



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 22<sup>ND</sup> DAY OF MAY, 2023**

**R**

**BEFORE**

**THE HON'BLE MR JUSTICE KRISHNA S DIXIT**

**WP No. 25316/2022 (GM-R/C)**

**C/W**

**WP No.25318/2022 (GM-R/C),**

**IN W.P.NO.25316/2022:**

**BETWEEN:**

1. SRI JAGADGURU MURUGHARAJENDRA  
VIDHYA PEETHA.,  
M.K. HATTI, CHITRADURGA,  
KARNATAKA 575 502.  
REP BY ITS PRESIDENT.
2. SRI. JAGADGURU MURUGHARAJENDRA  
BRUHAN MATH,  
REP BY ITS PONTIFF AND CHIEF  
DR SHIVAMURTHY MURUGHASHARANARU  
REP BY THE GPA HOLDER  
SRI. BASAVAPRABHUSWAMIGALU  
VIRATKTHA MATH, DAVANAGERE,  
KARNATAKA 577 002.

...PETITIONERS

(BY SRI.JAYAKUMAR S PATIL., SENIOR COUNSEL A/W  
SRI. VISHWANATH H M., ADVOCATE)

**AND:**

1. THE CHIEF SECRETARY,  
GOVT OF KARNATAKA,  
VIDHANA SOUDHA,  
B.R. AMBEDKAR ROAD,  
BANGALORE 560 001.





2. THE DEPUTY SECRETARY,  
REVENUE DEPARTMENT,  
(LAND, UPOR AND RELIGIOUS ENDOWMENT)  
VIKAS SOUDHA, B.R. AMBEDKAR ROAD,  
BANGALORE 560 001.
3. THE SECRETARY,  
MUZRAI DEPT,  
VIKAS SOUDHA, B.R. AMBEDKAR ROAD,  
BANGALORE 560 001.
4. THE COMMISSIONER,  
HINDU RELIGIOUS INSTITUTIONS,  
AND CHARITABLE ENDOWMENTS DEPARTMENT,  
VARTHA BHAVANA, CHAMARAJPETE,  
BANGALORE 560 018.
5. THE DEPUTY COMMISSIONER,  
CHITRADURGA DISTRICT,  
KARNATAKA 577 501.
6. SRI. P.S. VASTRAD (I.A.S RETD)  
NO. 301, CASA GRANDE AAPRTMENT,  
BEHIND MARTIAL MOTORS VOLVO SHOWROOM,  
POORPA PRASAD ROAD, RACE COURSE,  
BANGALORE 560 001.
7. THE REGISTRAR OF SOCIETIES,  
CHAMARAJPET, BENGALURU 560 018.

...RESPONDENTS

(BY SRI. PRABHULING K NAVADGI., ADVOCATE GENERAL A/W  
SRI. R SRINIVASA GOWDA., AGA FOR R1 TO R5 & R7;  
SRI. GANGADHAR GURUMATH., SENIOR COUNSEL A/W  
SRI. H SUNIL KUMAR., ADVOCATE FOR R6;  
SRI. B A CHANDRASHEKAR., ADVOCATE INTERVENAR)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF  
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE  
IMPUGNED ORDER BEARING KAM.E 112 MU.SA.VI 2022 DATED  
13.12.2022 PASSED BY THE R2, PRODUCED AS ANNEXURE-A,  
AS ILLEGAL.



**IN W.P.NO.25318/2022:**

**BETWEEN:**

1. SRI. D. S. MALLIKARJUN,  
S/O D B SHIVASHALAPPA,  
AGED ABOUT 50 YEARS,  
R/AT BELADINGALU, 2<sup>ND</sup> MAIN,  
6<sup>TH</sup> CROSS, VIDYANAGARA,  
CHITRADURGA - 577 501.
2. SRI. THIPPESWAMY H N,  
S/O H N NINGAPPA,  
AGED ABOUT 60 YEARS,  
R/AT NO.504, BHARAMASAGARA,  
CHITRADURGA - 577 519.
3. SRI. JITENDRA N,  
S/O LATE NIJALINGAPPA B T,  
AGED ABOUT 39 YEARS,  
R/AT AMMANA KANASU,  
2<sup>ND</sup> CROSS KSRTC BADAVANE,  
JOGIMATTI ROAD,  
CHITRADURGA - 577 501.

...PETITIONERS

(BY SRI.JAYAKUMAR S PATIL., SENIOR COUNSEL A/W  
SRI. S KALYAN BASAVARAJ., ADVOCATE AND  
SRI. DR.PRAJAWAL K ARADHYA., ADVOCATE)

**AND:**

1. THE CHIEF SECRETARY,  
GOVT OF KARNATAKA,  
VIDHANA SOUDHA,  
B.R. AMBEDKAR ROAD,  
BANGALORE 560 001.
2. THE DEPUTY SECRETARY,  
REVENUE DEPARTMENT,  
(LAND, UPOR AND RELIGIOUS ENDOWMENT)  
VIKAS SOUDHA, B.R. AMBEDKAR ROAD,  
BANGALORE 560 001.



3. THE SECRETARY,  
MUZRAI DEPT, VIKASA SOUDHA,  
B.R. AMBEDKAR ROAD,  
BANGALORE 560 001.
4. THE COMMISSIONER,  
HINDU RELIGIOUS INSTITUTIONS,  
AND CHARITABLE ENDOWMENTS DEPARTMENT ,  
VARTHA BHAVANA, CHAMARAJPETE,  
BANGALORE 560 018.
5. THE DEPUTY COMMISSIONER,  
CHITRADURGA DISTRICT,  
KARNATAKA 577 501.
6. SRI. P.S. VASTRAD (I.A.S RETD)  
NO. 301, CASA GRANDE APARTMENT  
BEHIND MARTIAL MOTORS VOLVO SHOWROOM,  
POORPA PRASAD ROAD, RACE COURSE,  
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7. THE REGISTRAR OF SOCIETTES.,  
CHAMARAJPET, BENGALURU 560 018.
8. SRI JAGADGURU MURUGHARAJENDRA VIDYA PEETHA  
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KARNATAKA - 577 502.  
REP BY ITS PRESIDENT.
9. SRI JAGADGURU MURUGHARAJENDRA BRUHAN MATH  
BY ITS PLAINTIFF AND CHIEF  
DR SHIVAMURTHY MURUGHA SHARANARU  
REP BY ITS GPA HOLDER,  
SRI BASAVAPRABHUSWAMIGALU  
VIRAKTHA MATH, DAVANAGERE,  
KARNATAKA - 577 002.

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SRI. R SUBRAMANYA., AAG AND  
SRI. R SRINIVASA GOWDA., AGA FOR R1 TO R5 & R7;  
SRI. GANGADHAR GURUMATH., SENIOR COUNSEL A/W  
SRI. H SUNIL KUMAR., ADVOCATE FOR R6)



THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE IMPUGNED ORDER BEARING KAM.E.112 MU.SA.VI 2022 DATED 13.12.2022 PASSED BY THE R2 PRODUCED AT ANNEXURE-A AS ILLEGAL.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

### **ORDER**

These two petitions seek to lay a challenge to the Government Order dated 13.12.2022 whereby, the Respondent-Mr.P.S.Vastrad, a retired IAS officer, has been appointed as the Administrator for the Mutt & the institutions run by it. W.P.No.25316/2022 is filed by the *Vidya Peetha*, represented by its President, and the Mutt is represented by its Pontiff Dr.Shivamurthy Murugha Sharanaru through the GPA holder Sri.Basavaprabhuswamigalu. W.P.No.25318/2022 is filed by three individuals who claim to be the devotees of Mutt.

2. The operative portion of the order reads as under:

“ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ಕಂಇ 112 ಮುಸೇವಿ 2022  
ಬೆಂಗಳೂರು, ದಿನಾಂಕ:13-12-2022

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿದವು ಅಂಶಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ, ಚಿತ್ರದುರ್ಗ ಶ್ರೀ ಜಗದ್ಗುರು ಮುರುಘರಜೇಂದ್ರ ಬೃಹನ್ನರದ ಪೀಠಾಧಿಪತಿ ಮತ್ತು ಎಸ್.ಜೆ.ಎಂ ವಿದ್ಯಾಪೀಠದ ಅಧ್ಯಕ್ಷರು ಶ್ರೀ ಶಿವಮೂರ್ತಿ ಮುರುಘಾ ಶರಣರು



ದಿನಾಂಕ:01.09.2022 ರಿಂದ ನ್ಯಾಯಾಂಗ ಬಂಧನದಲ್ಲಿ ಇರುವುದರಿಂದ ಸದರಿ ಸಂಸ್ಥೆಯ ನಿರ್ವಹಣೆಯಲ್ಲಿ ಈ ಸಂಸ್ಥೆಯ ದಿನನಿತ್ಯದ ಕಾರ್ಯಚಟುವಟಿಕೆಗೆ ಹಾಗೂ ಮೇಲುಸ್ತುವಾರಿ ನಡೆಸಲು ಸಾರ್ವಜನಿಕ ಹಿತದೃಷ್ಟಿಯಿಂದ ಮಠದ ಚರಾ-ಸ್ಥಿರ ಆಸ್ತಿಗಳನ್ನು ಸಂರಕ್ಷಿಸುವ ಹಿತದೃಷ್ಟಿಯಿಂದ ಹಾಗೂ ಸಂಸ್ಥೆಯ ಹಣ ದುರುಪಯೋಗ ಆಗದಂತೆ ಲೆಕ್ಕಪತ್ರಗಳನ್ನು ನಿರ್ವಹಿಸುವ ಹಾಗೂ ಒಟ್ಟಾರೆ ವ್ಯವಸ್ಥೆಯನ್ನು ಪರಿಣಾಮಕಾರಿಯಾಗಿ ನಡೆಸುವ ಹಿತದೃಷ್ಟಿಯಿಂದ ಭಾರತ ಸಂವಿಧಾನ ಅನುಚ್ಛೇದ 162,3(ಎ)ರನ್ವಯ ಶ್ರೀ ಪಿ.ಎಸ್.ವಸ್ತ್ರದ್ ಐ.ಎ.ಎಸ್ (ನಿವೃತ್ತರು), casa Grande Apts No.301, Behind Martial Motors Volvo Showroom, poorpa Prasad Road off, Race Course Road, Bangalore- 560 001. ಇವರನ್ನು ಈ ಕೂಡಲೇ ಜೇರಿಗೆ ಬರುವಂತೆ ಹಾಗೂ ಮುಂದಿನ ಆದೇಶವರೆಗೆ ಸದರಿ ಟ್ರಸ್ಟ್ ಮತ್ತು ಶಿಕ್ಷಣ ಸಂಸ್ಥೆಗೆ "ಆಡಳಿತಾಧಿಕಾರಿ"ಯನ್ನಾಗಿ ನೇಮಿಸಿ ಆದೇಶಿಸಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆಜ್ಞಾನುಸಾರ  
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ."

The Government specifically mentions that this Order has been made in exercise of the power availing under Articles 162 & 31A of the Constitution of India *inter alia* for safeguarding the movable & immovable properties of the Mutt and to prevent misappropriation of funds of the institution and further, to conduct the overall management effectively inasmuch as the Pontiff has been facing criminal cases is in judicial custody since 1.9.2022.

3. After service of notice, the State & its officials have entered appearance through the learned AGA and their case is argued by the learned Advocate General. The



Administrator being arrayed as Respondent *eo nomine*, is represented by an advocate on record and his case is argued by a learned Senior Advocate. With the leave of court, amended Petitions have also been filed from the side of Petitioners. The Respondents have filed their Written Versions/Statement of Objections resisting the Writ Petitions. Since these cases have a cognate fact matrix, with the consent of the Bar, they are clubbed & heard together.

4. There is another case in W.P.No.2331/2023 filed by the Pontiff alone laying a challenge to the order dated 15.12.2022 passed by the learned II Addl. District & Session Judge, Chitradurga, whereby he has been '*restrained from exercising the Powers or discharging the duties of SJM Mutt and other institutions running under the said Mutt as a Pontiff and head of the institution pending conclusion of trial.*' This order is made under section 8(2) of the Religious Institutions (Prevention of Misuse) Act, 1988, (hereafter '1988 Act'). This case too was heard along with these two Writ Petitions. However, the



contentions canvassed being essentially in the domain of Criminal Jurisprudence, a separate judgment is being handed, keeping in view the avenue availing for its challenge and such other relevant factors.

#### 5. FACTS IN BRIEF:

(a) Petitioner-Mutt originally established by *Allamprabhu*, a 12th-century mystic saint and a poet who prolifically composed *Vachanaas* in Kannada. This saint and his order propagated the unitary consciousness of Self and Shiva, being the prominent patrons of the *Lingayat* movement that reshaped medieval Karnataka. Later, this Mutt was rejuvenated in the 16<sup>th</sup> century by another saint of great repute *Sriman Niranjan Jagadguru Mahaswami* and since then, it has been conducting *anna daasoha* & *akshara daasoha* to all sections of the society regardless of religion, region, race, caste, gender, place of birth or the like. By a long & committed yeoman service, it has carved out a *niche* for itself. Several educational institutions having been founded are being run successfully under the aegis of Mutt since decades.

(b) It is pertinent to state that, in Karnataka, several such *Veerashaiva/Lingayat* Mutts have been relentlessly providing education, professional, vocational & traditional to lakhs of people on affordable costs and that



thousands of students prosecute their studies with free boarding & lodging facilities, *sans* discrimination on any grounds whatsoever. Nobody can justifiably dispute this. It is incongruous not to acknowledge the enormous contribution made by the *Veerashaivas/Lingayats* in general and their Mutts in particular, *inter alia* to the field of education. Siddhaganga Mutt, Suttur Mutt & Murugha Mutt have been in the forefront. It is no exaggeration to state that without that, the constitutional aspiration of eradicating illiteracy and its associated evils, would have remained merely as lofty ideals.

(c) Website version of Mutt: It is relevant to reproduce the website version of the Mutt with a caveat that the adjudication of these cases did not much warrant verification of its authenticity:

*"Gurusiddha Swamiji popularly known as Murige Swamiji II succeeded him and remained as the head of Math upto 1729.A.D. He was honoured as the Raja-guru by the rulers Baramanna Nayaka and his son Hire Madakari Nayaka(1721-48.A.D). He was a profound scholar in both Kannada and Sanskrit and had poetic talent. He has so many works in both the languages to his credit. The Next successors Swadi Channabasava Swamiji, Sirahatti Siddalinga Swamiji, Nayakanahatti(Dodda) Gurupada Swamiji, Murusavirada(Sanna) Gurupada Swamiji, were treated with respect as Raja-gurus by Hire Madakari Nayaka, (Kasturi Rangappa Nayaka II (1748-54 AD) and the last Madakari Nayaka (1754-79AD) the rulers of Chitradurga in the year 1779 A.D.,the heritage of the Math continued. Within two or three decades after the establishment of the Math,*



*hundreds of branch maths were established in various parts of South India, due to the religious influence on the people. The local public began to call the branch maths as "Virakta Maths" and "Murige Maths", to show their devotion.*

*For these branch maths, the rulers like those of Keladi, Kodagu(Coorg), Sode(Swadi), Harapanahalli, Mattodu, Tarikere, Hagalawadi, Savanur, Sirasangi, Lakshmeswara, Mysore, Ummattur, Punganur, Kolhapur, etc., including Muslim Nawabs and the subjects of all communities showed respect and released so many grants. This clearly indicates the secularism and greatness of the Math. Remarks of two western scholars of the past century and the beginning of the present century are also the clear evidences for the prominence and the high position of the Math. **Edward P. Rice** author of "**A History of Canarese Literature**" states that "Lingayatism was the state religion of the early Wodeyars of Mysore and of Ummattur from 1399-1610 and of the Nayaks of Keladi (Ikkeri or Bednur) from 1550-1763. Their Principal Matha in the Mysore country is at Chitradurga". Edgar Thurston who made a survey of "Tribes and castes of South India", writing on the Lingayat Maths has pointed out that "Each Virakta Math is directly subject to teh Murige Math at Chitradurga(Chitradurga), which has absolutely jurisdiction over all the Viraktas" Starting from Sri Murige Swamiji-I to the present Sri Shivamurthy Murugha Sharanaru, twenty Pontiffs have adorned the religious seat of the Math."*

(d) Petitioner-Mutt which practises & professes *Basava Tatva*, mainly founded on humanitarian principles, has mediately established 105 educational institutions, professional & other, and that they are managed & administered by the Petitioner-*Vidya Peetha*. It is not in dispute that the Pontiff has the decisive role in all that.



These institutions have produced thousands of meritorious candidates, many of whom serve in public & private employment. Mutt has a registered Trust Deed dated 26.11.2010. Petitioner-Dr.Shivamurthy Murugha Sharanaru came to be installed as Pontiff of the Mutt on 31.1.1991 by his predecessor Sri Mallikarjuna Swamaji, again a tall saint of *Basava Tatva Darshanaas*. The Petitioner-Vidhya Peetha has been registered as a society under the provisions of the Karnataka Societies Registration Act, 1960 vide Certificate of Registration dated 21.6.1966. The Pontiff happens to be the President of the Trust, ex officio and he is described as the 'supreme authority'.

(e) On 13.10.2022, Nazarbad Police, Mysore, registered against the Petitioner-Pontiff Crime No.155/2022 for the offences punishable under sections 376(2)(i), 376(3), read with section 149 of Indian Penal Code, 1860 and under sections 17, 5(1) & (6) of the Protection of Children from Sexual Offences Act, 2012 (hereafter 'POCSO Act'). The Fast Track Court at Mysore transferred the investigation to the Rural Police, Chitradurga, on the ground of territoriality of offences. Accordingly, the said Police have registered Crime No.387/2022 for the same offences. The Pontiff & others having been arrested are continuing in judicial custody. The investigation having been completed, the Police have



filed the two charge sheets as 'A' & 'B' in Crime No.387/2022. The Spl. Court at Chitradurga, having taken cognizance of alleged offences, has registered Spl.C.(P).No.181/2022 & Spl.C.(P).No.182/2022.

(f) The Petitioner-Pontiff had filed application on 6.9.2022 seeking a direction from the Jail Authorities to permit him to affix his signatures on cheques & other instruments *inter alia* for the purpose of organizing disbursements of salaries and other expenses to the staff of Mutt and of the educational institutions run by it. Learned Spl. II Addl. District & Sessions Judge, Chitradurga, vide order dated 20.9.2022 dismissed the said application. This having been challenged in Crl.P.No.9654/2022, a Coordinate Bench of this court vide order dated 30.9.2022 granted the prayer in the subject application. Accordingly, Petitioner has executed two registered GPAs in favour of one Sri Basavaprabhu Swamiji. When the above was the position, the government vide order dated 13.12.2022 has appointed the Administrator as mentioned above.

6. I have heard at length the learned counsel appearing for the parties and perused the Petition Papers; I have adverted to relevant of the Rulings prolifically cited



at the Bar. The following questions are broadly framed for my consideration:

1.	<i>Whether the impugned order dated 13.12.2022 whereby, the government in exercise of its executive power under Article 162, has appointed the Administrator to the Mutt &amp; to Vidya Peetha, is liable to be voided for want of competence...?</i>
2.	<i>Whether Petitioner-Pontiff facing criminal cases and presently continuing in judicial custody, can exercise managerial functions of his office/position or as the President of the Trust in question by way of delegation...?</i>
3.	<i>Whether the impugned order appointing the Administrator to the Mutt &amp; the institutions, is violative of the Fundamental Rights guaranteed under Article 26 of the Constitution and therefore, is liable to be quashed...?</i>

#### **7. CONTENTIONS OF PETITIONERS:**

Learned Sr. Advocate Mr.Jayakumar S Patil

appearing for the Petitioners vehemently argued that:

(a) The Petitioner-Mutt is a religious denomination and other Petitioners being devotees of the Mutt, belong to



that denomination; there are internal squabbles in a section managing the affairs of Mutt & its educational institutions, and that has resulted into false implication of the Pontiff in the subject criminal cases; till after the trial & conviction, an accused is presumed to be innocent; merely because charge sheet has been filed, the trial court has taken cognizance of the alleged offences and the Pontiff is in judicial custody, his Pontiffhood is not put in suspended animation. He also draws attention of the court to a Coordinate Judge's order in Crl.P.No.9654/2022 granting some reprieve to the Pontiff in the matter of management;

(b) Law does not prohibit a Pontiff in detention from exercising administration through his delegates; accordingly, he is continuing to do administration & management through one Sri Basavaprabhu Swamiji; a retired District Judge one Mr.Vastramath is also appointed to look after affairs of management. That being the position, the government has neither competence nor justification to appoint the Administrator of its choice *sans*



an opportunity of hearing. Since the field is already occupied by 'law', no executive power avails to the Government under Article 162; even otherwise, Petitioners have religious freedoms guaranteed under Articles 25 & 26 of the Constitution; several other rights are attached to Pontiffhood and they could not have been cut short in the absence of statutory authorization. In support of his submission, he banks upon certain decisions.

#### **8. CONTENTIONS OF STATE AND ADMINISTRATOR:**

Learned AG appearing for the State & its officials and learned Sr. Advocate appearing for the Administrator *per contra* contended that:

(a) The plea of 'occupied field' which Petitioners have put forth no longer avails after the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, came to be made repealing *inter alia* the Bombay Public Trusts Act, 1950, the Madras Hindu Religious and Charitable Endowments Act, 1951, the Mysore Religious and Charitable Institutions Act, 1927, etc., which were the



law that had earlier occupied the field vide Entry 28 of List III of the Constitution; thus, the executive power having revived, avails to the State under Article 162; the government has issued the impugned order in exercise of such power to prevent abuse of administration and to safeguard huge properties of the Mutt & its institutions, in the public interest; the Pontiff admittedly facing serious criminal charges and being in judicial custody, all his *pontific* and *temporal* powers & capacities, are in suspended animation.

(b) There is no violation of any Fundamental Rights of Petitioners as alleged in the petitions. That the government has *parens patriae* jurisdiction; Mutt & its institutions own properties worth more than a thousand crore rupees; government too has granted land and funds to the Mutt; there are hundred of staff members and thousands of students; the impugned order is made in the best interest of all these; after all, it is not that the Administrator will there be permanently; government will review its decision once the Pontiff comes out from the



confinement. Therefore, no exception can be taken to the same. Having so contended, both they highlight arguably undesirable consequences of removing the administrator and handing the reins to the Pontiff who is facing serious criminal charges and confine to gaol. So contending, they seek dismissal of the Petitions.

9. This court is inclined to grant indulgence in the matter for the following reasons:

**(A) CONSTITUTIONAL SECULARISM AND STATE INTERFERENCE IN RELIGIOUS INSTITUTIONS OF ANY FAITH:**

In India, the history of control of Religious Institutions of any faith by the State is traceable to the Colonial Era & its mindset. The interference of Colonial regime in religious matters of any faith noticeably started becoming progressive since 1800 C.E. or so. From 1860s, Hindu Religious Institutions as a class had been subjected to government control in a great measure. Even after independence and enactment of the Constitution, this mindset continues in one or the other forms of inheritance. Even to this day, there has been a continued tendency in



'powers that be' to exclusively control (not merely regulate) Hindu Religious Institutions, without authority of law and at times, absolutely *sans* justification. Indian secularism as a constitutional value, oscillates between *sarva dharma samabhaava* and *dharmanirapekshata* in varying degrees. Secularism has been recognized as a *Basic Feature* of the Constitution in *KESAVANANDA BHARATI vs. STATE OF KERALA*<sup>1</sup> much before the word '*secular*' secured a place in the Preamble vide 42<sup>nd</sup> Amendment in 1976. The Apex Court in *INDIRA NEHRU GANDHI vs. RAJ NARAIN*<sup>2</sup> explained secularism *inter alia* to mean that the State shall have no religion of its own and all persons shall be equally entitled to freely profess, practise & propagate religion. The interference of the State in Religious Institutions, goes against its professed secular credentials. In secularism, State neutrality *qua* religion is inherent and this requires the governance to maintain a distance from the affairs of religious institutions of all faiths, equally and further to respect their autonomy. The

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<sup>1</sup> AIR 1973 SC 1461

<sup>2</sup> AIR 1975 SC 2299



Division Bench of Telangana High Court whilst examining similar aspects in *SRI AHOBILA MUTT PARAMPARA VS THE STATE OF ANDHRA PRADESH*, observed as under:

*"...The Mathadhipati is a trustee according to the provisions of the Act and if the court is competent to appoint the Charity Commissioner as a superior of a math, the result would be disastrous and it would amount to a flagrant violation of the constitutional guarantee which religions institutions have under the Constitution in regard to the management of its religious affairs. This is not a secular affair at all relating to the administration of the trust property. The very object of a math is to maintain a competent line of religious teachers for propagating and strengthening the religious doctrines of a particular order or sect and as there could be no math without a Mathadhipati as its spiritual head, the substitution of the Charity Commissioner for the superior would mean a destruction of the institution altogether...Thus, it is clear legally the taking over of complete charge is a violation of the constitutional guarantee under Article 26..."*

The challenge to this decision in SLP Nos.1538-1540/2023 is negated by the Apex Court vide order dated 27.01.2023.

**(B) AS TO PETITIONER-MUTT BEING A RELIGIOUS DENOMINATION UNDER ARTICLE 26 OF THE CONSTITUTION:**



(i) While Article 25 guarantees freedom of conscience and the right to profess, practice & propagate religion, the provisions of Article 26 complementarily protect such right of every religious denomination. Under clause (a) of Article 26, every such denomination can establish & maintain institutions for religious & charitable purposes; the registered Trust Deed is an enabling instrument in this regard and that several educational institutions have been established under the aegis of Mutt, is not in dispute. Clause (b) gives the right to manage religious affairs of the denomination, on its own; clause (c) enables the denomination to own & acquire property and clause (d) empowers it to administer such property. A religious denomination or organization enjoys almost a complete autonomy in the matter of deciding as to what rites & ceremonies constitute essential religious practice according to the tenets of religion concerned and that the State has no authority to meddle with such decisions vide

*COMMISSIONER OF POLICE vs. ACHARYA*



JAGADISHWARANANDA AVADHUTA<sup>3</sup>. Added, what is observed in *THE COMMISSIONER, HINDU RELIGIOUS ENDOWMENTS, MADRAS vs. SRI LAKSHMINDRA THIRTHA SWAMIAR OF SRI SHIRUR MUTT*<sup>4</sup> at paragraph 15 becomes instructive:

*"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 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 the logical 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... 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 organization. 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... The*

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<sup>3</sup> (2004) 12 SCC 770

<sup>4</sup> 1954 SCR 1005



*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..”*

(ii) An Irish anthropological historian of yester century William McCormack<sup>5</sup> explains 'Lingayats as a Sect', in the following words:

*"...The Lingayats, or Virasaivas, are a large sect, and are to be found today residing in the towns and villages of the Kannada-speaking region of south India...The prominent attributes of Lingayats are the wearing of the linga, a symbol of Siva, on the body, the practice of strict vegetarianism, and the substitution of Jangamas for Brahmans in the performance of life cycle and calendar festivals. Recognition of the religious leadership of Basava the prophet-saint who founded, or perhaps only gave additional impetus to, the Lingayat movement that arose in the twelfth century A.D. is not, on the other hand, limited to members of the sect. Basava's teachings were laid down in vachanas, short prose sayings in Kannada, and these have a secure place in the popular tradition of bhakti (devotion to a personified deity) religion in the Kannada region.' It is the personality of Basava, moreover, which provides the principal point of contact between Lingayatism and modern*

<sup>5</sup> William McCormack, 'Lingayats as a Sect', The Journal of The Royal Anthropological Institute of Great Britain and Ireland, Vol. 93, 59-71, (1963)



*Hinduism, with its universalistic orientation aimed at overcoming caste exclusiveness and its message of social reform.*

*...Bhandarkar (1928) was among the first to use the word 'sect' to describe adherents of the Lingayat, or Virasaiva, philosophy, and his usage was followed by Nandimath (1942), Basham (1954), and Dasgupta (1955). Basham, for example, has considered Lingayats to constitute a sect which is 'noteworthy rather for its cult and social doctrines than for its theology, which is a "qualified monism" with few striking features' (Basham 1954, P. 335). The anthropologist J. H. Hutton and the sociologist Max Weber, on the other hand, consider Lingayats to be the example par excellence of a religious group becoming a caste. Thus they fall in with the usage which describes Lingayats by the hyphenated term 'caste-sect' (Hutton 1946, p. 103)...*

It is not impertinent to refer to what the Apex Court in *SHAKUNTALABAI AND ANR. VS L.V. KULKARNI*<sup>6</sup> said:

*"...In Encyclopaedia of Religion and Ethics edited by James Hastings... we find that the Lingayats are a religious community in India..."*

(iii) The submission of Petitioners' counsel Mr.Patil that the *"Lingayat community in the State by itself constitutes a separate religion like Jainism, Buddhism,*

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<sup>6</sup> AIR 1989 SC 1359



*Sikhism, etc*” is hotly contested; it is told at the Bar that a similar question is being debated in a pending Public Interest Litigation. Added, both the Mutt & its Pontiff being the Petitioners, even otherwise, have denominational rights of the kind. Therefore, this question does not merit consideration in these cases. That being said, it cannot be controverted that Veerashaiva/Lingayat Mutt itself being a religious denomination, in the light of law declared in SHIRUR MUTT, *supra*, enjoys the constitutional guarantees *inter alia* enacted in Article 26; the mathaadhpati being the religious & temporal head of the Mutt can exercise these rights, of course subject to regulation/restriction by ‘law’.

**(C) AS TO SOME ASPECTS OF MUTTS AND MATHAADHIPATIS:**

(i) *A matha (मठ), is a Sanskrit word that means institute, college, cloister.<sup>7</sup> In some contexts, it refers to 'hut of an ascetic, monk or renunciate' or 'temple for studies'. Etymologically, the word 'math' means 'inhabit' or*

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<sup>7</sup> M. Williams, 'A Sanskrit-English Dictionary', Oxford University Press, 172 – 73, (1923)



*'to grind'. The oldest meaning of 'matha' is 'hut' or 'hovel,' 'the hut of a nomadic arya.' In time, it came to mean 'the residence of various ascetics or religious scholars, sometimes attached to a grand temple.' The earliest epigraphical evidence for mutts related to Hindu-temples during 7th to 10th century.<sup>8</sup> Mathas, as simple huts for wandering ascetics, are mentioned in chapter 12.139 of the Mahabharat and section 3.1 of Baudhayana Dharmasutras.<sup>9</sup> The mathas and attached temples routinely hosted debating, Vedic recital and student competitions, and these were part of community festivals in the history of South Asia. These mathas were also the centers where many new texts were composed as well as the libraries and repository of ancient and medieval manuscripts, where the old texts were preserved and decaying copies replaced over the centuries. Some Hindu*

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<sup>8</sup> H. Scharfe, *'From Temples Schools To Universities, in Education in Ancient India'*, Handbook of Oriental Studies, Brill Academic, 173 – 74, (2002)

<sup>9</sup> T. I. Sears, *'Worldly Gurus and Spiritual Kings: Architecture and Asceticism in Medieval India'*, Yale University Press, 4 – 9, (2014)



*monasteries offered hospice care for pilgrims and various forms of assistance to their local communities.<sup>10</sup> Hindu mathas and temples like Buddhist monasteries had by the 10th century attached medical care along with their religious and educational roles. An inscription dated to about 930 CE states the provision of a physician to two matha to care for the sick and destitute. Similarly, a stone inscription in Andhra Pradesh dated to about 1262 CE mentions the provision of a prasutishala (maternity house), vaidya (physician), an arogyashala (health house) and a kitchen with the religious center where people from all social background could be fed and cared for. The historical role of mathas as knowledge and services repository is attested in early Sanskrit texts, as well as many historical inscriptions found along the ruins of Indian temples and monasteries.<sup>11</sup>*

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<sup>10</sup> K.G. Zysk, 'Asceticism and Healing in Ancient India', 45 – 49, (1998)

<sup>11</sup> F. Simini, M. Friedrich, H. Isaacson, J. Quenzer, 'Of Gods and Books, Ritual and Knowledge Transmission in the Manuscript Cultures of Premodern India ', studies in Manuscript Cultures, Vol. 8, 166 – 188, (2016)



(ii) Amongst Veerashaivas/Lingayats, the Mutt parampara has been obtaining since the emergence of Lingayat movement around the 12<sup>th</sup> century. The Veerashaiva Mutts have enjoyed community support, and have served as the center *inter alia* for Shaiva studies. They have enormously contributed to educational, cultural and philanthropic activities.<sup>12</sup> The purpose of Mutt is to encourage & foster spiritual training by maintenance of a complete line of teachers who could impart religious instructions to disciples and followers of the Mutt and try to strengthen the doctrines of the particular school or order which they profess to be adherents (here Virakta). Mathaadhupati is the head and superior of spiritual fraternity. Invariably, Mutts are headed by Pontiffs with variable nomenclatures like *mathaadhupati*, *mathaadheesha*, *peethaadhupati*, *mahanta*, etc. Amongst Hindus, a Mutt is an institutional sanctum presided over by a superior who combines in himself the dual offices of being the religious or spiritual head of the particular cult or

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<sup>12</sup> D. A. Chekki, 'Religion and Social System of the Virasaiva Community' Greenwood, 55 - 57, (1997)



religious fraternity and of the manager of the secular properties of the institution or Mutt. It hardly needs to be stated that Mutts are juridical persons capable of owning property. *Mathaadhupati* being the head of the institution does not simply manage the temporalities of a Mutt but also functions as the premier of spiritual fraternity. It is he who manages the properties of Mutt and administers its affairs. The Privy Council in *VIDYA VARUTHI vs. BALUSAMI*<sup>13</sup> said that, a *mathaadhupati* does not hold the property of Mutt as a life tenant; his position is similar to that of a Hindu widow in respect of husband's property; he is not a trustee in the strict sense; however, he is not a mere manager, either; Pontiffhood in Hindu Law is not a mere office. In *SHIRUR MUTT*, at paragraph 11, it is observed:

*"...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...Thus in the conception of Mahantship, as in Shebaitship, both the elements of office and property, of duties and personal interest are blended*

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<sup>13</sup> AIR 1921 PC 123



*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..."*

At paragraph 12, it has been observed that:

*"...It is true that the beneficial interest which he enjoys is appurtenant to his duties and as he is in charge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which he is called upon to discharge...This purpose cannot be served if the restrictions are such as would bring the Mathadhipati down to the level of a servant under a State department. It is from this standpoint that the reasonableness of the restrictions should be judged..."*

*(iii) As head of the institution, a Pontiff holds the Mutt under his charge and its endowment in trust for the maintenance of the Mutt, for his own support, and that of his disciples and for the performance of religious & other charities according to usage. There is a fiduciary character of the head of the Mutt and his obligations in respect of*



*proper carrying out of the objects of the institution; even though he may have wide discretionary powers regarding the application of the income, he is always subject to certain obligations & duties equally prescribed by custom & usage. In view of these obligations & duties, he is answerable as a trustee in the general sense for proper administration. Justice B.K.MUKHERJEA of 'Marshall to Mukherjea'<sup>14</sup> fame writes: "...A Mohunt is now held to be a mere manager of the endowed property like the Shebait of a Debutter estate, but there is no reason why Mohuntship should not be regarded as property in the same sense as the rights of a Shebait are so regarded..."<sup>15</sup> It is pertinent to mention that in VIDYAPURNA vs. VIDYANIDHI<sup>16</sup>, it was observed by the Madras High Court that *the head of a Mutt did not suffer forfeiture of his rights by reason of his having become a lunatic*. However, this view has been*

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<sup>14</sup> William O. Douglas, 'From Marshall to Mukherjea: Studies in American and Indian Constitutional Law', Eastern Law House, (1956)

<sup>15</sup> B.K. Mukherjea, 'The Hindu Law Of Religious And Charitable Trusts', Eastern Law House, 344, (1979)

<sup>16</sup> ILR 27 MAD 435



overruled by the Full Bench in *MUTHUSAMIER vs. SREE SREE METHANTITHI*<sup>17</sup>. No decision nor *opinio juris* is cited at the Bar as to what happens to the status & power of an undertrial 'Pontiff in custody'. What happens to a Pontiff convicted for an offence involving moral turpitude obviously is not the issue here.

**(D) AS TO STATUS & RIGHTS OF A PONTIFF IN CUSTODY:**

(i) Mr.Patil assisted by the advocates on record for the Petitioners submitted that the doctrine of innocence of accused comes to the rescue of the status of an accused as mathaadhipati. This was repelled by the other side. It was an English Barrister Sir William Garrow (1760-1840), who coined the 'presumption of innocence' in Criminal Jurisprudence, having been inspired by a French Cannon lawyer Jean Lemoine (1250-1313) from whom this idea originated. The House of Lords in *WOOLMINGTON vs. DPP*<sup>18</sup> described this presumption '*as being the golden thread running through the web of English Criminal Law*'.

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<sup>17</sup> ILR 38 MAD 356

<sup>18</sup> (1935) UKHL 1



An accused is presumed to be innocent till proven guilty, has been firmly established even in Indian Jurisprudence subject to all just exceptions. It is a matter of common knowledge that not only accused persons in detention but even convicts serving the sentence exercise proprietary rights of ownership. In *D. BHUVAN MOHAN PATNAIK vs. STATE OF ANDHRA PRADESH*<sup>19</sup>, it is observed:

*"Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails to by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practice" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law..."*

The Electoral Jurisprudence as obtaining in the country does not bar a person in detention from contesting as

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<sup>19</sup> 1975 SCR (2) 24



candidates *inter alia* in the elections to the Parliament & State Legislatures, subject to all just exceptions. Similarly, the Service Rules promulgated for regulating the conduct of the persons in public employment such as civil servants normally provide for automatic suspension, if they are arrested & detained for a specified period. Illustratively, Rule 10(2)(a) of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 reads as under:

*"...A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-*

*(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours."*

No law of the kind as applicable to the Pontiffs of Mutts, is brought to notice of the court, nor any supportive provision in the Trust Deed in question is demonstrated. The very fact that the Petitioner-Pontiff is in confinement physically renders him incapable of discharging certain rites/rituals of his office, cannot be gainfully disputed.



(ii) Mr. Jayakumar S Patil is more than justified in contending that ordinarily detention *per se* does not strip off the status of Pontiff of a Mutt nor keeps all his rights in suspended animation. To put it metaphorically, prisons are not the 'concentration camps' of all legal rights; in their precincts lie no funeral pyres that burn such rights to ashes. Petitioners are still persons entitled to all constitutional rights otherwise not curtailed by law, although their rights & liberties stand diminished by the very confinement. A great Judge, John Marshall of U.S. Supreme Court had aptly said: "*...a prisoner does not shed his basic constitutional rights at the prison gate...*" Referring to him and such others, our Apex Court in *FRANCIS CORALIE MULLIN vs. THE ADMINISTRATOR, UNION TERRITORY OF DELHI*<sup>20</sup> observed: "*What is stated by these learned Judges in regard to the rights of a prisoner under the Constitution of the United States applies equally in regard to the rights of a prisoner or detenu under our constitutional system...*"

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<sup>20</sup> 1981 SCR (2) 516



(iii) It is not in dispute that the present Pontiff having been throned to the *gaddige* way back in 1991, was discharging the functions attached to his office. Presently, he has been facing serious criminal charges in the subject prosecution and that he has been in judicial custody since 1.9.2022, his bail petitions having been negated. The Criminal Court at Chitradurga, it is admitted by the Petitioners, has taken cognizance of the offences on the basis of charge sheet filed by the Police after investigation. Be that as it may. It need not be repeated that no law or ruling nor *opinio juris* is cited from the side of opponents to support the contention that the Pontiffhood stands suspended on arrest & detention, *per se*. Trust Deed is also silent about the same. Therefore, this court is left with no option than to say that the Petitioner-Pontiff despite confinement, continues to be Peethaadhpati of Mutt in question. Whether such a Pontiff in custody can perform religious rites & ceremonies of the Mutt in question, is rightly not much debated, the challenge being confined to the appointment of



Administrator who would obviously discharge secular acts of management & administration of the Mutt and of educational institutions. The tenure of Administrator is not specified; despite asking during the course of learning, no assurance is furnished by the learned AG that the impugned order shall be promptly recalled once the Pontiff is enlarged on bail. Added, no explanation is offered as to why an opportunity of hearing to the stakeholders was not afforded. Thus, there are some unjust elements with which the impugned order is infected.

(iv) Mr.Patil appearing for the Petitioners passionately draws attention of the court to what a learned Coordinate Judge in the very Pontiff's CrI.P.No.9654/2022 observed vide order dated 13.9.2022:

*"...This petition was disposed of by the order dated 30.09.2022. After its disposal, the petitioner is again before this Court seeking for clarification of the said order. Learned counsel appearing for the petitioner submits that the order needs to be clarified insofar as execution of power of attorney by the Pontiff, to perform all functions that he was undertaking when he was Pontiff, prior to being housed in prison. Learned SPP appearing for the State would*



*submit that he be permitted to execute power of attorney in accordance with law. Learned counsel appearing for the petitioner submits that he has also on the earlier occasion submitted before this Court that he has to execute the power of attorney in terms of Rule 166 of the Karnataka Prisons Rules, 1974 (For short "said Rules").*

*Rule 166 of the said Rules reads as follows;*

**166. Prisoners allowed to sign a power of attorney** (1) Every newly convicted prisoner may be permitted at the discretion of the Superintendent to sign and attest a power of attorney or other statements concerning his properties. (2) Prisoners other than newly admitted prisoners may be granted similar privilege at the discretion of the Superintendent but in their case each such transaction shall be treated as one interview with reference to the foregoing rules.

*The Karnataka Prisons Rules, 1974 empowers a prisoner to be permitted to sign and attest a power of attorney or other statements concerning his properties and the prisoners other than newly admitted prisoners may be granted similar privilege at the discretion of the Jail Superintendent. In terms of the said Rules, the petitioner shall make an appropriate application before the Jail Superintendent, who would consider the same and permit the petitioner to execute the said power of attorney in terms of the said Rules. The power of attorney is sought to be executed for the functions that the petitioner was performing prior to him getting into prison i.e., (1) Chairman of Vidhyapeeta and (2) the Trustee of the Mutt..."*



The above observations lend credence to the contention that the Petitioner-Pontiff can cause the administration of Mutt & its educational institutions by delegation of his powers in favour of appropriate persons. He has already appointed Sri Basavaprabhu Swamigalu and assigned certain functions to a retired Judicial Officer. It is not the case of Respondents that these persons are not suitable or that there is any complaint whatsoever against them. Whether these persons could have been delegated certain powers, does not pertain to the domain of public law and therefore, a Writ Court ordinarily does not examine such questions vide *LIFE INSURANCE CORPORATION OF INDIA vs ESCORTS LTD*<sup>21</sup> .

**(E) AS TO EXECUTIVE POWER OF THE STATE AND THE MEANING OF 'LAW':**

(i) Learned Sr. Advocate Mr.Patil appearing for the Petitioners submitted that the State Government lacked competence to make appointment of an Administrator, in the absence of a statute law empowering it; if Pontiff's rights whether ordinary or fundamental, are recognized,

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<sup>21</sup> 1985 SCR Supl. (3) 909



their curtailment cannot happen except with the authorization of legislation validly made. Learned AG appearing for the State *per contra* contended that after the repeal of enactments enlisted in Section 78 of the 1997 Act, there is no law occupying the field and therefore, the State having exercised the executive power availing under Article 162 of the Constitution, has competently appointed the Administrator so that the interest of Mutt & its institutions is safeguarded, at least till the Pontiff is enlarged from the gaol. He vividly highlighted the consequences of voiding the impugned order. He also disputes the invocability of Article 26 in the absence of complete divestation of Mutts ownership in the subject property on permanent basis. He hastens to add that the impugned order is itself a law within the generic definition of 'law' given in Article 13. Both they invoke certain rulings in support of their respective submissions.

(ii) As already discussed above, the Mutt is a religious denomination and Petitioner-Pontiff is the serving mathaadhpati. Justice B.K.MUKHERJEA writes:



*“A Math, like an idol, is a juridical person and is capable of acquiring, holding and assuring legal rights through the medium of some human agency which is ordinarily the agency of the Mohunt. The position, indeed, would be different if a formal trust deed is executed. In such circumstances, the legal ownership would vest in the trustees, and the superior or Mohunt might be one of the trustees or even the sole trustee if the donor so chooses...There cannot be a Math in the legal sense without a Mohunt or superior, no matter in whichever way he might come to occupy the office. All matters relating to the administration of a Math are also intimately connected with the rights and duties of a Mohunt...”*

Their Fundamental Rights both religious & proprietary are guaranteed under Article 26 as expansively construed by the Apex Court in a catena of decisions, *supra*. Further, the very Pontiffhood has some proprietary character that enjoys protection under Article 300A of the Constitution. True it is, these rights as any other, are not absolute and therefore, can be regulated by law on specific grounds. The appointment of Administrator amounts to substantial interference of the State with the administration & management of the affairs of both the Mutt & the institutions run under its aegis, cannot be gainfully disputed. If that be so, the intruder has the *onus* on his



shoulders to discharge by pointing out the existence of power and the justification for its exercise.

(iii) It hardly needs to be stated that existence of power is one thing and its exercise is another. There is force in the submission of Mr. Patil that the regulation and control of the constitutional rights like Article 300A in general and the Fundamental Rights guaranteed under Articles 25 & 26 in particular has to be by statute law. This cannot be done in exercise of executive power of State, assuming the availability of such power on the repeal of the enactments vide section 78 of the 1997 Act. This view gains support from *RAI SAHIB RAM JAWAYA KAPUR vs. STATE OF PUNJAB*<sup>22</sup> wherein, paragraph 17 reads as under:

*"Specific legislation may indeed be necessary if the Government require certain powers in addition to what they possess under ordinary law in order to carry on the particular trade or business. Thus when it is necessary to encroach upon private rights in order to enable the Government to carry on their business, a specific legislation sanctioning such course would have to be passed..."*

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<sup>22</sup> AIR 1955 SC 549



In *BIJOE EMMANUEL vs. STATE OF KERALA*<sup>23</sup>, the State authorities had issued two Circulars whereby, two students were rusticated from the class for not singing the National Anthem; these Circulars were pressed into service as the 'law' empowering & justifying the punitive action. The source of power from which the subject Circulars could have emanated was not demonstrated. The Apex Court at paragraph 16 observed: "*The two circulars on which the department has placed reliance in the present case have no statutory basis and are mere departmental instructions. They cannot, therefore, form the foundation of any action aimed at denying to citizen's Fundamental Right under Art. 19(1)(a)...*"

(iv) The vehement contention of learned AG that Article 13(3)(a) of the Constitution defines 'law' very widely and the impugned order appointing the Administrator answers this description, is a misconception, to say the least. True it is, that the definition of 'law' chosen by the Makers of the Constitution in this Article is

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<sup>23</sup> 1986 SCR (3) 518



generic in nature. It is pervasively inclusive and Mr.H.M.Seervai, a jurist of yester decades aptly reasoned out, why it is so, as under:

*"Art.13(3)(a) defines "law" very widely by an inclusive definition. It does not expressly include a law enacted by the legislature, for such an enactment is obviously law. The definition of law includes: (i) an Ordinance, because it is made in the exercise of the legislative powers of the executive; (ii) an order, bye-law, rule, regulation and notification having the force of law because ordinarily they fall in the category of subordinate delegated legislation and are not enacted by the legislature; law at all. This extended definition appears to have been given to "law" in order to forestall a possible contention that law can only mean law enacted by the legislature. In view of this, the omission of an amendment of the Constitution from Art. 13(3)(a) is significant."*

(v) Similarly, D.D.Basu<sup>24</sup>, having surveyed the decisions, succinctly states the following:

*"...Law, in this Article, means the law made by the Legislature and includes intra vires statutory orders and orders made in exercise of power conferred by statutory rules. So is a custom having the force of law. But administrative orders having no statutory sanction or the Flag Code containing the executive instructions of the Central Govt is not law. A statutory scheme is a 'law', but not the*

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<sup>24</sup> D.D.Basu 'Shorter Constitution Of India' 15<sup>th</sup> Edition, Lexis Nexis, 62-63, (2019)



*bye-laws made by a co-operative society, which are in the nature of articles of association, unless such bye-laws have been made in exercise of statutory power of the society acts as an agency of the Government. Government circulars are not "law" within the meaning of Art. 13 of the Constitution. The Legal Remembrancer's Manual is merely a compilation of executive orders and is not a "law" within the meaning of Art. 13 of the Constitution. This does not, however, mean that an administrative order which offends against a fundamental right will, nevertheless, be valid because it is not a 'law' within the meaning of Art. 13(3). It can be struck down if it violates any other article under part III. "*

Mr. Patil rightly points out an apt observation of the Apex Court in *A.K.GOPALAN vs. STATE OF MADRAS*<sup>25</sup>:

*"The inclusion of article 13(1) and (2) in the Constitution appears to be a matter of abundant caution. Even in their absence, if any of the fundamental rights was infringed by any legislative enactment, the Court has always the power to declare the enactment, to the extent it transgresses the limits, invalid. The existence of article 13 (1) and (2) in the Constitution therefore is not material for the decision of the question what fundamental right is given and to what extent it is permitted to be abridged by the Constitution itself..."*

Enacting a wide definition is not intended to empower the State but to curtail its power in exercise of which it could otherwise limit the worth of Fundamental Rights &

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<sup>25</sup> AIR 1950 SC 27



freedoms guaranteed in Part III. While construing the definition given in the '*dictionary clause*' of a statute, one has to keep in mind the intent & content of said provision or the Chapter in which the such provision occurs. This applies more, when one is construing the definition clause given in Part III of the Constitution enacted to curtail the power of Caesar qua citizens. That being the position, the inclusive definition of '*law*' being wider as indicated above would not come to the rescue of the State. An argument to the contrary would imperil the fundamental freedoms that are constitutionally enshrined in Part III.

(vi) The vehement submission of learned AG that in more or less a same fact matrix, a Coordinate Bench of this Court having heard the same counsel namely Mr.Patil himself, repelled his similar contention. Let me examine the same. In W.P.Nos.17370 & 17391/2012 between *SRI VIDYA MANOHARA TEERTHA SWAMIGALU* vs. *STATE & OTHERS*, disposed off on 2.1.2013, what was principally in challenge was a Government Order whereby, the Administrator was appointed to Sri Vyasaraaja Mutt



(Sosale). A learned Coordinate Judge repelled the challenge *inter alia* with following observations that occur at paragraph 39:

*"The Administrator in the present case is not appointed permanently. He is appointed only for a period of two years. In any case, the Administrator is not a substitute for matadhipathi and his management is only to facilitate better administration of the Mutt. None of the religious rights of the matadhipathi are either touched or taken away by the impugned order. The Act of appointing the Administrator does not in any way impair the right of the matadhipathi or the rights guaranteed under Article 26... On the contrary, it seeks to protect and promote that right..."*

In the fact matrix of the said case, a finding was recorded as to no curtailment of rights of mathaadhupati having happened. In other words, the case turns out to be more fact-specific and it is apparently in variance of facts of the case at hands, wherein there is a rank interference of the State to the substantial exclusion of Petitioner-Pontiff, as if his status and powers as such have been kept under suspended animation on account of detention *per se*. It is this distinct question which constitutes the *jugular vein* of the case and therefore, keeps distance from the ruling



cited at the Bar. Therefore, it cannot be construed as laying down any concrete ratio supportive of the case of Respondent-authorities, mainly because the Bench did not choose to invalidate the appointment of Administrator. Added, no discernible ratio arises even by applying the popular tests like *Wambaugh's Test*<sup>26</sup> or *Dr.Upendra Baxi Test*. It hardly needs to be stated that a case is an authority for the proposition that it actually lays down in a given fact matrix and not for all that which logically follows from what has been so laid down vide *QUINN vs. LEATHEM*<sup>27</sup>.

**(F) AS TO EXECUTIVE POWER OF THE STATE UNDER ARTICLE 162 OF THE CONSTITUTION, ITS NATURE, SCOPE & AVAILABILITY:**

(i) Article 162 of the Constitution has the following text:

*"Extent of executive power of State.- Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:*

<sup>26</sup> P.J. Fitzgerald, '*Salmond on Jurisprudence*', Sweet & Maxwell, Twelfth Edition, 141 - 145, (1966)

<sup>27</sup> (1901) A.C. 495



*Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof."*

This provision speaks of the extent of executive power of the State to the matters with respect to which the State Legislature has power to make laws. It, by no stretch of imagination, is attracted as a source of power of the State to pass an appropriate order and such power should be traced only in the provisions of relevant statutes. In RAM JAWAYA KAPUR, *supra*, the Apex Court having discussed the nature & scope of this power, stated that the executive power of the State is co-extensive with the legislative power and it avails for exercise as long as there is no statute occupying the field. It is the specific case of the State that the impugned order appointing the Administrator is made in exercise of such power availing under Articles 162 & 31A of the Constitution. There is no dispute as to the impugned order being a product of exercise of executive power, which according to learned



AG, avails after the repeal of enactments enlisted in section 78 of the 1997 Act. Mr.Patil appearing for the Petitioners countered the same by contending that such a repeal does not render the field unoccupied, there being other legislations like Code of Civil Procedure, 1903.

(ii) True, it is that section 78 of the 1997 Act repealed as many as seven enactments of which, the Bombay Public Trusts Act, 1950 Madras Hindu Religious and Charitable Endowments Act, 1951, the Mysore Religious and Charitable Institutions Act, 1927, the Coorg Temple Funds Management Regulation, 1892 & Coorg Temple Funds Management Act, 1956, are relevant, others not being applicable. It is also true that the 1997 Act is not applicable *inter alia* to Mutts, as such; section 1 of Karnataka Amending Act No.27 of 2011 reads: "*The maths and temples attached to the maths are kept out of the purview of the Act, as the maths are headed and managed by mathadipathis.*" This provision unmistakably evinces the legislative intent to immune Mutts as a distinct class of religious institutions from State control & regulation.



Therefore, the repeal of the subject statutes does not create legislative vacuum in the field so that it is re-occupied with executive power. In other words, despite such repeal, the field continues to be occupied by law namely the 2011 Act.

(iii) Added to the above, the affairs of Mutt being *inter alia* governed by the registered Trust Deed, section 92 of CPC, becomes invocable, the Mutt in question admittedly answering description of the Trust of the kind in the said provision. It is the specific case of Petitioners in general and Mutt & its Pontiff in particular that the fact matrix which eventually resulted into the appointment of Administrator, would indisputably take the matter to the precincts of this provision and therefore, a representative suit is maintainable. Mr.Patil repeatedly said that if anybody has grievance arising out of an extraordinary situation like the one at hands because of Pontiff being in judicial custody, suit remedy with leave of the court can be resorted to. This section in so many words enables even the office of AG to maintain such a suit *sans* sanction. The



Apex Court in *SYED MOHD. SALIE LABBAI VS MOHD. HANIFS*<sup>28</sup>, observed that when there is allegation of breach of any express or constructive trust created for a public charitable or religious purpose like the Petitioner-Mutt or where the directions of the Court are necessary for the administration of such a trust, suit of the kind is maintainable. What is enacted by the Parliament in section 92 of CPC thus occupies the field and as a consequence, the executive power otherwise availing to the State under Article 162, is denuded. Therefore the impugned order is without jurisdiction.

(iv) It hardly needs to be stated that even though the executive power may, ordinarily be exercised in the absence of any legislation to support an action, it cannot be so exercised as to contravene any law relating to the matter or Rules having the force of law. In *BISHAMBHAR DAYAL CHANDRA MOHAN vs. STATE OF UTTAR PRADESH*<sup>29</sup>, it is observed:

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<sup>28</sup> (1976) 4 SCC 780

<sup>29</sup> AIR 1982 SC 33



*"...The quintessence of our Constitution is the rule of law. The State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In State of Madhya Pradesh v. Thakur Bharat Singh, the Court repelled the contention that by virtue of Art. 162, the State or its officers may, in the exercise of executive authority, without any legislation in support thereof, infringe the rights of citizens merely because the legislature of the State has power to legislate in regard to the subject on which the executive order is issued. It was observed: 'Every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority.'..."*

**(G) AS TO ARGUMENT OF GRAVE CONSEQUENCES OF QUASHING THE APPOINTMENT OF ADMINISTRATOR:**

(i) Learned AG appearing for the State and the learned Sr. Advocate appearing for the Administrator *eo nomine*, contended that when Pontiff of a Mutt is in custody, he will not be in a position to discharge his temporal duties relating to administration & management of the Mutt and the educational institutions run under its aegis; the Mutt having wealth of more than a thousand crore rupees, as of prudence & necessity, requires a full time Administrator; the government having given the land



and huge public funds for the benefit of Mutt, has a legitimate say in the matter of administration & management of at least non-secular activities of the Mutt and of the institutions. Both they vividly highlight the consequences of absence of Pontiff owing to detention. Learned Sr. Advocate appearing for the Petitioners does not agree with the proposition of having an Administrator appointed by the government, that too in gross violation of principles of natural justice. He submitted that when the Legislature intends no interference in the affairs of Mutt, be it religious or temporal, the argument of 'undesirable consequences' does not avail to the State. He hastens to add that law should be obeyed even if heavens do fall.

(ii) The following observations in *SHIRUR MUTT*, assume significance while treating contention of the kind:

*"...It should be noticed, however, that under article 26(d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A*



*law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of article 26..."*

It is pertinent to refer to what the Australian High Court said in *ADELAIDE COMPANY OF JEHOVAH'S WITNESSES vs. THE COMMON WEALTH*<sup>30</sup>:

*"...The Constitution protects religion within a community organized under a Constitution, so that the continuance of such protection necessarily assumes the continuance of the community so organized. This view makes it possible to reconcile religious freedom with ordered government..."*

A welfare State constitutionally ordained cannot assume that civil society lacks virtues and that its members, such as devotees of Mutts and temples will be invariably incapable of addressing exigencies of the kind, on their own and therefore, the government should rush in to set the things right. Mutts and temples are not of nascent origin; they have been there since a millennia & more. Inevitable are highs & lows as is with the turning of the wheel of time. From this, no institution be it governmental

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<sup>30</sup> 1943 CLR 116



or religious is immune. With the benefit of experience, precedents and practices have been evolved through the ages so as to provide the modes and method of dissolving the difficulties in the matter of administration, as is the case with Mutt in question. If civil society fails in its endeavours, let it fail; however that cannot justify interference of the Government in the affairs of Mutt in the absence of legislative authorization. The doctrine of *parents partirae*, is not invocable in cases like this. It is apt to recall the following words of philosopher Thomas Paine<sup>31</sup> (1737-1809):

*"...Society is produced by our wants, and government by our wickedness; the former promotes our happiness positively by uniting our affections, the latter negatively by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last a punisher. Society in every state is a blessing, but Government, even in its best state, is but a necessary evil Government, like dress, is the badge of lost innocence; the palaces of kings are built upon the ruins of the bowers of paradise. For were the impulses of conscience clear, uniform and*

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<sup>31</sup> Thomas Paine, 'Common Sense: Of The Origin and Design of Government in General, With Concise Remarks on the Enligh Constitution', 1 - 3 , (1776)



*irresistibly obeyed, man would need no other lawgiver; but that not being the case, he finds it necessary to surrender up a part of his property to furnish means for the protection of the rest; and this he is induced to do by the same prudence which in every other case advises him, out of two evils to choose the least..”*

(iii) It hardly needs to be stated that Mutts & temples are central to ‘Hindu Dharma in its generic sense’ and to its offshoot religions, as well. They play a pivotal role in the lives of people in several ways. Mutts and their *parampara* contribute in a great measure to the preservation of civilizational values, too. As already mentioned above, they also undertake activities that would benefit the public at large. Normally, how a mathaadhpati is to be appointed is a matter governed by the customs & traditions obtaining in the Mutt. In the absence of Pontiff because of death, disease or detention, what should happen is ordinarily be left to the devotees or the prominent members of the community concerned, should statute or some instrument of law does not provide for the solution. There is no such statute, and the Trust Deed is silent about the matter. It is nobody’s case that



the devotees or the prominent members of the community will not be able to take a call in the matter. No explanation is offered from the side of State as to why the office of AG was not asked to institute a representative suit under section 92 of CPC, either. It is true that it is open to the devotees or the members of *Veeraishaiva/Lingayat* community to avail the remedy of representative suit.

(iv) The 1997 Act as amended in 2011 which aspect is discussed in detail supra, the Legislature intends to insulate the Mutts from State interference, be it administrative functions, religious rites or other temporal activities. If that be so, it is un-understandable to say the least as to how an Administrator can be appointed by government of the day. An argument to the contrary cannot be sustained without imperilling the constitutional guarantees availing to religious denominations & Pontiffs; such an arguments and it also runs counter to a seventy year jurisprudence, as developed by the Apex Court since SHIRUR MUTT. The State and its functionaries should realise that by their very nature they can not be a can not



be panacea to all the evils in society. As of necessity, it should leave religious institutions to solve their problems on their own by appropriate measure, such as community mediation/conciliation or judicial process, of course subject to all just exceptions. The fact that the government has allotted some land to the Mutt and handed some funds, *per se* would not justify its interference, especially when the terms & conditions subject to which that has been done, do not authorizing action of the kind. Had the government indicated its intent to condition the grant of such a bounty, the Mutt would have had an opportunity to decline the offer.

In the above circumstances, I make the following:

- (i) The question Nos.1, 2 & 3, as framed at paragraph 6, having been answered in the negative, these Petitions succeed and a Writ of Certiorari, therefore, issues quashing the impugned order whereby the Government had appointed the Administrator;
- (ii) In the peculiar circumstances of the case, the Administrator shall continue for a short period of six weeks only with no power to take any major decision that would have repercussions beyond the said period and,



that he shall manage only the day to day affairs;

- (iii) The above interim arrangement has been made so that the devotees of the Mutt and the prominent members of the community concerned would pool their wisdom & virtue to devise an appropriate plan of action for the due administration & management of the affairs of Mutt and the educational institutions run under its aegis, on a war footing;
- (iv) The option of the devotees and community members to seek relief/redressal in terms of Section 92 of CPC is not foreclosed, arguably, their being a case for that end, and that all contentions in that regard are kept open; Nothing observed in this order shall cast its shadow on such proceedings, particularly when the rights of Mutt & its Pontiff have been adjudged in the light of constitutional guarantees *vis-à-vis* government, and, none else.
- (v) This Court places on record that, it is conscious of the practical difficulties the Mutt and its institutions have been put to because of the Pontiff's continuance in judicial custody and that his meditate administration through delegates/agencies, is a poor solace & substitute for the effective administration and management, to say the least.
- (vi) Costs made easy.



This Court places on record its deep appreciation for the research and assistance rendered by its official Law Clerk Cum Research Assistant, Mr. Faiz Afsar Sait.

**Sd/-  
JUDGE**

cbc/snb

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