Supreme Court of India
N. Adithayan vs The Travancore Devaswom Board & ... on 3 October, 2002
Author: Raju
Bench: S. Rajendra Babu, Doraiswamy Raju.

CASE NO.:
Appeal (civil) 6965 of 1996

PETITIONER:
N. Adithayan

RESPONDENT:
The Travancore Devaswom Board & Ors.

DATE OF JUDGMENT: 03/10/2002

BENCH:
S. Rajendra Babu & Doraiswamy Raju.

JUDGMENT:

J U D G M E N T Raju, J.

The question that is sought to be raised in the appeal is as to whether the appointment of a person, who is not a Malayala Brahmin, as "Santhikaran" or Poojari (Priest) of the Temple in question Kongorpilly Neerikode Siva Temple at Alangad Village in Ernakulam District, Kerala State, is violative of the constitutional and statutory rights of the appellant. A proper and effective answer to the same would involve several vital issues of great constitutional, social and public importance, having, to certain extent, religious overtones also.

The relevant facts, as disclosed from the pleadings, have to be noticed for a proper understanding and appreciation of the questions raised in this appeal. The appellant claims himself to be a Malayala Brahmin by community and a worshipper of the Siva Temple in question. The Administration of the Temple vests with Travancore Devaswom Board, a statutory body created under the Travancore Cochin Hindu Religious Institutions Act, 1950. One Shri K.K. Mohanan Poti was working as temporary Santhikaran at this Temple, but due to complaints with reference to his performance and conduct, his services were not regularized and came to be dispensed with by an order dated 6.8.1993. In his place, the third respondent, who figured at rank No.31 in the list prepared on 28.4.1993, was ordered to be appointed as a regular Santhikaran and the Devaswom Commissioner also confirmed the same on 20.9.1993. The second respondent did not allow him to join in view of a letter said to have been received from the head of the Vazhaperambu Mana for the reason that the third respondent was a non-Brahmin. The Devaswom Commissioner replied that since under the rules regulating the appointment there is no restriction for the appointment of a non- Brahmin as a Santhikaran, the appointment was in order and directed the second respondent to allow him to join and perform his duties. Though, on 12.10.1993 the third respondent was permitted to join by an order passed on the same day, the appointment was stayed by a learned Single Judge of the Kerala High Court and one Sreenivasan Poti came to be engaged on duty basis to perform the duties of Santhikaran, pending further orders. The main grievance and ground of

challenge in the Writ Petition filed in the High Court was that the appointment of a non-Brahmin Santhikaran for the Temple in question offends and violates the alleged long followed mandatory custom and usage of having only Malayala Brahmins for such jobs of performing poojas in the Temples and this denies the right of the worshippers to practice and profess their religion in accordance with its tenets and manage their religious affairs as secured under Articles 25 and 26 of the Constitution of India. The Thanthri of a Temple is stated to be the final authority in such matters and the appointment in question was not only without his consultation or approval but against his wish, too.

The Travancore Devaswom Board had formulated a Scheme and opened a Thanthra Vedantha School at Tiruvalla for the purpose of training Santhikarans and as per the said Scheme prepared by Swami Vyomakesananda and approved by the Board on 7.5.1969 the School was opened to impart training to students, irrespective of their caste/community. While having Swami Vyomakesananda as the Director Late Thanthri Thazhman Kandarooru Sankaru and Thanthri Maheswara Bhattathiripad, Keezhukattu Illam were committee members. On being duly and properly trained and on successfully completing the course, they were said to have been given `Upanayanam' and `Shodasa Karma' and permitted to wear the sacred thread. Consequently, from 1969 onwards persons, who were non-Brahmins but successfully passed out from the Vendantha School, were being appointed and the worshippers Public had no grievance or grouse whatsoever. Instances of such appointments having been made regularly also have been disclosed. The third respondent was said to have been trained by some of the Kerala's leading Thanthris in performing archanas, conducting temple ritual, pooja and all other observances necessary for priesthood in a Temple in Kerala and elsewhere based on Thanthra system. Nothing was brought on record to substantiate the claim that only Malayala Brahmins would be `Santhikaran' in respect of Siva Temple or in this particular Temple. In 1992 also, as has been the practice, the Board seems to have published a Notification inviting applications from eligible persons, who among other things possessed sufficient knowledge of the duties of Santhikaran with knowledge of Sanskrit also, for being selected for appointment as Santhikaran and inasmuch as there was no reservations for Brahmins, all eligible could and have actually applied. They were said to have been interviewed by the Committee of President and two Members of the Board, Devaswom Commissioner and a Thanthri viz., Thanthri Vamadevan Parameswaram Thatathiri and that the third respondent was one among the 54 selected out of 234 interviewed from out of 299 applicants. Acceptance of claims to confine appointment of Santhikarans in Temples or in this temple to Malayala Brahmins, would, according to the respondent-State, violate Articles 15 and 16 as well as 14 of the Constitution of India. As long as appointments of Santhikars were of persons well versed, fully qualified and trained in their duties and Manthras, Thanthras and necessary Vedas, irrespective of their caste, Articles 25 and 26 cannot be said to have been infringed, according to the respondent-State.

Mr.K.Rajendra Choudhary, learned Senior Counsel for the appellant, while reiterating the stand before the High Court, contended that only Namboodri Brahmins alone are to perform poojas or daily rituals by entering into the Sanctum Sanctorum of Temples in Kerala, particularly the Temple in question, and that has been the religious practice and usage all along and such a custom cannot be thrown over Board in the teeth of Articles 25 and 26, which fully protect and preserve them. Section 31 of the 1950 Act was relied upon for the same purpose. It was also contended for the

appellant that merely because such a religious practice, which was observed from time immemorial, involve the appointment of a Santhikar or Priest, it would not become a secular aspect to be dealt with by the Devaswom Board dehors the wishes of the worshippers and the decisions of the Thanthri of the Temple concerned. Strong reliance has also been placed upon the decisions of this Court reported in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt [1954 SCR 1005]; Sri Venkataramana Devaru & Ors. Vs. The State of Mysore & Ors. [1958 SCR 895]; Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan & Ors. [1964 (1) SCR 561] and Seshammal & Ors. Etc. Etc. Vs. State of Tamil Nadu [1972 (3) SCR 815], besides inviting our attention to A.S. Narayana Deekshitulu Vs. State of A.P. & Ors. [(1996)9 SCC 548] to claim that such a religious practice as claimed for the appellant became enforceable under Article 25(1) as also Section 31 of the 1950 Act.

Shri R.F. Nariman, learned Senior Counsel, contended that the appellant failed to properly plead or establish any usage as claimed and this being a disputed question of fact cannot be permitted to be agitated in the teeth of the specific finding of the Kerala High Court to the contrary. It was also urged that the rights and claims based upon Article 25 have to be viewed and appreciated in proper and correct perspective in the light of Articles 15, 16 and 17 of the Constitution of India and the provisions contained in The Protection of Civil Rights Act, 1955, enacted pursuant to the constitutional mandate, which also not only prevents and prohibits but makes it an offence to practice `untouchability' in any form. Accordingly, it is claimed that no exception could be taken to the decision of the Full Bench of the Kerala High Court in this case. Reliance has also been placed on the decisions reported in Mannalal Khetan Etc. Etc. Vs. Kedar Nath Khetain & Ors. Etc. [1977(2) SCR 190]; Bhuri Nath & Ors. Vs. State of J&K & Ors. [1997(2) SCC 745] and Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi, & Ors. Vs. State of U.P. & Ors. [(1997)4 SCC 606], in addition to referring to the law declared in the earlier decisions of this Court on the scope of Articles 25 and 26 of the Constitution.

Shri K. Sukumaran, learned Senior Counsel, strongly tried to support the decision under appeal by placing reliance in addition to certain other decisions reported in Sastri Yagnapurushadji & Ors. Vs. Muldas Bhudardas Vaishya & Anr. [1966(3) SCR 242]; Sri Jagannath Temple Puri Management Committee rep. Through its Administrator and Anr. Vs. Chintamani Khuntia & Ors. [AIR 1997 SC 3839] and Acharya Jagdishwaranand Avadhuta & Ors. Vs. Commissioner of Police, Calcutta, & Anr. [(1983) 4 SCC 522]. The other learned counsel adopted one or the other of the submissions of the learned Senior Counsel.

This Court in The Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshimindra Thirtha Swamiar of Sri Shirur Mutt (1954 SCR 1005) (known as Shirur Mutt's case) observed that Article 25 secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others. It was also observed that what is protected is the propagation of belief, no matter whether the propagation takes place in a church or monastery or in a temple or parlour meeting. While elaborating the meaning of the words, "of its own affairs in matters of religion" in Article 26 (b) it has been observed that in contrast to secular matters relating to administration of its

property the religious denomination or organization enjoys complete autonomy in deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. In Sri Venkataramana Devaru & Others vs. The State of Mysore and Others (1958 SCR 895), it has been held that though Article 25 (1) deals with rights of individuals, Article 25 (2) is wider in its contents and has reference to rights of communities and controls both Articles 25 (1) and 26 (b) of the Constitution, though the rights recognized by Article 25 (2) (b) must necessarily be subject to some limitations or regulations and one such would be inherent in the process of harmonizing the right conferred by Article 25 (2) (b) with that protected by Article 26 (b).

In Tilkayat Shri Govindlalji Maharaj vs. The State of Rajasthan & Others [1964(1) SCR 561) dealing with the nature and extent of protection ensured under Articles 25 (1) and 26 (b), the distinction between a practice which is religious and one which is purely secular, it has been observed as follows:

"In this connection, it cannot be ignored that what is protected under Arts. 25 (1) and 26 (b) respectively are the religious practices and the right to manage affairs in matters of religion. If the practice in question is purely secular or the affair which is controlled by the statute is essentially and absolutely secular in character, it cannot be urged that Art. 25 (1) or Art. 26 (b) has been contravened. The protection is given to the practice of religion and to the denomination's right to manage its own affairs in matters of religion. Therefore, whenever a claim is made on behalf of an individual citizen that the impugned statute contravenes his fundamental right to practise religion or a claim is made on behalf of the denomination that the fundamental right guaranteed to it to manage its own affairs in matters of religion is contravened, it is necessary to consider whether the practice in question is religious or the affairs in respect of which the right of management is alleged to have been contravened are affairs in matters of religion. If the practice is a religious practice or the affairs are the affairs in matters of religion, then, of course, the rights guaranteed by Art. 25 (1) and Art. 26 (b) cannot be contravened.

It is true that the decision of the question as to whether a certain practice is a religious practice or not, as well as the question as to whether an affair in question is an affair in matters of religion or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because as is well known, under the provisions of ancient Smritis, all human actions from birth to death and most of the individual actions from day to day are regarded as religious in character. As an illustration, we may refer to the fact that the Smritis regard marriage as a sacrament and not a contract. Though the task of disengaging the secular from the religious may not be easy, it must nevertheless be attempted in dealing with the claims for protection under Arts. 25 (1) and 26 (b). If the practice which is protected under the former is a religious practice, and if the right which is protected under the latter is the right to manage affairs in matters of religion, it is necessary that in judging about the merits of the claim made in that behalf the Court must be satisfied that the practice is religious and the affair is in regard to a matter of religion. In dealing with this problem under Arts. 25 (1) and 26 (b), Latham, C.J.'s observation in Adelaide Company of Jehovah's witnesses Incorporated vs The Commonwealth (1), that "what is religion to one is superstition to another", on which Mr. Pathak relies, is of no

relevance. If an obviously secular matter is claimed to be matter of religion, or if an obviously secular practice is alleged to be a religious practice, the Court would be justified in rejecting the claim because the protection guaranteed by Art. 25 (1) and Art. 26 (b) cannot be extended to secular practices and affairs in regard to denominational matters which are not matters of religion, and so, a claim made by a citizen that a purely secular matter amounts to a religious practice, or a similar claim made on behalf of the denomination that a purely secular matter is an affair in matters of religion, may have to be rejected on the ground that it is based on irrational considerations and cannot attract the provisions of Art. 25 (1) or Art. 26 (b). This aspect of the matter must be borne in mind in dealing with the true scope and effect of Art. 25 (1) and Art. 26 (b)."

This Court, in Seshammal & Ors. Etc. Etc. vs. State of Tamil Nadu [1972(3) SCR 815], again reviewed the principles underlying the protection engrafted in Articles 25 and 26 in the context of a challenge made to abolition of hereditary right of Archaka, and reiterated the position as hereunder:

"This Court in Sardar Syadna Taher Saifuddin Saheb vs The State of Bombay (1) has summarized the position in law as follows (pages 531 and 532).

"The content of Arts. 25 and 26 of the Constitution came up for consideration before this Court in the Commissioner, Hindu Religious Endowments Madras vs Sri Lakshmindra Thirtha Swamiar of Sri Shirur Matt (1); Mahant Jagannath Ramanuj Das vs The State of Orissa (2); Sri Venkatamona Devaru vs The State of Mysore (3); Durgah Committee, Ajmer vs Syed Hussain Ali (4) and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. The second is that what constitutes an essential part of a religious or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion."

Bearing these principles in mind, we have to approach the controversy in the present case."

It has also been held that compilation of treatises on construction of temples, installation of idols therein, rituals to be performed and conduct of worship therein, known as "Agamas" came to be made with the establishment of temples and the institution of Archakas, noticing at the same time the further fact that the authority of such Agamas came to be judicially recognized. It has been highlighted that "Where the temple was constructed as per directions of the Agamas, the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting of mantras and devotional songs appropriate to the deity." Thereafter for continuing the divine spirit, which is considered to have descended into the idol on consecration, daily and periodical worship has to be made with two-fold object to attract the lay worshippers and also to preserve the image from pollution, defilement or desecration, which is believed to take place in ever so many ways. Delving further on the importance of rituals and Agamas it has been observed as follows:

"Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu Religious faith and cannot be dismissed as either irrational or superstitious. An illustration of the importance attached to minor details of ritual is found in the case of His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu vs Prathivathi Bhayankaram Venkatacharlu and others (1) which went up to the Privy Council. The contest was between two denominations of Vaishnava worshippers of South India, the Vadagalais and Tengalais. The temple was a Vaishnava temple and the controversy between them involved the question as to how the invocation was to begin at the time of worship and which should be the concluding benedictory verses. This gives the measures of the importance attached by the worshippers to certain modes of worship. The idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the image which must be avoided at all costs. That is also the rationale for preserving the sanctity of the Garbhangriha or the sanctum sanctorum. In all these temples in which the images are consecrated, the Agamas insist that only the qualified Archaka or Pujari step inside the sanctum sanctorum and that too after observing the daily disciplines which are imposed upon him by the Agamas. As an Archaka he has to touch the image in the course of the worship and it is his sole right and duty to touch it. The touch of anybody else would defile it. Thus under the ceremonial law pertaining to temples even the question as to who is to enter the Garbhagriha or the sanctum sanctorum and who is not entitled to enter it and who can worship and from which place in the temple are all matters of religion as shown in the above decision of this Court.

The Agamas have also rules with regard to the Archakas. In Saivite temples only a devotee of Siva, and there too, one belonging to a particular denomination or group or sub- group is entitled to be the Archaka. If he is a Saivite, he cannot possibly be an Archaka in a Vaishnavite Agama temple to whatever caste he may belong and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple.

Indeed there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or vice versa. What the Agamas prohibit is his appointment as an Archaka in a temple of a different denomination. Dr. Kane has quoted the Brahmapurana on the topic of Punah-

pratistha (Re-consecration of images in temples) at page 904 of his History of Dharmasastra referred to above. The Brahmapurana says that "when an image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, has ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other deities or is rendered impure by the touch of outcastes and the like-in these ten contingencies, God ceases to indwell therein." The Agamas appear to be more severe in this respect. Shri R. Parthasarthy Bhattacharya, whose authority on Agama literature is unquestioned, has filed his affidavit in Writ Petition No.442 of 1971 and stated in his affidavit, with special reference to the Vaikhanasa Sutra to which he belongs, that according to the texts of the Vaikhansa Shastra (Agama), persons who are the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vishnavites. They only can touch the idols and perform the ceremonies and rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the Grabha

Griha. Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. It is, therefore, manifest that the Archaka of such a temple besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any circumstances, the Archaka undoubtedly occupies an important place in the matter of temple worship. Any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorized by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be prima facie invalid under Article 25 (1) of the Constitution."

While repelling, in the same decision, the grievance that the innocent looking amendment brought the State right into the sanctum sanctorum, through the agency of Trustee and Archarka, this Court observed as hereunder:

"By the Amendment Act the principle of next- in-the-line of succession is abolished. Indeed it was the claim made in the statement of Objects and Reasons that the hereditary principle of appointment of office-holders in the temples should be abolished and that the office of an Archaka should be thrown open to all candidates trained in recognized institutions in priesthood irrespective of caste, creed or race. The trustee, so far as the amended section 55 went, was authorized to appoint any body as an Archaka in any temple whether Saivite or Vaishnavite as long as he possessed a fitness certificate from one of the institutions referred to in rule 12. Rule 12 was a rule made by the Government under the Principal Act. That rule is always capable of being varied or changed. It was also open to the Government to make no rule at all or to prescribe a fitness certificate issued by an institution which did not teach the Agamas or traditional rituals. The result would, therefore, be that any person, whether he is a Saivite or Vaishnavite or not, or whether he is proficient in the rituals appropriate to the temple or not, would be eligible for appointment as an Archaka and the trustee's discretion in appointing the Archaka without reference to personal and other qualifications of the Archaka would be unbridled. The trustee is to function under the control of the State, because under Section 87 of the Principal Act the trustee was bound to obey all lawful orders issued under the provisions of the Act by the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner. It was submitted that the innocent looking amendment brought the State right into the sanctum sanctorum through the agency of the trustee and the Archaka.

It has been recognised for a long time that where the ritual in a temple cannot be performed except by a person belonging to a denomination, the purpose of worship will be defeated: See Mohan Lalji vs Gordhan Lalji Maharaj (1). In that case the claimants to the temple and its worship were Brahmins and the daughter's sons of the founder and his nearest heirs under the Hindu law. But their claim was rejected on the ground that the temple was dedicated to the sect following the principles of Vallabh Acharya in whose temples only the Gossains of that sect could perform the rituals and ceremonies and, therefore, the claimants had no right either to the temple or to perform the worship. In view of the Amendment Act and its avowed object there was nothing, in the petitioner's submission, to prevent the Government from prescribing a standardized ritual in all

temples ignoring the Agamic requirements, and Archakas being forced on temples from denominations unauthorized by the Agamas. Since such a departure, as already shown, would inevitably lead to the defilement of the image, the powers thus taken by the Government under the Amendment Act would lead to interference with religious freedom guaranteed under Articles 25 and 26 of the Constitution."

This Court repelled a challenge to the provisions in Bombay Hindu Places of Public Worship (Entry Authorisation) Act, 1956, in Sastri Yagnapurushadji and Others vs Muldas Bhudardas Vaishya & Another [1966(3) SCR 242] and quoted with approval the observation of Monier Williams (a reputed and recognized student of Indian sacred literature for more than forty years and played important role in explaining the religious thought and life in India) that "Hinduism is far more than a mere form of theism resting on Brahminism" and that "It has ever aimed at accommodating itself to circumstances, and has carried on the process of adaptation through more than three thousand years. It has first borne with and then, so to speak, swallowed, digested and assimilated something from all creeds." This Court ultimately repelled the challenge, after adverting to the changes undergone in the social and religious outlook of the Hindu community as well as the fundamental change as a result of the message of social equality and justice proclaimed by the Constitution and the promise made in Article 17 to abolish "untouchability", observing that as long as the actual worship of the deity is allowed to be performed only by the authorized poojaris of the temple and not by all devotees permitted to enter the temple, there can be no grievance made.

In Bhuri Nath & Ors. Vs. State of J&K & Ors. (Supra), this Court while dealing with the validity of J & K Shri Mata Vaishno Devi Shrine Act, 1988, and the abolition of the right of Baridars to receive share in the offerings made by pilgrims to Shri Mat Vaishno Devi, observed their right to perform pooja is only a customary right coming from generations which the State can and have by legislation abolished and that the rights seemed under Articles 25 & 26 are not absolute or unfettered but subject to legislation by the State limiting or regulating any activity, economic, financial, political or secular which are associated with the religious behalf, faith, practice or custom and that they are also subject to social reform by suitable legislation. It was also reiterated therein that though religious practices and performances of acts in pursuance of religious beliefs are, as much as, a part of religion, as further belief in a particular doctrine, that by itself is not conclusive or decisive and as to what are essential parts of religion or behalf or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question arise on the basis of materials- factual or legislative or historic if need be giving a go bye to claims based merely on supernaturalism or superstitious beliefs or actions and those which are not really, essentially or integrally matters of religion or religious belief or faith or religious practice.

A challenge made to U.P. Sri Kashi Vishwanath Temple Act, 1983 and a claim asserted by a group of Shaivites the exclusive right to conduct worship and manage the temple in question came to be repelled by this Court in Sri Adi Visheshwara of Kashi Vishwanath Temple, Varansi and Others vs State of U.P. and Others [1997(4) SCC 606]. While taking note of the aim of the constitution to establish an egalitarian social order proscribing any discrimination on grounds of religion, race, caste, sect or sex alone by Articles 15 to 17 in particular, it was once again reiterated as hereunder:

"28. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos/Creator and realize his spiritual self. Sometimes, practices religious or secular are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of the ancient Smriti, human actions from birth to death and most of the individual actions from day-to-day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his Judicial Process, life is not logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination all be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion and if the court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. And whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question.

29. Justice B.K. Mukherjea in his Tagore Law Lectures on Hindu Law of Religious and Charitable Trust at p. 1 observed:

"The popular Hindu religion of modern times is not the same as the religion of the Vedas though the latter are still held to be the ultimate source and authority of all that is held sacred by the Hindus. In course of its development the Hindu religion did undergo several changes, which reacted on the social system and introduced corresponding changes in the social and religious institution. But whatever changes were brought about by time and it cannot be disputed that they were sometimes of a revolutionary character the fundamental moral and religious ideas of the Hindus which lie at the root of their religious and charitable institutions remained substantially the same; and the system that we see around us can be said to be an evolutionary product of the spirit and genius of the people passing through different phases of their cultural development."

As observed by this Court in Kailash Sonkar vs Smt. Maya Devi (AIR 1984 SC 600), in view of the categorical revelations made in Gita and the dream of the Father of the Nation Mahatma Gandhi that all distinctions based on castes and creed must be abolished and man must be known and recognized by his actions, irrespective of the caste to which he may on account of his birth belong, a positive step has been taken to achieve this in the Constitution and, in our view, the message conveyed thereby got engrafted in the form of Articles 14 to 17 and 21 of the Constitution of India, and paved way for the enactment of the Protection of Civil Rights Act, 1955.

It is now well settled that Article 25 secures to every person, subject of course to public order, health and morality and other provisions of Part-III, including Article 17 freedom to entertain and exhibit by outward acts as well as propagate and disseminate such religious belief according to his judgment and conscience for the edification of others. The right of the State to impose such restrictions as are desired or found necessary on grounds of public order, health and morality is inbuilt in Articles 25 and 26 itself. Article 25(2) (b) ensures the right of the State to make a law providing for social welfare and reform besides throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus and any such rights of the State or of the communities or classes of society were also considered to need due regulation in the process of harmonizing the various rights. The vision of the founding fathers of Constitution to liberate the society from blind and ritualistic adherence to mere traditional superstitious beliefs sans reason or rational basis has found expression in the form of Article 17. The legal position that the protection under Articles 25 and 26 extend a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion and as to what really constitutes an essential part of religion or religious practice has to be decided by the Courts with reference to the doctrine of a particular religion or practices regarded as parts of religion, came to be equally firmly laid down.

Where a Temple has been constructed and consecrated as per Agamas, it is considered necessary to perform the daily rituals, poojas and recitations as required to maintain the sanctity of the idol and it is not that in respect of any and every Temple any such uniform rigour of rituals can be sought to be enforced, dehors its origin, the manner of construction or method of consecration. No doubt only a qualified person well versed and properly trained for the purpose alone can perform poojas in the Temple since he has not only to enter into the sanctum sanctorum but also touch the idol installed therein. It therefore goes without saying that what is required and expected of one to perform the rituals and conduct poojas is to know the rituals to be performed and mantras, as necessary, to be recited for the particular deity and the method of worship ordained or fixed therefor. For example,

in Saivite Temples or VaishnaviteTemples, only a person who learnt the necessary rites and mantras conducive to be performed and recited in the respective Temples and appropriate to the worship of the particular deity could be engaged as an Archaka. If traditionally or conventionally, in any Temple, all along a Brahman alone was conducting poojas or performing the job of Santhikaran, it may not be because a person other than the Brahman is prohibited from doing so because he is not a Brahman, but those others were not in a position and, as a matter of fact, were prohibited from learning, reciting or mastering Vedic literature, rites or performance of rituals and wearing sacred thread by getting initiated into the order and thereby acquire the right to perform homa and ritualistic forms of worship in public or private Temples. Consequently, there is no justification to insist that a Brahman or Malayala Brahman in this case, alone can perform the rites and rituals in the Temple, as part of the rights and freedom guaranteed under Article 25 of the Constitution and further claim that any deviation would tantamount to violation of any such guarantee under the Constitution. There can be no claim based upon Article 26 so far as the Temple under our consideration is concerned. Apart from this principle enunciated above, as long any one well versed and properly trained and qualified to perform the puja in a manner conducive and appropriate to the worship of the particular deity, is appointed as Santhikaran dehors his pedigree based on caste, no valid or legally justifiable grievance can be made in a Court of Law. There has been no proper plea or sufficient proof also in this case of any specific custom or usage specially created by the Founder of the Temple or those who have the exclusive right to administer the affairs religious or secular of the Temple in question, leave alone the legality, propriety and validity of the same in the changed legal position brought about by the Constitution and the law enacted by Parliament. The Temple also does not belong to any denominational category with any specialized form of worship peculiar to such denomination or to its credit. For the said reason, it becomes, in a sense, even unnecessary to pronounce upon the invalidity of any such practice being violative of the constitutional mandate contained in Articles 14 to 17 and 21 of the Constitution of India.

In the present case, it is on record and to which we have also made specific reference to the details of facts showing that an Institution has been started to impart training to students joining the Institution in all relevant Vedic texts, rites, religious observances and modes of worship by engaging reputed scholars and Thanthris and the students, who ultimately pass through the tests, are being initiated by performing the investiture of sacred thread and gayatri. That apart, even among such qualified persons, selections based upon merit are made by the Committee, which includes among other scholars a reputed Thanthri also and the quality of candidate as well as the eligibility to perform the rites, religious observances and modes of worship are once again tested before appointment. While that be the position to insist that the person concerned should be a member of a particular caste born of particular parents of his caste can neither be said to be an insistence upon an essential religious practice, rite, ritual, observance or mode of worship nor any proper or sufficient basis for asserting such a claim has been made out either on facts or in law, in the case before us, also. The decision in Shirur Mutt's case (supra) and the subsequent decisions rendered by this Court had to deal with the broad principles of law and the scope of the scheme of rights guaranteed under Articles 25 and 26 of the Constitution, in the peculiar context of the issues raised therein. The invalidation of a provision empowering the Commissioner and his subordinates as well as persons authorized by him to enter any religious institution or place of worship in any unregulated manner by even persons who are not connected with spiritual functions as being

considered to violate rights secured under Articles 25 and 26 of the Constitution of India, cannot help the appellant to contend that even persons duly qualified can be prohibited on the ground that such person is not a Brahaman by birth or pedigree. None of the earlier decisions rendered before Seshammal's case (supra) related to consideration of any rights based on caste origin and even Seshammal's case (supra) dealt with only the facet of rights claimed on the basis of hereditary succession. The attempted exercise by the learned Senior Counsel for the appellant to read into the decisions of this Court in Shirur Mutt's case (supra) and others something more than what it actually purports to lay down as if they lend support to assert or protect any and everything claimed as being part of the religious rituals, rites, observances and method of worship and make such claims immutable from any restriction or regulation based on the other provisions of the Constitution or the law enacted to implement such constitutional mandate, deserves only to be rejected as merely a superficial approach by purporting to deride what otherwise has to have really an overriding effect, in the scheme of rights declared and guaranteed under Part III of the Constitution of India. Any custom or usage irrespective of even any proof of their existence in pre constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by Courts in the country.

For the reasons stated supra, no exception, in our view, could be taken to the conclusions arrived at by the Full Bench of the Kerala High Court and no interference is called for with the same, in our hands. The appeal consequently fails and shall stand dismissed. No costs.

1 67 C.L.R. 116, 123.

1 [1962] 2 Suppl. S.C.R. 496.

1 [1954] S.C.R. 1005.

2 [1954] S.C.R. 1046.

3 [1958] S.C.R. 895.

4 [1962] 1 S.C.R. 383.

1 73 Indian Appeals 156.

1 35 Allahabad (P.C.) 283 at page 289.