IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
Writ Petition (Civil) No. /2019
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

SRI SUBRAMANYASWAMIKOIL
SWATHANTHRA PARIPALANA
STHALATHARGAL SABHAI AND OTHERS …PETITIONERS

-VERSUS-

STATE OF TAMIL NADU …RESPONDENT

PAPER BOOK

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ADVOCATE FOR THE PETITIONERS: K. V. MUTHU KUMAR

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16.	**Annexure – P/9:**			

	True copy of the order dated 21.07.2017 in Crl. O. P. No. (s) 8690 and 12060 of 2017 passed by the Hon'ble High Court of Madras in the case titled **R. Venkatraman v/s D.G.P and Ors.**			
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19.	**<u>Annexure – P/12:</u>** True copy of Documents to support Paragraph 25, Madurai JC RTI, RTI Reply dated July 2019.			
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PERFORMA FOR FIRST LISTING

Section:PIL

The case pertains to (Please tick / check the correct box):

- ☐ Central Act: N/A
- ☐ Section: N/A
- ☐ Central Rule: N/A
- ☐ Rule No: N/A
- ☐ State Act: Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959
- ☐ Section (s):1(3), 3
- ☐ State Rule: Tamil Nadu Hindu Religious and Charitable Endowments Rules
- ☐ Rule No: N/A
- ☐ Impugned Interim Order: N/A
- ☐ Impugned Final Order / Decree: N/A
- ☐ High Court: N/A
- ☐ Name of Judges: N/A
- ☐ Tribunal / Authority Name : N/A

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1. Nature of Matter: Civil

2. (a) Petitioner / Appellant: Sri SubramanyaswamikoilSwathanthraParipalanaSthalathargal Sabha

   (b) Email ID:

   (c) Phone No:

3. (a) Respondent: State of Tamil Nadu

   (b) Email ID: N/A

   (c) Phone No: N/A

4. (a) Main Category: 08 PIL Matters

   (b) Sub Category: 0812; Others

5. Not to be listed before: N/A

6. Similar / Pending matter: WP(C) 476 of 2012

7. Criminal Matters:

   (a) Whether accused / convicted has surrendered: N/A

   (b) FIR / Complaint No: N/A

   (c) Police Station: N/A

   (d) Sentence Awarded: N/A

   (e) Period of Sentence Undergone including period of detention/custody under gone: N/A

8. Land Acquisition Matters:

   (a) Date of Section 4 Notification: N/A

   (b) Date of Section 6 Notification: N/A

   (c) Date of Section 17 Notification

9. Tax Matters: State the Tax Effect: N/A

10. Special Category: N/A

11. Vehicle No in case of motor accident claim matters): N/A

12. Decided Cases with Citation: N/A

Date: .11.2019

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SYNOPSIS

The instant Writ Petition under Article 32 of the Constitution of India, 1949 (**"the Petition"**) is being preferred by the Petitioners to challenge the constitutional *vires* of the framework of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 along with its Rules (**"the 1959 Act"**). In particular, the Petitioners have challenged the constitutional *vires* of Sections 1(3), 3, 23, 24, 25-A, 26, 27, 34, 34A, 34B, 34C, 34D, 35, 36, 45, 47, 48, 49, 49-B, 50, 52, 53, 54, 56(2), 57, 58, 59, 61, 63, 64, 65, 66, 67, 69, 70, 71-76 (including 75A-C), 92, 97, 108 and 111 ("Impugned Provisions") and the following Rules ("Impugned Rules"):

i. Utilization of Surplus Funds Rules (G.O. Ms. No. 4524, Revenue, dated the 5th November, 1960) were framed and amended by G.O. Ms. No. 275 C.T. & R.E. Department, dated 16th July 1997;
ii. Conditions for Appointment of Executive Officers Rules, 2015 (G.O. Ms. No. 260, Tourism, Culture and Religious Endowments (RE4-2), dated 6th November 2015) framed under Sections 43A and 45 of the Act as being unconstitutional; and
iii. Appointment of Auditors Rules (G.O. Ms. No. 3029, Revenue, dated the 20th July 1961) framed under Section 87

At the outset, it is submitted that the present Writ Petition is being preferred because:

- The Petitioner No. 1 constitutes a separate religious denomination within Art 26 as recognized by several religious texts. The Petitioner No. 2 is a registered Trust of practicing Hindus whose rights under Articles 25 and 26 are affected by the Impugned Provisions and Rules. The Petitioner No. 3 is a Trustee of the Petitioner No. 2 and a practicing Hindu from the State of Tamil Nadu, whose rights under Article 25(1), and Article 26 where applicable are infringed by the Impugned Provisions and Rules. The Petitioner No. 4 is member of the Mukkani Brahmin community and a priest at the Tiruchendur Temple, which establishes his *locus* as a Petitioner;
- That the fundamental rights of the Petitioners have been violated as their rights to manage their own religious institutions and their properties have been severely abridged by the Respondent, which is a State within the meaning of Art. 12 and
- The challenge is based on violation of Art(s) 14, 19, 25, 26, 29, and 31A, all falling under Part – III of the Constitution.

The Hon'ble Supreme Court in the case of **Commr., HRE v/s Sri LakshmindraThirthaSwamiar of Sri ShirurMath ("ShirurMath case") AIR 1954 SC 282** has quashed section (s) 21, 30, 31, 56, 63 – 69 of the erstwhile Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 (**"1951 Act"**) since they conferred unfettered powers on the delegated authorities of the State to interfere with the religious and administrative affairs of the Hindu community and its religious and charitable institutions. Under the garb of remedying the 1951 Act, the present 1959 Act was framed and claimed to be in line with the judgement of **ShirurMath case**.

A good number of the Impugned Provisions of the 1959 Act retain the letter and spirit of their predecessor provisions which were struck down in *Shirur Math*, which is one of the primary grounds of challenge. It is submitted that the Impugned Provisions, while excluding Maths from their ambit, apply to other Hindu religious institutions, denominational and otherwise. There is no intelligible criterion for the said differentiation, which exposes its arbitrary, capricious and discriminatory character. In addition to the said provisions, certain provisions which were not challenged earlier, have been challenged here on the ground that they are plagued by the same fatal constitutional infirmities which plagued the provisions which were struck down in *ShirurMath*.

The Impugned Provisions vest unlimited and unbridled powers to appointees/servants of the Respondent, namely the officers of the Hindu Religious and Charitable Endowments (HRCE) Department, to entrench themselves in the day-to-day functioning and administration of Hindu religious institutions to such an extent that the divide between secular aspects of administration and religious aspects is completely eliminated. All the resources of Hindu religious institutions vest completely in the hands of the Respondent and subject to its control, making it impossible for any religious activity to be carried out without the blessings of the servants/officers of the State.

As opposed to the limited role envisaged for the State under Article 25(2)(a), which is regulatory in nature, the 1959 Act facilitates and strengthens the ability of the State to completely takeover Hindu religious institutions, which fate no religious institution of any other community has to suffer. Therefore, the framework of the Act is directly at loggerheads with the *dicta* of this

Hon'ble Court in Sri La Sri Subramania Desiga Gnanasambanda Pandara Sannadhi v. State of Madras, AIR 1965 SC1683and Dr. Subramaniam Swamy v/s State of TN (2014) 5 SCC 75 ("Chidambaram Temple Case"), apart from violating Articles 14, 19, 25, 26, 29 and 31A.

The Impugned Provisions also fail to take into account the unique features of the Hindu faith, which distinguish it from Abrahamic faiths, thereby violating the rights of the Hindu community under Articles 14, 25, 26 and 29. For instance, the concepts of Deity, Dharma and Sampradaya, which are very different from Abrahamic conceptions of God, religion and denomination are completely brushed under the carpet thereby imposing Abrahamic standards and notions on the Hindu community and its religious institutions. Therefore, it becomes evident that the impact of the Impugned Provisions goes beyond the secular aspects of administration of Hindu religious institutions.

Further, the Petitioners submit that Executive Officers (EO) were appointed by the Respondent to Hindu religious institutions under Section 45 of the Act in the absence of EO Rules for 55 years, despite the provision expressly envisaging framing of Rules for the said purpose. This is again in violation of the judgements cited above. Also, the Rules which were framed in November 2015 after much castigation by this Hon'ble Court in *Chidambaram* in 2014, run against the said judgement in letter and spirit by violating rights under Articles 14, 25, 26, 29 and 31A. Rules framed for appointment of Auditors are also in violation of Section 87 of the Act as well as the Constitution since as an interested party in the outcome of the audit, the State ought to delegate the audit to an independent external agency. Hence, for the reasons stated hereinabove and for the detailed grounds stated hereinbelow in the present Petition, the Petitioners pray that the 1959 Act, specifically though

not limited to sections 1(3), 3, 23, 25-A, 26, 34, 34A, 34B, 34C, 34D, 47, 48, 49, 49-B, 50, 53, 54, 57, 58, 61, 63, 64, 65, 66, 67, 69, 70, 92, 97, 108 and 111 and the Impugned Rules be declared as *ultra vires* Articles 14, 15(1) 19, 25, 26, 29, and 31A of the Constitution of India, 1949.

LIST OF DATES

1925	The then government of Madras Presidency establishes the Madras Hindu Endowments Act, 1923, the first legislation wherein the State would manage the affairs of Hindus religious establishments and Hindu temples alone. It envisaged a Board of Commissioners appointed by the State who would manage the affairs of Hindu endowments and temples alone.
1927	The Madras Act, II of 1927 sought to replace the earlier 1925 Act which applied exclusively to Hindu Public endowments. However, with passage of time and with multiple amendments, these statutes only strengthened the powers vested with Board of Commissioners.
12.02.1951	Notifications issued under Section 65-A of Chapter V of the Madras Act, 1927 was challenged before the Hon'ble High Court of Madras by a slew of Writ Petitions by the *Madathipathi* of *Shirur Math* and *PoduDikshitar*s of *Sabanayagar* temple. However, during the pendency of the Writ Petition, the Madras Act, 1927 was repealed.

27.08.1951 The Madras Legislature passed the Madras Hindu Religious and Charitable Endowments Act, 1951 comes into force. This new legislation applied to all Hindus endowments and Hindu institutions exclusively and gave sweeping powers to the Hindu Religious and Charitable Endowments (**"HR & CE"**) Department alone.

Petitioners therein were given leave to amend their Writ Petitions accordingly to challenge the validity of the newly enacted Legislation.

13.12.1954 The Hon'ble High Court of Madras allowed the Writ Petitions and quashed the unconstitutional sections of the 1951 Act. The Hon'ble High Court held as follows:

"To sum up, we hold that the following sections are ultra vires the State Legislature in so far as they relate to this Math: and what we say will also equally apply to other Maths of a similar nature. The sections of the new Act are: sections 18, 20, 21, 25(4), section 26 (to the extent section 25(4) is made applicable), section 28 (though it sounds innocuous, it is liable to abuse as we have already pointed out earlier in the judgment), section 29, clause (2) of section 30, section 31, section 39(2), section 42, section 53 (because courts have ample powers to meet these contingencies), section 54, clause (2) of section 55, section 56, clause (3) of section 58, sections 63 to 69 in Chapter VI, clauses (2), (3) and (4) of section 70, section 76, section 89 and section 99 (to the

extent it gives the Government virtually complete control over the Mathadhipati and Maths)."

Nil State of Madras preferred three appeals against the said order of the Hon'ble High Court of Madras. Civil Appeal 15 of 1953 and Civil Appeal 39 of 1953, relating to Sri Venkataramana Temple, Mulkipettah, South Kanara and Sri Sabhanayagar Temple, Chidambaram, Tamil Nadu respectively were dismissed by Constitutional Benches of this Hon'ble Court after recording the submissions of the Madras Government that the notifications relating to the temple would be withdrawn. Madras Government contested the judgment concerning ShirurMath alone vide Civil Appeal No. 38 of 1953 and thereto it limited its arguments to the Constitutional vires of the sections.

16.04.1954 In a Landmark Judgment titled **The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Tirtha Swamiar of Sri Shirur Math, AIR 1954 SC 282**, popularly known as **Shirur Math Case**, the Hon'ble Supreme Court dismissed the appeal by the State of Madras and held as follows:

"The result, therefore, is that in our opinion sections 21, 30(2), 31, 56 and 63 to 69 are the only sections which should be declared invalid as conflicting with the fundamental rights of the respondent as Mathadhipati of the Math in question

and section 76(1) is void as beyond the legislative competence of the Madras State Legislature. The rest of the Act is to be regarded as valid. The decision of the High Court will be modified to this extent, but as the judgment of the High Court is affirmed on its merits, the appeal will stand dismissed with costs to the respondent."

19.11.1959 The then Government of Madras brought in the new Madras Hindu Religious and Charitable Endowments Act, 1959 which sought to remedy the earlier 1951 Act (subsequently renamed Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959) and it came into force on 01.01.1960.

.11.2019 The said Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 and Rules arechallenged before the Hon'ble Supreme Court by means of the present Writ Petition under Art 32 of the Constitution of India, 1949 being in violation of Art (s) 14, 19, 25, 26, 29, and 31A of the Constitution of India, 1949.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
Writ Petition (Civil) No. /2019
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. SRI SUBRAMANYASWAMIKOIL
SWATHANTHRA PARIPALANA
STHALATHARGAL SABHAI
REPRESENTED BY SECRETARY OF THE SABHA
SH. A. NARAYANAN
HAVING ITS REGISTERED OFFICE AT:
NO. 29/63, MAILAPPAPURAM STREET,
THIRUCHENDUR, TUTCOURIN DIST.,
TAMIL NADU
PIN – 628 215 …PETITIONER NO. 1

2.INDIC TRUST COLLECTIVE
REPRESENTED BY ITS TREASURER
SH. RAVILOCHAN IYYENGAR
HAVING ITS REGISTERED OFFICE AT:
NO. 5-E, BHARAT GANGA APTS.,
MAHALAKSHMI NAGAR,
4TH CROSS STREET,
ADAMBAKKAM, CHENNAI
TAMIL NADU
PIN – 600 088 …PETITIONER NO. 2

3.MADHUSUDHANAN SRINIVASAN
S/O SRINIVASAN
R/AT PLOT NO.6.,
DOOR NO.1 THANIGAI STREET,
ARUL MURUGAN NAGAR,
KEELKATTALAI, PALLAVARAM
KANCHEEPURAM
TAMIL NADU
PIN – 600 117

…PETITIONER NO. 3

4.JEYANTHINATHAN
S/O PITCHU AYYAR
R/AT 78/113.,
SOUTH CAR STREET,
TIRUCHENDUR
TOOTHUKUDI
TAMIL NADU
PIN – 628 215

…PETITIONER NO. 4

-VERSUS-

STATE OF TAMIL NADU
THROUGH SECRETARY,
TAMIL NADU RELIGIOUS ENDOWMENTS AND
INFORMATION DEPARTMENT,
DISTRICT, CHENNAI,
TAMIL NADU …RESPONDENT

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

TO,
THE HON'BLE CHIEF JUSTICE
& LORDSHIP'S COMPANION JUSTICES
OF HON'BLE SUPREME COURT OF INDIA
HUMBLE PETITION OF ABOVE-NAMED PETITIONERS

MOST RESPECTFULLY SHOWETH:

1. The Petitioners are filing the present Writ Petition under Article 32 of the Constitution of India, 1949 to challenge the constitutional *vires* of, but not limited to Sections 1(3), 3, 23, 24, 25-A, 26, 27, 34, 34A, 34B, 34C, 34D, 35, 36, 45, 47, 48, 49, 49-B, 50, 52, 53, 54, 56(2), 57, 58, 59, 61, 63, 64, 65, 66, 67, 69, 70, 71-76, 92, 97, 108 and 111 ("Impugned Provisions"), Utilization of Surplus Funds Rules (G.O. Ms. No. 4524, Revenue, dated the 5th November, 1960) were framed and amended by G.O. Ms. No. 275 C.T. & R.E. Department, dated 16th July

1997, Conditions for Appointment of Executive Officers Rules, 2015 (G.O. Ms. No. 260, Tourism, Culture and Religious Endowments (RE4-2), dated 6th November 2015) framed under Sections 43A and 45 of the Act, and Appointment of Auditors Rules (G.O. Ms. No. 3029, Revenue, dated the 20th July 1961) framed under Section 87 of the Act("Impugned Rules").

2. The Petitioner No. 1 herein is a registered society under the Societies Registration Act, 1860 with its registered office at 29/63, Mailappapuram Street, Tiruchendur, Tuticorin District, Tamil Nadu-628215. The Petitioner is a Hindu religious denomination within the meaning of Article 26 of the Constitution in so far as the Tiruchendur Sri Subrahmanya Swamy Devasthanam (hereinafter referred to as "the Tiruchendur Temple") in Tamil Nadu is concerned. The community represented by the Petitioner No. 1, which goes by the name Mukkani Brahmins, has over 500 members and has the locus to file the instant Petition, as Hindus under Article 25(1) to practice and profess the Hindu faith and the religious practices prescribed for members of the religious denomination in relation to the Tiruchendur Temple. Petitioner No. 1 constitute a religious denomination within the meaning of Article 26. True copies of the relevant texts attesting to the status of Petitioner No. 1 as a religious denomination as set out in the various functions performed dated nil are annexed herewith as **Annexure-P/1 (Pages to).** Several authoritative texts and records specifically refer to them as tracing their origins to the Presiding Deity of the Tiruchendur Temple, Lord Subrahmanya, who is said to have set up 2000 families of Mukkani Brahmins to attend to the services of the Temple, a duty

which they have ever since faithfully performed despite the hurdles created by the 1959 Act and Rules and the State authorities appointed thereunder. The primary function of the members of the Petitioner No. 1 consists of making offerings, performing poojas and celebrating festivals in accordance with the practices, scriptures, beliefs, traditions and customs of the Temple on behalf of worshippers True copy of the Registration Certificate of Petitioner No. 1 and Petitioner No. 2 dated nil re annexed herewith as Annexure-P/2 (Pages to).

3. The Petitioner No. 2 herein is a registered trust under the Indian Trusts Act, 1882 with its registered office at 5E, Bharat Ganga Apartments, Mahalakshmi Nagar, 4th Cross Street, Adambakkam, Chennai – 600 088. The Petitioner No. 2 is a collective of activists, intellectuals and civil liberties campaigners who, as practitioners of Sanatana Dharma and devotees of the Presiding Deity of the Tiruchendur Temple, are committed to the advocacy of Indic/Dharmic civil liberties through Constitutional and democratic means. The Petitioner No. 2 has been campaigning for freedom of Dharmic/Hindu/Indic religious institutions from Government control ever since its inception in June 2017. Not only was this one of the core objects behind the inception of the Petitioner No. 2, it has also actively filed Petitions before this Hon'ble Court and several High Courts of the country to protect the rights of Dharmic institutions. The Petitioner No.1 sabha is registerd in the year 1924 and does not have any PAN card nor have they filed income tax returns. The Email address of Petitioner No.2 is Namaste@indiccollective.org, Phone No:9841942152 and PAN number is AABT14756Q. The Petitioner No. 2's Annual income nil per annum. The Petitioner No.3's

AADHAAR: No. is 5667 0731 2900 and PAN number is DQLPS7887H. The Petitioner No.4's AADHAAR No. is 881867661021 and PAN number AKAPJ5806F.

4. The Petitioner No. 3, as a practicing Hindu from the State of Tamil Nadu and Trustee of the Petitioner No. 2, has the necessary *locus* to challenge the Impugned Provisions and Rules since they impinge on his rights under Article 25(1), and Article 26 where applicable. The Petitioner no.4 is member of the Mukkani Brahmin community and is also a member of the Petitioner No.1. Therefore, he has the necessary *locus* to challenge the Impugned Provisions and Rules since they impinge on his rights under Article 25(1), and Article 26 where applicable.

5. That the fundamental rights of the Petitioners have been violated as their rights to manage their own religious institutions and their properties have been severely abridged by the Respondent, which is a State within the meaning of Art. 12 and that the challenge is based on violation of Art(s) 14, 19, 25, 26, 29, and 31A, all falling under Part – III of the Constitution. The Petitioners have challenged the framework of the 1959 Act and the Rules enumerated above primarily on the ground that it violates fundamental rights under Articles 14, 19, 25, 26, 29 and 31A by facilitating entrenchment of the State Government in a Hindu religious institution, which has a denominational character, by taking away the rights of (a) the religious denomination, (b) devotees, and (c) the Hindu community at large to manage their religious institutions and the assets of such institutions. It is humbly submitted that even *de hors* rights under Article 26 and violation of such rights,

the 1959 Act and the Impugned Rules are violative of the rights of the Petitioners under Articles 14, 19, 25, 29 and 31A. The fact that the members of the Petitioner No. 1 and their families have a distinct culture of their own owing to the *sampradaya* they follow, only strengthens their claim under Article 29, apart from and independent of Article 26.

6. The Petitioners have not filed any other Petition either in this Hon'ble Court or in any other High Court seeking same and similar directions as prayed for in this Petition.

The facts which give rise to the present cause of action culminating into the present Writ Petition are as follows:

7. The history of Government takeover of Temple administration dates back to the colonial era, prior to which Temples were managed by communities with the patronage of Rulers who were practitioners of Sanatana Dharma and whose Princely States too had clear religious identities. Since the modern Indian State professes to be a secular State, it cannot step into the shoes of the Hindu Rulers of the erstwhile Princely States without violating its commitment to the definition of secularism it subscribes to.

8. During the colonial era, owing to the significant resources attached to Temples in erstwhile Madras, the British, through the East India Company, at the end of the 18th Century, began interfering with the traditional administrative systems of Temples citing corruption in Temple administrations as the primary pretext. In 1796, the British

administration followed a policy of centralized collection as well as distribution of all Temple revenues in the limited territories under its control. The policy also included audit of the use of the funds by Temple authorities and bureaucratic control over Indian Temple administrators. This policy resulted in undermining the autonomous, localized, community-driven and self-sufficient nature of Temple administration by making it increasingly dependent on a centralised bureaucracy. By 1800, when the British administration expanded to what came to be known as the Madras Presidency, the Board of Revenue was established by the East India Company in 1789 to take charge of Temples in the Presidency. Consequently, the endowments of Temples came under British control.

9. Subsequently, the British adopted a more formal approach to takeover of Temples in Madras Presidency by promulgating the Madras Endowments and Escheats Regulation of 1817, also known as the Regulation VII of the Madras Code, which was similar to Regulation XIX of 1810 of the Bengal Code. The ostensible purpose of Regulation VII of 1817 was set forth in its Preamble which read as under:

"Considerable endowments have been granted in money, or by assignments of land or of the produce of the land by the former Governments of this country as well as by the British Government, and by individuals for the support of mosques, Hindu temples, colleges and choultries, and for other pious and beneficial purposes; and … endowments [are] in many instances appropriated, contrary to the intentions of the donors, to the personal use of the individuals in

immediate charge and possession of such endowments; and… it is the duty of the government to provide that such endowments be applied according to the real intent and will of the granter."

10. To this end, the Madras Regulation vested in the Board of Revenue and District Collectors the power of general superintendence over all endowments made in land or money for the support of Mosques, Hindu Temples, Colleges and other public purposes, for the maintenance and repair of bridges, Choultries or Chatrams and other public buildings and for the custody and disposal of escheats. The Board, upon recommendation of District Collectors, appointed and supervised the work of Temple trustees. On reports of misuse of Temple endowments or embezzlement, District Collectors had the power to take over the Temple management and claim costs from the endowments of the Temple for administrative services provided by them. This allowed the Colonial Madras Government to administer all religious institutions in the Presidency.

11. Apart from overseeing the administration of Temples, maintenance of its buildings and management of its finances, the colonial Government also ended up intervening in the religious affairs of Temples. By giving itself the power of general superintendence on all kinds of endowment made to religious institutions, the British Government exercised the power of audit and control over all expenses. This Regulation was in force for more than two decades until 1839. However, this state of affairs was not acceptable to Christian missionaries in England who protested against the administration of

religious institutions of "heathens" by the "Christian Colonial Government". They further objected to the provision of maintenance to such institutions by the Colonial Government. As a result of these protests in England, between 1839 and 1842 the Colonial Government had to withdraw from all functions relating to Indian religious endowments. The Madras Presidency Government was, however, reluctant to withdraw from its functions which sentiment was captured in the words of Mr. D. Elliot, a member of the Indian Law Commission, Madras, who submitted to the Government a memorandum dated March 1, 1845 observing as follows:

"The Government could not renounce a duty so solemnly undertaken and withdraw its officers from a charge imposed upon them under such a sanction, without any adequate provision for the due execution of the charge, so far as it had till then extended, by other agency, or leave the interest concerned without protection."

Despite this representation, the Government withdrew from all Indian religious institutions notwithstanding the fact that the Regulation was still in force.

12. In 1860, a Bill seeking to repeal all such Regulations was placed before the Legislative Council. However, instead of repealing them, the Colonial Government enacted a new legislation, which was called the Religious Endowment Act (XX of 1863). The 1863 Act, which applied to Temples and Mosques, provided for transfer of the functions which were formerly performed by the Board of Revenue and its local agents, to local committees in each District. The members of the local committees would

be appointed by the Board from among the religious community and in accordance with wishes of the persons interested in welfare of that institution. To ascertain this, the Government was vested with the power to conduct elections in case of vacancy. The members were to have a term for life and were not removable except for misconduct and that too by a regular suit. Courts of law were authorized to deal with disputes, acts of misuse, neglect of duty etc. The local committees did not have the power to remove any trustee or other officers of the Temples, or to ensure performance of its orders except by way of approaching the Court.

13. In order to allow elected provincial ministers to take charge of Indian religious endowments, a Bill was introduced in 1922 to repeal the Act of 1863, which was ultimately passed in 1925 by Madras Presidency after modifications. The Madras Hindu Religious Endowments Act 1923, which was the first legislation to apply only to Hindu religious institutions in contrast to previous laws, divided Temples into 'Excepted and Non-excepted' Temples. The Act established "boards" consisting of a President and two to four commissioners, as nominated by the Government to function as a statutory body to manage only Hindu religious institutions and endowments, a clear departure from previous legislations which applied to religious institutions of Hindus and Muslims. Temple trustees were required to furnish accounts to and obey the instructions of the boards. The surplus funds of the Temples could be spent by the boards themselves on any religious, educational or charitable purposes not inconsistent with their objects. However, this Act too was replaced by the Madras Act, II of 1927 to address concerns

relating to the legality of action taken under the earlier Act. The Act applied to whole of Madras Presidency with certain limitations, and only public endowments came within the ambit of the 1927 Act. The mechanism set up under the Act included the Board of Commissioners, Temple Committees, Temple Trustees and servants of the institution. Multiple amendments were effected to this Act between 1928 and 1946 and more powers were sought to be vested in the Board of Commissioners.

14. The Madras Act of 1927 was challenged before the Madras High Court by way ofCivil Miscellaneous Petition and Writ PetitionsFebruary 12, 1951 by the *Mathadhipati* of the *Shirur Math* in present-day Karnataka and the *PodhuDikshitars* of the *Sabhanayagar* Temple in Chidambaram in present-day Tamil Nadu, respectively. During the pendency of the Petitions before the Madras High Court, the 1927 Act was repealed and The Madras Hindu Religious and Charitable Endowments Act, 1951 was promulgated, which too applied exclusively to Hindu religious institutions and was not limited to public endowments and gave sweeping powers to the HRCE Department. The pending petitions were amended to challenge the 1951 HRCE Act. The Writ Petitions were allowed and the Madras High Court held as follows:

"To sum up, we hold that the following sections are ultra vires the State Legislature in so far as they relate to this Math: and what we say will also equally apply to other Maths of a similar nature. The sections of the new Act are: sections 18, 20, 21, 25(4), section 26 (to the extent section 25(4) is made applicable), section 28 (though it sounds innocuous, it is liable to abuse as we have already pointed out earlier

in the judgment), section 29, clause (2) of section 30, section 31, section 39(2), section 42, section 53 (because courts have ample powers to meet these contingencies), section 54, clause (2) of section 55, section 56, clause (3) of section 58, sections 63 to 69 in Chapter VI, clauses (2), (3) and (4) of section 70, section 76, section 89 and section 99 (to the extent it gives the Government virtually complete control over the Mathadhipati and Maths)."

15. Against the said judgment of the Madras High Court, the HRCE Department preferred an appeal before this Hon'ble Court, which was dismissed in 1954 in the landmark judgment of The Commissioner, Hindu Religious Endowments, Madras v. Sri LakshmindraTirthaSwamiar of Sri ShirurMath, AIR 1954 SC 282, popularly known as the Shirur Math Judgment. In dismissing the appeal, this Hon'ble Court held as follows:

"The result, therefore, is that in our opinion sections 21, 30(2), 31, 56 and 63 to 69 are the only sections which should be declared invalid as conflicting with the fundamental rights of the respondent as Mathadhipati of the Math in question and section 76(1) is void as beyond the legislative competence of the Madras State Legislature. The rest of the Act is to be regarded as valid. The decision of the High Court will be modified to this extent, but as the judgment of the High Court is affirmed on its merits, the appeal will stand dismissed with costs to the respondent."

16. Subsequently, the 1951 Act was repealed and replaced by the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the 1959 Act"). It is this Act, as it stands as on date after

multiple amendments, which is the subject of challenge in the instant Petition.

Prior to adverting to the Grounds, the Petitioners would like to bring out the facts relating to the appointment of Executive Officers and sheer mismanagement and misappropriation of temple funds. It is submitted that these facts are essential to the present Writ Petition and bring out how the law is modelled in such a manner that it encourages such malfeasance:

17. Under Section 103(c) of the erstwhile 1951 Act, all notifications issued bringing Hindu Temples and Endowments under Chapter VI of the 1927 Act, were, under deemed to have been issued under the 1951 Act. By virtue of Section 103(c), *Tiruchendur Sri SubramaniaswamyDevasthanam* and 44 other Temples and endowments continued to be under the yoke of the HRCE Department. Subsequently, several important provisions of the 1951 Act, including the Section 56 on appointment of EOs and Sections 63-69 and notification of Temples, were struck down by the Madras High Court in 1951 and this Hon'ble Court in 1954 in **ShirurMathCase**. Despite this, the then Madras Government issued a Government Order P. No.3069 dated August 4, 1956 and extended the notification of major temples and Endowments including *Sri Subramaniaswamy Temple in Tiruchendur*, by another five years beginning September 30, 1956. True copy of the G. O. dated 04.08.1956 in G. O. No. 3069 passed by the Government of Tamil Nadu is annexed herewith and marked as **Annexure – P/3(Pages to)**.

18. The *Adheenakartar* of *Sri DharmapuramAdheenam* who was the hereditary trustee of *RajanKattalai*, one of the large endowments of *Sri Thiagarajaswamy Temple, Tiruvarur* challenged the said G.O.P. No. 3069 by way of writ petition before the Hon'ble Madras High Court. The High Court by a judgment dated 11 August 1961, while accepting the contention of the *Adheenakartar* that the notification cannot be extended, nevertheless refused to issue, the writ prayed for because the said plea had not been taken in the writ petition and the period for which the notification had been extended was shortly due to expire. The *Adheenakartar* approached this Hon'ble Court with a certificate of fitness. Meanwhile, the then Government of Madras State promulgated the 1959 Act which came into force from 01.01.1960. True copy of the Appointment of Auditors Rules (G.O. Ms. No. 3029, Revenue, dated the 20th July 1961) is annexed herewith as **Annexure – P/4(Pages to)**.

a. *Vide*judgment dated February 10, 1965, in **SDG PandaraSannidhi Case**, a Bench of this Hon'ble Court headed by the then Chief Justice Shri P.B. Gajendragadkar quashed the notification dated August 4, 1956. However, the then Government of Madras State, a few months later, inserted Sections 75-A, 75-B and 75-C in the 1959 Act virtually extending notification of the major temples and endowments till July 15, 1966 notwithstanding the Judgment of this Hon'ble quashing the notification of 1956. After extending the notification of major temples and endowments, the Government of Madras attempted

to overcome the necessity of handing back the Temples to the respective communities or trustees from whose administration it had taken over the temples by way of notification. For some of the major Temples, the Commissioner of Hindu Religious and Charitable Endowments Department appointed Executive Officers under Section 45 of the 1959 Act just before the extended notification ended on July 15, 1966. Each of these orders of appointment of Executive Officers were to take effect from 16.07.1966 i.e. immediately after 15.07.1966 the date up to which Section 75-A had extended the notification of the temples notwithstanding the Judgment of this Hon'ble Court in **AIR 1965 SC 1578**. True copies of the various orders passed by the Commissioner, HR & CE for appointment of EOs dated 31.01.1966, 12.03.1966, 09.04.1966, and 13.05.1966 is annexed herewith as **Annexure – P/5(Pages to)**.

19. Before setting out further into the malpractices and mismanagement by the EOs, it is pertinent to mention that the Respondent has passed a Govt. order in 1997 as per which the Trustee of a Temple was required to in case of a single Trustee and where there are 2 or more Trustees the Chairman of the Board of Trustees of a religious institution to submit proposals for diversion of surplus funds to the HRCE Commissioner, who shall then pass orders based on his discretion. It also mandated that the said excess funds may be used by the HR & CE Commissioner for secular/non-Hindu purposes also. True Copy of the Utilization of Surplus Funds Rules (G.O. Ms. No. 4524,

Revenue, dated the 5th November, 1960) were framed and amended by G.O. Ms. No. 275 C.T. & R.E. Department, dated 16.07.1997 is annexed herewith as **Annexure – P/6(from page to)**.

20. Set out below are a few instances of such abusive and capricious appointments ostensibly made under Section 45 by the TNHRCE Department in the absence of any rules being framed under the said provision until November 2015. In the 2000-year old *Sri Nellaippar Temple in Tirunelveli*District dedicated to Lord Shiva and belonging to Saivite Religious Denomination, an Executive Officer was appointed vide Order No. 16248/66 dated 13.05.1966. The said Order did not give any reasons for the said appointment. The then Commissioner of the Hindu Religious and Charitable Endowments Department stated in the order that the appointment was made under Section 45 but did not specify the term for which the Order shall remain in force. No Rules had beenprescribed as conditions for appointment of Executive Officersand notified as required under Section 45(1) read with Section 116(2)(1) and Section 116(3) at the time of appointment of the Executive Officer. The said Order remains in force till date and has been further retrospectively legalized by the EO Rules of 2015.As a consequence of the presence of successive EOs in the Temple for over four decades, the Temple has suffered the following harm:

    a. The EOs have interfered regularly with the religious practices and rituals of the Temple to the extent that a number of rituals have ceased to be performed:
    b. The EOs have miserably failed to realize the income due from the landed properties of the Temple and utilize the income for the

benefit of the Temple and its stakeholders, which includes the community of devotees;

c. The religious and heritage value of the Temple has been irreparably damaged due to utter recklessness of the EOs in undertaking new construction without ensuring the safety of the ancient structure;

d. The EOs have allowed encroachment of landed properties, buildings and sites of the Temple by illegal occupants and defaulters of lease agreements;

21. Under Section 87(3) of the 1959 Act, the Temple should be mandatorily subjected to concurrent audit, that is to say, the audit should take place as and when the expenditure is incurred. However, no concurrent audit mandated by the 1959 Act is undertaken in the Temple even though the State Government charges an exorbitant 4% of the gross annual income of the Temple as annual audit fees in addition to 12% an annual contribution. The audit reports of the Temple finalized on 23.09.2013 for the fasli years 1416–1419 (01.07.2006 to 30.06.2009) state that the audit for the five fasli years (1416 – 1420) were done during 01.08.2011 to 01.12.2011 in one go. It is pertinent to note that audit fees for each year have been paid even though the audit began five years later.True copy of the Audit Report for Petitioner Temple in Fasali 1416 – 1418 dated 10.03.2011 is annexed herewith as **Annexure – P/7(Pages to)**.

22. The audit reports, inter alia, record the following serious deficiencies in the Temple's administration:

a. A total of 2139 audit objections were pending resolution from 1966 to 2006 (i.e. from the year of appointment of an Executive Officer to Sri Nellaiappar Temple). The total financial value of the objections amounts to Rs. 2,68,65,041.46;
b. The number of audit objections for the fasli years 1416 -1419 were 139 and the financial value of these objections totaled Rs. 9,00,28,368.00;
c. The rentals and lease amounts due to the properties of the Temple reached an astronomical figure of Rs. 8,14,89,753.64 in the year 2009. No proceedings were taken by the Temple administration under Section 79-C of the 1959 Act through the Regional Joint Commissioner who is vested powers similar to that of the powers of a District Collector under the Tamil Nadu Revenue Recovery Act, 1864;
d. A daily wage employee of the Temple was asked to work as a servant in house of the Regional Joint Commissioner of the HR & CE Department in Tirunelveli. Wages amounting to Rs. 73,000 were paid to him from the Temple funds during fasli years 1416 to 1419 (2006 to 2009). Similarly, a daily wage employee was deputed as a watchman to the Joint Commissioner's residence for 51 days and his wages were paid from Temple funds;
e. Salary amounting to Rs. 2,96,088 was paid from the Temple funds to the Manager of the Officer of the Joint Commissioner, who was serving as a Manager in the said office and not in the Temple from 29.06.2009;

f. Rent arrears from buildings and shops which exist on the land belonging to the Temple from 24 major defaulters ranged from a minimum of two years to fifteen years. The total amount from these 24 defaulters alone was Rs. 1,85,33,618.50. The audit reports further state that the Executive Officers have colluded with the defaulters and have not taken any credible action to realize the arrear amounts;

g. Due to violations of investment guidelines and investment inefficiencies of the State, the Temple incurred income/interest loss of Rs. 5,09,030 during the audit period;

h. About 54 acres of valuable lands located in two villages and belonging to the Temple/its endowments have been encroached for more than a decade and no credible action has been taken by the HRCE Department to recover the lands from the illegal occupants.

23. In the case of the Tiruchendur Temple, the EO was appointed by the HRCE Commissioner vide Order no. 23779/66 dated 10.06.1966 with effect from July 16, 1966. Again, this Order was unreasoned and did not specify the term of appointment of the EO, which has resulted in the presence of the EO till date in the Temple. Following are but a handful of the examples of the harm caused to the Temple by the HRCE Department which ostensibly took over the Temple from the members of the Petitioner No. 1 for "proper administration":

a. 5,389 cows donated to the Temple were apparently stolen in a single audit period, which was pointed out by auditors for

fasliyears 1416-1418. The auditors reported that no FIR was filed against this misappropriation of valuable cattle;

b. For audit relating to the period 1974-75, joint sitting of officials to consider the audit objections and to take action in respect of them took place only in the year 2014 i.e. 40 years after the audit took place. Predictably, the audit objections were "closed" citing delay of 40 years;

c. For the Fasli year 1424 (01.07.2014 - 30.06.2015), it was found that the acts of commission and omission of the HRCE Department resulted in causing a loss to the tune of approximately INR 4.2 crores under five heads of audit objections alone;

24. It is also further pertinent to mention that in the year 2015 Rules for appointment of EO were framed u/s 43A and 45 of the Act. The said Rules were framed only after castigation by the Hon'ble Supreme Court in the **Chidambaram Temple Case** and the said Rules sought to validate the continuance of EOs who were appointed under the erstwhile procedures which were declared unconstitutional by the Hon'ble Supreme Court in **Chidambaram Temple Case**. True Copy of the Conditions for Appointment of Executive Officers Rules, 2015 (G.O. Ms. No. 260, Tourism, Culture and Religious Endowments (RE4-2), framed under Sections 43A and 45 of the Act dated 06.11.2015 is annexed herewith as **Annexure – P/8 (pages to)**.

That in furtherance of what has already been stated above, the Petitioners would like to bring out the pernicious effect of the State control of Temples in the following paragraphs:

25. Apart from that, the said HRCE legislations have resulted in the following:

a. Rampant corruption, commercialization and numerous instances of inefficiencies in the day-to-day administration;

b. Statist interference in religious matters of Hindu Institutions by Governments in power;

c. Non-protection of the endowed properties and non-realization of the due income therefrom;

d. Irreparable and irreplaceable loss of heritage and antiques thousands of heritage temples, primarily in Tamil Nadu in the name of renovation and "development";

e. Theft of icons, idols and other valuable statuaries and antique jewels by HRCE Officials along with State Police Officials and idol smugglers.

26. In all the decades that Hindu religious institutions in Tamil Nadu have been under the thumb of the HRCE Department, the ability of the Hindu community to administer its own institutions has been systematically clipped and pared down. Post the promulgation of the 1959 Act, till date, close to 44,121 temples in Tamil Nadu have been taken over by the state government, out of which approximately 85 per cent of the Temples receive INR 10,000 or less in contributions from devotees. In other words, Temples with a monthly income of less than INR 1,000 are under state control, which defies logic and reasonableness. Since taken over by Government, there have been no poojas in 16,000 temples due to the alienation of the local communities

from the temple administration and care by Government. State appointees, who go by the title of 'executive officers' and 'fit persons', are appointed to Temple administrations without there being a due cause and for indefinite periods. In most instances, there is no written order pursuant to which these appointments have been made, which violates the fundamental requirements of natural justice. Once appointed, the executive officers stay put for good and effectively take control of the administration of temples in all respects, secular and religious. From the approval of budgets for performance of daily rituals in the temple to the appointment of key functionaries to the temple administration, the executive officer has the last word. While the Supreme Court's verdict in the *Chidambaram Temple case*, wherein the court came down heavily on indefinite and unreasoned appointments of executive officers, served to loosen the stranglehold of the HRCE Department to a limited extent, the rot is so deep that it requires an invasive surgery. Clearly, the State is a tenant which nevervacates once it enters aTemple's framework.

27. Further, the reign of the HRCE Department has wreaked havoc on the upkeep of the Temples in Tamil Nadu, the observance of their religious traditions and the preservation of their movable and immovable assets. This criticism stands vindicated by a judgment delivered by the Madras High Court on July 21, 2017 in a writ petition filed by a public-spirited citizen alleging the connivance between HRCE officers, officers of the Tamil Nadu State Police and idol smugglers in the theft of Temple idols and jewels. In the said decision, the High

Court had acknowledged the rich cultural heritage of Tamil Nadu and the duty to preserve for future generations whatever is left of the culture. The Court then went on to categorically find that the HRCE Department of Tamil Nadu had miserably failed in discharging its primary duty, i.e. protecting temples and preserving their valuable heritage, which is a scathing report card of the HRCE Department and a vindication of the long-standing position of Temple freedom advocates that State HRCE departments are the worst when it comes to looting or facilitating loot of Temple heritage. The High Court further invoked articles 25 and 49 of the Constitution to give a concrete constitutional peg to the rights of Temples and the obligations of the state with respect to protection of Temples and antiques of religious or cultural significance. True copy of the order dated 21.07.2017 in Crl. O. P. No. (s) 8690 and 12060 of 2017 passed by the Hon'ble High Court of Madras in the case titled **R. Venkatraman v/s D.G.P and Ors.** is annexed herewith as **Annexure – P/9(from pages to)**.

28. Here are a few more glaring instances of such mis-management across the board which prove that this is not an epidemic limited to only the State of Tamil Nadu:

a. There are no external audits by professional Chartered Accountants even for Temples that earn more than INR 10 Crore per annum. Such Temples in the three States of Karnataka, Andhra Pradesh and Tamil Nadu are audited by internal government auditors only. Even

TirumalaTirupatiDevasthanamwhich earns about INR 3000 Crores per annum does not have an external audit;

b. These internal audits too are ineffective since most of the audit objections recorded by the internal government auditors are not resolved as required under law and they are kept pending for decades. Audit objections pending as on 31.03.2016 for Tamil Nadu Temples that are under the administrative control of the Tamil Nadu Hindu Religious and Charitable Endowments Department are a mind-boggling 1.38 million audit objections;

c. Most of the landed properties of Hindu Temples, Mathas and Endowments in Karnataka, Andhra Pradesh and Tamil Nadu are not realizing the due income therefrom for the Hindu Institutions they belong to. More than 1,00,000 acres in these States are under encroachment or hostile occupation.

d. The 500-year old Raja Gopuram of the ancient Sri Kalahasti Siva Temple in Sri Kalahasti, Andhra Pradesh came crumbling down to earth on May 26, 2010. The burning to cinders of an ancient Mandapam viz., VeeraVasantharayaMandapam on February 2, 2018 in the famous Sri MeenakshiSundareswarar Temple, Madurai, Tamil Nadu that was resplendent with unique statuaries is only one of the hundreds of examples of apathy shown to heritage structures by Government Administrators in ancient Temples. The former was due to indiscriminate sinking of bore wells by commercial establishments that were illegally allowed adjacent to the Temple and the latter was due to the 127 shops that were permitted against law inside the Temple;

e. Funds from Temples have been transferred by EOs under Section 36 of the 1959 Act for purposes which are beyond the pale of Section 66, and in any case, it is not for the EO to transfer funds, but only for the trustees. Such funds have been used for construction of buildings for the HRCE Department, which has no statutory sanction whatsoever. Further, since all civil works which cost INR 1.00 Crore or more need Government approval, the HRCE Commissioner, in some instances has split the total cost into three different works of Rs. 98.00 lakhs, 75.00 lakhs and 20.00 lakhs to circumvent the need for Government approval;

f. An RTI reply from the TNHRCE in 2012 revealed that out of 4,78,462.46 acres belonging to Hindu religious institutions in TN, 14,101.15 acres had been wrongly transferred to individuals under the Updating Registry Scheme (UDR) and 4,409.65 acres were under illegal encroachment. Importantly, only 28.09 Crores had been collected as revenues from the remaining 4,64,361.31 acres belonging to Hindu religious institution. Also, it was revealed that only INR 25.96 Crores was collected as revenue from 2,26,03533 Sq ft of buildings belonging to Hindu religious institutions and under the administration of the HRCE, while 18,47,815 Sq ft of buildings are under illegal encroachment. It was also revealed that out of 29,14,66,214 Sq ft belonging to 33,627 Temple sites, 1,33,30,667 Sq ft was under illegal encroachment and only INR 40.70 Crores had been collected as income from the remaining 27,81,35,547 Sq ft;

g. Such instances are equally rampant in the State of Kerala. About 25,000 acres belonging to Temples that are governed by the Malabar Devaswom Board are under hostile encroachment. No progress has been made by the State Government in recovering these lands even after an Hon'ble Division Bench directed them to do so in an expeditious manner by an order dated March 12, 2018 in W.P.(C) 27910 of 2015;

h. Serious instances of mismanagement of Temples that come under the Travancore and Cochin Devaswom Boards have been reported by the High Power Commission appointed by Hon'ble High Court of Kerala in W.P. (C) Nos. 26692, 27575 and 22384 of 2006 in which Mr. Justice K.S. Paripoornan (Chairman), Mr. Justice B.M. Thulasidas and Mr. D.R. Kaarthikeyan were members. A few of the instances reported in Volume I of the report are given below:

   i. Luxury cars were bought for the use of Devaswom Board members and even their houses were furnished using funds of Devaswom Board managed temples (Pages 69-77 of the report);

   ii. "Selection of Santhies (Priests), much less Melsanthies (Chief Priest), have been done by the Travancore Devaswom Board very casually. The selection of Santhies/ Melsanthies have been invariably done on considerations other than merit and it reflects a very sad state of affairs". (Para 93 of Page 118 of the Report);

iii. "The above unauthorized ventures (schools and other similar institutions) are being run by the Board on commercial basis, and not on humanitarian basis and not for the educational upliftment, social and cultural advancement and economic betterment of Hindu community" (Para 108 of Page 138 of the Report);

iv. An observation made by the Hon'ble Kerala High Court in O.P. No. 3821 of 1990 records the following concerning the functioning of Travancore Devaswom Board and Cochin Devaswom Board:

"… While considering the audit reports, innumerable illegalities, misappropriation of funds, etc., in the two Boards came to light. It was also noticed that the functioning of the statutory Boards were far from satisfactory, that the writ of the Boards are not holding field and the utter inefficiency in the management has resulted in mismanagement, incompetence and indiscipline and also disabling this Court from discharging its duty and finalizing the audit report…. Instances also came to light pointing out, fraud at various levels in the conduct of the administration; as also defalcation of misappropriation of funds… In paragraph 9, this Court has pinpointed the ills that existed in the two Boards, which require expertise and effective treatment as follows:

(a) The background, stated herein above, disclose gross neglect and improper and inefficient administration in the two Devaswom Boards;

(b)Failure to maintain proper accounts, registers, disclosure of leakages, total lack of financial discipline;

(c) The inability of the Devaswom to get cooperation and obedience to their orders even from the sub-ordinate officers and poor results in spite of warnings, coercive steps on different occasions administered by the Court;

(d) The unsatisfactory way in which, cases of misappropriation and leakages in the various temples were dealt with by the Boards;

(e) "Drift" discernable in the attitude of the Board and the staff;

(f) Failure to even make honest attempts to cope up with the call of duty and the challenging situation;

(g) Total neglect of the affairs and conduct of the religious institutions and utter mismanagement in the major temples disclosed in the administration absence of details, accounts, failure to produce them, misappropriation and misapplication of funds…."

29. It is evident from the above that the State Governments and Endowment Departments/Devaswom Boards which are populated by State Appointees at the expense of Temple revenues have not exactly covered themselves in glory in providing "proper and efficient

management" to Temples, which is their statutory pretext for entering the administration of Temples. In light of the above facts and submissions, apart from patent unconstitutionality, it is evident that the religious institutions of the Hindu community suffer almost irreparable, irreversible and incalculable degradation at the hands of State appointees. Therefore, it imperative that their role is limited to the issue of addressing mismanagement only when it arises and allowing the Hindu community to run its own religious institutions with autonomy, transparency and accountability.

30. In light of the above facts, it is evident that an investigation into the conduct of the HRCE Department is warranted, preferably by a Special Investigation Team constituted by this Hon'ble Court and led by an officer of high integrity. One such officer is Shri A.G. PonManickavel, Inspector General of Police (Idol Theft Wing), whose term as a Special Officer was extended by the Madras High Court *vide* Order dated July 21, 2017 to look into idol smuggling racket and prosecute such cases. In fact, his appointment was upheld by this Hon'ble Court in SLP No. 6139-6140 of 2017 *vide* Order dated September 1, 2019 when the Respondent sought to transfer him from Idol theft cases.

31. The cause of action arose in favour of the Petitioners when the Impugned Act came into force and when an Executive Officer was appointed to the *Sri Subrahmanya Swami Devasthanam* in 1966. The cause of action is a continuing one since an Executive Officer continues to be present in the Temple and the Impugned Provisions and Rules continue to impinge on the fundamental rights of the Petitioners.

32. As recent as 2018, the Respondent has passed a G.O whereby the Temple Lands cannot be sold to private parties, but to Public Sector Undertakings (PSUs) and to Government department. The present G.O is nothing but an eye-washer as the contention of the Petitioners from the fact stated hereinabove is of corruption in the Respondent and the present G.O will not only be a continuation of the same, but will legalize loot of Temple Lands by the State, a clear violation of Fundamental Right. True copy of the G.O. (Ms) No. 200 dated 02.11.2018 passed by the Govt. of Tamil Nadu is annexed herewith as **Annexure – P/10(Pages to)**.

33. It is submitted that the Petitioner no.2 issued notice to the Additional Chief Secretary Tourism, Culture and Religious Endowments Department Government of Tamil Nadu and The Commissioner Hindu Religious and Charitable Endowments.

True copy of the notice issued by Petitioner no.2 to the Additional Chief Secretary Tourism, Culture and Religious Endowments Department Government of Tamil Nadu and The Commissioner Hindu Religious and Charitable Endowments Department dated 26.02.2019 is annexed herewith as **Annexure – P/11 (Pages to)**

34. Further, an RTI Reply dated July 2019 revealed widespread mismanagement in invitation of Tenders and undertaking of construction activities in various temples. In particular 25 further supported the contentions as stated in the RTI Reply. True copy of Documents to support Paragraph 25, Madurai JC RTI, RTI Reply dated July 2019 is annexed herewith as **Annexure – P/12 (from pages to)**.

GROUNDS

Following Grounds is being adverted to by the Petitioners in support of their Writ Petition:

A. BECAUSE the Impugned Provisions of the Act and Rules violate the fundamental rights of the Petitioners under Articles 14, 25, 26, 29 and 31A;

B. BECAUSE the Impugned Provisions of the Act and Rules are fundamentally discriminatory since they stifle the ability of the Hindu community to manage its own religious institutions without having to suffer the constant presence and interference of the State Government and its Officers through the HRCE Department;

C. BECAUSE the Impugned Provisions of the Act and Rules have stifled the religious and cultural rights of the Hindu community, including the Petitioners;

D. BECAUSE out of the Impugned provisions of the 1959 Act, Sections 24, 35, 36, 45, 71-76 correspond to Sections 21, 30, 31, 56, 63-69 of the 1951 Act, which were struck down by this Hon'ble Court in 1954 in **Shirur Math Case**;

E. BECAUSE quite a few of the Impugned Provisions and Rules are against the *ratio* of this Hon'ble Court in *SDG Pandara Sannadhi* and *Chidambaram;*

The following Grounds bring out the comparison of the Corresponding provisions of the 1959 Act and the 1951 Act along with the observations of the Hon'ble Supreme Court in **Shirur Math Case**.

F. BECAUSE Section 24 of the 1959 Act is a mere repetition of the Section 21 of the erstwhile 1951 Act which was struck down as unconstitutional, as tabulated below:

Sl. No.	**1951 Act**	**1959 Act**
1.	Section 21 - Power to enter religious institution (1) The Commissioner, Deputy Commissioner, Assistant Commissioner or such officers or servants of a religious institution as may be authorised by the Commissioner, Deputy Commissioner, or Assistant Commissioner in this behalf, shall have *power to enter the premises of any religious institution or any place of worship for the purpose of exercising any power conferred, or discharging any duty imposed by or under this Act.* (2) If any such officer or servant is resisted in the exercise of such power or discharge of such	Section 24 - Power to enter religious institutions (1) The Commissioner, or an Additional or a Joint or a Deputy or an Assistant Commissioner or any officer authorized by the Commissioner or Additional Commissioner or Joint Commissioner or Deputy Commissioner or the Assistant Commissioner in his behalf shall have *power to enter the premises of any place of worship for the purpose of exercising any power conferred or discharging any duty imposed by this Act, or the rules made thereunder.* (2) If any such officer is resisted in the exercise of such power or

	duty, the Magistrate having jurisdiction shall, on a written requisition from such officer or servant, direct any police officer not below the rank of Sub-Inspector to render such help as may be necessary to enable the officer or servant to exercise such power or discharge such duty. (3) *In entering the premises of a religious institution or place of worship*, the person authorized by, or under sub-section (2) or the police officer referred to in sub-section (2) shall, if practicable, give notice to the trustee and shall have due regard to the practices and usages of the institution.	discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such officer direct any police officer not below the rank of Sub- Inspector to render such help as may be necessary to enable the officer to exercise such power or discharge such duty. (3) *Before entering the sanctum sanctorum or poojagruha or any other portion held specially sacred within the premises of a religious institution or place of worship*, the person authorized by or under sub-section (1) or the police officer referred to in sub-section (2), shall give reasonable notice to the trustee or head of the institution and shall have due regard to the religious practice or usage of the institution.

		(4) *Nothing in this section shall be deemed to authorize any person who is not a Hindu to enter the premises or place referred to in this section or any part thereof.* *(5) If any question arises, whether the religious practice or usage of the institution prohibits entry into the sanctum sanctorum or poojagruha or any other portion held specially sacred within the premises of a religious institution, or place or worship, by the person or police officer mentioned in sub-section (3), the question shall be referred for the decision of the Commissioner. Before giving any decision on any such question, the Commissioner may make such enquiry as he deems fit.* (6) Any person aggrieved by the decision of the

		Commissioner under subsection (5) may, within one month from the date of the decision*, appeal to the Government.* Provided that the Government shall not pass any order prejudicial to any party unless he has had a reasonable opportunity of making his representations.

G. BECAUSE In striking down Section 21 of the 1951 Act, this Hon'ble Court in **Shirur Math Case** had held as follows:

"It is well known that there could be no such thing as an unregulated and unrestricted right of entry in a public temple or other religious institution, for persons who are not connected with the spiritual functions thereof. It is a traditional custom universally observed not to allow access to any outsider to the particularly sacred parts of a temple as for example, the place where the deity is located. There are also fixed hours of worship and rest for the idol when no disturbance by any member of the public is allowed. Section 21, it is to be noted, does not confine the right of entry to -the outer portion of the premises; it does not even exclude the inner sanctuary the 'Holy of Holies' as it is said, the sanctity of which is zealously preserved. It does not say that the entry may be made after due notice to the head of the institution and at such

hours which would not interfere with the due observance of the rites and ceremonies in the institution. We think that as the section stands, it interferes with the fundamental rights of the Mathadhipati and the denomination of which he is head guaranteed under articles 25 and 26 of the Constitution. Our attention has been drawn in this connection to section 91 of the Act which, it is said, provides a sufficient safeguard against any abuse of power under section 21. We cannot agree with this contention. Clause (a) of section 91 except from the saving clause all express provisions of the Act within which the provision of section 21 would have to be included. Clause (b) again does not say anything about custom or usage obtaining in an institution and it does not indicate by whom and in what manner the question of interference with the religious and spiritual functions of the Math would be decided in case of any dispute arising regarding it. In our opinion, section 21 has been rightly held to be invalid."

H. BECAUSE, the untrammeled amplitude of the erstwhile Section 21 coupled with the absence of safeguards to prevent defilement or desecration led to invalidation of Section 21. While, on the face of it, the current Section 24 conveys the impression that it has addressed the grave lacunae pointed out by this Hon'ble Court in the erstwhile Section 21, a clear reading of Section 24 makes it abundantly evident that it facilitates greater concentration of power in the hands of the Commissioner to decide as to whether and which portion of the premises of a Temple is sacred or not in accordance with the belief, practice and tradition of the Temple.

The Commissioner has no training in tradition to decide such intricate issues of faith and such questions must be referred to trained traditional experts or religious heads who are considered final authorities in regard to the traditions and practices of a given Temple. Further, even if the official entering the Temple under Section 24 is a practicing Hindu, it still does not make him an expert on the tradition that applies to a given Temple. Importantly, there is no safeguard against the entry of a person who is a nominal Hindu but has no faith in either Hinduism or the tradition of a given Temple. In light of the lack of above safeguards, a State appointed authority cannot be given the powers currently bestowed by Section 24 of the 1959 Act since it is clear violation of Articles 14 and 25, and where applicable Articles 26 and 29.

I. BECAUSE Section 35 of the 1959 Act is a mere repetition of Section 30 of the erstwhile 1951 Act which was struck down as unconstitutional, as tabulated below:

S. No.	**1951 Act**	**1959 Act**
1.	Section 30 - Authority of trustee to incur expenditure for securing the health etc. of pilgrims and worshippers and for the training of Archakas etc. (2) In incurring such expenditure or making such	Section 35 - Authority of trustee to incur expenditure for securing the health etc. of pilgrims and worshippers and for the training of Archakas etc.

	contributions the trustee shall have due regard to such general or special instructions as may be given by the Commissioner or in the case of an institution over which an Area Committee has jurisdiction, also by such Committee.	(2) In incurring such expenditure, the trustee of the religious institution other than a math or a specific endowment attached to a math shall be guided by such general or special instructions as may be given by the Commissioner.

J. BECAUSE in relation to Section 30, this Hon'ble Court held as follows in **Shirur Math Case**:

'24. In relation to Section 30 of the 1951 Act, this Hon'ble Court held as follows in the Shirur Math judgment:

"…If the trustee is to be guided but not fettered by such directions, possibly no objection can be taken to this clause; but if he is bound to carry out such instructions, we do think that it constitutes an encroachment on his right. Under the law, as it stands, the Mahant has large powers of disposal over the surplus income and the only restriction is that he cannot spend anything out of it for his personal use unconnected with the dignity of his office. But as the purposes specified in sub-clauses (a) and (b) of section 30(1) are beneficial to the institution there seems to be no reason why the authority vested in the Mahant to spend the surplus income for such purposes should be taken away from-him and he should be

compelled to act in such matters under the instructions of the Government officers. We think that this is an unreasonable restriction on the Mahant's right of property which is blended with his office".

K. BECAUSE despite the clear ratio of this Hon'ble Court with respect to the unreasonableness of the fetter cast by the erstwhile provision, the Respondent has interpreted the ratio as being solely applicable to a Math and not to other Hindu religious institutions. It is indeed shocking that the spirit of autonomy which this Hon'ble Court emphasized upon in the **Shirur Math Case** has been rendered otiose by the Respondent by proceeding under the assumption that Hindu religious institutions other than Maths are not entitled to the same degree of autonomy and freedom as Maths. There is no intelligible criterion that has been identified for the said differentiation, despite the fact that the right to manage religious institutions is the fundamental right of communities, whether or not they constitute a religious denomination within the meaning of Article 26. This is because it cannot be the argument of any reasonable person that the rights available to a religious denomination within a religion or a section thereof under Article 26 are not available to non-denominational religious institutions of the same religion. This would be contrary to Articles 14, 25 and 26. Importantly, the said provision also violates the rights under Article 26 of denominational religious institutions other than Maths.

L. BECAUSE Section 36 of the 1959 Act is a mere repetition of Section 31 of the erstwhile 1951 Act which was struck down as unconstitutional as enumerated in the table below:

S. No.	**1951 Act**	**1959 Act**
1.	Section 31 - Cypres application of surplus funds of endowments. (1) The Commissioner may, after holding an enquiry in such manner as may be prescribed by order, declare that, after satisfying adequately the purposes of the religious institution and after setting apart a sufficient sum for the repair and renovation of the buildings connected with the math or temple or the endowments attached thereto, there is a surplus which is not required for any such purpose, and may, by such order, direct thatsuch surplus as is	Section 36 - Utilization of surplus funds (1) With the previous sanction of the Commissioner, and subject to such conditions and restrictions as may be prescribed, the trustee of a religious institutions may appropriate for any of the purposes specified in sub-section (1) of section 66— (i) any portion of the accumulated surplus of such institution, and (ii) if, after making adequate provision for the purposes referred to in subsection (2) of section 86 and also for the arrangements and the training referred to in sub-

	declared to be available, be appropriated to religious, educational or charitable purposes: Provided that, in the case of a temple founded and maintained by a section of the Hindu Community, the surplus shall, as far as possible, be utilized for the benefit of the said section for the purposes mentioned above. (2) It shall be competent to the Commissioner when giving a direction under sub-section (1) to determine what portion of such surplus shall be retained as a reserve fund for the math or temple and to direct the remainder to be appropriated to the purposes specified in that sub-section.	section (1) of section 35, there is a surplus in the income of the institution for any year or any portion of such surplus : Provided that the trustee shall, in appropriating the surplus under this section, give preference to the purposes specified in items (a) to (g) of subsection (1) of section 66: Provided further that, before according the sanction under this section, the Commissioner shall publish the particulars relating to the proposal of the trustee in such manner as may be prescribed, invite objections and suggestions with respect thereto and consider all objections and suggestions received from persons having interest:

	(3) The Commissioner may, at any time, by order and in the manner provided in subsection (1) modify or cancel an order passed under that sub-section. (4) The order of the Commissioner under this section shall be published in the prescribed manner. The trustee or any other person having interest may, within six months of the date of such publication, institute a suit in the Court to modify or set aside such order. Subject to the result of such suit, and of the appeal, if any, under section 31-B, the order of the Commissioner shall be final and binding on the	Provided also that, the sanction aforesaid shall be published in such manner as may be prescribed: Provided also that, nothing in this section shall prevent the trustee of a math or of a specific endowment attached to a math from utilizing the surplus referred to in this section in such manner as he deems fit.

	trustee and all persons having interest. (5) Any decision of the Court under this section may, at any time for sufficient cause, be modified or cancelled by the Court in a suit instituted by the Commissioner or the trustee or any person having interest but not otherwise.	

M. BECAUSE while quashing Section 31 of the 1951 Act, this Hon'ble Court held the following in **Shirur Math Judgment**:

"… it, is not understood why sanction of the Deputy Commissioner should be necessary for spending the surplus, income for the propagation of the religious tenets of the order which is one of the primary duties of a Mahant to discharge. The next thing that strikes one is, whether sanction is necessary if the trustee wants to spend the money for purposes other than those specified in section 59(1)? If the answer is in the negative, the whole object of the section becomes meaningless. If, on the other hand, the implication of the section is that the surplus can be spent only for the purposes specified in section 59(1) and that too with the

permission of the Deputy Commissioner, it undoubtedly places a burdensome restriction upon the property rights of the Mahant which are sanctioned by usage and which would have the effect of impairing his dignity and efficiency as the head of the institution. We think that sections 30(2) and 31 have been rightly held to be invalid by the High Court."

N. BECAUSE in light of the clear finding of this Hon'ble Court, it is for the Respondent to explain as to why is such a meaningless and unreasonable fetter u/s 36 of the 1959 Act justified in the context of Hindu religious institutions other than *Maths*, and where does the Respondent draw their power from, to strike such a distinction which Articles 25 and 26 do not recognize. The removal of the words "Cypresapplication of surplus funds" found in Section 31 of the 1951 Act and replacing them with "Utilization of Surplus funds" in Section 36 of the 1959 Act is a deliberate modification carried out to interfere in the religious and administrative rights. In fact, Section 36 is one of those provisions which exemplify the fundamental problem with HRCE legislations such as the 1959 Act i.e. State Governments operate under the assumption that the Constitution allows them to perform the role of a 'Big Brother' with respect to Hindu religious institutions alone and that a license permit Raj-like scenario was envisaged under Article 25(2)(a) which stifles, suffocates and renders subservient only Hindu religious institutions to the whims and fancies of the State and its appointees. Neither was this the intention of the framers of the

Constitution nor does this sit well with any established canon of Secularism which requires the State to steer clear from managing any religious institution, except to the extent permitted by and in accordance with the Constitution. The ensuing portions of this Petition will bear out that every Impugned provision and Rule, and the Act and Rules as a whole, facilitate State entrenchment and subversion of Hindu religious institutions, thereby depriving the Hindu community alone of its fundamental rights to manage its religious institutions through community management structures, with minimal state intervention or intrusion.

O. BECAUSE u/s 36 of the 1959 Act the Utilization of Surplus Funds Rules (G.O. Ms. No. 4524, Revenue, dated the 5th November, 1960) were framed and amended by G.O. Ms. No. 275 C.T. & R.E. Department, dated 16th July 1997. These Rules require the trustee or where there are two or more trustees, the Chairman of the Board of Trustees of a religious institution to submit proposals for diversion of surplus funds to the HRCE Commissioner, who shall then pass orders based on his discretion. It is submitted that the very existence of such a structure militates against the spirit of autonomy granted to religious institutions, including Hindu religious institutions, and creates a mechanism with immense propensity for bureaucratization and hence corruption. Most importantly, these Rules also envisage and mandate expending the surplus amount on non-Hindus or for secular purposes, which cannot be dictated by the HRCE Commissioner since the resources

belong to the Hindu community and not the Government. It is for the community and the community alone to decide how, when, where and how much to spend and not for any arm of the State, especially the Executive to dictate. Such a structure goes well beyond the minimalist regulatory framework prescribed by Article 25(2)(a) and is clearly violative of Articles 14, 25(1), 25(2)(a) and 26 where applicable to denominational institutions.

P. BECAUSE Sections 43-A and 45 of the 1959 Act are a mere repetition of Section 56 of the erstwhile 1951 Act which was struck down as unconstitutional as enumerated in the tabular form given hereinbelow:

Sl No.	1951 Act	1959 Act

1.	Section 56.- (1) For the administration of the secular affairs of a math, the trustee of the math shall, when so required by the Commissioner, appoint a competent person as manager and report the name of the person so appointed, to the Commissioner; and in default of such appointment, the Commissioner may himself make the appointment. (2) The manager appointed under sub section (1) shall be subordinate to the trustee of the math and shall, in addition to the trustee, be responsible for the due submission to the Commissioner of the registers, accounts and budgets of the math, and	Section 43-A – (1)Notwithstanding anythingcontained in section 45 or any other provision in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an Executive Officer for any temple under the control of a math. (2) The Executive Officer shall be subject to the control of the trustee of the math and shall exercise such powers and discharge such duties as may be prescribed. (3) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the Executive Officer.

	also for the performance of the other statutory duties imposed upon the trustee by or under this Act.	Section 45 - Appointment and duties of Executive Officers (1)Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math. Explanation — In this section "math" shall not include a temple under the control of a math. (2) The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner.

		Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in subsection (1) shall be assigned to the executed officer. (3) The Commissioner may define the powers and duties which may be exercised and discharged respectively by the executive officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math. (4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive Officer.

Q. BECAUSE in relation to the erstwhile Section 56, this Hon'ble Court had held as follows:

"Section 56… makes provision of an extremely drastic character. Power has been given to the Commissioner to require the trustee to appoint a manager for administration of the secular affairs of the institution and in case of default, the Commissioner can make the appointment himself. The manager thus appointed -though nominally a servant of the trustee, has practically to do everything according to the directions of the Commissioner and his subordinates. It is to be noted that this power can be exercised at the mere option of the Commissioner without, any justifying necessity whatsoever and no pre-requisites like mis-management of property or maladministration of trust funds are necessary to enable the trustee to exercise such drastic power. It is true that the section contemplates the appointment of a manager for administration of the secular affairs of this institution. But no rigid demarcation could be made as we have already said between the spiritual duties of the Mahant and his personal interest in the trust property. The effect of the section really is that the Commissioner is at liberty at any moment he chooses to deprive the Mahant of his right to administer the trust property even if there is no negligence or maladministration on his part. Such restriction would be opposed to the provision of article 26(d) of the Constitution. It would cripple his authority as Mahant altogether and reduce his position to that of an ordinary priest or paid servant."

R. BECAUSE it is evident from Sections 43-A and 45 of the 1959 Act that the Respondent believes that except for a *Math*, it is permissible under the Constitution to appoint Executive Officers to a Hindu religious institution such as a Temple or a Temple controlled by a *Math*, without there being even a finding of mismanagement. Although this provision has been interpreted by a Constitution Bench of this Hon'ble Court in **Sri La Sri SubramaniaDesigaGnanasambandaPandaraSannadhi v. State of Madras, AIR 1965 SC 1683 ("SDG PandaaraSannidhi Case")**, and subsequently in **Chidambaram Temple Case** to conclude that an Executive Officer may be appointed only pursuant to a written reasoned order which makes out a case of mismanagement in a Hindu religious institution, it is evident that on the face of it, this provision vests untrammeled powers in the hands of the Commissioner. It is important to note that until November 2015, no rules had been notified under the said provision despite the provision being in force since 1959. Even the said Rules go well beyond the limitation imposed by this Hon'ble Court in the *Chidambaram Temple* Judgments, and are therefore the subject-matter of challenge in the instant Petition. Clearly, the provision is in clear violation of fundamental rights of the members of the Hindu community under Articles 14 and 25, and denominational rights of groups such as the members of the Petitioner No. 1 under Articles 26 and 29.

S. BECAUSE as already stated hereinabove the Conditions for Appointment of Executive Officers Rules, 2015 (G.O. Ms. No. 260, Tourism, Culture and Religious Endowments (RE4-2), dated 6th November 2015) (**"EO Rules"**) were framed under Sections 43A and 45 of the Act and did not exist until after the castigation by this Hon'ble Court in the **Chidambaram Temple Case** for appointing EOs without promulgation of the Rules. However, even the Rules which have been promulgated run directly counter to the ratio and intent of the said Judgments. The EO Rules, framed by the Respondent No. 1 herein after a period of nearly 55 years, were notified only to tide over the illegality of the appointment of Executive Officers who have been appointed thus far under Section 45 of the 1959 Act and also to justify subsequent arbitrary and unreasoned appointments under Sections 43-A and 45 of the 1959 Act. This is evident from the fact that the Rules seek to brazenly validate the continuance of Executive Officers who have been appointed to Temples for whom no orders of appointments were passed or where such orders have since ceased to exist.

T. BECAUSE A reading of the EO Rules demonstrates that the Rules go beyond the mandates of Sections 43-A and 45, which themselves are under challenge, and further impinge on the rights of Hindus to administer their religious institutions under Articles 25 and 26. For instance, the proviso to Section 45(2) assumes significance with respect to the scope of appointment of EOs and their powers. The said proviso clearly states that only such powers

and duties as appertain to the administration of the properties of the religious institution referred in sub-section (1) shall be assigned to Executive Officer. Thus, it is evident that the Executive Officers appointed under Section 45(1) have powers and duties only to administer the properties of the Temple and not the Temple itself. This assumes importance in the instant challenge since a reading of Rule 3 of the said Rules establishes that the very trigger for appointment of EOs to Temples by the HRCE Commissioner goes beyond Section 45(2). Importantly, if there is even a scintilla of doubt that the 1959 Act is effectively an instrumentality of the coercion of Hindu religious institutions by the State, Rule 3 leaves nothing to imagination. The sheer breadth of the language of Rule 3(i), (ii), (viii) and (x) is proof of the fact that there is no restrain, check, balance or safeguard to limit the scope of the appointment and powers to issues which are permitted by the Act, which themselves are under challenge. In other words, this is a case where the delegated legislation goes beyond an already unconstitutional provision, thereby making a case where the servant outdoes the master.

U. BECAUSE the *carte blanche* power provided by Rule 3(x) to the HRCE Commissioner to appoint EOs to Hindu religious institutions makes a complete mockery of the façade created by the so-called grounds for appointment from Rule 3(i) to (ix) since it permits appointment for "any reason", which effectively also means without reason. It is indeed shocking that the Respondent has

promulgated such Rules which fly in the face of the ratio and dictum of this Hon'ble Court in **Chidambaram Temple Case** which led to the very promulgation of Rules which have not existed for 55 years despite an express statutory mandate. Further, according to the ratio of this Hon'ble Court in **SDG Pandara Sannadhi Case** and **Chidambaram case**, any appointment of Executive Officer by the HRCE Commissioner cannot be for an indefinite period. This would mean that such appointment based on clearly reasoned orders identifying mismanagement can only be for reasonable periods. In view of this, Rule 3, which permits appointment for a period of five years at a time, runs counter to the dictum as well as Articles 25 and 26. If the State indeed needs five years to correct mismanagement in a Temple, it begs the question as to how does the State believe that it is better placed to correct mismanagement than members of the community itself. This mischief is further compounded by Rule 7 which renders even the broad fetters of Rule 3 completely otiose. Also, if there was ever a list of consent obtained through statutorily sanctioned State coercion, Rules 3(viii) and 7(iii) would figure right at the top and would compete with each other for the most pernicious example.

V. BECAUSE Sections 71 – 76 of the 1959 Act is a mere repetition of Sections 63 – 69 of the 1951 Act which was struck down as unconstitutional in the **ShirurMath Case**. The said provisions deal with appointment of Executive Officers (dealt with in para [s]

15 – 21 in Facts). The comparison is brought about in the table below:

S. No.	**1951 Act**	**1959 Act**
1.	Section 63- Issue of notice to show cause why institution should not be notified (1)Notwithstanding that a religious institution is governed by a scheme settled or deemed to have been settled under this Act, where the Commissioner has reason to believe that such institution is being mismanaged and is satisfied that in the interests of its administration, it is necessary to take proceedings under this Chapter, the Commissioner may, by notice published in the	Section 71- Issue of notice to show cause why institution should not be notified. (1) Notwithstanding that a religious institution is governed by a scheme settled or deemed to have been settled under this Act, where the Commissioner has reason to believe that such institution is being mismanaged and is satisfied that in the interest of its administration, it is necessary to take proceedings under this chapter, the Commissioner may, by notice published in the prescribed manner, call upon the trustee and all other persons having interest

	prescribed manner, call upon the trustee and all other persons having interest to show cause why such institution should not be notified to be subject to the provisions of this Chapter. (2) Such notice shall state the reasons for the action proposed, and specify a reasonable time, not being less than one month from the date of the issue of the notice, for showing such cause. (3) The trustee or any person having interest may thereupon prefer any objection he may wish to make to the issue of a notification as proposed. (4) Such objection shall be in writing and shall reach the commissioner	to show causes why such institution should not be notified to be subject to the provisions of this Chapter. (2) Such notice shall state the reasons for the action proposed and specify a reasonable time not being less than one month from the date of the issue of the notice for showing such cause. (3) The trustee or any person having interest may thereupon prefer any objection he may wish to make to the issue of a notification as proposed. (4) Such objection shall be in writing and shall reach the Commissioner before the expiry of the time specified in the notice aforesaid or within

	before the expiry of the time specified in the notice aforesaid or within such further time as may be granted by the Commissioner.	such further time as may be granted by the Commissioner.
2.	Section 64 – Consideration of objections, if any, and notification of institution. (1) Where no such objection has been received within the time so specified or granted, the Government may, on receipt of a report from the Commissioner to that effect, by notification published in the Fort. St. George Gazette, declare the religious institution to be subject to the provisions of this Chapter.	Section 72 – Consideration of objections, if any, and notification of institution. (1) Where no such objection has been received within the time so specified or granted, the Government may, on receipt of a report from the Commissioner to that effect, by notification, declare the religious institution to be subject to the provisions of this Chapter. (2) Where any such objections have been

	(2) Where any such objections have been received within the time so specified or granted, the Commissioner shall hold an inquiry into the objections in the manner prescribed, and decide whether the institution should be notified to be subject to the provisions of this Chapter or not. (3) If the Commissioner decides that the institution should be notified as aforesaid, he shall make a report to that effect to the Government who may thereupon, by notification published in the Fort St. George Gazette declare the religious institution to be subject to the provisions of this Chapter.	received within the time so specified or granted, the Commissioner shall hold an enquiry into the objections in the manner prescribed and decide whether the institution should be notified to be subject to the provisions of this chapter or not. (3) If the Commissioner decides that the institution should be notified as aforesaid, he shall make a report to that effect to the Government who may thereupon, by notification, declare the religious institution to be subject to the provisions of this chapter.

	(4) Every notification published or deemed to be published under this section shall remain in force for a period of five years, but it may by notification, be cancelled at any time or continued from time to time for a further period or periods not exceeding five years at a time as the Government may by notification, in each case, think fit to direct.	(4) Any trustee or any person having an interest, who is aggrieved by a notification published under sub-section (1) or sub-section (3) may, within thirty days from the date of its publication, institute a suit in the Court for the cancellation of such notification and the Government shall cancel the notification if the Court so directs: Provided that the Court shall have no power to suspend the operation of the notification pending the disposal of the suit. (5) Any party aggrieved by a decree of the Court under sub-section (4) may, within ninety days from the date of

		the decree, appeal to the High Court. (6) Notwithstanding anything contained in sub-sections (4) and (5), if the Government after taking into consideration such matters relating to the management and administration of the religious institution as may be prescribed, are satisfied at any time after the publication of a notification under sub-section (1) or sub-section (3) that it is no longer necessary to continue the notification, they may cancel the notification. (7) Any notification published under section 64 of the Tamil Nadu] Hindu Religious and Charitable Endowments Act, 1951 Tamil Nadu(Act XIX of 1951) and in force on the date of

		commencement of this Act shall be as valid as if such notification had been published under this Act : Provided that if on the date of the commencement of this Act a period of thirty days has lapsed from the date of the publication of a notification under section 64 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 (Tamil Nadu Act XIX of 1951), no suit shall be instituted under sub-section (4) of this section: Provided further that if, on the date of the commencement of this Act, a period of thirty days has not lapsed from the date of publication of the notification under section 64 of the said Act, the date of publication

		of such notification for the purposes of sub-section (4) of this section shall be the date of publication of that notification under the said Act.
4.	Section 65 - Scheme to lapse on notification. On the publication of the notification, the scheme of administration, if any, settled for the religious institution, whether before or after the commencement of this Act, and all rules, if any famed under such scheme shall cease to apply to the institution; and such scheme and rules shall not be deemed to be revived by reason of the cancellation of the notification or by	Section 73 - Scheme to lapse on notification. On the publication of the notification, the scheme of administration, if any, settled for the religious institution, whether before or after the date of the commencement of this Act, and all rules, if any, framed under such scheme shall cease to apply to the institution and shall become inoperative and such scheme and rules shall not be revived by reason of the cancellation of the notification under sub-section (4) or under sub-section (6) of section 72.

	reason of its having ceased to be in force by efflux of time.	
5.	Section 66 -Appointment of salaried Executive Officer. (1) For every institution notified under this Chapter, the Commissioner shall as soon as may be appoint a salaried executive officer, who shall be a person professing the Hindu religion. (2) The salary and allowance of the executive officer, as determined by the Commissioner, shall be paid from the funds of the religious institution.	Section 74 – Appointment of salaried executive officer. For every institution notified under this Chapter, the Commissioner shall, as soon as may be, appoint a salaried executive officer, who shall be a person professing the Hindu religion.
6.	Section 67 - Term of office and duties of Executive Officer.	Section 45 above prescribes the same.

	(1) The executive officer shall hold office for such period as may be fixed by the Commissioner and he shall exercise such powers and perform such duties a may be assigned to him by the Commissioner: Provided that only such powers and duties as appertain to the administration of the endowments of the religious institution shall be assigned to the executive officer. (2) The Commissioner shall define the powers and duties which may be exercised and performed respectively by the executive officer and the trustee, if any, of the religious institution.	

	(3) The executive officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860) (4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive officer.	
7.	Section 68 - Section 58 not to apply to notified institutions. (1) Section 58 shall not apply to, and no Area Committee shall have jurisdiction over, any religious institution notified under this Chapter or under Chapter VI-A of the Madras Hindu Religious Endowments Act, 1926, Madras Act II of 1927 so long as the	Section 75 - Section 64 not to apply to notified institutions. (1) Section 64 shall not apply to any religious institution notified under this Chapter or under Chapter VI of the Tamil Nadu Hindu religious and Charitable Endowments Act, 1951 (Tamil Nadu Act XIX of 1951) or under Chapter VI-A of the Tamil Nadu Hindu Religious Endowments Act,

	notification remains in force. (2) Nothing in sub-section (1) shall be construed as prohibiting the framing of a scheme under section 58 during the period when a notification is in force, to take effect immediately on the notification ceasing to be in force.	1926 (Tamil Nadu Act II of 1927) so long as the notification remains in force. (2) Nothing in sub-section (1) shall be construed as prohibiting the settlement of a scheme under section 64 during the period when a notification is in force, to take effect immediately on the notification ceasing to be in force.
8.	Section 69 - Saving. Nothing in this chapter shall apply to maths or other religious institution having hereditary trustees who have a beneficial interest in the income of the institutions.	Section 76 - Saving. Nothing in this Chapter shall apply to maths or other religious institutions having hereditary trustees who have a beneficial interest in the income of the institution.

W. BECAUSE With respect to Sections 63-69 of the 1951 Act, this Hon'ble Court in **ShirurMath Case** held as follows:

"The provisions are extremely drastic in, their character and the worst feature of it is that no access is allowed to the court to set

aside an order of notification We hold therefore, in agreement with High Court that these sections should be held to be void."

The mischief of the current provisions becomes evident from Section 72 wherein merely to cosmetically overcome the findings of this Hon'ble Court, the provision provides for a remedy to approach a Court of law, however, Section 72(4) clearly states that the Court cannot suspend the notification pending the disposal of the Suit. This is clearly a mockery of the ratio of this Hon'ble Court since it deprives the Civil Court of the power of passing interlocutory orders even if it comes to the conclusion that the order of notification is a patently illegal one or without basis. Further, the provision also saves notifications issued under the erstwhile Act as if they were passed under the current Act. Critically, there is no time limit which is spelt out for cessation of notification so that the Temple may be returned to the control and management of the Hindu community or a denomination thereof as the case may be, which runs directly against the grain of the **Chidambaram Temple Case** and others Judgements of this Court wherein it has been held that supersession of management of religious institutions by the State is a violation of the rights under Article 25, and Article 26 where such rights apply, as is the case in the instant Petition.

X. BECAUSE the Respondent must be directed to place on record details of the number of Temples which have been de-notified after having been notified and after the mismanagement which

occasioned the notification was rectified. The data in this regard would reveal that once the State enters the management of a Hindu religious institution, it becomes a tenant for eternity who cannot be evicted and which gradually takes over the ownership of the institution and its assets by holding traditional administrators at ransom through coercion or through false and manufactured allegations of mismanagement. In the later portion of the instant Petition, the conduct of the Respondent in relation to the *Tiruchendur*Temple shall bear out this fact.

Y. BECAUSE Section 92 (1) of the 1959 Act is a mere repetition of Section 76 (1) of the 1951 Act which was struck down as unconstitutional by this Hon'ble Supreme Court in **ShirurMath Case**. The said comparison is brought about by the table below:

S. No.	**1951 Act**	**1959 Act**
1.	Section 76- (1) In respect of the services rendered by the Government and their officers, every religious institution shall, from the income derived by it, pay to the Government annually such contribution not exceeding five per	Section 92 – (1) Every religious institution shall, from the income derived by it, pay to the Commissioner annually such contribution not exceeding twelve per centum of its income as may be prescribed in respect of the services rendered by the

	centum of its income as may be prescribed. (2)Every religious institution, the annual income of which for the fasli year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is hot less than one thousand rupees, shall pay to the Government annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income as the Commissioner may determine.	Government and their officers and for defraying the expenses incurred on account of such services. (2)Every religious institution, the annual income of which, for the fasli year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is not less than five thousand rupees, shall pay to the Government annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income up to five lakh rupees and four percent of its income if the income exceeds five lakhs, as the Commissioner may determine.

Z. BECAUSESection 76(1) was struck down by this Hon'ble Court in **ShirurMathCase** on the grounds that what was being levied was a tax, and not a fee, which was beyond the legislative competence of the State Legislature. To overcome this finding, the State Government effected an amendment to Section 76(1) in 1954 through Act XXVII of 19954 dated September 22, 1954. The said amendment was once again challenged before the Madras High Court, and upon reaching this Hon'ble Court, it was held as follows in **H.H. SundaraThirthaSwamiar V. Commissioner for Hindu Religious & Charitable Endowments, Mysore**:

"By the impugned cl. (1) the defects in the original section have been remedied by the Legislature. Contributions are now payable to the Commissioner and not to the Government, and they are to be levied expressly in respect of services rendered by the Government and their officers, and for defraying the expenses incurred on account of such services. By sub-section (2) every religious institution, the annual income of which is not less than one thousand rupees, has to pay to the Commissioner annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income as the Commissioner may determine. By sub-section (4) the Government is required to pay the salaries, allowances, pensions and other 'beneficial remuneration' of the Commissioner, Deputy

Commissioner, Assistant Commissioners and other Officers and servants employed for the purposes of the Act and also to defray the other expenses incurred for such purposes, including the expenses of Area Committees and the cost of auditing the accounts of religious institutions. The section manifestly provides for levy of contribution at a rate not exceeding five per cent of its income from all religious institutions, and audit fee from religious institutions of which the income is Rs. 1,000/- or more, but all the amounts collected under cls. (1) and (2) have to be spent for meeting the expenses in connection with the performance of the duties rendered to the religious institutions and for no other purposes. By section 81 (1) a separate Fund called "'The Madras Hindu Religious and Charitable Endowments Administration Fund" is constituted and that Fund vests in the Commissioner, and by cl. (2) of that section the contributions payable under s. 76 (1) and the audit fee payable under s. 76 (2) when realized are credited in the said Fund. The two principal objections against the levy of the contribution under s. 76 before it was amended were (1) that the money raised by levy of the contribution was not earmarked or specified for defraying the expenses that the Government had to incur in performing services. All the collections went to the Consolidated Fund of the State and all the expenses were not met out of the collections but out of the general revenues by a proper method of appropriation as is done in case of other Government expenses, and (2) that there was a total absence of any co-relation between the expenses incurred by the Government and the

amount raised by contribution under the provision of s. 76. The Legislature has by the amendment of s. 76 (1) and (4) and the constitution of a separate Fund under s. 81 rectified both these defects. The amounts raised are specifically ear-marked for defraying expenses for rendering services : they do not go into the Consolidated fund of the State, but are included in a separate Fund. The Contributions are not even payable to the Government they are payable to the Commissioner.

It was urged that there was no co-relation between the expenses incurred and the amounts collected as contributions, but there is no reliable evidence on the record in support of this plea. Our attention was invited to Ex. 'A' referred to in paragraph-2 of the supplemental counter-affidavit of the State of Madras in Writ Petition No. 323 of 1955, in which an abstract of the receipts and charges was set out. It was stated in that document:

"During the period from 30th September 1951 to 30th June 1952 the total receipts under the head XXXVI Miscellaneous-(c.) Miscellaneous Administration of Madras Hindu Religious and Charitable Endowments Act, 1951" amounts to Rs. 3,16,013-1-3 and the total receipts under "XLVI-Miscellaneous (d) fees for Government Audit" by way of contribution recovered from the religious institutions amounted to Rs. 2,27,531-4-10. The total expenditure during the said period towards salary and allowances of the officers and staff contingencies and fees paid to private auditors for auditing the accounts of religious institutions amounted to Rs. 6,93,539-10-3."

Then followed a chart for fasli years 1361, 1362, 1363 and 1364 setting out different heads such as Arrear Demand, Current Demand, Total Demand and, Write off, Net Demand, Collection and Balance. It appears from the Chart that there were large arrears in the collection of contributions and by the end of the fasli year 1364 the arrears exceeded 15.50 lakhs. An abstract at the foot of the chart shows that the total actual collections amounted to Rs. 19.74 lakhs and the balance recoverable for the four fasli years was Rs. 15.75 lakhs. The total expenditure for 31 out of the four years was Rs. 26.4 lakhs. It is difficult to draw an inference from this document that the demand of contribution was wholly unrelated to the expenditure incurred out of the accumulations. No attempt was made before the High Court to establish that the levy of contribution at the rate of five per cent was so exorbitant that it could be said to have no true relation to the value of the services rendered to the endowments by the administration. Our attention was also invited to a statement of account showing that the Commissioner received when the Act of 1951 was brought into force a total investment in fixed deposits, Government stock certificates, debentures of co-operative land mortgage bank, national savings certificates and in banks a total account exceeding Rs. 18 lakhs. But this is the accumulation during a period of nearly 25 years when the Act of 1927 was in operation. There is no evidence on the record as to the sources from which the fund was accumulated. From this statement of account it would not be possible to infer that the contributions under s. 76(1) of the Act of

1951 were wholly disproportionate to the value of the services to be rendered. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to individual who obtains the benefit of the service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax. It is true that ordinarily a fee is uniform and no account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said that it is of the nature of a tax. A fee being a levy in consideration of rendering service of a particular type, correlation between the expenditure by the Government and the levy must undoubtedly exist, bat a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributories do not obtain the same degree of service as others may.

Section 80 makes the Commissioner a corporation sole with perpetual succession and s. 81 provides for the constitution of the Madras Hindu Religious and Charitable Endowments Administration Fund. These sections have been enacted with the

object of establishing a distinct Fund out of the income of the endowments totally unrelated to the general revenues of the State. By s. 82 contributions which had been levied under the Act XIX of 1951 before it was amended by the Act XXVII of 1954 under s. 76(1) and (2) have been validated. Section 82 provides :-

"82. (1) Contributions under section 76(1) and the further sums payable under section 76(2) shall be payable with effect from the commencement of this Act. For the period from the commencement of this Act until the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, the rate prescribed by the Government under section 76(1), or determined by the Commissioner under section 76(2), shall be deemed to be the rate prescribed or determined under section 76(1) or section 76(2), as the case may be, as amended by the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, and contributions and further sums paid to the Government shall be deemed to be contributions and further sums, as the case may be, paid to the Commissioner under section 76(1) and section 76(2) as amended by the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954.

(2)The Government shall pay to the Commissioner the balance, if any, remaining out of the aggregate of the contributions and further sums paid or realized before the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 1954, in pursuance of section 76(1) and section 76(2), after

deducting therefrom sums paid by the Government under section 76(4)."

It is true that the contributions levied under s. 76(1) of the Act before it was amended had the characteristic of a tax, and the levy thereof was accordingly struck down. But the Legislature had power to enact appropriate retrospective legislation declaring these levies as fees by denuding them of the characteristics which went to make the levies of the nature of a tax. By the express provision contained in sub- section (1) of s. 82 the rates prescribed under s. 76(1) or determined by the Commissioner under s.76(2), under the Act as originally enacted were to be deemed rates prescribed under ss. 76(1) or determined under s. 76(2) as amended by the Act XXVII of 1954, and contributions and other sums paid to the Government were to be deemed as contributions and other sums paid to the Commissioner under ss. 76(1) and (2) as amended. Retrospectively the payments received by the Government were dissociated from the general governmental revenues and by sub-section (2) account was to be made on the footing that these payments constituted a distinct and separate fund and all payments were deemed to be received by the Commissioner and not by the Government."

AA. BECAUSE while it could be argued that the amended Section 76, whose validity was upheld by this Hon'ble Court is identical to the impugned Section 92, what is important to note is that Section 12 of 1959 Act and several other provisions make it abundantly clear

that the HRCE Commissioners of all grades are servants of the State Government. Therefore, there is no material change in the language of the un-amended Section 76(1), amended 76(1) and the impugned Section 92(1). Further, the total contribution under the amended Sections 76(1) and (2) was 6.5% which has increased to 13.5% (12+1.5)-16% (12+4) depending on the income bracket of the religious institution. There is no justification for this quantum jump since the scope of services have remained largely the same and the HRCE Department has an abysmal track record of making good its obligations under the Act for which it purports to collect a fee. In other words, when there is no justification for the quantum of fee charged, the levy rises to the level of a tax notwithstanding the fact that a separate fund has been created under Section 96, namely the TNHRC Administration Fund. In other words, the mere factum of creation of a separate fund does not convert a tax into a fee unless the fee has a reasonable correlation to the so-called services being rendered to Hindu religious institutions by way of "public service". In any case, a significant number of these so-called services involves entrenchment of the State through Executive Officers and other unconstitutional provisions which have resulted in the creation of a huge department whose functioning is subsidized by Hindu religious institutions at the expense of their religious and administrative autonomy. Since the State is always eager to clarify that it is a secular State and not a Hindu State and distances itself from the Hindu religion at every possible occasion, there is no

reason for the State to create a department whose bill Hindu religious institutions are expected to foot to their detriment in more ways than one. Therefore, it is humbly submitted that Section 92(1) indeed imposes a tax, and not a fee, notwithstanding the cosmetic changes it has made to attempt to overcome the finding of lack of legislative competence. Further, a State which professes to be secular cannot impose itself through a "service" particularly with respect to religious institutions. The State must maintain at the very least, the same degree of distance from Hindu religious institutions as it does with Muslim and Christian institutions. There is no sanction in the Constitution for the State's imposition on Hindu religious institutions alone. The modern Indian secular State cannot step into the shoes of Rulers of yore or even the Rulers of Princely States since they did not shy away from embracing their Hindu identity nor did they practice secularism in the manner it is currently practiced by the Indian State. Therefore, Hindu religious institutions have a legitimate Constitutional right to expect the State to maintain a safe distance from them so as to avoid being stifled by the bureaucracy of the State and the political and religious machinations of Governments who have vested interests in cultivating vote banks.

In the following portions, the challenge with respect to the remaining provisions of the 1959 Act, such as Sections 1(3), 3, 23, 25-A, 26, 34, 34A, 34B, 34C, 34D, 47, 48, 49, 49-B, 50, 53, 54, 57, 58, 61, 63, 64, 65, 66, 67, 69, 70, 92, 97, 108 and 111 have been detailed hereinbelow:

BB. BECAUSE u/s 1 (3) of the 1959 Act it is made abundantly clear that the 1959 Act applies only to Hindu public religious institutions and endowments including incorporated *Dewaswoms* and unincorporated *Dewaswoms*. It is humbly submitted that the very existence of a legislation such as the Act which imposes a top-down structure only on Hindu religious institutions to the detriment of the community's management structures is proof of the skewed application of the State's powers under Article 25(2)(a) wherein it chooses to exercise such powers in such a draconian exclusively in relation to the Hindu community. When evidently the State has the power to interfere with the religious institutions of all communities equally, but chooses to do so much more with one particular community and also benefits financially from such interference in the name of ensuring "proper management", it is a textbook instance of discriminatory treatment and arbitrary use of power. This is the core issue which lies at the heart of all the ills which plague Hindu religious institutions.

CC. BECAUSE the Constitution envisages the following:

a. Keeping with the spirit of Article 17, Article 25(2)(b) enables throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus, without affecting the rights of Hindu religious denominations under Article 26. This is a salutary and noble objective which the Petitioners, along with the rest of Hindu society, have endorsed and welcomed;

b. Article 25(2)(a), without any limitation as to religion, allows the State to make laws to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice. There is absolutely no doubt that the said provision enables the State to make laws across the board for all religions.

It is abundantly evident that despite the Constitution bestowing the Indian State with the power to only regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice, State Governments across the board such as the Respondents go well beyond regulation or restriction and also exercise their legislative and executive powers only in relation to Hindu religious institutions.

DD. BECAUSE u/s 3 of the 1959 Act, it is abundantly made clear that the power of the State Government to extend the 1959 Act to charitable endowments only to Hindu and Jain public charitable endowments on grounds of mismanagement. Not only is the said provision bereft of any safeguard against its indefinite application to a Hindu or Jain charitable endowment, the Order of the Government under the said provision is not capable of being appealed against. Further, sub-Section (4) of the provision allows any mischievous trustee to invite the Government to invoke and apply the said provision without a case having been made out for mismanagement of the endowment and without an investigation being carried in that regard. Such a blanket provision allows a community specific endowment to be taken over by the State

Government without due cause. The violation of Articles 14, 25, 26 and 29 are clearly made out.

EE. BECAUSE u/s 23 of the 1959 Actthe power and duties of the Commissioner in respect of Temples and religious endowments. The sheer breadth and generality of the tone of this provision, along with express vesting of the power of general superintendence over Temples and Hindu religious endowments, sets the tone for State entrenchment in the administration of Hindu religious institutions. In stark contrast to the spirit of regulation or restriction, this provision allows the State to cast a long shadow on Temple administration, all in the name of ensuring proper administration. Instead of retaining minimal powers of intervention in a need to address mismanagement as and when detected, this provision allows the State to be present at all times, which clearly stifles the community's ability to run its own religious institutions. There is no place for such an all-pervasive mechanism in relation to religious institutions in a State which swears by secularism and ostensibly resists imputation of any specific religious identity, or at least the Hindu identity. What is even more shocking is that while there exists a specific chapter which is dedicated to the notification of Temples and Hindu religious endowments on grounds of mismanagement, there is no constitutional justification of providing an Orwellian provision such as either Section 23 or Section 45 since both provisions facilitate appointment of Executive Officers to Temples even without there being a finding of mismanagement. In fact, it could be argued that

Section 45 is a direct consequence of the broad, untrammeled and unchecked general powers bestowed on the Commissioner by Section 23. Therefore, Section 23 must be struck down for violation of Articles 14, 25, 26, 29 and 31A.

FF. BECAUSE u/s 25A of the 1959 Act dealing with the qualification of Trustees is incapable of accommodating the concept of a Deity in Dharmic traditions since it requires the trustee to have "faith in God". The concept of a Deity in relation to a Temple is very different from the Abrahamic conception of God. This is one of the fundamental distinctions between the indigenous concept of Dharma and the Abrahamic concept of religion. By requiring Trustees to have faith in God, the impugned provision and therefore the Act betrays its Abrahamic foundations, which is unacceptable in so far as Hindu religion institutions are concerned. The Constitution does not permit imposing the underpinnings and value systems of one faith on institutions and adherents of another. Not only does this amount to discrimination against Hindus and their religious institutions under Article 14, it also violates their rights under Articles 25 and 26 since such a conceptual framework facilitates subterraneous Abrahamisation of the Hindu faith which the Petitioners have every right to resist, object to and protest against under the aegis of the Constitution through Constitutional means by way of the instant Petition.

GG. BECAUSE the concepts of Temple and Deity are integrally intertwined in *Dharmic* traditions and the concept of *Sampradaya*

flows from the same, which although is vastly different from the Abrahamic conception of a religious denomination, is unfortunately put in the same basket under Article 26. Therefore, what *Dharmic* traditions call for in order to permit access to anyone into the Temple is faith in the Deity, the *Sampradaya* and the traditions of that*Sampradaya*. The concepts of consecration and desecration flow from a belief in these foundations which result in the Temple being treated as the Abode of the Deity and a place of worship as opposed to a place of prayer. Temples are dedicated to Deities, which perform the role of personification of characteristics, and therefore conform to the concept of a *Saguna* form of worship, and opposed to *Nirguna* (worship of the formless). Clearly, Section 25A is as far removed from *Dharmic* foundations as possible, thereby rendering it incapable of being applied to *Dharmic* institutions such as the Temple. Therefore, Article 25A ought to have called for faith in the Deity of a given Temple as opposed to an abstract concept called God. This has a bearing even on denominational rights since only individuals who belong to a religious denomination to which the Temple belongs may qualify for the post of a trustee for the denominational religious institution. Further, while Section 26 prescribes non-profession of the Hindu faith as one of the grounds for disqualification, Section 25-A merely requires belief in God. This inconsistency also highlights the infirmities in Section 25A. In light of these nuances to which the impugned provision is completely oblivious, it is violative of Articles 14, 25(1), 26 and 29.

HH. BECAUSE u/s 26 of the 1959 Act dealing with disqualifications of trustees suffers from multiple infirmities. First, it is not sufficient for a person to profess Hindu faith in order for the person to be entitled to be appointed a Trustee. The person must have faith in Idol Worship of Deities and must also believe in the traditions and practices of the Temple to which he or she is appointed as a trustee. Therefore, Section 26(1)(a) is violative of Articles 25 and 26 where applicable. Secondly, given that fundamental rights, including the right to religion under Article 25, have been recognized by the Constitution for all persons, and not just citizens, there is no basis to provide a ground of disqualification of trustees on the basis of citizenship. It is humbly submitted that there are Hindus all over the world and everyone of them has a right in respect of Hindu religious institutions in which they repose faith. Therefore, lack of Indian citizenship cannot be a ground of disqualification without attracting unconstitutionality under Articles 14, 25 and 26. Thirdly, there is absolutely no nexus between appointment as a trustee to a Hindu religious institution and removal or dismissal from service by the Central Government or State Government or a local authority. This ground of disqualification is evidently arbitrary and lacks an intelligible basis, thereby violating Articles 14, 25 and 26 (where applicable) of the Constitution. Finally, notwithstanding the disqualification of a hereditary trustee, no State appointee or bureaucrat can "supersede" and occupy that position since it violates the traditions

and practices of the religious institution and is also against all known canons of secularism.

II. BECAUSE u/s 27 of the 1959 Act dealing with requirement of a Trustee of a Hindu religious institution to obey all lawful orders issued under the Act by the Government, the Commissioner, the Additional Commissioner, the Joint Commissioner and the Assistant Commissioner effectively renders the community administrators of Hindu religious institutions and therefore the institutions of the community themselves entirely subservient to the Government and the Officers of the HRCE Department. The sheer width of this provision renders redundant the existence of any appeal mechanism since it mandates obedience of all orders no matter how unreasonable and unjust they may be so long as they are purportedly passed under any provision of the Act. Clearly, this provision is in violation of Articles 14, 25, 26 and 31A.

JJ. BECAUSE u/s 34 of the 1959 Act it requires the institution to seek the sanction of the HRCE Commissioner before entering into a transaction in relation to the institution's immovable property. It is one thing to cloak the HRCE Commissioner with the right of audit and inspection of accounts, and an entirely different thing to require his blessings before immovable property belonging to the institution can be alienated. With respect to transactions which relate to the institution's assets, the institution is answerable to the Hindu community and not to the State or its officers. Therefore, it would have been constitutional to put in place a

mechanism which requires the community's sanction before immovable property is alienated. However, to allow the HRCE Commissioner to have a say in this regard is to interfere with the institution's freedom to contract and do what it deems fit. The State can lay down a framework for alienation of immovable property with a view to ensure that such alienation happens with the knowledge and consent of the community and is always in the interest of the institution and the community. But it is certainly not for the State to arrogate to itself the status of the arbiter in this regard since every State officer is inevitably susceptible to political and other machinations which do not necessarily coincide with the best interests of Hindu religious institutions and the Hindu community. That the HRCE Commissioner is bound by the directions of the State Government in respect of alienation of immovable property under Section 34(4A) and is also a Servant of the Government as expressly provided under Section 12, only demonstrate the unconstitutionality of Section 34 without the need for any further elaboration. No other religious community's institutions are subject to the stranglehold of the State.

KK. BECAUSE the aforementioned provision has been used by the State Government to acquire Temple lands at throw away prices, which was never the intention of the said provision since the provision on the face of it deals with sale of alienation of immoveable property by Hindu religious institutions to third parties other than the State Government. In other words, the provision

has been used by the HRCE Commissioner, a Government Servant, to sanction sale of Temple lands to the Government. The conflict of interest in so far as protecting the beneficial interest of Temples and the Hindu community could not have been starker. In this regard, attention of this Hon'ble Court is drawn to G.O (Ms) No. 200 dated November 2, 2018 and Circular R. C. No. 34211/2013/M3 dated 16.11.2018. It is to be appreciated that ownership of land by a religious community has a social significance and continued alienation of immovable property only results in shrinking public visibility of the community, which is facilitated by the State in this case through provisions like Section 34. Therefore, if land belonging to the Temple is alienated, it must be compensated by transfer of land to the Temple at some other comparable location instead of compensating in monetary terms. It is submitted that the right to hold, acquire, manage and administer property is available to all Hindu religious institutions and not just to Hindu denominational religious institutions since it cannot be argued that rights which are available to a part of the religion, namely the religious denomination, is not available to other religious institutions belonging to the same denomination. To argue thus would result in violation of Article 14. In light of this position, it becomes evident that Section 34 is violative of rights of Hindus under Articles 14, 25, 26 (where applicable) and 31A.

LL. BECAUSE u/s 34A – 34D of the 1959 Act deal with fixation of lease rent on the immovable property of the religious institution,

termination of lease, payment of amount to the lessee and bar on jurisdiction of civil courts on such issues. A several and joint reading of the said provisions reveals that just as the Act requires prior sanction of the Commissioner under Section 34 before immovable property is alienated, it allows the Commissioner to preside over lease agreements, lease amounts, termination of leases and compensation to lessees, which itself highlights the fetters which apply to Hindu religious institutions in dealing with their own property. Further, the bar on the jurisdiction of Courts over such issues shields the State's Officers from any judicial scrutiny leaving only the extraordinary writ remedy open to Hindu religious institutions and members of the Hindu community. These provisions therefore, violate Articles 14, 25, 26 and 31A.

MM. BECAUSE u/s 47 of the 1959 Act deals with trustees, their number and their term. In order to understand this provision better, it must be read along with Section 46. Under Section 46, the Commissioner is empowered to publish a list of Hindu religious institutions, which are classified into three categories based on their annual income, namely (a) those with an annual income between INR 10,000 and INR 2,00,000, (b) those with an annual income between INR 2,00,000 and INR 10,00,000 and (c) those with an annual income exceeding INR 10,00,000. Section 47 deals with constitution of board of trustees for institutions which fall under either of these categories when there is no hereditary trustee. For institutions which fall under category (a), the Joint

Commissioner/Deputy Commissioner has the power to appoint the board; for category (b), the Commissioner has the power and for category (c), the Government has the power. The fundamental infirmity in Section 47(1) is that as opposed to allowing the community to elect the board of trustees, the provision empowers the officers of the Government to appoint trustees. This effectively paves the way for subservience of the board to the officers of the Government and hence the Government. Importantly, pending the constitution of the board of trustees, the Government and its officers have the power to appoint fit persons to Hindu religious institutions. This effectively allows the Government and its officers to delay even the constitution of the board of trustees and run the institutions through fit persons. It is inconceivable as to how such a mechanism is expected to give effect to the rights of the Hindu community to manage and administer its own religious institutions. The discriminatory nature of the mechanism is writ large. Clearly, it violates Articles 14, 25, 26 and 31A.

NN. BECAUSE the mischief in Section 47 comes to the fore upon a reading of Section 47(2). Even when the institutions identified in the list published under Section 46 have a hereditary trustee or trustees, the Government and its officers have been cloaked with untrammeled powers to appoint a non-hereditary trustee or such number of non-hereditary trustees as they deem fit on the ground that "the affairs of the institution are not or not likely to be properly managed by the hereditary trustees or trustees". In other words,

in addition to having the power to appoint Executive Officers under Section 45 and notifying religious institutions under Sections 71-76 for takeover by the Government, the Government also have another point of entry into Hindu religious institutions through Sections 47(1) and 47(2), thereby making a complete mockery of the rights of the Hindu community to manage its own religious institutions. A further reading of sub-sections (3) and (4) only confirms this position since it shows that the Government can coerce hereditary trustees or trustees to resign from their positions so as to pave way for Government appointed non-hereditary trustees. Even if hereditary trustees or trustees move a Court of law challenging the appointment of non-hereditary trustees by the Government and its officers, the proviso to sub-section (4) expressly prevents the Court from staying the order of the Government or its officers pending the adjudication of the application of the hereditary trustees or trustees by the Court. The sheer unreasonableness and unconstitutionality of the entire provision would be evident to any reasonable person. As long as this provision exists, the fundamental rights of the Hindu community under Articles 14, 25 and 26 shall remain ephemeral and incapable of actual exercise. It is humbly clarified that the Petitioners believe that a community-run Temple management structure involving members of the Schedules caste and Scheduled Tribe community and a lady member would only further the cause of cohesion within the Hindu community. Therefore, reserving two posts for one member from the SC/ST community and one lady

member, would continue to serve that cause. However, the primary contention remains that all members must be elected by the Hindu community as opposed to being selected/appointed by the Government or its Officers.

OO. BECAUSE Section 48 of the 1959 Act dealing with the board of Trustees the Government and its officers have the power to nominate a Chairman from among the trustees in case the trustees do not elect a Chairman from among themselves. It is indeed surprising that no other alternative was deemed fit instead of the Government and its Officers nominating the Chairman. This is yet another proof of the Government's intent to interfere with the autonomy of the board of trustees to the detriment of the rights of the Hindu community and its religious institutions.

PP. BECAUSE u/s 49 of the 1959 Act dealing with constitution of a board of trustees to Hindu religious institutions which are not included in the list published under Section 46 or notified under Chapter VI. Given that this provision too envisages appointment of the board of trustees by the Officer of the Government, the infirmities which afflict Section 47 apply with equal rigour to Section 49 as well. It is humbly submitted that Section 47 of the 1959 Act is similar to Section 39 of the 1951 Act which was struck down by a Division Bench of the Hon'ble High Court of Karnataka in **K. MukundarayaShenoy&ors. v. State of Mysore &ors. AIR 1959 Kant 18.** Similarly, Section 49 of the 1959 Act is similar

to Section 41 of the 1951 Act which too was struck down in the said Judgment.

QQ. BECAUSE u/s 49B of the 1959 Act inter alia, permits the Executive Officer to object to the decisions taken by the Board of Trustees and force the Board of Trustees to reconsider their decisions. Even after reconsideration, if the board takes a decision, sub-Section 3(a) allows the HRCE Officers to pass such orders as they may deem fit, effectively giving them the power to overrule the board of trustees. This goes well beyond the minimalist role envisaged for the State under Article 25(2)(a), which does not by any stretch of imagination permit a State appointee to entrench himself to such an extent that no decision can be taken by the board of trustees independent of the EO or the HRCE Officers. The finality bestowed on the orders passed by the HRCE Officers under Section 49B(3)(c) and lack of any appeal against such orders is proof of the unconstitutional intent of the provision.

RR. BECAUSE u/s 50 of the 1959 Act similar to 42 of the 1951 Act which enabled appointment of trustees notwithstanding any scheme which has been settled contrary to the provisions of the 1951 Act. The said erstwhile provision was held as being unconstitutional by a Division Bench of the Hon'ble High Court of Karnataka in **K. MukundarayaShenoy&ors. v. State of Mysore &ors. AIR 1959 Kant 18.**

SS. BECAUSE u/s 52 of the 1959 Act every non-hereditary trustee lawfully holding office on the date of the commencement of the Act, shall be deemed to have been appointed as such trustee under the Act for the residue of his term of office on the date of such commencement. This provision is similar to Section 44 of the 1951 Act which was struck down by the Karnataka High Court in **MukundarayaShenoyCase**. It is humbly submitted that the said provision has the effect of rendering non-hereditary trustees to the status of servants of the State, which is the fundamental grievance in the instant Petition that the State cannot act as a master in so far as Hindu religious institutions are concerned since the State is not in the business of running or managing the affairs of religious institutions.

TT. BECAUSE u/s 53 of the 1959 Act the power of the Government to remove or suspend trustees without any participation by the Hindu community is as bad as its power to appoint trustees or nominate chairman or appoint fit persons. What is even worse is that the lack of a meaningful appeal to a Court of law under sub-section (5) renders the provision liable to be struck down. Further, there is no intelligible basis to provide an appellate remedy to the High Court to the trustee under sub-section (5A) from the order of the Government and require a hereditary trustee to institute a suit against such order. This amounts to discrimination against hereditary trustees. Therefore, the violation of Articles 14, 25, 26 and 31A are writ large.

UU. BECAUSE u/s 54 of the 1959 Act the provision deals with filling up of vacancies, temporary and permanent, of hereditary trustees. In the event of any such vacancies, the power to fill it up belongs to the community or non-hereditary trustees elected by the community, as opposed to the Joint or Deputy Commissioner. The provision of an appeal from the orders of such Commissioners to the Commissioner is again not a meaningful remedy and must be available in a court of law.

VV. BECAUSE Sections 55 and 56 (2) of the 1959 Act vests the trustee with the power to appoint office holders and servants to the Hindu religious institutions. In light of this, HRCE Officers cannot exercise powers which enable them to overrule the decision of the trustee since that would effectively render the Executive the final arbiter in such issues, and allow it to influence administrative and disciplinary issues in Hindu religious institutions. Instead, an appeal for remedy to a Court of law would be much more desirable. Therefore Section 56(2) violates Article 14, 25, 26 and 31A.

WW. BECAUSE Sections 57, 58, and 61 of the 1959 Act, No officer of the government can exercise the power to fix fees for services or the standard scales of expenditure since that amounts to excessive interference with the affairs of Hindu religious institutions, which goes beyond the mandate of Article 25(2)(a).

XX. BECAUSE Section 59 of the 1959 Act deals with institution of suits for removal of trustee of a Math or a specific endowment attached to a Math. Section 59(1) allows the HRCE Commissioner to institute such a suit and also mandates his approval when two or more interested persons wish to institute such a suit. Firstly, the HRCE Commissioner, who is the servant of the State, has no stake in a Hindu religious institution and must not be allowed to institute a Suit since such a mechanism allows the State through the HRCE Commissioner to exert pressure on Maths and its office bearers. In short, it is a tool of coercion and extortion which allows the State to play politics within Hindu Maths. Applying the same yardstick, there is no reason why interested persons must require the approval of the HRCE commissioner under Section 59(1) or the Government under Section 59(2) to institute such a suit. The very existence such approval mandates violates Articles 14, 25, 26, 29 and 31A.

YY. BECAUSE u/s 63 of the 1959 Act, it enables the Joint Commissioner or the Deputy Commissioner to preside over and adjudicate on a wide range of issues relating to Hindu religious institutions, which in itself is deeply disturbing and ex facie unconstitutional. A State which calls itself secular cannot appoint its own officers to act as adjudicators of issues relating to religious institutions. Such issues ought to have left to the realm of religious heads from within the community and at best to Courts of law with the expert assistance of religious heads. The argument that

Officers of the State can preside over even secular aspects of religious institutions is a complete façade since it allows the State to control the affairs, administration and resources of religious institutions through such an artificial distinction. As stated earlier, the right to control the affairs and administration of religious institutions is not limited to denominational institutions under Article 26, since such rights are equally available to non-denominational institutions. Simply stated, denominational institutions do not have greater rights to prevent State interference than non-denominational institutions since ultimately both classes of institutions are religious in nature, and are therefore entitled to expect the State to maintain more than an arm's length distance. Given that this Hon'ble Court has repeatedly urged that religion must be kept out of politics, it is fair and reasonable to expect that even the State apparatus is kept out of religious institutions. Therefore, Section 63 violates Articles 14 (since only Hindu religious institutions are subject to such pervasive State control), 25, 26, 29 and 31A.

ZZ. BECAUSE sections 64 and 65 of the 1959 Act empower the HRCE Officers under these provisions to settle schemes for Hindu religious institutions and Maths or endowments attached to Maths is without any kind of fetter in terms of the duration of such schemes sought to be settled by them for such institutions. In any event, since the power under these provisions allows the HRCE officers to remove existing trustees and appoint new trustees, as

opposed to allowing the community to elect its own trustees for the institution, it goes beyond the limited powers envisaged under Article 25(2)(a) for laws which regulate religious institutions. What is even worse is that these provisions allow the HRCE officers to circumscribe the scope of powers of the trustees appointed by them, thereby rendering them puppets to the HRCE Department and hence the State Government. Clearly, this is in violation of Articles 14, 25, 26, 29 and 31A and contrary to the law laid down in Sri LakshamanaYatendrulu and Ors. v. State of A.P. and Anr.(1996) 8 SCC 705 (Framing of scheme is only for a short period)

AAA. BECAUSE sections 66 and 67 allow the Joint or Deputy Commissioners to appropriate endowments if they are satisfied that the purpose of a religious institution has from the beginning been, or has subsequently become impossible to realize. The fact that an officer of the Executive has been bestowed with such a far-reaching power in itself ought to shock the conscience of any reasonable person who believes that a modern Constitutional State must not involve itself in the running of religious institutions. Importantly, it is not for a State's officer to decide whether a Hindu religious institution's purpose was impossible to realize from the beginning or that it has failed to realize its objects. This is an extremely subjective and vague power that allows the State's officer to summarily conclude that a Hindu institution could have never achieved its objectives or has failed to achieve its objectives.

Assuming such a wide power could have been bestowed upon a State's officer, there are no metrics spelt out whatsoever on the basis of which such a conclusion may be arrived at. Importantly, even if such a conclusion is possible, it is not for the State to step in and appropriate the endowments of the institution but to allow the community to elect its representatives who can take a decision on their behalf. Since none of these issues have been remotely addressed by the provision, it is liable to be struck down as being violative of Articles 14, 25, 26, 29 and 31A. The infirmities which plague Section 66 equally to Section 67 since it is for the members of the Hindu community or the specific denomination to which the religious institution belongs to decide as to what must be done with the institution which has ceased to exist. Importantly, it is not for the Joint or Deputy Commissioner to put a place of religious worship to any other use under Section 67(2)(b) since that would be in violation of rights of the members of the community or the specific denomination thereof. It would certainly be in violation of the Places of Worship Act, 1991 which prevents conversion of the character of a place of worship.

BBB. BECAUSE Section 66 (1) (a) permits the excess funds of HR&CE to be given to needy religious organizations of other religions. This is in stark contrast to Section 32 of the Wakf Act, 1955 which permits the use of Wakf money only for the purposes of Wakf and not for anything else. This is discriminatory and stands in violation of Article 14 of the Constitution of India.

CCC. BECAUSE section is unconstitutional on the ground that it provides an appeal to the Commissioner from the orders passed by the Deputy or Joint Commissioner under the provisions of the chapter, which is barely a meaningful remedy given the structure of the Act and the role of HRCE Officers. Given the proximity of the officers to the State and given that the orders passed by them affect the functioning of a religious institution, an appeal would be meaningful only if it is available before a Court of law. As regards Section 70, the bar on the Court's ability to stay an order passed by the Commissioner pending adjudication of the appeal preferred against the Order of the Commissioner, is clearly unreasonable and in violation of the rights of the Community and its religious institutions. Therefore, both provisions are liable to be struck down.

DDD. BECAUSE in light of the history of the use of Section 75A as narrated hereinabove, it becomes imperative to challenge the said provision along with Sections 75B and 75C since they suffer from the same vires as Section 45. This is because they permit the continuance of the notifications issued under Chapter VI-A of the 1927 and 1951 MHRCE Acts without setting out the needs for such continuance. Further, while a right to suit against such notifications has been provided under Section 75C, yet again the power of the Court to suspend the operation of the notifications pending the disposal of the suit has been taken away. Finally,

under Section 75C(4)(b), the Commissioner is deemed to have always had the power to appoint a salaried EO to institutions which are subject of notifications referred to in Sections 75-A and 75-B. In other words, whether or not such appointment was justified in the first place, it is retrospectively endorsed through this said provision, which is blatantly against Articles 14, 25 and 26.

EEE. BECAUSE the draconian nature of sections 108 and 111 of the 1959 Act speaks for themselves for they deprive trustees and members of the Hindu community of their right to approach a Court of law outside of the narrow windows provided by the Act. Effectively, these provisions shield the entire HRCE establishment from judicial scrutiny and allows it to get away with arbitrary, unreasonable, unjust and capricious decisions. Consequently, the provisions are violative of Articles 14, 25, 26 and 31A since they have a direct bearing on the autonomy of Hindu religious institutions.

FFF. BECAUSE Appointment of Auditors Rules (G.O. Ms. No. 3029, Revenue, dated the 20th July 1961) framed under Section 87 of the Act- According to these Rules, Audit of the accounts of all religious institutions and charitable endowments under the control of Hindu Religious and Charitable Endowments Administration Department shall be done by an independent audit-wing created in the Hindu Religious and Charitable Endowments Administration Department, which will be under the immediate control of a Chief Audit Officer and under the ultimate control of the Commissioner,

Hindu Religious and Charitable Endowments Administration Department. This is ultra vires Section 87 of the Act since Section 87(4) envisages a departmental audit only for Temples with an annual income less than INR 1000. However, for other Temples, an independent auditor must be appointed, especially considering that the HRCE Department charges 13.5-16 % as annual contribution cum cost for audit under Section 92 of the Act. In other words, the core function of the HRCE Department, which is audit of accounts, stands compromised as a consequence of these Rules, which go against the express intent of the provision itself. Importantly, these Rules do not seem have been tabled before the Legislative Assembly of the State, which also affects their vires. Therefore, these Rules too are liable to be struck down both on grounds being ultra vires the Act and also for being promulgated without following due process. External audit by a qualified chartered accountant is a must under the Income-Tax Act when the income of any assessee crosses Rs. 2.00 crores per annum.

GGG. BECAUSE In appreciating the above submissions and the reliance placed on Article 31A, reference is made to Article 31A(B) which supports the ratio of *SDG PandaraSannadhi* and *Chidambaram*, namely that the State cannot, under any law, take over any property for an indefinite period of time notwithstanding its claim of protecting public interest or securing proper management. Critically such takeover is at best exempt from a challenge under Articles 14 and 19, but is not exempt from a challenge on grounds

of violation of Articles 25, 26 and 29. Therefore, HRCE laws such as the TNHRCE Act 1959 must conform to this position too.

HHH. BECAUSE in view of the pendency of W.P (C) No. 476 of 2012 and W.P (C) No. 544/2009, this Hon'ble Court is the only forum that the Petitioners can approach and crave interference in the interest of protecting guaranteed fundamental rights.

PRAYER

IN LIGHT OF THE FACTS OF THE CASE, CASE LAWS CITED, AND THE LEGAL SUBMISSIONS MADE HEREINABOVE, THE PETITIONERS PRAY BEFORE THIS HON'BLE COURT THAT:

i. Issue a writ in the nature of certiorari in quashing Sections 1(3), 3, 23, 24, 25-A, 26, 27, 34, 34A, 34B, 34C, 34D, 35, 36, 45, 47, 48, 49, 49-B, 50, 52, 53, 54, 56(2), 57, 58, 59, 61, 63, 64, 65, 66, 67, 69, 70, 71-76 (including 75A, 75B and 75C), 92, 97, 108 and 111 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 be declared ultra *vires* Articles 14, 19, 25, 26, 29, and 31A of the Constitution of India; and

ii. Issue a writ in the nature of certiorari and quash the Utilization of Surplus Funds Rules (G.O. Ms. No. 4524, Revenue, dated the 5th November, 1960) framed under Section 36 of the Act as being unconstitutional; and

iii. Issue a writ in the nature of certiorari and quash the Conditions for Appointment of Executive Officers Rules, 2015 (G.O. Ms. No. 260, Tourism, Culture and Religious Endowments (RE4-2), dated 6th

November 2015) framed under Sections 43A and 45 of the Act as being unconstitutional; and

iv. Issue a writ in the nature of certiorari and quash the Appointment of Auditors Rules (G.O. Ms. No. 3029, Revenue, dated the 20th July 1961) framed under Section 87 of the Act as being ultra vires the Act; and

v. Issue a writ in the nature of certiorari and quash the appointment of Executive Officers made under Section 45 for the Tiruchendur Temple and the other major Temples such as Sri Kantimatisameta Sri Nellaiappar Temple,Tirunelveli, Sri Arthanareeswarar Temple, Tiruchengode, Sri Kallazhagar Temple, Azhagarkoil and Sri Kothandaramaswamy Temple, Vaduvurto which such appointments were made with effect fromJuly 16, 1966 under Sections 75-A and 75-B of the Act; and

vi. Issue a writ in the nature of mandamus and direct an investigation by a Special Investigation Team headed by an officer of high integrity such as Shri A.G.PonManickavel IPS, IG (Idol Theft Wing) of Tamil Nadu, into the conduct of the Officers of the Hindu Religious and Charitable Endowments Department insofar as the *Sri Subrahmanya Swami* Temple is concerned as well as other public servants, including elected representatives, of the Respondent; and

vii. Issue a writ in the nature of mandamus Direct external audit of the Temple for the past five years through a reputed audit firm; and/or

viii. Issue any such other writ or pass any such other or further order (s)

ix. and direction (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

DRAWN BY:
J. SAI DEEPAK
ADVOCATE

FILED BY:

K. V. MUTHUKUMAR
ADVOCATE FOR PETITIONERS

SETTLED BY
MOHAN PARASARAN
SENIOR ADVOCATE

Drawn On : 22.11.2019
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