the Swamijies of one Dwandwa Mutt in respect of or with reference to the other Dwandwa Mutt. In fact, it was for meeting such contingency which may arise in the administration and management of Mutts that Shriman

Madhwacharya had established Ashta Mutts by grouping them into four pairs. This has been the practice ever since the establishment of these 8 Mutts by Shriman Madhwacharya and at no point of time such powers exercised by the Swamijies of Dwandwa Mutts, with reference to the affairs of their respective Dwandwa Mutt, has ever been successfully questioned in any Court of law or authority. Therefore, there is absolutely no merit and substance in the contentions of the petitioners that the Peethadhipathi being a person below the age of majority is not capable of exercising free consent in the matter of contracting. The Peethadhipathi of Shri Shiroor Mutt as he stands today need not enter into any contract with anybody for any purpose so long as the Peethadhipathi of Shri Sode Vadiraja Mutt which is its Dwandwa Mutt is empowered to exercise all the powers of Peethadhipathi of Shri Shiroor Mutt.

58. It has been further stated that the petitioners are guilty of suppression of material facts. They have deliberately suppressed the fact of they having approached the jurisdictional criminal court through the 1<sup>st</sup> petitioner herein, against the 6<sup>th</sup> Respondent herein and one person by

name Shri Rathna Kumar with a private complaint under Section 200 of the Code of Criminal Procedure for offences punishable under Sections 417, 420, 464 to 467, 471, 468, 511 read with Section 34 of the Indian Penal Code in Private Complaint Report (PCR) No.2 of 2021. The said PCR came to be rejected by the said jurisdictional criminal court by an order dated 07.01.2021, with the following observations :

"14. In view of the aforesaid proposition of law in my view, the first and foremost question, which would arise in the present case, is that even if the entire allegations made in the complaint are taken at their face value and accepted in their entirety, whether or not the ingredients of the offences punishable under sections 417, 420, 464, 465, 467, 471, 468, 511 r/w 34 of IPC would be attracted. It is an admitted fact that Sri. Sri. Laxmivara Theertha Swamiji of Shirooru Mutt has passed away on 19-7-2018 without appointing a successor and Sode Mutt has been looking after its affairs thereafter as Dwandha Mutt of Shirooru Mutt as per the customs and traditions prevailing in the AshtaMutt. Admittedly, there is no written constitution for affairs of the Ashta Mutt. Under such circumstances, whether Sode Mutt being Dwandhwa Mutt of Shirooru Mutt having right to collect rent or execute G.P.A.to manage the affairs of the properties of Shirooru Mutt is all required to be decided by the civil court. Mere execution of GPA is itself is not amounts forgery as defined under section 463 of IPC. The allegation made in the complaint even if it is translated into evidence at this stage it only indicates the civil liability of accused persons. The allegations made in the complaint even if they are accepted, they are vague and are not sufficient to constitute offence particularly, offence punishable under the provisions of the Indian Penal Code. Under the above said circumstances, I am of the clear opinion that this is a case where totally civil liability has been converted into criminal liability in order to lodge complaint.

16. Therefore the complainant has failed to make out prima facie case to refer the complaint under section 156(3) of Cr.P.C., in respect of the alleged offences punishable under sections 417, 420, 464,465, 467, 471, 468, 511 r/w 34 of IPC. From the above observations, the court proceeds to pass the following:

ORDER

Complaint filed by the complainant under section 200 of Cr.P.C. is hereby dismissed.

59. It has been stated that feeling aggrieved by the order of the Trial Court, the 1<sup>st</sup> petitioner challenged the order of the jurisdictional criminal court before this Hon'ble Court in Criminal Petition CrI.P.No.2669/2021. This Hon'ble Court was pleased to dismiss the said petition by its order dated 04.06.2021 with the following observations:

5. I have carefully considered the arguments addressed by the learned Counsel for the petitioner and also perused the material on record.

6. Petitioner, who is admittedly the brother of deceased Sri Laxmivara Thirtha Sripadaru who was the Peethadhipathi of Sri Shirooru Mutt has filed the present complaint before the Trial court in his capacity as the Secretary of Shri Shirooru Mutt Bhaktha Samithi. His brother late Sri Laxmivara Thirtha Sripadaru had attained salvation on 19.07.2018. After filing of the complaint on 04.01.2021, the learned counsel appearing for the complainant was heard by the learned Magistrate on the very same day and the matter was posted on 07.01.2021 for orders. The learned Magistrate after receiving the complaint under Section 200 Cr.PC for offences of which he is authorized to take cognizance or which has been made over to him under Section

192, may, if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding further in the case. Such an exercise appears to have been done by the learned Magistrate himself. The learned Magistrate has observed in his order that late Sri Laxmivara Thirtha Sripadaru who was the Peethadhipathi of Sri Shirooru Mutt had passed away on 19.07.2018 without appointing a successor to his Mutt. After his death, Sode Mutt of which accused No.1 is the Peethadhipathi is looking after the affairs of Sri Shirooru Mutt which is a Dwandhwa Mutt. He has observed that as per the customs and traditions prevailing in the Ashta Mutt of Udupi, in the absence of a successor being named by the Peethadhipathi, after the death of such a Peethadhipathi, the Peethadhipathi of Dwandhwa Mutt is required to look after the affairs of such Mutt. He has also observed that there is no written constitution for the affairs of the Ashta Mutt of Udupi. This has been the practice and custom followed by Ashta Mutt for years together. It is under these circumstances, accused No.1 has taken charge of the affairs of Sri Shirooru Mutt which cannot be found fault with. Therefore, it is prima facie clear that the learned Magistrate has made an enquiry in compliance of the requirements of Section 202 Cr.PC.

7. The complainant has made allegations in his complaint that accused No.1 has executed a power of attorney in favour of accused No.2 and they have clandestinely sold the property belonging to Sri Shirooru Mutt and he has also made an allegation that the building belonging to Sri Shirooru Mutt was demolished by the accused persons without any authority. These allegations, at the most would amount to a civil dispute and no case on these allegations can be made out against the accused persons for the offences alleged in the complaint. The learned Magistrate having exercised his powers under Section 202 Cr.PC and being satisfied that there was no case made out by the complainant to proceed against the accused persons for the alleged offences in the complaint, has rightly dismissed the

complaint exercising his powers under Section 203 Cr.PC.

8. The impugned order is a well reasoned order and it does not suffer from any illegality or irregularity which calls for interference by this Court. Therefore, I do not see any good ground to entertain this petition.

Accordingly, I proceed to pass the following order:

Criminal petition is dismissed.”

60. It has been stated that the aforesaid facts ought to have been placed before this Hon'ble Court by the petitioners. However, there is no whisper about these proceedings in the present writ petition. This amounts to wilful, deliberate and wanton suppression of facts by the petitioners and on this count alone they are liable to be non-suited and their writ petition is liable to be dismissed with exemplary costs. However, the petitioners have chosen to make reckless, unfounded and unsustainable allegations against the 6<sup>th</sup> Respondent accusing him of colluding with the jurisdictional police and the Child Right Enforcing Agency, which are false frivolous, vexatious, without basis and bear no consideration by this Hon'ble Court.



61. Learned Government Advocate for State Government has vehemently argued before this Court that the present petition is not a PIL and the reliefs claimed by the petitioners are declaratory in nature. He has stated that it is a private law remedy and a petition under Article 226 of the Constitution of India as a PIL is certainly not at all maintainable. He has also stated that the scope of judicial review in the matter of appointment of Pontiff is quite limited. He has stated that respondent No.7 has been appointed as Peetadhipathi of Shiroor Mutt keeping in view the religious practices of the Mutt and there has been no violation of fundamental rights guaranteed to respondent No.7 under the Constitution of India. He has also stated that there is no violation of any other statutory provisions of law in the matter of appointment of Peetadhipathi and the person, who has been appointed as Peetadhipathi has crossed 16 years of age. He has also stated that the State was vigilant in the matter and there has been no violation of Covid 19 pandemic guidelines nor violation of Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897. He has placed reliance upon two judgments i.e., (i) in the case of **Guruvayoor Devaswom Managing Committee**

**and anr., v. C.K.Rajan and ors.,** reported in (2003) 3 SCC 546; and (ii) in the case of **Jaipur Shahar Hindu Vikas Samithi v. State of Rajasthan and ors.,** reported in (2014) 5 SCC 530.

62. This Court has appointed Sri.S.S.Naganand, learned Senior Counsel as an Amicus Curiae and he has assisted this Court by summarizing the issue with the help of religious texts and the judicial pronouncements on the subject from time to time. He has been assisted by learned counsel Sri.Ragahvendra S.Srivatsa and Sri.Prashant Murthy S.G.

63. Sri.S.S.Naganand, learned Senior Counsel has argued before this Court that two questions arise for consideration in the present case, they are:

- (i) Whether the head of Sode Sri Vadiraja Mutt has the authority to appoint the Matadhipathi for Sri Shiroor Mutt?
- (ii) Whether the appointment of respondent No. 7 as the Matadhipathi of Sri Shiroor Mutt is opposed to any statutory or constitutional provision, for the reason of the said person being less than 18 years of age?

64. As regards the first question, it has been stated by the learned Senior Counsel that the accepted practice and custom is the system of "Dwandwa Mutts" prevailing among the eight Mutts (Ashtha Mutts) in Udupi. In the event of the head of one of the Mutts passing away without nominating his successor, the head of the paired Mutt has the authority to appoint such successor. This custom has found judicial recognition by way of a judgement of a Division Bench of the Madras High Court in the case of Bheemanakatte Mutt, AIR 1917 Mad 809. A seven judge Bench of the Hon'ble Supreme Court in AIR 1954 SC 282 (Shrioor Mutt case) has declared that the followers of Madhwacharya constitute a religious denomination and the followers of Shiroor Mutt form a section of the religious denomination. As Article 26 contemplates not merely a religious denomination, but also a section thereof, the Mutt or the spiritual fraternity represented by it legitimately comes within the purview of Article 26 of the Constitution of India. The system of Dwandwa Mutts being an essential religious practice, is protected under Article 26 of the Constitution of India.

65. It has been stated by the learned Senior Counsel that the second issue is really the larger issue involved in this case. He has stated that the petitioners, by way of amendment, have sought the very broad relief of declaration that "Bal Sanyasa" or the imposition of Sanyasa on a minor amounts to material abandonment of the minor and that it violates Articles 21 and 39 (e) and (f) of the Constitution. In the order dated 25/05/2021, it is recorded that this Hon'ble Court had invited the attention of the counsel for the petitioners to the prayer made in the petition. At that stage, it was contended that the rights of the minor are being violated and accordingly the writ petition was amended. It is the respectful submission of the amicus that this general issue having larger implications for the society at large across religions and religious denominations does not really arise in this case. Such a broad proposition having extremely wide ramifications is an academic issue as far as the present case is concerned. This is so for the following reasons:

- (a) The age of majority is reckoned as 18 years only for purposes of entering into a binding contract and undertake responsibilities as majors. This is the purpose for which the Majority Act, 1875 was enacted.

While prescribing the age of majority as 18 years for this purpose, a specific exception is carved out in Section 2 which says that nothing contained in the Act shall affect the religion or religious rites and usages of any class of citizens of India. Therefore, for purposes of religion or religious rites and usages that have the protection of the Constitution as also international treaties, a person cannot be presumed to be a minor only for the reason that he is less than 18 years of age. When the question arises whether any of the rights of such a person is violated, it has to be examined in the totality of circumstances and it may not be appropriate to proceed on the presumption that he is a minor for all purposes.

- (b) As per the United Nations Convention on the Rights of the Child (CRC), "child" means every human being below the age of 18 years unless under the law applicable to the child, maturity is attained earlier. This prescription has to be read in conjunction with the laws of India as contained in the Majority Act, 1875 which saves customary law in respect of religion or religious rites and usages.

- (c) From the record, it is clear that the person concerned (respondent No. 7) is above 16 years of age and that he has passed his 10<sup>th</sup> standard examination at school. Even if it is presumed that the person concerned is a "child", Article 12 of CRC guarantees to the child, who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, ***the views of the child being given due weight in accordance with the age and maturity of the child.***
- (d) Article 14 of CRC assures the right of the child to freedom of thought, conscience and religion. A duty is cast on the parents to provide direction to the child in the exercise of his or her right in a manner ***consistent with the evolving capacities of the child.***
- (e) The freedom of religion and conscience can be curtailed only if it violates public order, morality and health. This is the mandate of article 25 of the Constitution as also that of CRC.
- (f) In the present case, the question arises in the context of a Madhwa Mutt in Udupi, being one among the Ashta Mutts. They are a religious denomination, or at least a

section of a religious denomination having their own customs and practices and the question will have to be considered in this context.

- (g) It is therefore inappropriate to generalise that the initiation into Sanyasa of any person below the age of 18 years is a violation of the rights of the minor. When the question arises, it will have to be examined in the light of all the attendant circumstances so that the various salutary principles are balanced.

66. It has been stated that it is settled practice that the Court does not decide matters, which are only of academic interest on the facts of a particular case. (See **Arnit Das vs State of Bihar**, (2001) 7 SCC 657, at Para 6, **Dhartiparkar Madan Lal Agarwal vs Rajiv Gandhi**, 1987 (Supp) SCC 93 at Para 4).

67. In respect of practices/customs prevalent among various denominations in South India, it has been stated that broadly, there are three schools of thought that are followed among the Brahmin community in South India. Advaita is the school of thought propounded by Adi Shankaracharya. Dvaita is the school of thought propounded by Sri Madhwacharya

and Vishishtadvaita is the school of thought propounded by Sri Ramanujacharya. The followers of each of these schools have their own precepts, usages and customs. The present case is concerned with the followers of Madhwacharya, who instituted the eight Mutts in Udupi.

68. As far as the Advaita school in South India is concerned it has been stated that the Sringeri Mutt is one of the Peethas established by Adi Shankaracharya. In the past, there have been instances of persons below 18 years have been initiated into Sanyasa. The requirement is that the person has to be a Brahmachari (unmarried, celibate) and must have a foundation in Shastric studies. The Swamiji who will appoint the successor and initiate him into Sanyasa will take an informed decision, after having observed the person for some time and based on divine instincts.

69. It has been further stated that in the Shrivaisnava Sampradaya, it is usually persons, who have experienced the preceding Ashramas of Brahmacharya and Gruhastha who are initiated into Sanyasa. There is however, no bar on young and unmarried persons entering Sanyasa Ashrama.



70. It has been stated that among the followers of Madhwacharya in the Udupi region, particularly the Ashta Mutts, the practice is to give Sanyasa Deeksha only to a Brahmachari (unmarried,celibate). There is, however, no inflexible rule that a person has to be of a certain age. It is not necessary that only boys of a tender age are to be initiated into Sanyasa. The family background of the person concerned, his inclination towards Shastric studies, his ability to study the Sriman Nyayasudha by Sri Jayatheertha and profess the principles propounded by Sri Madhwacharya are all observed and then his Jataka (horoscope) is examined by expert astrologers to ascertain his suitability for the position. Deva Prashna (consultation with the divine) is also undertaken and as per the outcome, the person is given Sanyasa Deeksha. If the person so initiated happens to be of less than 18 years of age, it is only coincidental. There is no rule of Bala Sanyasa.

71. It has been stated that there is no compulsion or force involved in the matter of Sanyasa. Unless the person concerned and his parents consent whole heartedly, Sanyasa Deeksha will not be given. There is nothing like imposition of Sanyasa on a child.

72. It has been further stated that while Sri Madhwacharya, like Sri Shankaracharya, was inclined towards an ascetic life right from a tender age and accordingly became a Sanyasi at a very young age, that was not the case with his younger brother who came to be known as Sri Vishnu Theertha. In the case of Sri Vishnu Theertha, Sanyasa was at a later age. In fact, as per Sumadhwa Vijaya (a biographical work on Sri Madhwacharya by Sri Narayana Panditacharya) Sanyasa should immediately follow Virakti (detachment). It is that detachment, irrespective of the age of the person, that determines the eligibility to enter Sanyasa Ashrama.

73. It has been stated that as per Sri Krishnamruta Maharnava by Sri Madhwacharya, a person comes of age (in the sense of having discretion and being responsible for his actions) at the age of fourteen. This is said in the context of the incident of Ani Mandavya, who argued with the God of Dharma and professed that no child below the age of fourteen years should be punished for his delinquencies.

74. In respect of practice of initiating children as Buddhist monks it has been stated by learned Senior Counsel that although the question is alien to the case on hand, some information has been gathered about child monks in Buddhist Monasteries. Broadly, this is the practice prevalent among Buddhists:

- In Buddhism, minors are encouraged to become monks. This practice is prevalent in Tibet, Bhutan, Nepal and Sri Lanka.
- The Dalai Lama who is said to be the reincarnation of the Buddha is selected from amongst the children from birth to 3 years of age.
- Parents consent is a must. Without consent, a minor cannot be ordained.
- There are practical and theoretical scriptures which imparts rigorous training to a person for a year or so before he can be robed as a monk.
- These scriptures are contained in **Thripitaka**. Thripitaka has 3 sections. The section pertaining to Sanyasin is called **Vinayapitaka** meaning 'book of discipline' or 'rule of conduct'. It is written by Buddha himself and contains the scriptures for training, everyday routine for a monk, routine for a person to be ordained etc.
- There is no tradition of head of a mutt. After the lifetime of the founder of the mutt, they keep idols of Buddha. Only in rare circumstances, a person is chosen

as a head of the mutt, if it is believed that the founder has been reborn. Reincarnation is believed to have happened if the person reborn has intense connection with any of the things of the former.

- Nowadays, in India, the practice of children being offered by parents to monasteries to become monks is reducing. Instead, children are encouraged to take up education and higher education internationally.
- Monasteries do not force children to become monks.

75. It has been stated that there are some academic studies into the life and treatment of child monks in Buddhist monasteries. A study of monasteries in Sikkim reveals that the rights of children initiated as monks are well taken care of at the monasteries. There is, however, another study by a Canadian social worker who has certain recommendations to make as regards "Alternative Care" for child Buddhist monks. There is, however, consensus that there is no legal prohibition for children being free to pursue lives as monks.

76. It has been further stated that in the Jain sect, there is a practice of young children being initiated into Sanyasa. There is no inflexible rule as to the age at which Sanyasa Deeksha can be given. The Pontiff from whom Deeksha is sought will have absolute discretion whether to do

so or not. There is no concept of appointing a successor to a Mutt or an institution by the devotees if no successor is appointed. In recent times, there was an incident of a girl of 8 years becoming a Jain Sanyasin. The matter reached the Bombay High Court and is pending before a Division Bench in Writ Petition No.3159 of 2006.

77. To sum up, it has been stated by the learned Senior Counsel that there is no statutory, much less constitutional, bar on a person of less than 18 years age being initiated into Sanyasa. It is impossible, and also inappropriate, to generalise the issue and each case will have to be seen in the factual context involved.

78. To support his submission, learned Senior Counsel has drawn the attention of this Court to relevant Shlokas with translation.

*यदा विरक्तः पुरुषः प्रजायते तदैव सन्न्यासविधिः श्रुतौ श्रुतः।*

*न सङ्गहीनोऽपि परिव्रजामि वामहं तु शुश्रूषुमकल्पयन्निति॥”*

*(yadā viraktaḥ puruṣaḥ prajāyate tadaiva sannyaśavidhiḥ śrutau śrutaḥ।*

*Na saṅgahīno'pi parivrajāmi vāmahaṃ tu śuśrūṣumakalpayanniti ॥)*

- *Sumādhva-vijaya by nārayaṇa-panḍitācārya*

79. The aforesaid *śloka* elaborates the principle contained in the *Śruti* which reads as "यदहरेव विरजेत् तदहरेव प्रव्रजेत्" (yadahareva virajet tadahareva pravrajjet). The said *Śruti* mandates that a person who attains *Vairāgya*, i.e. dispassion towards worldly affairs, should also take up "*Pravrajya*", commonly known as *Sannyāsa*, on the very same day of attaining *Vairāgya*. The abovementioned *śloka*, after reaffirming the principle of necessary immediacy of *Sannyāsa* after *Vairāgya*, further asserts that the existence of worldly obligations, such as the duty to attend to aging parents, is no bar to *Sannyāsa*, as the duty to attend to aging parents can still be fulfilled by appointing someone else for the task. Furthermore, the commentary *Mandopakāriṇi* elaborates that duties such as taking care of parents are suited only for those who have not yet attained *Vairāgya*. Therefore, it becomes all the more clear that *Sannyāsa* should immediately follow *Vairāgya*.

"जीवन्धतुर्दशादूर्ध्वम् पुरुषो नियमेन तु।

स्त्री वाप्यनूनदशकं देहं मानुषमाज्जते॥

चतुर्दशोर्ध्वजीविनि संसारश्चादिवर्जितः।

*अतोऽवित्त्वा परं देवं मोक्षाशा का महामुने॥”*

*(jīvaṃścaturdaśādūrdhvam puruṣo niyamena tu /*

*strī vāpyanūnadaśakaṃ dehaṃ mānuṣamārjjate //*

*caturddaśordhvajīvini saṃsāraścādivarjitaḥ /*

*ato'vittvā paraṃ devaṃ mokṣāsā kā mahāmune //)*

- Śloka 206 and 207, *Śrīkṛṣṇāmṛta-mahārṇava*

- by *Shri Madhvācārya*.

80. The aforesaid ś'okas state that any person who has attained the age of fourteen, be it a man or woman, every passing day after attaining that age, necessarily earns, through his actions, as much *Karma* as is sufficient to cause at least ten re-incarnations in the human body. The effect is further compounded by the immense likelihood that more *Karma* would also be earned in subsequent lives, and one is stuck in an eternal loop. Therefore, in order to attain *Mokṣā*, i.e. Salvation, it is essential for one to make efforts to realize the Divine, as soon as possible in life.

*”आचतुर्दशमाद् वर्षात् कर्म्मणि नियमेन तु।*

*दशावराणाम् देहानाम् कारणानि करोत्ययम्।*

*अतः कर्मक्षयान्मुक्तिः कुत एव भविष्यति॥”*

*(ācaturdaśamād varṣāt karmṃāṇi niyamena tu /*

*daśāvarāṇām dehānām kāraṇāni karotyayam /*

*ataḥ karmakṣayānmuktiḥ kuta eva bhaviṣyati //)*

- Śloka 208, Ibid.

81. The aforesaid Śloka reaffirms that after attaining the age of fourteen, a person earns enough *Karma* as to cause at least ten re-incarnations in the human body. However, before the age of fourteen, no *Karma* is earned. This is due to **the fundamental principle of the *Dharma-śāstras* that a person becomes responsible for his actions, i.e. that his actions produce either *Pāpa* or *Puṇya* only after he attains the age of fourteen years.** The bar of "*Karmic capacity*" is set at the age of fourteen. **However, once the threshold of fourteen years is crossed, *Karma* is inescapably produced.** Therefore, it is not possible to free oneself from the cycle of re-incarnation by mere attempts at "*Karmakṣayā*", but direct realization of the Divine is necessary.

82. The age bar of fourteen is proclaimed by Rishi Animandavya in the following Ślokas as:

*"मर्यादां स्थापयाम्यद्य लोके धर्मफलोदयाम्।*

*आ चतुर्दशमाद्वर्षान्न भविष्यति पातकम्॥*



परेण कुर्वतामेवं दोष एव भविष्यति॥”

(*maryādāṃ sthāpayāmyadya loke dharmaphalodayām /  
ā caturdaśamādvārṣāṇna bhaviṣyati pātakam //  
pareṇa kurvatāmevaṃ doṣa eva bhaviṣyati //*)

In the aforesaid *shloka* Rishi Animandavya proclaims that he is hereby establishing the “*maryādā*” of “*dharmaphalodaya*”, i.e. the threshold after which one’s actions produce *Dharma*, i.e. *Pāpa* or *Puṇya*. This “*maryādā*” is the age of fourteen. The commission of prohibited actions by a person who has not attained the age of fourteen years shall not produce “*Pātakam*”, i.e. Sin. However, if he has crossed the age of fourteen, the commission of prohibited actions shall inevitably have consequences.

83. Heard the learned counsel for the parties, Sri.S.S.Naganand, learned Senior Counsel and Amicus Curie and perused the record. The matter is being disposed of with the consent of the learned counsel for the parties at the motion hearing stage itself.

84. The petitioners before this Court, who are projecting themselves as members of Sri Shiroor Bhakth

Samithi, a trust registered under the provisions of the Indian Trusts Act, 1882 have filed this present petition being aggrieved by the nomination of respondent No.7 as Peetadhipathi of Sri Shiroor Mutt by respondent No.6 – Sri Vishwa Vallabha Teertha Swamiji, who is Peetadhipathi of Sri Sode Vadiraja Mutt. The petition has been filed by way of a PIL and petitioner Nos.1 and 2 are real brothers, petitioner No.3 is the son of petitioner No.2 and petitioner No.4 is the son of petitioner No.1. Thus, the members of one family have formed some Trust and have filed the present writ petition before this Court.

85. The petitioners have conveniently omitted the history of past litigation, which was at the behest of petitioner No.1 against respondent No.6 and one person by name Sri Rathna Kumar. Petitioner No.1 has filed a complaint under Section 200 of the Code of Criminal Procedure for offences punishable under Sections 417, 420, 464 to 467, 471, 468, 511 r/w Section 34 of the Indian Penal Code in Private Complaint Report (PCR) No.2/2021. The said complaint was rejected by the jurisdictional Criminal Court by an order dated 7.1.2021. The Trial Court has dismissed the

complaint by an exhaustive order and the Trial Court has observed that the allegations made against respondent No.6 are vague and are not sufficient to constitute any offence under the Indian Penal Code. The order passed by the Trial Court has already been reproduced in the earlier paragraphs.

86. The petitioner No.1 being aggrieved by the order passed by the Trial Court has approached this Court also challenging the order dated 7.1.2021 by filing Criminal Petition No.2669/2021 and again this Court by an order dated 4.6.2021 has dismissed the criminal petition by holding that the order passed by the Trial Court is a well reasoned order and it does not suffer from any illegality or irregularity. The order passed by this Court has also been reproduced in the earlier paragraphs, meaning thereby, attempts were made to malign the image of respondent No.6 – Sri Vishwa Vallabha Teertha Swamiji, Peetadhipathi of Respondent No. 5 – Sri Sode Vadiraja Mutt and the petitioners were unsuccessful in their attempt.

87. In all fairness, petitioner No.1, who was a party to the criminal proceedings should have disclosed the

aforesaid facts and the non disclosure amounts to wilful and deliberate suppression of the material facts.

88. In the present case, there has been suppression of the aforesaid facts and the Hon'ble Supreme Court in the case of **Arunima Baruah v. Union of India and ors.**, reported in (2007) 6 SCC 120, has dealt with the issue of suppression of facts. The Apex Court in the aforesaid case, in paragraphs 10, 11, 12, 15, 16, 21 and 22 has held as under;

**"10.** On the one hand, judicial review is a basic feature of the Constitution, on the other, it provides for a discretionary remedy. Access to justice is a human right. (See *Dwarka Prasad Agarwal v. B.D. Agarwal* [(2003) 6 SCC 230] and *Bhagubhai Dhanabhai Khalasi v. State of Gujarat* [(2007) 4 SCC 241 : (2007) 2 SCC (Cri) 260 : (2007) 5 Scale 357] .) A person who has a grievance against a State, a forum must be provided for redressal thereof. (See *Hatton v. United Kingdom* [15 BHRC 259] . For reference see also *Zee Telefilms Ltd. v. Union of India* [(2005) 4 SCC 649] .)

**11.** The court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concept of access to justice. The same, however, would not mean that the court will have no jurisdiction to deny equitable relief when the complainant does not approach the court with a pair of clean hands; but to what extent such relief should be denied is the question.

**12.** It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

**15.** In *Spry on Equitable Remedies*, 4th Edn., p. 5, referring to *Moody v. Cox* [(1917) 2 Ch 71 : (1916-17) All ER Rep 548 (CA)] and *Meyers v. Casey* [(1913) 17 CLR 90] it is stated:

“... that the absence of clean hands is of no account ‘unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for’. When such exceptions or qualifications are examined it becomes clear that the maxim that predicates a requirement of clean hands cannot properly be regarded as setting out a rule that is either precise or capable of satisfactory operation.”

Although the aforementioned statement of law was made in connection with a suit for specific performance of contract, the same may have a bearing in determining a case of this nature also.

**16.** In the said treatise, it was also stated at pp. 170-71:

“In these cases, however, it is necessary that the failure to disclose the matters in question, and the consequent error or misapprehension of the defendant, should be such that performance of his obligations would bring about substantial hardship or unfairness that outweighs matters tending in favour of specific performance. Thus, the failure of the plaintiff to explain a matter of fact, or even, in some circumstances, to correct a misunderstanding of law, may incline the court to take a somewhat altered view of considerations of hardship, and this will be the case, especially where it appears that at the relevant times the plaintiff knew of the ignorance or misapprehension of the defendant but nonetheless did not take steps to provide information or to correct the material error, or a fortiori, where he put the defendant off his guard or hurried him into making a decision without proper enquiry.”

**21.** *Ubi jus ibi remedium* is a well-known concept. The court while refusing to grant a relief to a person who comes with a genuine grievance in an arguable case should be given a hearing. (See *Bhagubhai Dhanabhai Khalsi* [(2007) 4 SCC 241 : (2007) 2 SCC (Cri) 260 : (2007) 5 Scale 357] .) In this case, however, the appellant had suppressed a material fact. It is evident that the writ petition was filed only when no order of interim injunction was passed. It was obligatory on the part of the appellant to disclose the said fact.

**22.** In this case, however, suppression of filing of the suit is no longer a material fact. The learned Single Judge and the Division Bench of the High Court may be correct that, in a case of this nature, the Court's jurisdiction may not be invoked but that would not mean that another writ petition would not lie. When another writ petition is filed disclosing all the facts, the appellant would be approaching the writ court with a

pair of clean hands, and the Court at that point of time will be entitled to determine the case on merits having regard to the human right of the appellant to access to

justice, and keeping in view the fact that judicial review is a basic feature of the Constitution of India."

In the light of the aforesaid judgment, as deliberately the factum of filing of criminal case has been suppressed by the petitioners, the present public interest litigation appears to be more a personal interest litigation than a private interest litigation. However, as a serious dispute has been raised in respect of appointment of respondent No.7 as Peetadhipathi, the matter is being dealt with on merits also.

89. The Hon'ble Supreme Court on an abuse of public interest litigation has time and again held that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking [see: (1) **Dattaraj Nathuji Thaware v. State of Maharashtra**, reported in (2005) 1 SCC 590; (2) **Ashok Kumar Pandey v. State of West Bengal**, reported in (2004) 3 SCC 349; (3) **State of**

**Uttaranchal v. Balwant Singh Chaufal**, reported in (2010) 3 SCC 402; and (4) **Janata Dal v. Chowdhary**, reported in (1992) 4 SCC 305].

90. The dispute in the present case relates to the appointment of respondent No.7, who is aged about 16 years, as Peetadhipathi of Sri Shiroor Mutt by respondent No.6, who is Peetadhipathi of Sri Sode Vadiraja Mutt.

91. The holy land Bharata, is a leading centre of rich tradition of culture and heritage and the treasure of culture and heritage has its roots in ancient granthas (sacred texts) i.e., the Vedas, the Upanishads, the Smritis, Ramayana, Maha-Bharata, Purana and other religious texts. In the earlier times, the Sanyasis used to live in caves and leaf huts and they used to roam around this holy land to spread their unlimited knowledge.

92. The Guru-Shishya parampara is in existence since ages and in order to learn religious texts, pupils used to reside in Ashramas voluntarily and with time, in addition to Ashramas, the Mutts were also established and the dispute in



the present case is arising out of a Mutt established by Shriman Madhwacharya, a great Philosopher and a saint. He initially established a Mutt called Sri Krishna Mutt about 800 years ago and has installed an Idol of Lord Krishna and the Mutt is known as Sri Krishna Mutt. Shriman Madhwacharya during his lifetime has also established Ashta Mathas (eight Mutts) in Udupi Town and propounded "Dwaitha Philosophy".

93. The eight Mutts so established by Shriman Madhwacharya for the above purposes are as under:

- (1) Shri Pejavara Mutt,
- (2) Shri SodeVadiraja Mutt (the 5<sup>th</sup> Respondent),
- (3) Shri KrishnapuraMutt,
- (4) Shri PuttigeMutt,
- (5) Shri ShirooruMutt,
- (6) Shri KaniyoorMutt,
- (7) Shri PalimaruMutt and
- (8) Shri AdmaruMutt.

94. To the aforesaid 8 Mutts, Shriman Madhwacharya appointed 8 Peethadhipathis, who were his direct 'Sanyasin-Disciples" and they were:

1. Shri HrishikshaTeertharu-**Shri. Palimaru Mutt**
2. Shri Narasimha Teertharu-**Shri. Admaru Mutt**
3. Shri JanardanaTeertharu-**Shri Krishnapura Mutt**
4. Shri Upendra Teertharu-**Shri Puttige Mutt**
5. Shri Vamana Teertharu-**Shri Shirooru Mutt**

6. Shri Vishnu Teertharu-**Shri Sode Mutt**
7. Shri Rama Teertharu-**Shri Kaniyuru Mutt**
8. Shri AdhokshajaTeertharu-**Shri Pejawara Mutt**

95. Shriman Madhwacharya blessed his 8 disciples mentioned above with the images/idols of the following deities:

1. Shri Rama (Shri. Palimaru Mutt)
2. Chaturbhuja Kalinga Mardhan Krishna (Shri. Admaru Mutt)
3. Shri Kalinga Mardhana Krishna (Shri Krishnapura Mutt)
4. Vithala (Shri Puttige Mutt)
5. Vithala (Shri Shirooru Mutt)
6. BhooVaraha (Shri Sode Mutt)
7. Narasimha (Shri Kaniyuru Mutt)
8. Vithala(Shri Pejawara Mutt)

96. These 8 Balasanyasi-Disciples were all living in Shri Krishna Mutt at the relevant point in time and carried out the activities associated with the Worship of Lord Shri Krishna as ordained by their teacher Shriman Madhwacharya. The Propounder of the Dwaitha Philosophy, Shriman Madhwacharya, had established these 8 Mutts in pairs. In other words, the Ashta Mutts were grouped into pairs and the set of 4 Pair Mutts are popularly known as Dwandwa Mutts.

97. The arrangements so made by Shriman Madhwacharya of these 8 Mutts are as under :

1. Shri. Palimaru Mutt- Shri. Admaru Mutt
2. Shri. Krishnapura Mutt- Shri Puttige Mutt
3. Shri Shirooru Mutt- Shri. Sode Mutt
4. Shri. Kaniyuru Mutt-Shri Pejawara Mutt

98. From the aforesaid, it is clear that respondent No.5 - Mutt Sri Sode Mutt is the Dwandwa Mutt of the Sri Shiroor Mutt. The arrangement so put in place by Shriman Madhwacharya 800 hundred years ago among these 8 Mutts was such that as and when the circumstances as obtaining demanded or presented on account of death or any incapacity of the presiding Peethadhipathi of any of the Ashta Mutts, the Peethadhipathi of its Pair Mutt (Dwandwa Mutt) could step in and take care of its affairs and activities. Such was the power conferred on the Peethadhipathi of the Dwandwa Mutt that he had the power to select and appoint a successor not only to the Mutt of which he is the Peethadhipathi, but also a successor to its Pair Mutt (Dwandwa Mutt), whose Peethadhipathi for reasons such as death, impairment-mental or physical, or for any reason whatsoever did not or could not select and appoint his successor.

99. The facts on record reveal that the qualifications for being selected and appointed as a Peethadhipathi of any of the Ashta Mutts are that the person should belong to the Tulu Shivalli Madhwa Brahmin Community and he should be a Brahmachari (Celibate) belonging to a Tulu speaking Brahmin Family from South Canara and a follower or disciple of any of the Ashta Mutts. A person so selected and appointed would be initiated into "Sanyasa" in accordance with the Hindu scriptures, procedures, religious ceremonies and rituals as are prescribed in that behalf and he shall live with the Peethadhipathi of the Mutt if available, or with the Peethadhipathi of the Pair Mutt (Dwandwa Mutt), if the Swamiji of a particular Mutt is not available due to death, incapacity or impairment or any such reasons. While so living with the Peethadhipathi of the Mutt to which he is appointed or anointed as a Peethadhipathi or with the Peethadhipathi of its Dwandwa Mutt (pair Mutt), he shall learn the Vedas, Upanishads and other religious and spiritual subjects. Primarily he should learn the teachings of Shriman Madhwacharya enshrined in his 37 texts, which are popularly known as "Sarva Moola Granthas".

100. Respondents No.5 and 6 have placed on record before this Court the incontrovertible fact that the earlier pontiffs of Shri Shirooru Mutt, namely Shri Shri Laksimindra Theertha, Shri Shri Lakshmimanojna Theertha and Shri Shri Lakshmivara Theertha, hailed from the same blood family, who are recognized to be the disciples of Sri Sode Vadhiraaja Mutt. Moreover, the above mentioned three of them were appointed as the Peethadhipathi of Shirooru Mutt, one after the other, by the then Dwandwa Matadhipati, Shri Shri Vishwothama Theertha and the ashrama guru of the present pontiff of Shri Sode Vadhiraaja Mutt, under the concept of the Dwandwa Mutt, which is prevailing in the customs of the Shri Krishna Mutt since the time of Shriman Madhwacharya.

101. The facts on record also reveal that Shriman Madhwacharya having established the above mentioned 8 Mutts and the Krishna Mutt, had ordained that each of the disciples appointed as Peethadhipathis of each of the 8 Mutts should take charge of the affairs of Shri Krishna Mutt from the other, who was in charge of such affairs of the Mutt when his turn would come to an end and preside over the affairs of Sri Krishna Mutt for a period of 2 months and function as

"Paryaya Peethadhipathi of Shri Krishna Mutt". The period of 2 months of such charge is called "Paryaya", the duration of which came to be extended later to 2 years by Shri. Vadiraja Teertha of Sri Sode Mutt during his term of Peethadhipathi of that Mutt. The end of each such term is marked by a Festival, which is celebrated on a grand scale and is attended by lakhs of people.

102. All the 8 Peethadhipathis are the "Joint Trustees" of Shri Krishna Mutt, where the idol of Lord Shri Krishna was installed and consecrated by Shriman Madhwacharya. The Paryaya Swarniji will be the Managing Trustee of Sri Krishna Mutt during his term of 2 years (Paryaya) and will be responsible for carrying out series of rituals and ceremonies associated with the worship of Lord Shri Krishna from early dawn and till late in the night. The religious activities and ceremonies connected with the worship of Lord Shri Krishna will be carried out as per a practice known as "**Tantra Sara Paddathi**", laid down by Shriman Madhwacharya. The Paryaya Peethadhipathi is also required to carry out Car Festival (Rathostava) of Lord Shri Krishna. During Paryaya, Shri Krishna Mutt feeds all the devotees who come to witness

the festival from all over the world, from out of the income of Shri Krishna Mutt, the resources of the Paryaya Swamiji and from the borrowings that he may make. The Peethadhipathis of the other 7 Mutts assist the Paryaya Swamiji in the series of rituals and spiritual activities associated with the worship of Lord Shri Krishna and preach, propagate and spread not only the teachings of Shriman Madhwacharya but also the Vedas, the Upanishads, other Holy Scriptures and Spiritual Sciences associated with Hindu Dharma to the people so as to enable them lead a pious, honest, truthful and peaceful life and also to earn the merit and grace of the almighty.

103. The facts on record further reveal that during the past over 800 years the aforesaid custom, tradition, procedure, system, religious and spiritual activities of Sri Krishna Mutt and Ashta Mutts are being carried out by their respective Peethadhipathis, as their trustees strictly as ordained by Shriman Madhwacharya and in accordance with other religious scriptures, without any hindrance, obstructions, interruptions, threat, coercion, duress, enticement or inducement from any quarter whatsoever and to the utmost satisfaction of the followers of the 8 Mutts and other devotees. Suffice it to say that the place or premises,

where the great saint Shriman Madhwacharya lived with his 8 disciples in the initial period and carried out the worship of Lord Shri Krishna was called and continues to be called and known as Sri Krishna Mutt and is attached to the Ashta Mutts established by Shriman Madhwacharya, each one of which is presided over by his disciples as Peethadhipathis. It is respectfully submitted that the very aim, object and purpose of establishing the Ashta Mutts and grouping them into 4 pairs (Dwandwa Mutts), as detailed herein was to have cordiality, camaraderie, among the Ashta Peethadhipathis so that any complicated circumstances or situations which may arise in any of the Ashta Mutts could be dealt with and solved by the Peethadhipathis of Ashta Mutts and to ensure proper worship of Lord Shri Krishna and other religious ceremonies or activities connected therewith perpetually and without any interruption or obstruction from any quarter whatsoever. It is noteworthy and necessary to point out that all the pontiffs of Ashta Mutts from their inceptions have had Balasanyasis as Peethadhipathis, who have efficiently and successfully managed and administered the Sri Krishna Mutt and their respective Ashta Mutts, for over 800 years. Shriman Madhwacharya himself was a Balasanyasi and was initiated



into Sanyasa at the age of 11 years by his Teacher Shri AchyutaPrekshacharya.

104. Sri Sode Vadiraja Mutt (5<sup>th</sup> respondent herein) and Sri Shiroor Mutt, as stated earlier, have been paired with each other for the purposes mentioned herein above and are hence called Dwandwa Mutts. By virtue of being Dwandwa Mutts, each of the Peethadhipathis of these two Mutts has the inherent power to take care of the affairs of the other Mutt and carry out the activities associated therewith.

105. Sri Shiroor Mutt is one of the Ashta Mutts established by Shriman Madhwacharya and he appointed his direct disciple Shri Vamana Teertha as its first Peethadhipathi. The pontiff so appointed was handed down an idol of Shri Vithala, the presiding deity of this Mutt, by Shriman Madhwacharya. This Mutt has an adorable and glorious history to its credit. This Mutt has been rendering the yeomen's service to the cause of propagation of Madhwa Sidhanta and Unbroken observance. The Mutt has not lagged behind to respond to the social issues as a matter of obligation. All the pontiffs of this Mutt starting from Shri Vamana Teertha the founder of the lineage, have contributed

to various fields. Even other exalted saints of this lineage, endowed with godly characteristics, readily came forward to help the whole of mankind. This Mutt has had as many as 30 Peethadhipathis, including the incumbent Shri Vedavardhana Teertha (who has been arrayed herein as respondent No. 7 under the name Aniruddha). This Mutt has been paired with Sri Sode Mutt by Shriman Madhwacharya.

106. In respect of Shri Sode Vadiraja Mutt (5th respondent) it has been stated that Shri Shiroor Mutt was also established by Shriman Madhwacharya and its first Peethadhipathi was Shri Vishnu Teertha. Shri Vishnu Teertha was the direct brother and disciple of Shriman Madhwacharya. The presiding deity of this Mutt is Shri Bhuvараह. Shri Vadiraja Teertha was also a pontiff of this Mutt and he was very well read and, erudite saint and toured to the length and breadth of India propagating the Dvaita philosophy. The 6<sup>th</sup> Respondent is the present pontiff of this Mutt. This Mutt was paired with Shri Shiroor Mutt by Shriman Madhwacharya and that is how these two Mutts have come to be known as Dvandwa Mutts. Among the Ashta Mutts, Sri Sode Vadiraja Mutt (then known as Kumbhasi Mutt) has

the adorable and glorious history to its credit. The Mutt has been rendering the yeoman's service to the course of propagation of Siddhanta and unbroken observance. The Mutt has not lagged behind to respond to the social issues as a matter of obligation. All the pontiffs, starting from Sri Vishnuthirtha - the founder of the lineage, have contributed to various fields. The crest jewel of the lineage Sri Vadiraja Teertha has enriched the dignity of higher rank by his mystic power and extra ordinary contribution. Being Latavya Ruju god incarnated, Vadiraja showed the noble path to the world of qualified souls to set themselves free from the mundane worries. Even other saints of this lineage, endowed with godly characteristics, readily came forward to help the whole of mankind. All of these saints enjoyed the reward and recognition for the services rendered. With safeguarding the greatness tradition, Mutt realized the timely need and also accorded the importance to the modern education. Mutt has the rich collection of rare manuscripts. Mutt is providing better facilities of its branches for devotees.

107. Respondent No.7 hails from a highly educated family and right from his childhood he used to show deep

interest in the religious texts and he was appointed as a Peetadhipathi of Sri Shiroor Mutt in accordance with the Shastras (religious texts). The appointment of respondent No.7 has been done by respondent No.6 keeping in view the Dwaita Philosophy as it is only respondent No.6, who can appoint respondent No.7 as Matadhipathi/Peetadhipathi as Sri Sode Vadiraja Mutt is paired with Sri Shiroor Mutt by Shriman Madhwacharya, who propounded Dwaita Philosophy.

108. Another important aspect of the case is that the petitioners are not at all the disciples of Sri Shiroor Mutt. They might be having respect and faith in the philosophy and the teachings of Shriman Madhwacharya, but they are not all the followers of Sri Shiroor Mutt. The Hindu Religion does not debar a person to take sanyasa below the age of 18 years and it is nobody's case that respondent No.7 has been forced to become a sanyasi. Respondent No.7, after becoming sanyasi was appointed as a Matadhipathi/Pontiff of Sri Shiroor Mutt under the accepted practice and customs, known as Dwandwa Mutts prevailing among eight Mutts (Ashta Mutts) in Udupi. Dwandwa Mutt's philosophy provides that in the event of the head of one of the Mutts passing

away without nominating his successor, the head of the paired Mutt has the authority to appoint such successor. This custom has found judicial recognition by way of a judgement of a Division Bench of the Madras High Court in the case of **Raghubhushana Tirthaswami and another v. Vidiavaridhi Tirthaswami and another**, reported in AIR 1917 Mad 809. Paragraphs 1, 4, 5, 7, 8 and 9 read as under;

"1. Appellant 1 (plaintiff 1 in the suit) is the Swami of a mutt called the Bhimanakattai and appellant 2 (plaintiff 2) was nominated by him to the headship of another mutt called the Bhandarikere. Defendant 1 in the suit is a person who claims to have been nominated Swami of the Bhandarikere mutt by defendant 2 who is described as the Pariyaya Swami. The suit was instituted in order to obtain a declaration that the head of the Bhimanakattai Mutt for the time being is entitled to appoint a Swami to the Bhandarikere Mutt in default of any appointment by the last Swami of the latter mutt during his lifetime and that the Pariyaya Swami of the Krishna temple at Udipi, which is the office held by defendant 2 has no right to appoint a Swami to the Bhandarikere Mutt in case of such vacancy. The next important prayer in the plaint is that plaintiff 2 may be declared to have been lawfully appointed to the Bhandarikere Mutt and that he may be put in possession of that mutt and its properties. The learned Subordinate Judge has found against the claims of plaintiffs 1 and 2. He also found that the Pariyaya Swami has no right to make any appointment to the Bhandarikere Mutt. In the result he dismissed the suit. The plaintiffs have preferred this appeal against the decision of the Subordinate Judge.

4. As regards the case of the plaintiffs, so far as it is based on the allegation that the Bhimanakattai Mutt

is the parent mutt and as such its Swami has a right to appoint to the Bhandarikara Mutt, it can vary easily be disposed of. The entire evidence of the plaintiff was adduced to prove the dwandwa relationship between the two mutts in question. That is to say, the Swami of either I of them in a contingency such as this has a right to appoint the Swami of the sister mutt and not that the Bhimanakattai Mutt possessed any predominant right, by virtue of being the original mutt, of appointing to the Bhandarikere Mutt. The connexion between a moola mutt and the branch or cowle mutt presupposes a certain amount of controlling authority and superiority of position in the one and of subordination in the other; while the idea of Dwandwa Mutts is that they are both of co-ordinate and independent authority, but that in cases of urgency, the Swami of each has a right to appoint the Swami of the allied mutt. This is very well established by the evidence with regard to the eight Udipi Mutts which are grouped into twos with the dwandwa right existing inter se. Of these Dwandwa Mutts no one has authority of any sort over the other, and it is only the Pariyaya Swami who, being the custodian of the Krishna temple, has a certain superior authority over all the eight mutts. It is not even suggested that the Swami of Bhimanakattai Mutt is entitled to any special honours from the Bhandarikere Mutt or that he exercises any kind of control, supervision or privilege over it.

**5.** What is claimed on behalf of the Bhimanakattai Mutt is that this was the original mutt founded by the sage Durvasa whose name appears on the top of the pedigree, and that Bhimankattai was the Samasthanam of Yisvamurti who was the last Swami of the original matt before division. Visvamurti had two disciples Visvapathi and Gadadhara. Visvapathi was ordained successor to Visvamurthi in the original mutt and Gadadhara was placed in charge of a branch mutt which was then established. All this is a matter merely of tradition and cannot be said to be proved by any evidence. It is alleged that Bhimanakattai Mutt is proved at least to be an older mutt than the other and in support of that contention, a copper plate inscription marked as Ex. JJ is relied on. If this document could be said to

genuine, there would be good ground for holding that Bhimanakattai mutt is the more ancient of the two. It is a grant alleged to have been made in the era of Yudhishtira 89 by Janamejaya, the great-grandson of Yudhishtira himself. That would take the matter back to about 3,000 B.G. It is pointed out by Mr. Rice that having regard to the fact that the writing is modern Canarese and also other facts mentioned by him the copper plate inscription to say the least, is of doubtful authenticity. The learned Subordinate Judge seems to think that though the date 89 Yudhishtira era cannot be correct the grant itself is not fabricated and that it can be safely attributed to 14th century. He however fails to notice that the grant purports to be by the great-grandson of Yudhishtira himself who is said to have lived about 3,012 B.C. I think the Subordinate Judge was wrong in placing any reliance at all on Ex. JJ. Similarly I am not inclined to attach any importance to the claim that the sage Durvasa worshipped at Bhimanakattai, alleged to be his hermitage. It is wholly founded on a vague tradition of a non-historical character. The Subordinate Judge has also attached significance to the letter Ex. DD written in 1837 by the Swami of Bhandarikere Mutt to the Swami of Bhimanakattai Mutt, asking the latter to find out if there were any old accounts and documents in his possession which might be useful in connexion with certain suits relating to the land of Bhandarikere. It appears that sometime about 1705 (Ex. CC) there was partition between the two mutts of certain jewels, books, brass and copper vessels and other articles of worship and that apparently explains why the Swami of Bhandarikere Mutt who wrote Ex. DD thought that the Swami of Bhimanakattai Mutt might have some papers which would throw light in the suits relating to the properties of his mutt. Nor does the conclusion of the lower Court, that Gopinath is the principal deity worshiped in the Bhandarikere Mutt while Ramadeva is the original deity worshipped in the Bhimanakattai Mutt, seem to be warranted by the evidence. There is ample evidence corroborated by the statements of witnesses on the plaintiffs' side to show that the images of Rama, Lakshmana and Sita, singly or together, form a principal object of worship in the Bhandarikere Mutt as well. There is however the undoubted fact that the grants recorded in the stone inscriptions M, N, O, P, all made in the 16th

century are in favour of the deity Gopinath. But admittedly more than one deity is worshipped in these mutts and it is likely that a particular devotee of a particular deity should make endowments for his worship.

**7.** On the question of the dwandwa right we have certain admitted facts. Such a right does exist among the eight Udipi Mutts which are also Madhava Mutts. We have also one undoubted instance of an appointment made by the Swami of Bhandarikere Mutt to the headship of the Bhimankattai Mutt. This instance was admitted on the defendants' side before the learned Subordinate Judge, as would appear from the judgment. The Swami so appointed was Raghu Pravira Thirta, the 35th in the list of Bhimanakattai Swamis; and the Swami of Bhandarikere who appointed him was Vidyasagar, the predecessor of the lunatic Vidyanidhi. No doubt an attempt was made before us to show that what the Bhandarikere Swami did was merely to perform the ceremony of ordination, the nominee in fact being designated by the Swami of Bhimanakattai Mutt during his lifetime. But apparently the suggested distinction between ordination and selection, so far as the particular case is concerned, is an after thought and was not sought to be drawn before the lower Court. The suggestion is based on the reading of Ex. FF, which is a document produced to support the case of the plaintiff and which has been found by the Subordinate Judge to be a fabrication, a finding strenuously supported by the learned Advocate-General himself who appeared for defendant 2.

**8.** I may here conveniently deal with the question whether the finding of the Subordinates Judge regarding Exs. FF, GG and EE is correct. Ex. EE is a letter purporting to be written by some villagers of a place called Halesige in the Bombay Presidency to one Anantha Battar who, at that time, that is, in 1821, was the agent of Bhimanakattai Mutt, informing him that Raghunatha Thirta, the Swami of that mutt, died of small pox in Halesige village, that before death, he desired the writers of the letter to write to Anantha Battar to the effect that he should request the Swami of Bhandarikere which was



dwandwa to the Bhimanakattai to give asram to the eldest son of Anantha Battar, that is, or a in him to the Samasthanam or office of the Swami of the Bhimanakattai Mutt. This letter refers to the case which, as I have already mentioned, did undoubtedly occur. Ex. FF was produced first in 1899 and as mentioned in the judgment of the Subordinate Judge who tried the previous suit, it was produced at a late stage of that suit and the present Subordinate Judge was justified in relying on this fact in considering the question of genuineness of the document. It is perfectly true that Raghunatha Thirta Swami of Bhimankattai died in Halesige where his tomb is and is worshipped by his devotees. But the Subordinate Judge remarks that it is hardly likely that there should not have been with him some responsible agent or officer of the Samasthanam and that he should have been under necessity of entrusting his personal effects and era important massage to men who must have been more or less strangers.

**9.** It is also pointed out that Ex. FF contains statements which are not true or at least are not likely to be inserted in a bona fide document; for instance the statement that the mutts were dwandwa and that the writers were interested in the Samasthanam of the deceased Swami from former times. "The latter statement is apparently not proved by any evidence although the descendants of the alleged writers, that is, P.W. Nos. 7, 8, 9, and 10 have been examined. On the other hand, P.W. 10, who alone among these witnesses identifies the signature of one of the signatories to FF as that of his great-grandfather, belonged to the Utharathi Mutt and is not a follower of Bhimanakattai Mutt. P.W. Nos. 7, 8 and 9 do not prove the writing or signatures of their ancestors in Ex. FF. The cross-examination of P.W. 10 shows that he is hardly a reliable witness. He is a mendicant and makes statements in support of the plaintiffs' case which having regard to the fact that he is a follower of Utharathi Mutt, would not ordinarily be within his personal knowledge. I am unable to say that the Subordinate Judge's finding that Ex. FF is not genuine is wrong. The same with Ex. GG. That is a peculiar document and though it is extremely likely that it was in existence in the Bhimanakattai Mutt, the entries could easily be rubbed out and other

entries substituted in their place. The entries are made on folded pieces of cloth stitched together in the form of a book and blackened with charcoal dust. One has only to put fresh charcoal dust on and write again with a piece of steel or something like that and nobody could tell the difference between that writing and the older writing. The lower Court has also held that Ex. EE, by which it is sought to prove a case of appointment of a Swami to the Bhandarikere Mutt by a Swami of the Bhimanakattai Mutt, is not genuine. It is a very long letter purporting to be written sometime in 1776 and in it there occurs a statement of parsons who are alleged to be the servants of the Bhimanakattai Mutt, to the effect that the then Swami Raghuvarya Thirta of that mutt had ordained the then Swami of Bhandarikere. The Subordinate Judge points out that the name of the Swami of Bhandarikere is not mentioned and urges that this shows that the man who concocted the document were not certain who was in fact the Swami of Bhandarikera Mutt in 1776."

109. The aforesaid judgment makes it very clear that Dwandwa right exists among the eight Udupi Mutts, which are also Madhva Mutts and respondent No.6 does have an authority to appoint a Matadhipathi/Peetadhipathi of Sri Shiroor Mutt and the same has been done by him.

110. Seven judges of the Hon'ble Supreme Court in the case of **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamir of Shirur Mutt**, reported in AIR 1954 SC 282, has declared that the followers of Madhva philosophy constitute a religious denomination and the followers of Sri Shiroor

Mutt form a sect of religious denomination. Paragraphs 10, 11 and 15 of the aforesaid judgment read as under;

**"10.** As regards Article 19(1)(f) of the Constitution, the question that requires consideration is, whether the respondent as Mathadhipati has a right to property in the legal sense, in the religious institution and its endowments, which would enable him to claim the protection of this Article? A question is also formulated as to whether this Article deals with concrete rights of property at all? So far as Article 25 of the Constitution is concerned, the point raised is, whether this Article which, it is said, is intended to protect religious freedom only so far as individuals are concerned, can be invoked in favour of an institution or organisation? With regard to Article 26, the contention is that a Math does not come within the description of a religious denomination as provided for in the article and even if it does, what cannot be interfered with is its right to manage its own affairs in matters of religion only and nothing else. It is said, that the word "religion", as used in this article, should be taken in its strict etymological sense as distinguished from any kind of secular activity which may be connected in some way with religion but does not form an essential part of it. Reference is made in this connection to clause (2)(a) of Article 25 and clause (d) of Article 26. We will take up these points for consideration one after another.

**11.** As regards the property rights of a Mathadhipati, it may not be possible to say in view of the pronouncements of the Judicial Committee, which have been accepted as good law in this country ever since 1921, that a Mathadhipati holds the Math property as a life tenant or that his position is similar to that of a Hindu widow in respect to her husband's estate or of an English Bishop holding a benefice. He is certainly not a trustee in the strict sense. He may be, as the Privy Council [ *Vide Vidya Varuthi v. Balusami*, 48 IA 302] says, a manager or custodian of the institution who has to discharge the duties of a trustee and is answerable as such; but he is not a mere manager and it would not be right to describe Mahantship as a mere office. A superior of a Math has not only duties to discharge in connection

with the endowment but he has a personal interest of a beneficial character which is sanctioned by custom and is much larger than that of a Shebait in the debutter property. It was held by a Full Bench of the Calcutta High Court [ Vide *Monahar v. Bhupendra*, 60 Cal 452] that Shebaitship itself is property, and this decision was approved of by the Judicial Committee in *Ganesh v. Lal Behary* [63 IA 448] and again in *Bhabatarini v. Ashalata* [70 IA 57] . The effect of the first two decisions, as the Privy Council pointed out in the last case, was to emphasise the proprietary element in the Shebaiti right and to show that though in some respects an anomaly, it was an anomaly to be accepted as having been admitted into Hindu law from an early date. This view was adopted in its entirety by this Court in *Angurbala v. Debabrata* [1951 SCR 1125] and what was said in that case in respect to Shebaiti right could, with equal propriety, be applied to the office of a Mahant. Thus in the conception of Mahantship, as in Shebaitship, both the elements of office and property, of duties and personal interest are blended together and neither can be detached from the other. The personal or beneficial interest of the Mahant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect to endowed properties; and these and other rights of a similar character invest the office of the Mahant with the character of proprietary right which, though anomalous to some extent, is still a genuine legal right. It is true that the Mahantship is not heritable like ordinary property, but that is because of its peculiar nature and the fact that the office is generally held by an ascetic, whose connection with his natural family being completely cut off, the ordinary rules of succession do not apply.

**15.** As regards Article 26, the first question is, what is the precise meaning or connotation of the expression "religious denomination" and whether a Math could come within this expression. The word "denomination" has been defined in the *Oxford Dictionary* to mean "a collection of individuals classed together under the same name: a religious sect or body having a common faith and organisation and designated by a distinctive name". It is well known that the practice of setting up Maths as centres of theological teaching was started by Shri Sankaracharya and was followed by various teachers

since then. After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day. Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name, — in many cases it is the name of the founder, — and has a common faith and common spiritual organisation. The followers of Ramanuja, who are known by the name of Shri Vaishnabas, undoubtedly constitute a religious denomination; and so do the followers of Madhwacharya and other religious teachers. It is a fact well established by tradition that the eight Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of these Maths profess to be followers of that teacher. The High Court has found that the Math in question is in charge of the Sivalli Brahmins who constitute a section of the followers of Madhwacharya. As Article 26 contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of this article."

111. Discussion on the religious denomination becomes relevant here. Article 26 refers not only to religious denominations, but also to sects thereof. Article 26 guarantees that every religious denomination, or sect thereof, shall have the right inter-alia to manage its own affairs in matters of religion. This right is made subject to public order, morality, and health. The expression "religious denomination" as interpreted in **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** (supra) was "a collection of individuals classed together under the same

name : a religious sect or body having a common faith and organisation and designated by a distinctive name". The Court held that each of the sects or sub-sects of the Hindu religion could be called a religious denomination, as such sects or sub-sects, had a distinctive name.

112. The petitioners have vehemently argued before this Court that there has been a violation of the constitutional rights guaranteed under Articles 25 and 26 of the Constitutions of India and the action of respondent No.6 is violative of fundamental rights guaranteed to the devotees of Sri Shiroor Mutt under Part III of the Constitution of India.

113. Articles 25 and 26 of the Constitution of India are reproduced as under;

**"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. "

114. As already stated earlier, the followers of Madhva philosophy constitute a religious denomination and the followers of Sri Shiroor Mutt form a sect of religious denomination. As Article 26 of the Constitution of India contemplates not merely a religious denomination but also a sect thereof, the Mutt or the spiritual fraternity represented

by it legitimately comes within the purview of Article 26 of the Constitution of India. Hence, the system of Dwandwa Mutt being an essential religious practice, is protected under Article 26 of the Constitution of India.

115. The framers of the Constitution were aware of the rich history and heritage of this country being a secular polity with diverse religions and faiths, which were protected within the fold of Articles 25 and 26. State interference was not permissible, except as provided by Article 25(2)(b) of the Constitution, where the State may make law providing for social welfare and reform. Article 26 of the Constitution guarantees the freedom to every religious denomination, or sect thereof, the right to establish and maintain institutions for religious or charitable purposes, and to manage their own affairs in matters of religion. The right conferred under Article 26 is subject to public order, morality and health, and not to any other provisions in Part III of the Constitution. A religious denomination or organization enjoys complete autonomy in matters of deciding what rites and ceremonies are essential according to the tenets of that religion. The only restriction imposed is on the exercise of the right being



subject to public order, morality and health under Article 26. Therefore, respondent No.6 is certainly in respect of religious denomination entitled under Article 26 of the Constitution of India to appoint respondent No.7 as Peetadhipathi.

116. **In S.P. Mittal v. Union of India & Ors.** (1983 AIR 1: 1983 SCC (1) 51), the Supreme Court, while relying upon the judgment in the case of **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Swamiar Thirtha Swamiar of Shirur Mutt** (supra), held that the words 'religious denomination' in Article 26 of the Constitution must take their colour from the word 'religion', and if this be so, the expression 'religious denomination' must satisfy three conditions:

- (1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;
- (2) common organisation; and
- (3) designation by a distinctive name

117. If there are clear attributes that there exists a sect, which is identifiable as being distinct by its beliefs and practices, and having a collection of followers who follow the same faith, it would be identified as a 'religious denomination'. The followers of Sri Shiroor Mutt constitute a religious denomination, or sect thereof, as the case may be and follow common faith and common beliefs and practices. Thus, the beliefs and practices are based upon the teachings of Shriman Madhwacharya and as per the essential religious practices and therefore, respondent No.6 has rightly appointed respondent No.7 as Matadhipathi/Peetadhipathi.

118. Before concluding the matter, the essential practice of particular religion test needs to be applied. The 'essential practices' test was formulated in Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt. (Supra) by the Supreme Court. Before articulating the test, the Supreme Court drew on the words "practice of religion" in Article 25(1) to hold that the Constitution protects not only the freedom of religious belief, but also acts done in pursuance of a religion. In doing so, it relied on an extract from the decision of

Latham, C.J. of the High Court of Australia in **Adelaide Company of Jehovah's Witnesses Incorporated v. The Commonwealth**, reported in 67 CLR 116, 127. The original extract relied upon has been reproduced herein below:-

"5. It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of s.116. The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion."

The Supreme Court then went on to formulate the 'essential practices test in the following words:

"20...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 daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion...all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b)...

...23. Under Article 26(b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of 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."

119. The 'essential practices test' was reiterated by the Supreme Court in **Ratilal Panachand Gandhi v. The State of Bombay & Ors.** reported in (1954) SCR 1055:AIR 1954 SC 388, where the narrow definition of "religion" given by the Bombay High Court was discarded. It was held that all religious practices or performances of acts in pursuance of religious beliefs were as much a part of religion, as faith or belief in particular doctrines. The Supreme Court re-iterated the 'essential practices test' in the following words:-

"13...Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of priests or the use of marketable commodities. No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate...We may refer in this connection to the observation of Davar, J. in the case of Jamshed ji v. Soonabai and although they were made in a case where the question was whether the bequest of property by a Parsi testator for the purpose of perpetual celebration of ceremonies like Muktaf bag, Vyezashni, etc., which are sanctioned by the Zoroastrian religion were valid and charitable gifts, the observations, we

think, are quite appropriate for our present purpose. If this is the belief of the community thus observed the learned judge, and it is proved undoubtedly to be the belief of the Zoroastrian community, - a secular judge is bound to accept that belief - it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of the religion and the welfare of his community or mankind. These observations do in our opinion afford an indication of the measure of protection that is given by Article 26(b) of our Constitution."

120. In *Durgah Committee, Ajmer & Anr. v. Syed Hussain Ali & Ors.* reported in 1961 AIR 1402 : 1962 SCR 383 the 'essential practices test' was discussed by a Constitution Bench in the following words:

"33...Whilst we are dealing with this point it may not be out of place incidentally to strike a note of caution and observe that in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim or being treated as religious practices within the meaning of Article 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Article 26 may have to be carefully scrutinised; in other words, the protection must be confined to such religious practices as are an essential and an integral part of it and no other."

The Supreme Court affirmed the 'essential practices test' as laid in the previous decisions in *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (supra)*, and *Ratilal Panachand Gandhi v. The State of Bombay & Ors. (supra)* insofar as it emphasised on the autonomy of religions to identify essential or integral practices.

121. Reference is required to be made to the doctrines and tenets of a religion, its historical background, and the scriptural texts to ascertain the 'essentiality' of religious practices.

122. The 'essential practices test' in its application would have to be determined by the tenets of the religion itself. The practices and beliefs which are considered to be integral by the religious community are to be regarded as "essential", and enjoys protection under Article 25.

123. The only way to determine the essential practices test would be with reference to the practices followed since time immemorial, which may have been scripted in the religious texts of this temple. If any practice

in a particular mode of worship can be traced to antiquity, and is integral to the sect, it must be taken to be an essential religious practice of that sect.

124. Learned counsel for the petitioners has placed heavy reliance upon a judgment delivered in the case of **Indian Young Lawyers Association (supra)**, however, the same has been now referred to a Larger Bench and the Hon'ble Supreme Court (Larger Bench) in the case of **Kantaru Rajeevaru (Right to Religion, In re-9 J.) (2) v. Indian Young Lawyers Assn.**, reported in (2020) 9 SCC 121, in paragraph 5 has held as under;

"5. It is our considered view that the issues arising in the pending cases regarding entry of Muslim women in durgah/mosque [being Writ Petition (Civil) No. 472 of 2019] [Ed.: See the latest order in this case dated 5-11-2019: Yasmeen Zuber Ahmad Peerzade v. Union of India, (2020) 2 SCC 50 (1)] ; of Parsi women married to a non-Parsi in the Agyari [being Special Leave Petition (Civil) No. 18889 of 2012] [Ed.: Reference may be made to two of the orders in these proceedings, the first order below referring the matter to a Constitution Bench: Goolrokh M. Gupta v. Burjor Pardiwala, (2020) 2 SCC 50 (2); and Goolrokh M. Gupta v. Burjor Pardiwala, (2020) 2 SCC 705] and including the practice of female genital mutilation in Dawoodi Bohra community [being Writ Petition (Civil) No. 286 of 2017] [Ed.: Reference may be made to the order referring the matter to a Constitution Bench in these proceedings: Sunita Tiwari v. Union of India, (2019) 18 SCC 719 : 2018 SCC OnLine SC 2667] may be overlapping and covered by the judgment [Indian Young Lawyers Assn. (Sabarimala

Temple-5 J.) v. State of Kerala, (2019) 11 SCC 1] under review. The prospect of the issues arising in those cases being referred to the larger Bench cannot be ruled out. The said issues could be:

5.1.(i) Regarding the interplay between the freedom of religion under Articles 25 and 26 of the Constitution and other provisions in Part III, particularly Article 14.

5.2.(ii) What is the sweep of expression "public order, morality and health" occurring in Article 25(1) of the Constitution.

5.3.(iii) The expression "morality" or "constitutional morality" has not been defined in the Constitution. Is it overarching morality in reference to Preamble or limited to religious beliefs or faith. There is need to delineate the contours of that expression, lest it becomes subjective.

5.4.(iv) The extent to which the court can enquire into the issue of a particular practice is an integral part of the religion or religious practice of a particular religious denomination or should that be left exclusively to be determined by the head of the section of the religious group.

5.5.(v) What is the meaning of the expression "sections of Hindus" appearing in Article 25(2)(b) of the Constitution.

5.6.(vi) Whether the "essential religious practices" of a religious denomination, or even a section thereof are afforded constitutional protection under Article 26.

5.7.(vii) What would be the permissible extent of judicial recognition to PILs in matters calling into question religious practices of a denomination or a section thereof at the instance of persons who do not belong to such religious denomination?

The aforesaid case is still pending before the Hon'ble Supreme Court.



125. Much has been argued on the issue of Sanyasa and it has been vehemently argued before this Court that respondent No.7 is a minor and his becoming sanyasi violates Article 39(a) and 39(f) of the Constitution of India. In respect of this aspect, learned Senior Counsel Sri Naganand was justified in arguing before this Court that age of majority is reckoned as 18 years only for the purposes of entering into a binding contract and undertake responsibilities as majors and for the same purpose, the Majority Act, 1875 was enacted. He has rightly argued before this Court that while describing the age of majority as 18 years for this purpose, a specific exception is carved out in Section 2, which says that nothing contained in the Act shall affect the religion or religious rites and usages of any class of citizens of India. Various statutes and even the Constitution of India does not prohibit any person, who is less than 18 years of age to become a sanyasi.

126. Reference has also been drawn to United Nations Convention on the Rights of Child. However, in the present case, respondent No.7 is 16 years of age and even if it is presumed that the person concerned is a child, Article 12 of

CRC guarantees to the child, who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. It also assures the right of the child to freedom of thought, conscience and religion and this is also the mandate of Article 25 of the Constitution of India.

127. In the present case, Sri Shiroor Mutt is one of the Ashta Mutts and it is a religious denomination having its own customs and practices and therefore, respondent No.7 was rightly appointed as a Matadhipathi/Peetadhipathi. It is not for the first time that a person of below age is becoming sanyasi. Sri Shringeri Mutt is one of the Peetas established by Shriman Adishankaracharya and large number of persons below 18 years of age have become sanyasis. The present petition has been filed with an ulterior motive without going through the religious practices of Sri Shiroor Mutt.

128. The Hon'ble Court in the case of **His Holiness Sri Vishwothama Thirtha Swamiar of Sode Mutt, Udipi, minor rep.by next friend P.S.Charya and ors., v. The**

**State of Madras, represented by the Collector of South**

**Kanara, Mangalore and ors.,** reported in AIR 1956 Mad

541, in paragraphs 110 and 111 has held as under;

**"110.** The third relevant reported case in this connection is 1927 PC 131(AIR V 14) © decided by the Judicial Committee of the Privy Council. Their Lordships stated:

"It is in evidence that in the town of Udipi there are eight maths each presided over by a superior Swamiar. They appear to form four groups connected by a tie which permits in case of the superior of one Math dying without nominating a successor the superior of the other Math to appoint a successor to the deceased Swamiar."

**111.** Besides these Maths there is temple dedicated to Krishna, one of the manifestations of Vishnu, perhaps the most popular deity forming the Hindu, Triad. Admittedly it has no superior but the affairs of the Krishna Temple are managed by the superiors of the eight maths in turn."

In light of the aforesaid, it can be safely gathered that Dwandwa rights have been rightly exercised by respondent No.6 by appointing respondent No.7 as Peetadhipathi of Sri Shiroor Mutt.

129. In other religions also like Buddhism, children of tender age have become monks and there is no impracticable rule as to the age on which sanyasa deeksha can be given.

Also, there is no statutory much less constitutional bar on a person of less than 18 years being initiated into sanyasa and the religious texts, which have been quoted in the arguments of learned Senior Counsel Sri Nagananda, Amicus Curiae, makes it very clear that the religion permits a person to become sanyasi before attaining the age of 18 years and there is no such bar and as per the Dwandwa philosophy respondent No.6 was certainly empowered to keeping in view the essential religious practices to appoint respondent No.7 as Peetadhipathi of Sri Shiroor Mutt.

130. In the considered opinion of this Court, the Courts are certainly not at all meant to write the religious text, however, they are under an obligation to follow the religious text in the matter of cases dealing with religious dispute and to follow the old practices which are prevalent in religion so long as they do not violate constitutional rights of an individual.

131. In the present case, Sri Shiroor Mutt is a religious denomination and as per the essential religious practices, respondent No.7 has become a sanyasi and has been

appointed as a Matadhipathi/Peetadhipathi of Sri Shiroor Mutt by respondent No.6. Therefore, by no stretch of imagination it can be presumed that the essential religious practice of Dwandwa Mutt, which is in vogue, is violative of constitutional rights guaranteed to the citizens of India.

132. The petitioners have not been able to establish violation of any statutory provisions nor violation of any constitutional rights guaranteed to respondent No.7. The essential religious practice is continuing for the last 800 years and the appointment of Pontiff is a practice, which is in existence for the last 800 years keeping in view the philosophy and the teachings of Shriman Madhwacharya.

133. The Division Bench of Madhya Pradesh High Court in the case of **Aarsh marg Seva Trust and Another v. State of Madhya Pradesh and Ors.**, W.P.No.8310/2019 (PIL), decided on 1.11.2019, as dealt with the essential religious practices and in paragraph 72 has held as under;

"This Court is not a theological wizard and shall be transgressing its role as a constitutionist authority by interfering with the essential religious practice, which is certainly not at all opposed to public order, morality, health or any other fundamental right. Resultantly, no

case for interference is made out in the matter and the writ petition is accordingly dismissed."

134. In the light of the aforesaid judgment, in which the Division Bench has declined to interfere in an essential religious practice, which was continuing since time immemorial, the question of interference of this Court in the essential religious practice of Sri Shiroor Mutt, which is continuing for the last 800 years, does not arise. Resultantly, the writ petition is dismissed.

Pending IAs, if any, stand disposed of.

No order as to costs.

SD/-  
ACTING CHIEF JUSTICE

SD/-  
JUDGE

nd