CASE NO.:
Appeal (civil) 6675 of 1999

PETITIONER:
M.P. Gopalakrishnan Nair & Anr.

RESPONDENT:
State of Kerala & Ors.

DATE OF JUDGMENT: 20/04/2005

BENCH:
H.K. Sema & S.B. Sinha

JUDGMENT:
JUDGMENT

W I T H

CIVIL APPEAL NO. 6674 OF 1999

S.B. SINHA, J :

BACKGROUND FACT:

Sri Krishna Temple situated at Guruvayoor is one of the most famous temples in the world. The history and legends of the temple are intimately linked with great saints like Villwamangalam Swamiyar, Melpathur, the author of Narayaneeyam, Poonthanam and Kururamma. The temple attracts millions of devotees from all over the world. Zamorin Raja and the Karanavan of the Mallissery Illom were the hereditary trustees of the temple. Disputes and differences arose between the Zamorin Raja and the Karanavan of the Illom mainly about Orrayma rights which were ultimately determined by a judgment of the Madras High Court in A.S. No. 35/1887 on 1-11-1880.

After the Madras Hindu Religious and Charitable Endowments Act, 1926 came into force, a scheme for administration of the Temple and its properties was framed in terms whereof the Zamorin Raja was entrusted with the management of the Temple under the supervision of the officers of the Board. The Karanavan of the Mallissery Illom thereupon filed O.S. No. 1 of 1929 before the District Court of South-Malabar.

The worshippers of the Temple also filed O.S. No. 2 of 1929 in the same court praying for framing up of a proper scheme which would give appropriate representation to the non-hereditary trustees from among the devotees. The District Court by a judgment and decree dated 25-10-1929 upheld the claim of the Karanavan of the Mallissery Illom to be made a joint trustee along with Zamorin Raja as a result whereof the scheme was amended. The Zamorin Raja preferred an appeal thereagainst before the High Court of Madras which were marked as A.S. No. 211 and 212 of 1930. The High Court of Madras disposed of the appeals by a common judgment dated 21-11-1930 confirming the decision of the District Court rejecting the prayer for appointment of non-hereditary trustees. Some modifications in the said scheme were made later on.

The Guruvayoor Devaswom Act, 1971, Act 6 of 1971 was framed after the Government established a Commission to enquire into the cause of the fire, which destroyed the temple in 1970. The validity of the Act was challenged before the Kerala High Court by the hereditary trustees in O.P. No. 812 of 1971, claiming infringement of their fundamental rights under Articles 19, 25 and 26 of Constitution of India. A Full Bench of the Kerala High Court dismissed the said writ petition. The Act was thereafter amended by Act 12 of 1972, which again came to be challenged in O.P. No.

314 of 1973 in a writ petition filed on behalf of the denomination of the temple. A Bench of Five Judges of the Kerala High Court struck down the said Amending Act in Krishnan Vs. Guruvayoor Devaswom Managing Committee [since reported in 1979 KLT 350]. The Governor of Kerala promulgated an ordinance known as Guruvayur Devaswom Ordinance, No. 25 of 1977.

The Legislature of the State of Kerala thereafter enacted Guruvayoor Devaswom Act, 1978 (the 1978 Act) with a view to make provision for the proper administration of the Guruvayoor Devaswom. The 1978 Act was enacted having regard to the decision of the 5-Judge Bench of Kerala High Court in Krishnan (supra).

PROCEEDINGS BEFORE THE HIGH COURT:

The First Appellant herein is President, Kerala Kshethra Samrakshina Samithi and the Second Appellant herein is the General Secretary, Vishwa Hindu Parishad, Kerala State. They filed a writ petition before the High Court praying for the following reliefs:

"i) declare that the Hindus in the Council of Ministers of the Leftist Democratic Front, respondents 4 to 14 herein, have no manner of authority to nominate Members to the Guruvayoor Devaswom Managing Committee in the light of the pronouncement of this Honourable Court in 1985 KLT 629 and other ruling of the Kerala High Court and that any move initiated by them to so nominate and constitute the Managing Committee will be illegal and unconstitutional and violative of the petitioners Fundamental Rights under Articles 14, 21, 25 & 26 of the Constitution of India;

ii) issue a writ of mandamus or any other appropriate writ, order or direction directing respondents 4 to 14 to refrain from nominating any members to the Guruvayoor Devaswom Managing Committee in pursuance of the provisions of Section 4 of the Guruvayoor Devaswom Act 1978;

iii) issue an interim order of stay of all steps initiated by respondents 1 & 4 to 14 to nominate any member/ members to the Guruvayoor Devaswom Managing Committee pending disposal of the above original petition before this Honourable Court;"

A Division Bench of the said Court having regard to the importance of the question involved in the writ petition by an order dated 9th July, 1999 referred the matter to a larger bench. By reason of the impugned judgment, a 5-Judge Bench of the Kerala High Court dismissed the said writ petition. The Appellants herein are, thus, before us.

SUBMISSIONS:

Mr. M.K.S. Menon, learned counsel appearing on behalf of the Appellants would contend that the expression 'Hindu' having not been defined either in the 1978 Act or Travancore Cochin Hindu Religious Institutions Act must be construed in the light of the series of decisions rendered by the Kerala High Court, as a person who believes in god and temple worship and professes Hindu faith. A person belonging to the denomination in relation to a temple, according to Appellants, must not only be entitled to attend at the performance of the worship or service but also must be in the habit of attending such performance. As the Hindu members

of the then Council of Ministers (Respondent Nos. 4 to 14) did not satisfy such requirements having regard to their political affiliation as they owe their allegiance to the leftist (Marxist) ideology and as they were against such religious practice; any nomination made by them as members of the Committee is ultra vires Articles 25 and 26 of the Constitution of India. Strong reliance in this behalf has been placed on Krishnan (supra), K. Krishnankutty & Others Vs. State of Kerala [1985 KLT 289], Narayanan Namboodiri & Others Vs. State of Kerala [1985 KLT 629] and Muraleedharan Nair Vs. State of Kerala [1990 (1) KLT 874].

Mr. T.L.V. Iyer, learned senior counsel appearing on behalf of the Respondents, on the other hand, would support the impugned judgment of the High Court contending that the management of a temple or religious endowment is a secular aspect which can always be subject matter of control by a State. Reliance in this behalf has been placed on A.S. Narayana Deekshitulu Vs. State of A.P. and Others [(1996) 9 SCC 548] and Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others [(1997) 4 SCC 606].

Mr. Iyer would urge that the worshippers never enjoyed any right in the denomination to have a person in the Management Committee and in any event, the Appellants herein have failed to establish that there had been a religious practice which had been existing as on the date of coming into force of the Constitution, the writ petition was not maintainable.

Mr. Iyer submitted that the expression "Hindu" having not been defined in the 1978 Act, the High Court rightly did not extend the meaning thereof to a person having a faith in the temple worship and other rituals connected therewith. It was pointed out that keeping in view the decision of the Kerala High Court in Krishnan (supra), the power of nomination is vested in a smaller body and not in the Government. It is the smaller body of Hindus amongst the members of the Council of Ministers who would nominate persons who must fulfill the qualifications laid down in Sub-sections (2) and (4) of Section 4 of the 1978 Act.

QUESTIONS BEFORE THE HIGH COURT:

The High Court framed the following questions for its determination:

(1) Whether the Hindu Ministers in the Council of Ministers should have faith in God and Temple worship while nominating the members to the Managing Committee of the Guruvayoor Devaswom under Section 4 of the Guruvayoor Devaswom Act? and

(2) Whether Hindu Ministers who are not believers in God and Temple Worship can, by reason of their not having faith in Hindu God and Temple worship, are disqualified from nominating the members of the Managing Committee of the Guruvayoor Devaswom, who should have faith in God and Temple worship, and must also make and subscribe an oath affirming their faith in God and Hindu Religion and believe in Temple worship.

JUDGMENT OF THE HIGH COURT

(a) The High Court noticed that in Krishnan (supra), the 5-Judge Bench upheld the validity of the 1978 Act holding that the Committee did not represent the denomination.

(b) Article 25 merely secures to every citizen, subject to public order, morality and health, a freedom specified therein but the State has the requisite power to make laws regulating economic, financial, political or other secular activity which may be associated with religious practice.

(c) Furthermore, the State has reserved unto itself the power to make laws providing for social reform and social welfare even though they might interfere with religious practices.

(d) The Bench in Krishnan (supra) merely directed for consideration of the Government whether the nomination could be given to a statutory body other than the State Government with sufficient guidelines furnished to it for ensuring that such nominations would be effected in such a way so as to make the committee a truly representative of the denomination consisting of the worshipping public.

(e) Section 4(1) of the 1978 Act was declared invalid as by reason thereof the State had been conferred with a naked and arbitrary power without any safeguard being provided for ensuring that the Committee will be a body representing the denomination.

(f) The observations made by a 3-Judge Bench in Narayanan Namboodiri (supra) to the effect that the requirements of Article 26 (d) would be satisfied only if those in charge of Devaswom represent denomination are not in consonance with the observations and findings of Krishnan (supra).

(g) What is necessary is that the Managing Committee should be the representative of the religious denomination and it is not necessary that the persons nominating should form part of it.

(h) The Bench in Narayanan Namboodiri (supra) having been called upon to determine the lis as to whether Section 4 was ultra vires Article 14 of the Constitution was not correct in making the observations that the requirement of Article 26 would be satisfied only if the Hindu Ministers among the Council of Ministers should also have belief in God and temple worship and, thus, it was not correctly decided.

(i) The management and administration of a temple being a secular matter, the State can control and administer the management thereof.

(j) The concession made by the Additional Advocate General and the Special Counsel appearing for the Devaswom to the effect that the persons nominating the members to the Managing Committee should also belong to the denomination as a result whereof Section 4(1) of the Act was not struck down by the Kerala High Court. It was held, that such a concession was not binding upon the State.

(k) Having regard to the concept of secularism and tolerance as reflected in our constitutional scheme as would appear from Clause (3) of Article 164 of the Constitution of India, Section 4(1) cannot be read in the manner as was submitted by the Appellants in view of the fact that the administration of the property of a religious institution is not a matter of religion.

(l) The Appellants herein have failed to establish that there had been a religious practice which was subsisting on the date of the coming into force of the Constitution of India to the effect that the denomination of the temple worshipers had a right to be in the Management Committee and members of the Management Committee were to be elected or nominated by an electoral college consisting of members of such denomination.

(m) The 1978 Act is not violative of Articles 25 and 26 of the Constitution of India.

(n) It was observed:

"39. Before parting with this case, we want to make it clear that it is a very important function or duty that is assigned to the nominating persons, namely, the duty of constituting a Committee for the efficient management and administration of Guruvayur Temple. It is true that the Act prescribed that persons who are elected as members of the Managing Committee should be

persons who have faith in Temple Worship and they have also to give a declaration to that effect. But, every man who believes in God and Temple worship may not be a good or efficient administrator or may not be aware of the formalities of temple management. It is our earnest hope and desire that the persons nominated by the Hindu Ministers should be of high integrity and honesty and should discharge the functions of management and administer with care, sincerity and in the interests of the religious denomination and in public interest. With a view to avoid politics among the members of the Committee, it is desirable that no politician from any party should be nominated to the Committee."

STATUTORY PROVISIONS:

Section 2(c) of the 1978 Act defines "committee" to mean the Guruvayoor Devaswom Managing Committee constituted under Section 3 thereof. 'Devaswom' has been defined in Section 2(e) to mean the Temple and includes its properties and endowments and the subordinate temples attached to it. The expression "person having interest in the Temple" has been defined to mean a person who is entitled to attend at, or is in the habit of attending, the performance of worship or service in the temple or who is entitled to partake, or is in the habit of partaking, in the benefit of the distribution of gifts thereat.

By reason of Section 3 of the 1978 Act, the administrative control and management of the Devaswom is vested in a committee constituted in the manner provided for under Section 4 thereof. The said committee is a body corporate and has perpetual succession having a common seal and shall by the said name sue and be sued through the Administrator. In terms of Section 4 of the 1978 Act, the Management Committee is to consist of nine members as provided for in Clauses (a) to (e) of Sub-section (1) thereof. Sub-section (2) of Section 4 of the 1978 Act provides for disqualification for being nominated under clause (e) of Sub-section (1) of Section 4 if:

"(i) he believes in the practice of untouchability or does not profess the Hindu Religion or believe in temple worship; or
(ii) he is an employee under the Government or the Devaswom; or
(iii) he is below thirty years of age; or
(iv) he is engaged in any subsisting contract with the Devaswom; or
(v) he is subject to any of the disqualifications mentioned in clauses (a), (b) and (c) of sub-section (3) of section 5."

Sub-section (3) of Section 4 of the 1978 Act provides for election of one of its members by the members of the Committee as its Chairman at its first meeting. Sub-section (4) of Section 4 enjoins every member of the Committee to make and subscribe an oath in the presence of the Commissioner in the following form, that is to say \026

"I, A B, do swear in the name of God that I profess the Hindu Religion and believe in temple worship and that I do not believe in the practice of untouchability."

CONSTITUTIONAL RIGHT OF THE APPELLANTS:

Before adverting to the questions raised at the Bar, we must place on record that the Appellants herein did not question the constitutionality of Section 4 of the 1978 Act. The provisions of the Act merely were required to be read in the light of the different judgments rendered by the Kerala High Court. While it may be true that in certain cases a statute in the nature of the 1978 Act may have to be read in the light of the provisions contained in Articles 25 and 26 of the Constitution of India, but the same would not mean while doing so the Court shall extend the protection granted thereby. Articles 25 and 26 of the Constitution of India read, thus:

"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."

Article 25 guarantees that every person in India shall have the freedom of conscience and shall have the right to profess, practice and propagate religion subject to the restrictions imposed by the State on the following grounds, viz.:
(i) Public order, morality and health;
(ii) other provisions of the Constitution;
(iii) regulation of non-religious activity associated with religious practice;
(iv) social welfare and reform; and
(v) throwing open of Hindu religious institutions of a public character to all classes of Hindus.

SECULARISM:

India is a secular country. Secularism has been inserted in the Preamble by reason of the Constitution 42nd Amendment Act, 1976. The object of inserting the said word was to spell out expressly the high ideas of secularism and the integrity of the nation on the ground that these institutions are subjected to considerable stresses and strains and vested interests have been trying to promote their selfish ends to the great detriment of the public good.

A 9-Judge Bench of this Court in S.R. Bommai Vs. Union of India [(1994) 3 SCC 1] observed:

"197. Rise of fundamentalism and communalisation of politics are anti-secularism. They encourage separatist and divisive forces and become breeding grounds for national disintegration and fail the parliamentary democratic system and the Constitution. Judicial process must promote citizens' active participation in electoral process uninfluenced by any corrupt practice to exercise their free and fair franchise. Correct interpretation in proper perspective would be in the defence of the democracy and to maintain the democratic process on an even keel even in the face of possible friction, it is but the duty of the court to interpret the Constitution to bring the political parties within the purview of constitutional parameters for accountability and to abide by the Constitution, the laws for their strict adherence.

It is now well-settled:
(i) The Constitution prohibits the establishment of a theocratic State.
(ii) The Constitution is not only prohibited to establish any religion of its own but is also prohibited to identify itself with or favouring any particular religion.
(iii) The secularism under the Indian Constitution does not mean constitution of an atheist society but it merely means equal status of all religions without any preference in favour of or discrimination against any one of them.

STATUTORY INTERPRETATION:

The management or administration of a temple partakes to a secular character as opposed to the religious aspect of the matter. The 1978 Act segregates the religious matters with secular matters. So far as, religious matters are concerned, the same have entirely been left in the hands of the 'Thanthri'. He is the alter ego of the deity. He gives mool mantra to the priests. He holds a special status. He prescribes the rituals. He is the only person who can touch the deity and enter the sanctum sanctorum. He is the final authority in religious matters wherefor a legal fiction has been created in Section 35 of the Act in terms whereof the Committee or the Commissioner or the Government is expressly prohibited from interfering with the religious or spiritual matters pertaining to Devaswom. His decision on all religious, spiritual, ritual or ceremonial matters pertaining to Devaswom is final unless the same violates any provision contained in any law for the time being in force. The impugned provisions of the Act must be construed having regard to the said factor in mind. By reason of Section 4(1) of the 1978 Act, the Committee will consist of nine members. The nomination of one person from the Council of Ministers as a representative of the employees of the Devaswom and five persons, one of whom shall be a member of a Scheduled Caste, are required to be nominated by the Hindus among the Council of Ministers from amongst the persons having interest in the temple. The area within which such nomination can be made by the Hindus amongst the Council of Minister is, thus, limited.

HINDU-CONCEPT OF

The word 'Hindu' is not defined. A Hindu admittedly may or may not be a person professing Hindu religion or a believer in temple worship. A Hindu has a right to choose his own method of worship. He may or may not visit a temple. He may have a political compulsion not to openly proclaim that he believes in temple worship but if the submission of the Appellants is accepted in a given situation, the 1978 Act itself would be rendered unworkable. Idol worships, rituals and ceremonials may not be practised by a person although he may profess Hindu religion.

A 5-Judge Bench of the Kerala High Court in Krishnan (supra) in paragraph 40 of its judgment noticed:

"\005It is well known that there are sections of Hindus whose schools of thought and philosophy do not consider idol worship, rituals and ceremonials as necessary or even conducive to the spiritual progress of man. There are also political creeds or social theories which openly condemn such forms of worship as being based on mere superstition and ignorance. Many persons, who are born Hindus and who may be said to profess Hinduism solely because they have not openly renounced the Hindu faith by any recognized process, may ardently believe in such political or social ideologies which do not view temple worship with favour."

The legislature has not chosen to qualify the word "Hindu" in any manner. The meaning of word is plain and who is a Hindu is well known. The legislature was well aware that "Hindu" is a comprehensive expression (as the religion itself is) giving the widest freedom to people of all hues opinion, philosophies and beliefs to come within its fold. [See Shastri Yagnapurushdasji and others Vs. Muldas Bhundardas Vaishya and another, AIR 1966 SC 1119 and Dayal Singh and Others Vs. Union of India and Others, (2003) 2 SCC 593, para 37]

The legislature was also well aware of the conglomeration/ diversity of thought that prevailed in the Hindu religion but it did not choose to limit 'Hindus' to the category propounded by the appellants \026 namely those who believe in temple worship. There is no absurdity or ambiguity which compels a departure from the plain language and to read section 4 as meaning something more than what is expressed, and, thus there is no reason to construe the expression 'Hindu' in the manner sought to be done by the Appellants. To debar all 'Hindu' Ministers of leftist Government, from nominating members to the Managing Committee of the Guruvayoor Devaswom will lead to stalemate in the Management of the Devaswom.

DETERMINATION:

The Bench in Krishnan (supra) upheld the right of the Executive Government to oversee control and management of a temple, but merely made the following observations:

"\005We may, however, observe that in the light of the recent amendment of the preamble to the Constitution emphasizing the secular character of the State it is desirable that the legislature should consider whether the power to nominate the members of the Committee should not be conferred on an independent statutory body other than the State Government with sufficient guidelines furnished to it for ensuring that the nominations will be effected in such a way as to be

truly representative of the denomination consisting of the worshipping public."

The only ground, which weighed with the Bench declaring Section 4(1) of the 1978 as unconstitutional, is confirmation of naked and arbitrary power upon the Government without any safeguard being provided for ensuring that the Committee would be a body representing the denomination. The 1978 Act was, as noticed hereinbefore, enacted to overcome the same. The composition of the body which would have the power of nomination in terms of Sections 4(1)(d) and 4(1)(e) would consist of the Hindu Ministers professing Hindu religion only. While making such nominations, they are statutorily bound to nominate such persons who would fulfill the criteria laid down therein. Section 4, therefore, lays down guidelines for ensuring that the Committee would be a body representing the denomination.

From its provisions it is clear that the Act has ensured that only persons who believe in temple worship are to be in the management of the temple. The Act has further ensured that none except the Thanthri gets any voice in the spiritual administration of the temple and that his voice alone will prevail in such matters. The practice of religion by the denomination including customs, practices and rituals is, therefore, preserved in its entirety and there is no tampering therewith in any manner whatsoever.

It is not clear how vesting of such a right on the Hindus in the Council of Ministers can effect their denominational rights when the members of the Managing Committee, the Commissioner and the Administrator have all got to be believers in temple worship. To insist on such a qualification in the electorate will be as bad saying that when the law relating to a temple is under consideration in the legislature, only Hindu legislators can vote and they must further be qualified as believers in temple worship.

It is expected that the action of such a body would be bona fide and reasonable. Once a committee is constituted which would be representing the denomination, in our opinion, it would be not be correct to contend that even the authority empowered to nominate must also be representative of the denomination.

Indisputably the State has the requisite jurisdiction to oversee the administration of a temple subject to Articles 25 and 26 of the Constitution of India. The grievance as regard the violation of the constitutional right as enshrined under Articles 25 and 26 of the Constitution of India must be considered having regard to the object and purport of the Act. For fulfilling the said requirements, the denomination must have been enjoying the right to manage the properties endowed in favour of the institutions. If the right to administer the properties never vested in the denomination, the protection under Article 26 of the Constitution of India is not available.

Assuming such a denomination exist, the question which is required to be posed is, what is the right that is sought to be protected. The right sought to be preserved is that under clauses (d) and (e) of Section 4(1). It does not depend upon the persons who nominates the members of the Managing Committee. The crux of the matter is who are the persons who are qualified to be in the Managing Committee. To fulfill the said object, the statute has taken particular care to see that only those who believe in temple worship among the Hindus can be nominated under clauses (d) and (e) of Section 4.

The High Court in its impugned judgment has arrived at a finding as regard categorical existence of a subsisting religious practice that as on the date of coming into force of the Constitution of India it has not been established that the denomination of temple worshippers had any right to be on the management committee or the members of such a committee were being elected / nominated by an electoral college consisting exclusively of members of such denomination. Nothing has been pointed out before us to

show that such a finding is contrary to the materials on records.

The freedom guaranteed under Article 25 of the Constitution is not an unconditional one. A distinction exists between the matters of religion, on the one hand, and holding and management of properties by religious institutions, on the other. What is necessary to be considered for determining the issue is as to whether by reason of the impugned Act the administration of the institution had been taken from the hands of the religious denomination and vested in another body. If the answer to the said question is rendered in the negative, attack to the constitutionality of the Act would not survive.

Furthermore, it is permissible for a legislature to take over the management of the temple from the control of a person and vest the same in a Committee of which he would remain the Chairman. [See Raja Bira Kishore Deb, hereditary Superintendent, Jagannath Temple, P.O. and District Puri Vs. The State of Orissa, AIR 1964 SC 1501]

It is also now trite that although State cannot interfere with the freedom of a person to profess, practise and propagate his religion, the secular matters connected therewith can be the subject matter of control by the State. The management of the temple primarily is a secular act. The temple authority controls the activities of various servants of the temple. It manages several institutions including educational institutions pertaining to it. The disciplinary power over the servants of the temple, including the priest may vest in a committee. The payment of remuneration to the temple servants was also not a religious act but was of purely secular in nature. [See Shri Jagannath Temple Puri Management Committee represented through its Administrator and Another Vs. Chintamani Khuntia and Others, (1997) 8 SCC 422, Pannalal Bansilal Pitti and Others Vs. State of A.P. and Another, (1996) 2 SCC 498 and Bhuri Nath and Others Vs. State of J&K and Others, (1997) 2 SCC 745].

State of Rajasthan and Others Vs. Shri Sajjanlal Panjawat and Others [(1974) 1 SCC 500] relied upon by Mr. Menon was also a case where the statute enabled the Government to appoint a committee of management. The provision was upheld. When the Government in terms of a statute is entitled to appoint a management committee for the temple, without violating the constitutional provisions, the more remote aspect of the mode of nomination of the members of the Managing Committee cannot be said to constitute violation of any constitutional mandate.

Yet again in Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi (supra), this Court held:

"31\005 It is a well-settled law that administration, management and governance of the religious institution or endowment are secular activities and the State could regulate them by appropriate legislation\005"

(See also N. Adithayan Vs. Travancore Devaswom Board and Others, (2002) 8 SCC 106, para 6)

Recently in Guruvayoor Devaswom Managing Committee and Another Vs. C.K. Rajan and Others [(2003) 7 SCC 546], a bench of this Court of which one of us (S.B. Sinha, J.) was a member observed:

"60. It is possible to contend that the Hindus in general and the devotees visiting the temple in particular are interested in proper management of the temple at the hands of the statutory

functionaries. That may be so but the Act is a self-contained code. Duties and functions are prescribed in the Act and the Rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance. The State should be asked to look into the grievances of the aggrieved devotees, both as parens patriae as also in discharge of its statutory duties."

The decision of the Kerala High Court in Krishnan (supra) did not lay down any proposition of law that the person authorized to nominate the persons of the Managing Committee should also form part of the denomination. With respect, the Full Bench in Narayanan Namboodiri (supra) misread and misinterpreted Krishnan (supra). Even assuming that the decision in Narayanan Namboodiri (supra) is correct (which it is not) it is not proper or correct to brand all Ministers of leftist Government as persons not believing in temple worship. There is no presumption that a Communist or Socialist (who may normally form part of a leftist Council of Ministers) are ipso facto non believers in god or in temple worship. Such a sweeping allegation or premise on which the prayer is based need not be correct. It depends on each individual approach. The observations in a judgment should not be, it is trite, read as a ratio. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom. [See Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr. \026 para 42 - (2005) 1 SCALE 385 and Haryana State Coop. Land Dev. Bank Vs. Neelam, JT 2005 (2) SC 600]

So far as the decision of Narayanan Namboodiri (supra) is concerned, we are of the opinion that the High Court in its impugned judgment has rightly held the same to be not applicable to the fact of the present case.

In Muraleedharan Nair (supra), whereuon Mr. Menon has placed strong reliance, the Bench was concerned with the interpretation of Sections 4 and 6 of the Hindu Religious Institutions Act, 1950. In that case for the purpose of contesting election, the candidate in the nomination paper itself was required to comply with Rule 3(b) mentioned in the Scheduled II which reads, thus:

"3(b) The person nominated shall affix his signature to the nomination paper before it is delivered to the Chairman, stating that he believes in God and professes the Hindu Religion and believes in temple worship and that he is willing to serve as a member of the Board, if elected."

The Court rightly proceeded on the basis that the function of the court is to apply the law as it stands. It is whilst analyzing the provisions of the Act and the Rules, the Bench referred to the dictionary meaning of temple and observed:

"So only persons who have faith in God or in temple worship, will be taken in by the word "Hindu", occurring in Act XV of 1950. It is implicit that only such of those who have faith in God and in temple worship, will be aware of its efficacy, necessity and importance and can be entrusted with the administration, supervision and control of the Devaswoms and other Hindu Religious Endowments. However wide the meaning of the word 'Hindu' may be under the general law, under Act XV of 1950, only those

Hindus who believe in God and in temple worship, will fulfill the requirement of the word 'Hindu' occurring in the Act. Our conclusion aforesaid necessarily flows from the title and preamble of the Act as also the definition contained in S.2(b) of the Act\005"

The High Court for the aforementioned purpose considered the history of the provisions as was understood at the relevant time. It noticed the Full Bench decision of Krishnan (supra) and while doing so fell into an error as was done in Krishnankutty (supra) that therein a proposition of law has been laid down in the fact that the person who professes Hindu religion but not a believer in temple worship and may even be opposed to the practice of idol worship cannot be considered a representative of the public having believed in God and temple worship.

This decision cannot, thus, be said to be an authority for the proposition that the "electoral college" should also be believers in temple worship.

The crucial question may now be addressed whether the vesting of power in the "Hindus" in the Council of Ministers to nominate the members of the Managing Committee could be held to violate Articles 25 and 26. The temple is visited by millions every year. Apart from proper management of the funds flowing from these devotees, the Devaswom also owns other properties, runs a college, a guest house, choultries etc., all of which require efficient and prompt management. This is quiet apart from the spiritual management dealing with religious side which is under the sole control management and guidance of the Thanthri. It is the secular aspect of the management that is vested in the Management Committee.

We have noticed hereinbefore that it is one thing to say that prejudice may be caused if the management of temple is entrusted to a person who has no faith in temple worship but it is another thing to say that such persons are nominated by those who may not have any such faith but those nominated would not only be believers in God but also in temple worship. The function of a statutory and constitutional authority while exercising its power of nomination cannot be equated with the power of management of a temple, particularly, in relation to the religious aspects involved therein.

One further question which may arise is as to whether Articles 25 or 26 can be invoked on the facts of the present case. There is no case for the Appellant that Section 4 insofar as it provides for the constitution of the Managing Committee is violative of any rights. If this be the position, the claim that the right of nomination has not been vested in a proper body is beside the point. The right to manage the Devaswom was at the inception of the Constitution vested in the two hereditary trustees, viz., the Zamorain Raja of Calicut and the Karnavam (Manager) of the Malliseery Illom (A Namboodri Family). The denomination of devotees at large had no say in the administration, except to watch the counting of the contents, the Bhandarams of the hundies of sealed locks where the devotees deposit their offerings to prevent any defalcation or pilferage. [See Krishnan (supra), para 3] The denomination of devotees had no say or right in the administration \026 secular or religious \026 of the temple. Article 26 does not create any rights in any denomination which it never had. It only safeguards and guarantees existing rights, which such a denomination had. [See Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi (supra)] Since the denomination had no right prior to January 26, 1950, they cannot claim any such rights after the enactment of the impugned Act. If it had no such right even in the matter of management of the temple, it is all most so in the matter of the constitution of the "electorate".

The said decision, therefore, also has no application to the fact of the present case.

The submission of the learned counsel to the effect that in Narayanan Namboodiri (supra) Section 4(1) was read down on the basis of the concession made by the Additional Advocate General and Special Counsel appearing for the Devaswom, in our opinion, with respect, have rightly been held to be not binding on the State by the High Court.

In Sanjeev Coke Manufacturing Company Vs. M/s. Bharat Coking Coal Limited and Another [(1983) 1 SCC 147 : AIR 1983 SC 239], this Court held:

"25\005 No Act of Parliament may be struck down because of the understanding or misunderstanding of parliamentary intention by the executive Government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the court may ultimately find and more especially by what may be gathered from what the legislature has itself said."

In P. Nallammal and Another Vs. State represented by Inspector of Police [(1999) 6 SCC 559 : JT 1999 (5) SC 410], this Court observed:

"7\005 The volte-face of the Union of India cannot be frowned at, for, it is open to the State or Union of India or even a private party to retrace or even resile from a concession once made in the court on a legal proposition. Firstly, because the party concerned, on a reconsideration of the proposition could comprehend a different construction as more appropriate. Secondly, the construction of statutory provision cannot rest entirely on the stand adopted by any party in the lis. Thirdly, the parties must be left free to aid the court in reaching the correct construction to be placed on a statutory provision. They cannot be nailed to a position on the legal interpretation which they adopted at a particular point of time because saner thoughts can throw more light on the same subject at a later stage."

The High Court, therefore, in our opinion, did not commit any error whatsoever in allowing the State to file a supplementary affidavit resiling from such concession made in the earlier case as had been noticed in paragraph 5 of the impugned judgment.

A wrong concession of law cannot bind the parties, particularly when the constitutionality of a statue is in question.

The contention by the Appellant that the "electorate" should be representative of the denomination of believers in temple worship (assuming such a denomination exists) also cannot be accepted, who will determine the electorate from amongst the millions of devotees of Lord Krishna visiting the temple? It will be impossible and impracticable to select such a College of "electors" from among them. The whole exercise will be arbitrary and time consuming and will be open to further challenge. The present mode has the advantage of being precise as the same has the advantage that only believers in temple worship are put incharge of the administration.

A statute, it is trite, should not be interpreted in such a manner as

would lead to absurdity. [See Nandkishore Ganesh Joshi Vs. Commissioner, Municipal Corporation of Kalyan & Dombivali and Ors, JT 2004 (9) SC 242 and Ranjitsingh Brahmajeetsingh Sharma Vs. State of Maharashtra and Anr., JT 2005 (4) SC 123]

It is necessary to bear in mind the principle 'ut res magis valeat quam pereat' in terms whereof a statute must be read in such a manner which would make it workable. [See Balram Kumawat Vs. Union of India, (2003) 7 SCC 628, Nandkishore Ganesh Joshi (supra), para 19 and Pratap Singh Vs. State of Jharkhand and Anr., JT 2005 (2) SC 271, para 82].

For the reasons aforementioned, we do not find any infirmity in the impugned judgment which is hereby affirmed. These Appeals are dismissed. No costs.