IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

SPECIAL LEAVE PETITON (CIVIL) No. 11295 OF 2011

IN THE MATTER OF:

SRI MARTHANDA VARMA & ANR. ..... PETITIONERS

VERSUS

STATE OF KERALA & ORS. ..... RESPONDENTS

WRITTEN SUBMISSIONS BY ADVOCATE J. SAI DEEPAK ON BEHALF OF THE TANTRI OF THE PADMANABHASWAMY TEMPLE (INTERVENOR), PEOPLE FOR DHARMA (INTERVENOR) AND M.V.SOUNDARARAJAN (INTERVENOR)

[FOR INDEX PLEASE SEE INSIDE]

ADVOCATE FOR PEOPLE FOR DHARMA AND THE TANTRI: **SUVIDUTT M.S.**

ADVOCATE FOR M.V. SOUNDARARAJAN: **RAMASUBRAMANIAN**

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TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES OF THE

SUPREME COURT OF INDIA

MOST RESPECTFULLY SHOWETH:

PRELIMINARY SUBMISSIONS

1. The instant Written Submissions are being filed on behalf of the Tantri of the Padmanabhaswamy Temple (Intervenor, I.A. No. 48245/2019), People for Dharma, Intervenor in Interlocutory Application Dy No. 82238 of 2017 (Second Intervenor), and M.V.Soundararajan, Intervenor in Interlocutory Application No. 2 of 2011 (Third Intervenor). The First Intervenor is the Tantri of the Padmanabhaswamy Temple and is the final authority on the religious practices and traditions of the Padmanabhaswamy Temple. The Second Intervenor has lent valuable assistance to this Hon'ble Court

in the Sabarimala case. Further, the Trust has filed PILs before the Hon'ble Kerala High Court with respect to causes relating to Temples which fall under the Travancore Devaswom Board. That apart, the Trust comprises individuals who are devotees of Lord Padmanabhaswamy, the Presiding Deity of the Sri Padmanabhaswamy Temple ("The Temple") which is the subject of the Petition. Consequently, the Second Intervenor has the necessary *locus* to intervene and assist the Hon'ble Court in the Petition.

2. The Third Intervenor is a recipient of 'Best Teacher Award' from the Government of Andhra Pradesh in 1981. The said Intervenor is also a Hereditary Trustee cum Archaka of the Shri Chilkur Balaji Temple in Hyderabad and has introduced reforms in the temple like no Hundi, no VIP darshan with a single Queue for all devotees, no ticket system, no Arjitha Sevas and no Cash offerings. This system of worship has received tremendous support among devotees across the world. The Third Intervenor has also been active in fighting corruption, politicization and commercialization of the Temple System across the country. He is the convenor of the Temples Protection Movement, Vice President of the Andhra Pradesh Archaka Samakhya and Editor of VAK Journal. He has contributed to the amendments made to Andhra Pradesh Endowments Act through Act 33 of 2007. He has assisted the Justice Rama Jois Committee on the amendments to the Endowments Act in Karnataka. He is also engaged as a Special Invitee Member of the Andhra Pradesh Dharmika

Parishad. As a devout Vaishnavite and believer of Lord Padmanabhaswamy, the Third Intervenor has the necessary *locus* to intervene and assist this Hon'ble Court in the Petition.

3. In support of the *locus* of the Intervenors, reliance is placed on Paragraph 62 of the judgement of this Hon'ble Court in *Akhil Bharatiya Soshit Karamchari Sangh v. Union of India* (1981) 1SCC 246. The said judgement starts at Page 650 of Part 3 of JSD 2 and Paragraph 62 is at Page 685. Further, since the State Government of Kerala did not object to the *locus* of non-believing Intervenors who sought entry into the Sabarimala Temple, surely it cannot object to the *locus* of or material placed by the Intervenors in this case whose object of worship is Sri Padmanabhaswamy and who are stakeholders to His Temple.

A. HISTORY OF THE RELATIONSHIP BETWEEN THE RULER OF TRAVANCORE AND THE SHRI PADMANABHASWAMY TEMPLE PRIOR TO 1750, AND BETWEEN 1750 AND 2019

4. In order to understand the infirmities in the Impugned Judgement of the Hon'ble High Court of Kerala dated January 31, 2011, it is imperative to understand the origins of the Temple and the centrality of the Travancore Royal Family, in particular the Ruler, to the history and religious practices of the Temple. To establish the history of the said relationship even before the dedication of the Travancore State by the

then Ruler Shri Anizham Thirunal Marthanda Varma to Lord Padmanabhaswamy in 1750, the following documents have been placed on record and were relied upon during the course of oral submissions:

i. ***Kerala Mahatmyam***- This is the *sthalapuranam* that records the origins, history and the traditions of the Temple. This ancient work was originally authored in Sanskrit. The relevant shlokas from Chapter 88 of the Malayalam Translation of the work, which was undertaken by Brahmasri Shekahari Puram Seshu Shastrikal and published in 1912, has been placed on record. The relevant extracts of the Malayalam translation and its English translation have been placed on record at Pages 42-59 of the Single volume Compilation (JSD 1) of Note of Arguments (16 Pages) cum Documents (309 Pages) dated January 21, 2019. The preface to the 1912 Malayalam publication along with its English translation is at Pages 1-6 of the Three-volume 834-Page Compilation (JSD 2) handed over on February 5, 2019. Chapters 86 and 87 of the *Kerala Mahatmyam* deal with the consecration of the Temple.Chapter 88 of the original Sanskrit text, titled *Anantapura Varnanam*, specifically speaks of the Temple. The relevant Shlokas which shed light on the origins of the Temple are Shlokas 1, 5, 6, 7, 10 and 11, which are extracted below along with their English translations:

Shloka 1-"*Darunaakaarayaamaasasuvarnenasubimbakam*

prathishtaapya cha tad bimbampoojayaamaasabhaargavah"

Bhagavan Parashurama (Bhargava) made a wooden idol and covered it with gold. Then He consecrated the murti and commenced pujas.

Shloka 5- *"Kshetra tantra dadauraamah taranaalayavaasine"*

Bhagavan Parashuramabestowed the Namboodiris from the Tarananalloor family with right to perform Tantram at the Temple.

Shloka 6-

"Vedaadhyayanaheenaanaam sameepagraamavaasinaam,
Kshetrakaaryamdadau tatra kshetrarakshantu bhaargavah"

Bhagavan Parashurama allotted the duty of managing the Temple rituals and protecting its practices to those brahmins from a nearby village, who did not have the right of vedaadhyayana.

These are the Yogattilpottimaar brahmins, who are part of Ettarayogam and form the council to supervise the rituals of the Temple.

Sloka 7-

"poojaartham kalpayaamaasa sabhaagraama nivaasinaah"

He ordained that the residents of Sabhagrama(*a village in the modern day Kasargod district*) shall do pujas to the Deity. *Even today, the nambi priests are selected only from those families which were originally from that village.*

v. Shlokas 10 and 11-

"nrsimhamoole dhanakoshajaalam

praakaaramadhyeshatakoti ratnam

niveshyaraamo bhagavaan mahaatmaa aadityabhoopaalam idambabhaase||

tvamevataavat paripaalayasvayam shree padmanabhaalayam etamanvaham

poojyashchamaanyo bhuvanekhilaanaam vikhyaatanaama kulashekarastvam||"

Bhagavan Parashurama placed the treasury at the Narasimha corner (*Vault B*) and huge numbers of gemstones in the Temple praakaaras (*reference to the other vaults*). Thereafter, Lord Parasurama, that great soul who was akin to whirlwind, instructed Maharaja Aditya as follows:

"You shall guard and nourish this Temple of SreePadmanabha by yourself *everyday* (*which is the reason why the Ruler is expected to visit the Temple everyday*). You shall be revered in all worlds as Kulashekhara"

It is evident from the text of *Kerala Mahatmyam* that the Ruler is integral to the history of the Temple and has specific duties assigned to it right from the inception of the Temple, which he is expected to perform without exception. Clearly, the Travancore Family enjoys rights under Article 25(1) in so far as their rights and duties in relation to the Temple are concerned.

ii. **Book titled Sree Padmanabha Swamy Temple**- This book was authored by Princess Gouri Lakshmi Bayi and published by Bharatiya Vidya Bhavan in 2013. The relevant portions of the book are captured on Pages 62 and 63 of JSD 1. This book records that members of the Tarananalloor family who are appointed as Tantris to the Temple are governed by a specific manuscript handed over to them by Bhagavan Parashurama, according to the belief, which is known as the *Anushtana Grantham* or *Parashurama Padhathi*. Consequently, the tradition is known as the *Padhathi Sampradayam* and the Temples which adhere to the said tradition are called *Padhathi Kshetras,* the Sri Padmanabhaswamy Temple being the foremost among them. The contents of the book which relate to the traditions and practices of the Temple have been corroborated by the Tantri in his impleadment application. These facts give the Temple a clear and irrefutable denominational character within the meaning of Article 26 thereby vesting in the Travancore Family and Tantri rights under Articles 25 and 26.

iii. **A History of Travancore from the Earliest Times**- Published in 1878 and authored by P. Shungoonny Menon, the Dewan Peishcar of Travancore, this work is considered seminal in understanding the journey of Kerala from its ancient origins as Parashurama Kshetra to the colonial times. This document starts at Page 7 of JSD 2. The relevant portions are at Pages 29,30,43-45,48-50,57-64,75, and 87-89. These portions establish the reliability of Kerala

Mahatmyam as the applicable scripture as well as the unbroken relationship between the Travancore Royal Family and the Padmanabhaswamy Temple.

iv. **The Travancore State Manual**- Published in 1906 and authored by V. Nagam Aiya, Dewan Peishcar of Travancore, this document too establishes the reliability of the Kerala Mahatmyam as the scripture for the Temple. This document starts at Page 100A of JSD 2. The relevant portions are at Pages 100, 104, 107 and 108.

v. **Devaswoms in Travancore-** This document has been placed on record at Pages 67-98 of JSD 1. Published in 1949, this document captures the entire history of Devaswoms in Travancore and its relationship to the Ruler. Pages 70-73 capture the relationship between the Travancore State and the Sri Padmanabhaswamy Temple and are consistent with the literature cited herein above. Pages 73-76 capture the relationship between the Travancore State and other Devaswoms. The three categories of Devaswoms are captured on Page 77 and the manner of their administration is captured from Page 78 onwards. This document effectively establishes that the treatment of the relationship between the Ruler and the Padmanabhaswamy Temple has been different and special compared to the relationship between the Ruler and other Devaswoms.

5. Each of the above-cited documents go on to establish the existence of the relationship of Padmanabha Dasa between the Ruler of Travancore and the Deity. These documents also convey the nuance that unlike the Kings of yore acting as patrons of Temples, in the case of the Padmanabhaswamy Temple, the Presiding Deity is the tutelary Deity of the Travancore Family owing to the fact that the Family traces its lineage to Maharaja Aditya on whom Bhagavan Parashurama is believed to have bestowed the duty to take care of the Temple and to guard it. Consequently, the descendants of Maharaja Aditya cannot be divested of this duty through any act of the State given that it would amount to altering the history of the Temple and its character. Simply stated, the role played by the Travancore Family, as descendants of Maharaja Aditya, is essential and integral to the Temple's very founding and hence its identity. This role is, therefore, protected by Article 25(1) and Article 26(b) of the Constitution. Since the Parashurama Padhati is practiced only by a handful Temples in the world and it has a distinct identity of its own, the people who have been given the sole right to perform the rituals of the Temple and the people who are integrally connected to the Temple are also protected by rights under Article 29(1) to protect the culture of the Temple. Further, owing to Section 7 of the Places of Worship (Special Provisions) Act, 1991, the denominational identity of the Temple and its religious character are protected under Sections 3 and 4 of the said Act. Any denial of the role of the Travancore Family by any arm of the State through a

constitutional amendment or otherwise, or through judicial pronouncement would amount to and result in altering the identity and character of the Temple, which is unconstitutional. Therefore, it is evident from the above that to assume that the said relationship between the Travancore Family and the Temple came into existence only in 1750 when the State was dedicated to the Deity by Shri Marthanda Varma, is factually incorrect.

6. The integral relationship between the Travancore Family and the Temple is further borne out from the Proclamation dated August 10, 1947 issued by His Highness Shri Bala Rama Varma wherein it was recorded that the Proclamation was being announced on behalf of the Padmanabha Dasa. This document was filed during the course of oral submissions on March 27, 2019. Subsequently, the Travancore Interim Constitution dated March 24, 1948, in particular Article 4 of the said Constitution, also captures the special relationship between the Travancore Family and the Temple.The said document starts at Page 761 (@763) of Part 3 of JSD 2. Two conclusions emerge from the said Article:

i. That Clause (a) and Clause (b) must be treated differently. This is because Sri Pandaravaka, which is a reference to the Sri Padmanabhaswamy Temple, is treated as part of matters related to the Palace and the Royal Family, whereas Devaswoms, Hindu Religious Endowments and matters connected therewith are spelt out separately in Clause (b); and

ii. That the Ruler exercised exclusive control and supervision with respect to both, without any interference from the Council of Ministers or the Legislative Assembly.

Clearly, the special and integral relationship between the Travancore Family and the Temple is continued through Article 4(a) of the Interim Constitution. The said Interim Constitution was promulgated in March 1948 after August 1947 when the Rulers of the States of Travancore and Cochin executed separate Instruments of Accession with the Dominion of India.

7. Subsequently, on May 29, 1949, a Covenant was entered into between the Rulers of Travancore and Cochin on the one hand, and the Government of India on the other, for the formation of the United State of Travancore and Cochin. This Covenant was signed by the Maharaja of Travancore, the Maharaja of Cochin, and Mr. Vapal Pangunni Menon, Advisor to the Government of India. The Covenant was published in the Gazette Extraordinary on July 1, 1949. This document is at Pages 13-19 of JSD 1. Article VIII of the said Covenant captures the relationship between (a) the Ruler of Travancore (Rajpramukh) and the Padmanabhaswamy Temple, (b) the Rajpramukh and the Travancore Devaswom Board, (c) the Ruler of Cochin and the Cochin Devasom Board, and (d) the Ruler of Cochin and the Sree Poornathrayeesa Temple and the Pazayannore Bhagavathy Temple. What is of consequence to the instant Petition are the following points:

i. In stark contrast to Articles IV(2) and XIV of the Covenant, Article VIII is not limited to the lifetime of the Ruler of Travancore who executed the Covenant;

ii. The special and integral relationship between the Ruler of Travancore and the Padmanabhaswamy Temple, which was recognized in Article 4(a) the Travancore Interim Constitution of 1948 is carried forward in Article VIII(b) of the Covenant, and again a distinction is struck between the relationship of the Ruler with the Temple on the one hand, and with other Temples which fall under the Travancore Devaswom Board on the other;

iii. Article VIII is a stand-alone recognition of the relationship between the Ruler of Travancore and the Temple, which is unaffected by other provisions of the Covenant. It is not part of the Privy Purse arrangement under Article XIV of the Covenant, nor is it part of the personal rights, privileges, dignities and titles of the Ruler as referred to in Article XVII of the Covenant. Therefore, any development or operation of law which affects any other provision of the Covenant still does not affect Article VIII;

iv. The relationship between the Travancore Family and the Deity represents an impartible and inalienable property which has been expressly and specially protected through a dedicated provision of the Covenant, namely Article VIII, as opposed to merely listing it as yet another private property in

the schedule of private properties which the Ruler was expected to furnish to the Government of India under Article XV of the Covenant. Therefore, the absence of any reference to the relationship in the schedule of private properties does not in any manner undermine the protection of the relationship guaranteed under Article VIII;

iv. The signatures appended by the Maharajas on behalf of themselves, their heirs and successors on the one hand, and the Government of India on the other, mean that all parties and their successors are bound by the terms of Covenant, unless constitutionally altered;

v. The reference to Ruler in the Covenant was guided by the definition of the Ruler in Section 6 of the Government of India Act, 1935 as evidenced by Article IX of the Covenant. The definition of the term Ruler in Section 6(6) under the Government of India Act 1935, as well as the amended definition in Section 6(4) in 1947, were placed on record before this Hon'ble Court during oral submissions of Mr. J. Sai Deepak on March 27, 2019. In both definitions, it was expressly provided that the term Ruler also accommodated any person who signed on behalf of the Ruler on account of the minority of the Ruler. Owing to the dedication of the State in 1750, given that Ruler of Travancore was the Deity, who is a perpetual minor in law, the Covenant was executed by the Ruler of Travancore as the representative of the Deity who had assumed the position of the Ruler in 1750;

vi. The Instrument of Accession entered into by the Rajpramukh of the United State of Travancore Cochin with the Government of India on July 14, 1949, clearly shows that the Ruler of Travancore, Shri Rama Varma, had signed the Instrument as the PadmanabhaDasa. The said document was placed on record by Mr. J. Sai Deepak during his oral submissions on March 27, 2019.

Each of the above shows that the conduct of the Ruler of Travancore in so far as the Temple is concerned, has been consistent and the relationship between the Ruler/Family and the Temple remained unchanged even until the execution of the Instrument of Accession with the United State of Travancore Cochin in July 1949.

8. The subsequent treatment of the Covenant by the Assembly of the United State of Travancore Cochin, especially of Article VIII of the Covenant, also abundantly establishes the legally valid and binding nature of the Covenant under the Indian Constitution. In this regard, the proceedings of the United State of Travancore and Cochin Legislative Assembly dated August 6, 1949 were placed on record on March 27, 2019 by Mr. J. Sai Deepak. On Internal Page No. 29 (page number on top right-hand corner), Question No. 24 of Sri K.P.Nilakanta Pillai, which relates to the Constitution of the Travancore-Cochin Union, and the response of Sri T.K.Narayana Pillai, have been captured. It becomes evident from the said exchange that the Covenant entered into by the Rulers of Travancore and Cochin with the concurrence and guarantee

of the Government of India and the Ordinances issued thereunder constitute the Constitution of the Travancore-Cochin Union.

9. In addition to this, on March 27, 2019, Mr. J. Sai Deepak also placed on record the proceedings of the of the United State of Travancore and Cochin Legislative Assembly dated October 6, 1949. On Internal Pages 106-108 of the said document, there is a clear discussion on (b) the obligation of the United State to contribute a sum of INR 51 Lakhs to the Devaswom Fund and the Pandaravaka Fund, and (b) the guaranteeing of such obligation under Article VIII of the Covenant. There is also a clear discussion of treating this obligation as a charge created on the consolidated fund of the Indian Union, which led to the creation of Article 290A, to ensure that it does not violate any canon of secularism, and also to honour the Union's obligations under Article VIII of the Covenant. In order to complete the history of this obligation, the Devaswom Proclamation dated April 12, 1922 issued by the then Ruler Sri PadmanabhaDasa Rama Varma has been placed on record at Pages 64-66 of JSD 1. A perusal of this document shows the following:

i. That since the Sri Padmanabhaswamy Temple was already within the exclusive control of the Ruler, the said Temple was not taken over as part of the 1922 Proclamation;

ii. Only other Devaswoms were taken over along with their immoveable properties and a Devaswom Fund was created to administer the said Devaswoms;

iii. Since the Devaswom properties had merged with the property of the State, to ensure adequate payment to the Devaswoms, a detailed allocation of funds was spelt out in Clause 4 of the Proclamation, which included not less than 40% of the Ayacut and Sanchayam land revenue of the State, moneys realized from time to time by the sale of the movable properties of the said Devaswoms, all voluntary contributions and offerings made by devotees, interest on investments of funds belonging to the said Devaswoms and all other moneys belonging to or other income received by the said Devaswoms;

iv. All immoveable properties of the Devaswoms which were mentioned in the Schedule to the Proclamation would be maintained separately;

v. A Devaswom department was also created for efficient management of the Devaswoms;

vi. Critically, unlike the secular Republic of India, the official religion of the Travancore Princely State was Hinduism, which is expressly mentioned on Internal Page 2, Running Page 65 of the Proclamation.

It was this obligation that was assumed by the Indian Union as part of Article VIII of the Covenant, among other things. This establishes beyond doubt that there is no basis to assume that either the Sri Padmanabhaswamy Temple or any other Temple under the Travancore Devaswom Board are State-funded. In fact, they are not and they are merely receiving a consolidated amount as annuities from the vast tracts of land which were taken over from them. Therefore, the amounts being paid to the Sri Padmanabhaswamy Temple and the TDB are charges created on the Consolidated Fund, and not State largesse being paid from the taxpayer's money.

10. The fact that none of the Temples under the TDB are State-funded is further borne out from the 2003 notification by the Revenue (Devaswoms) Department of the Government of Kerala, which has been placed on record at Page 306 of JSD 1. The said document clearly shows that the Devasom Fund and the Sree Pandaravaka Fund was enhanced in 2003 from INR 46.5 Lakhs to INR 100 Lakhs, out of which INR 80 Lakhs was earmarked for the Travancore Devaswom Board and INR 20 Lakhs was earmarked for the Sri Padmanabhaswamy Temple. This fact is again corroborated by the RTI Response issued by the Government of Kerala dated October 19, 2017 at Page 307 of JSD 1. In the said response, it has also been clarified that the Government has not yet paid the annuity of INR 58,500 which is due to the Sri Padmanabhaswamy Temple as per Section 6(1) of the Sri Pandaravaka Lands

(Vesting and Enfranchisement) Act, 1971 (the said Act is at Pages 293-303 of JSD 1). At Page 308 of JSD 1, in the RTI Response dated October 17, 2017 issued by the then Executive Officer of the Sri Padmanabhaswamy Temple to the Revenue (Devaswoms) Department of Kerala, it has been clearly stated that the annuity of INR 58,500 under the 1971 Act had not yet been paid for 2016-17 and 2017-18 as on date of the RTI Response.

11. On March 27, 2019, Mr. J. Sai Deepak also placed on record Chapter III of the Hindu Religious Institutions Bill which was published on March 4, 1950 through a Gazette Extraordinary. The said Chapter of the Bill is expressly dedicated to the Sree Padmanabhaswamy Temple and the draft of Sections 18-23 are manifestly a direct consequence of the Union's guarantees and obligations under Article VIII of the Covenant. This ultimately led to Sections 18-23 of the of the Travancore Cochin Hindu Religious Institutions Act 1950 ("the TCHRI Act, 1950") which are dedicated to the Padmanabhaswamy Temple. Therefore, the nexus between the said provisions of the Act and Article VIII of the Covenant is manifest and irrefutable. Importantly, despite amendments being effected to the TCHRI Act in 1958, 1974, 1976, 1991, 1994, 1995, 1999 and 2007, no amendment has been effected to Sections 18-23 of the Act notwithstanding any amendment to the Constitution, including the 26th Amendment in 1971 which abolished Privy Purses, repealed Articles 291 and 362, introduced Article 363A and amended

the definition of Ruler in Article 366(22). The 1958 and 1974 amendments to the TCHRI Act were placed on record by Mr. J. Sai Deepak on February 12, 2019 and the rest of the amendments were placed on record on March 27, 2019.

12. The following irrefutable conclusions emerge from the above facts and documents, which the State Government of Kerala has not placed on record, and which were placed on record by Mr. J. Sai Deepak on behalf of the Intervenors:

i. The relationship of a Padmanabha Dasa between the Ruler and the Temple existed before 1750, which was recognized by tradition, and was independent of its recognition by any other sovereign. Given the non-temporal nature of the relationship, the acquisition or loss of any title as sovereign or ruler in the temporal sphere would make no difference to the status of the Padmanabha Dasa;

ii. It is due to the integral nature of the relationship between Travancore Family and the Temple that Article VIII(b) of the Covenant, entered by and between the Rulers of the erstwhile Travancore and Cochin Princely States and the Indian Union, specifically and expressly states that the administration of the Temple and its properties shall be conducted by an Executive Officer, subject to the control and supervision of the Ruler of Travancore and the said Officer shall be appointed by the Ruler of Travancore. Further, the Committee of three Hindu members, who shall be nominated

by the Ruler, shall advise in the discharge of his functions in relation to the Temple;

ii. This is in contrast to Article VIII(c) and (e) which envisage the creation of the Travancore Devaswom Board consisting of three Hindu members, out of whom only one of them is nominated by the Ruler of Travancore. Clearly, the difference in the mechanism of appointments between the Padmanabhaswamy Temple and the Travancore Devaswom Board is a consequence of the recognition of the integral and essential relationship between the Temple and the Travancore Family.

iii. It is for these reasons that the same mechanism is reflected in Sections 18-23 of the Travancore Cochin Hindu Religious Institutions Act 1950 ("the TCHRI Act, 1950") which are dedicated to the Padmanabhaswamy Temple. Therefore, the nexus between the said provisions of the Act and Article VIII of the Covenant is manifest and irrefutable. It is also for this reason that the State Government has not undertaken any legislative amendments to Sections 18-23 since it has been aware all along that it would impact the obligations under the Covenant, which it does not have the power to affect in any manner.

iv. Since none of the above facts and documents were considered by the Hon'ble Kerala High Court in delivering the Impugned Judgement, the Judgement automatically renders

itself liable to be set aside since it suffers from grave non-consideration of relevant historical and legislative facts, apart from other fatal infirmities which shall be set out in the ensuing portions of the instant Written Submissions.

B. NATURE OF THE RELATIONSHIP BETWEEN THE TRAVANCORE RULER AND THE TEMPLE

13. Given the unique and peerless nature of the relationship between the Travancore Ruler and the Temple, to try and peg the relationship mechanically under the heads of Shebaitship or as a Dharmakarta, may not do justice to the position of a Padmanabha Dasa. The term Dasa here translates to a Slave, not a Servant. In other words, a Servant has the option of abandoning his Master, but a Slave does not until released by the Master. Such is the nature of the spiritual connect between the Travancore Ruler and the Deity of the Temple. Therefore, the presence or absence of any beneficial interest of the Ruler in the Temple is of no consequence to the relationship. In other words, the relationship is higher than that of a Shebait, but if at all a choice has to be made between a Shebait and a Dharmakarta, at the very least the Ruler is a Shebait, notwithstanding the technical requirements of a Shebait. This is evident from the history of accession of the Travancore State with the Indian Union, wherein the then Ruler's commitment to the institution was evident to Sri V.P.Menon, and the very question of the State's accession to the Union hinged on the Ruler retaining all and exclusive rights with

respect to the Temple. This is precisely why the express presence of Article VIII and the guarantees provided thereunder with respect to the Temple acquire special significance, for they protect the Ruler's impartible estate which shall devolve upon his successors without any impediment. The right recognized in and guaranteed by the Covenant is further guaranteed under Articles 13, 25 and 26 of the Constitution. Further, in light of the Covenant's protection of such rights, Article 363's application is triggered, which bars the jurisdiction of Courts and would also come in the way of any legislative action under Articles 25(2) or 26 of the State Legislature. This fact has been completely lost sight of in the Impugned Judgement.

C. BAR ON JURISDICTION OF COURTS UNDER ARTICLE 363

14. The High Court of Kerala as well as the State Government of Kerala have completely failed to appreciate the express language and import of Articles 363, 131 and 143 of the Constitution:

i. The 26th Amendment did not repeal Article 363, which establishes that the Amendment was not meant to affect Article 363 in any manner, notwithstanding the repealment of Articles 291 and 362. Article 363(1) expressly starts with a non-obstante clause that notwithstanding anything in the Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other Court shall have jurisdiction in any dispute "***arising out of*** *any provision of a*

treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation ***arising out of*** *any of the provisions of this Constitution* ***relating to*** *any such treaty, agreement, covenant, engagement, sanad or other similar instrument".*

ii. In interpreting the phrases "arising out of" or "relating to", Mr. J. Sai Deepak placed reliance on the judgement of this Hon'ble Court in *Renusagar Power Company Ltd vs General Electric Company And Anr*1985 AIR 1156, wherein it was held that phrases such as "arising out of" or "relating to" must be given the broadest possible interpretation. Extracted below is Paragraph 26 of the said Judgement:

1. Whether a given dispute inclusive of the arbitrator's jurisdiction comes within the scope or purview of an arbitration clause or not primarily depends upon the terms of the clause itself; it is a question of what the parties intend to provide and what language they employ;

2. Expressions such as 'arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the

existence, validity and effect (scope) of the arbitration agreement;

3. Ordinarily as a rule an arbitrator cannot clothe himself with power to decide the questions of his own jurisdiction (and it will be for the Court to decide those questions) but there is nothing to prevent the parties from investing him with power to decide those questions, as for instance, by a collateral or separate agreement which will be effective and operative;

4. If, however, the arbitration clause, so widely worded as to include within its scope questions of its existence validity and effect (scope), is contained in the underlying commercial contract then decided cases have made a distinction between question as to the existence and or validity of the agreement on the one hand and its effect (scope) on the other and have held that in the case of former those questions cannot be decided by the arbitrator, as by sheer logic the arbitration clause must fall along with underlying commercial contract which is either non-existent or illegal while in the case of the latter it will ordinarily be for the arbitrator to decide the effect or scope of the arbitration agreement i.e. to decide the issue of arbitrability of the claims preferred before him.

iii. Notwithstanding the fact that the said Judgment was delivered in the context of arbitration agreements, the interpretation of an English phrase cannot change. In fact, it must be given the broadest possible amplitude in a

Constitutional context. This means that any dispute which has any connection whatsoever with the Covenant is beyond the scope of judicial review by virtue of Article 363 (1). The same language is replicated in the Proviso to Article 131, which clearly demonstrates a consistency in intent. The effect of Article 363 is that, save for the advisory role of the Supreme Court in the manner prescribed in Article 143 upon reference by the Hon'ble President of India, neither the Supreme Court nor any other Court shall exercise adjudicatory powers with respect to any issue which arises out of or relates to a provision of a Covenant or any right or liability arising out of the Constitution which relates to a Covenant;

iv. The reason why the President alone has the power to take a decision with respect to disputes arising out of or relating to a Covenant is because a Covenant is also in the nature of a treaty entered into between the Indian Union and a Princely State, which is a B2B relationship, and is therefore relegated to the exclusive preserve of the head of the Indian Union, namely the President;

v. Given that Article VIII of the Covenant is at the heart of the dispute and is inextricably connected to the rights of the Travancore Family, the application of Article 363 to the dispute at hand is beyond doubt. This means that the Hon'ble High Court of Kerala ought not to have proceeded to adjudicate the matter and should have referred the matter

either to the Supreme Court for reference to the President, or directly to the Hon'ble President for his consideration. Since this goes to the root of the High Court's jurisdiction as well as the jurisdiction of this Hon'ble Court and affects the various orders passed by this Hon'ble Court, including the Committees appointed by it and the reports of the *Amicus* and the former CAG Shri Vinod Rai, the Impugned Judgement is liable to be set aside, along with the Orders passed by this Hon'ble Court, which attract the application of Article 363.

vi. Further, since Covenants and rights under the Covenant have been expressly recognized in the Constitution, in particular in Articles 131 and 363, it becomes evident that a Covenant as a document has constitutional recognition and is not merely a political document as observed in *Madhav Rao Scindia*. In other words, the Covenant is a document which can be legitimately relied upon to understand the rights of any ruler or any erstwhile ruler. Further, the definition of a Ruler under Article 363(2)(b) remains valid since it refers to a Ruler who had the power to enter into the Covenant with the Indian Union at the time of its execution. In this case, it is nobody's case that the Covenant of May 1949 is invalid since it was executed by a person who did not have the power as a Ruler to enter into it.

vii. Therefore, the bar under Article 363 continues to apply to the facts of the instant case since it is the admitted position

of all parties that Sections 18-23 trace their origins to the recognition given to the relationship in Article VIII of the Covenant. This is also precisely why Article 363 was not repealed by the 26th amendment because those aspects of Covenants other than privy purses and privileges continue to be available and disputes in relation to the same are barred from the jurisdiction of the Courts under Article 363.

viii. From the perspective of legislative history, the intent behind the incorporation of Article 363 in the Constitution is clearly reflected in the Constituent Assembly Debates dated October 16, 1949, which were placed on record by Mr. J. Sai Deepak on February 12, 2019 during the course of his oral submissions at Pages 545-649 of JSD 2. The motion to add the original Article i.e. the then Article 302AA in the Draft Constitution was moved by the Hon'ble member of Constituent Assembly, Mr. T.T. Krishnamachari and the logic behind it was explained by him in the following wordsat internal page 36 of the debate:

"10.153.134 -***The idea is that the court shall not decide in this particular matter. It is subject only to the provisions of article 119*** **(current Article 143)** ***by which the President may refer the matter to the Supreme Court and ask for its opinion and the Supreme Court would be bound to communicate its opinion to the President on any matter so referred by him***. *The House will also remember that there are few articles in the Constitution specifically, 302A* (current repealed Article 362)

and 267A (current repealed Article 291) *where there are references to these agreements, covenant, sanads, etc. and even these are precluded from adjudication by any court.* ***The House will recognize that it is very necessary that matters like these should not be made a matter of dispute that goes before a court and one which would well-nigh probably upset certain arrangements that have been recommended and agreed to by the Government of India in determining the relation between the rulers of States and the Government of India in the transitory period.*** *After the Constitution is passed, the position will be clear. Practically all the States have come within the scope of Part VIA* (current repealed Part VII of the Constitution) *and they will be governed by the provisions of this Constitution and, excepting so far as certain commitments are positively mentioned in the Constitution, and as I said the two articles 267A and 302A, the covenants will by and large not affect the working of the Constitution;* ***and it is therefore necessary in view of the vast powers that have been conceded in this Constitution to the judiciary that anything that has occurred before the passing of this Constitution and which might incidentally be operateable after the passing of the Constitution must not be a subject-matter of a dispute in a court of law."***

Since the motion to add the above Article was accepted by the Constituent Assembly without any further debate or amendments to it, the intention and reason behind adding

the said provision was undisputedly to preclude judicial intervention in matters that were arranged and agreed upon under the said agreements, covenants, *sanads* etc. by the Government of India and the Rulers of Princely States that would remain in effect even after the coming into force of the Constitution. It is clear that the intention was to assign such matters to the jurisdiction of the President only who may, if required, seek opinion from the Supreme Court, thereby precluding even the jurisdiction of State Governments to legislate on such matters.

ix. The reason why Article 363 acts as a bar on the jurisdiction of even the legislature in the context of rights under Covenants is made abundantly clear from its purpose as evidenced from the Constituent Assembly Debate, which is to relegate such issues to the President so as to prevent them from becoming disputes in a Court of law. Therefore, any attempt by the State Government of Kerala to legislatively undermine the rights of the Travancore Family which flow from the Covenant, too would be within the teeth of Article 363. The proposal filed by the State Government of Kerala is clearly a move in that direction, which would give rise to another round of litigation, which must be nipped in the bud by this Hon'ble Court.

D. THE CONSTITUTION (TWENTY SIXTH AMENDMENT) ACT, 1971 ANDITS EFFECT ON THE RIGHTS OF THE TRAVANCORE FAMILY

15. A clear reading of the Parliamentary Debates surrounding the promulgation of the 26th Amendment, read along with the Statement of Objects and Reasons of the 26th Amendment, the judgments delivered by this Hon'ble Court in the context of the 26th Amendment and the current provisions of the Constitution reveal the following:

i. The 26th Amendment was meant exclusively for abolition of Privy Purses and Privileges of the Ruler of former Indian States. The abolition of Privy Purses translated to repealment of Article 291 of the Constitution, and abolition of Privileges translated to repealment of Article 362. Further, the specific context in which the term Privilege was used is expressly captured in the Lok Sabha debates dated December 2, 1971, which were placed on record as a separate compilation along with Rajya Sabha debates dated December 9, 1971, by Mr. J. Sai Deepak on March 12, 2019 during the course of his rejoinder submissions. In running Page 2 of the said compilation, in the last two paragraphs of column number 139 (left column), there is a specific discussion on the issue of Privileges, which clearly establishes that those privileges which were bestowed on the Rulers of Princely States by the British Crown by virtue of them being recognized as "Feudal Princes" by the British Crown, were the only privileges which were sought to be abolished by the 26th Amendment. In other words, those rights, positions and relationships which existed prior to the entry of the British into India were beyond the scope of the 26th Amendment. At the very least, it becomes evident from a reading of the Parliamentary Debates that

religious rights were never meant to be interfered with by the 26th Amendment. In the facts of this case, it has become abundantly evident that the relationship of 'Padmanabha Dasa' between the Travancore Ruler and the Temple existed way before 1750 as reflected by tradition, and only the additional factum of dedication of the Princely State occurred in January 1750. Therefore, the said relationship is firstly independent of the dedication of 1750 and secondly independent of recognition of the Ruler of Travancore as a Ruler by the British Crown or the President of India. In other words, the relationship is not associated with the concept of rulership as recognised by the Crown or the President.

ii. Flowing from the above, the abolition of the concept of rulership either through the 26th Amendment or the merger of the Princely States with the Indian Union did not and cannot affect the relationship between the Travancore Family and the Temple. This is precisely why the Ruler's relationship with the Temple is distinct from his relationship with the other temples of the Devaswom board. This demonstrates that the Ruler was not exercising the right as a sovereign *qua* the Padmanabhaswamy Temple, which he was *qua* the other Temples.

iii. This means the relationship of the Family with the Temple rises much above a mundane property right, and is not to be limited by the narrow definition of Privilege. In other words, the Family enjoys a religious relationship with the Temple

which extends to both religious and secular aspects. This effectively gives rise to a right which is protected by Articles 25(1) and 26 in favour of the Family. This right, which is based on religious relationship has been specifically recognised in Article VIII of the Covenant, and is distinct from the personal rights, privileges, dignities and titles which the Ruler enjoys as a Ruler under Article VII. Therefore, while the 26th Amendment merely affects the right to receive a Privy Purse under Article XV and at best impacts the personal rights, privileges, dignities and titles under Article XVII, it does not impact in any manner the rights under Article VIII.

iv. Therefore, Article VIII preserves and protects the impartible religious relationship between the Family and the Temple which is completely independent of the concept of rulership, and which can be severably protected even if every other provision of the Covenant fails. This is why the relationship has been protected through a stand-alone provision so that no legislative enactment which impacts other provisions of the Covenant has any bearing whatsoever on Article VIII. During the course of his rejoinder submissions of March 12, 2019, Mr. J. Sai Deepak placed reliance on an article titled 'The Demise of the Right-Privilege Distinction in Constitutional Law', published in Volume 81 of Harvard Law Review in May 1968, and the judgment of this Hon'ble Court in *Ramana Dayaram Shetty* v. *The International Airport Authority of India and Others* 1979 AIR 1628/1979 SCC (3) 489 to support his contention that although the

accountability of the State in the context of the grant and treatment of Privilege had been progressively enhanced, the legal distinction between a Right and a Privilege continues to be valid. As a consequence of this position, the abolition of privileges by the 26th Amendment does not in any manner impact or dilute the religious rights of the Travancore Family. This is precisely why there is no whisper of the effect of 26th Amendment on the religious rights of Rulers in any of the judgments cited by the State Government of Kerala in the context of 26th Amendment. Further, the *Raghunath Rao* judgment expressly clarifies in Paragraphs 36 and 37 that the said judgment was limited to the specific Covenants which were the subject matter of adjudication in the said judgment. In a nutshell, the repealment of Articles 291 and 362 does not in any manner affect the position of the Travancore Family with respect to the Temple as protected by Sections 18-23 of the TCHRI Act, 1950 owing to the guarantee under Article VIII of the Covenant.

v. In so far as the amended definition of Ruler in Article 366(22) is concerned, it is reiterated that even if there existed no definition of Ruler in the Constitution or if it had been altogether deleted, it still would have made no difference to the status as a Padmanabha Dasa since the only recognition that matters in so far as the Temple is concerned is the recognition by its stakeholders, namely the Tantri, the Yogathil Pottimaars and the devotees. Importantly, in light of the fact that a crowning ceremony (Thirumudi Kalasam)

takes place under the stewardship of the Tantri when the senior male member of the family takes charge as the Padmanabha Dasa, this is the only ceremony that matters in so far as he recognition of the Senior male member as the Padmanabha Dasa. Viewed in this sense, it becomes evident that the use of the term Ruler in Article VIII of the Covenant and Sections 18-23 of the TCHRI Act, 1950, is nominative in nature i.e. it refers to a position than a person.

vi. It is humbly submitted that after the accession of the Travancore and Cochin Princely States to the Indian union in 1947 and the execution of the Covenant in May 1949, the position of a Ruler ceased to exist to the extent that the erstwhile Rulers no longer held sway in so far as the administration of the States are concerned. Therefore, the Twenty Sixth Amendment did not add or take away anything from the situation that existed in 1950 except for abolishing the privy purse and privileges associated with Rulership. That apart, neither the Accession nor the 26th Amendment could or did take away the privileges enjoyed by the erstwhile Rulers in religious institutions since the modern Indian secular State could not have stepped into the shoes of the erstwhile Rulers with respect to such religious privileges given that Princely States such as the Travancore State were avowedly Hindu States. Therefore, the reliance placed by the High Court on Article 366(22) to conclude that the position of the Ruler had ceased to exist after 1971 is neither here nor there. Further, the State Government of Kerala's own

counter-affidavit in *Mujeeba Rehman v State of Kerala* shows that the State Government too agrees that the 26th Amendment and the new definition of Ruler under Article 366(22) did not take away all rights and privileges of the Rulers of Princely States. A copy of the said judgement was placed on record by Mr. J. Sai Deepak on March 27, 2019.

vii. The Hon'ble High Court has failed to appreciate the significance of the position of the Padmanabha Dasa and has proceeded on the rather simplistic assumption that with the merger of the Princely States with the Indian Union or the promulgation of the Twenty Sixth Amendment, the position of the Padmanabha Dasa is co-terminus with the position of the Ruler of Travancore. There is no discussion anywhere in the Impugned Judgment of the rights of devotees who put faith in the history and origin of the Temple which accord an integral and an essential role to both the male and female members of the Royal Travancore Family in so far as the religious and secular aspects of administration of the Temple are concerned. That the devotees have rights under Article 25(1), the presiding Deity is the owner of the property as a juristic person and the Temple itself has rights under Article 26 owing to its unique denominational character which flows from the *Parashurama Padhathi* do not find mention anywhere in the analysis of the Hon'ble High Court.

D. THE DEITY'S FUNDAMENTAL RIGHTS IN A PLACE OF WORSHIP

16. It is humbly submitted that in adjudicating on any disputes in relation to a place of worship, it must be borne that by definition the place is not secular and has a specific religious identity, which flows from its theology and founding principles. Importantly, while the role of the State is not completely absent, it is expected to be minimal, non-intrusive, non-invasive and must make way for the faith of the devout to the maximum extent possible under the Constitution. In the context of Hindu religious institutions, the Will of the Deity reigns supreme and such Will is protected by law. It is irrefutable that in a Temple, its practices, the faith of the devotees in the Deity and the right of the devotees to worship the Deity, all are premised and must be necessarily traced to the very belief that there exists a Deity with the Temple being His Abode, which belief informs every religious practice and ritual associated with the Temple. Therefore, it necessarily follows that the belief that there exists a Deity as a living person translates to the said living Deity enjoying rights under Article 25(1) asserted through the Chief Priest or Shebait or Tantri and His devotees enjoying rights under Article 25(1). Since the Deity is a living person under the law, the Deity, through the Tantri and His devotees, has a fundamental right to practice His faith under Article 25(1).

17. In this regard, Mr. J. Sai Deepak placed reliance upon the judgement of a nine-Judge Bench of this Hon'ble Court in *State Trading Corporation of India Ltd. v. Commercial Tax*

Officer and Ors. (1964) 4 SCR 99. The majority opinion authored by Justice Sinha on behalf of the six out of the nine Judges expressed its view as follows on Article 25(1):

"Part III of the Constitution deals with Fundamental Rights. Some fundamental rights are available to "any person", whereas other fundamental rights can be available only to "all citizens". "Equality before the law" or "equal protection of the laws" within the territory of India is available to any person (Art. 14). The protection against the enforcement of ex-post-facto laws or against double-jeopardy or against compulsion of -self-incrimination is available to all persons (Art. 20); so is the protection of life and personal liberty under Art. 21 and protection against arrest and detention in certain cases, under Art.

22. Similarly, freedom of conscience and free profession, practice and propagation of religion is guaranteed to all persons. Under Art. 27, no person shall be compelled to pay; any taxes for the promotion and maintenance of any particular religious denomination. All persons have been guaranteed the freedom to attend or not to attend religious instructions or religious worship in certain educational institutions (Art. 28). And, finally, no person shall be deprived of his property save by authority of law and no property shall be compulsorily acquired or requisitioned except in accordance with law, as contemplated by Art. 31. These, in general terms,

without going into the details of the limitations and restrictions provided for by the Constitution, are the fundamental rights which are available to any person irrespective of whether he is a citizen of India or an alien or whether a natural or an artificial person."

18. Also extracted below is the relevant paragraph from the concurring opinion of Justice Hidayatullah from the judgment:

"Article 19 uses the word 'citizen' while the word 'person' is used in some other articles in Part III notably Art. 14 (creating equality before the law), Art. 21 (protection of life and personal liberty). By Art. 367, (unless the context otherwise requires) the General Clauses Act, 1897 applies to the interpretation of the Constitution. The word 'citizen' is not defined in the Constitution or the General Clauses Act but the word 'person' is defined in the latter to include 'any company or association or body of individuals whether incorporated or not.' The word "person" therefore, conceivably bears this extended meaning at least in some places in Part III of the Constitution."

If a body corporate can enjoy fundamental rights as a person through its stakeholders, there is no reason why a Deity cannot enjoy rights under Articles 21 and 25(1) as a person through the Shebait (Thanthri), the Travancore Royal family and the Devotees in so far its religious rights are concerned, particularly when the juristic character of the Deity has been

accepted for the purposes of litigation and taxation since 1925 in *Pramatha Nath Mullick vs Pradyumna Kumar Mullick* (1925) 27 BOMLR 1064 (part of JSD 1), and by this Hon'ble Court in *Yogendra Nath Naskar v. Commissioner of Income-Tax, Calcutta* 1969 AIR 1089 (part of JSD 1) and *Ram Jankijee Deities v. State of Bihar* 1999 AIR SCW 1878 (part of JSD 1). In view of the fact that the majority opinion in *State Trading Corporation* was delivered by seven Hon'ble Judges, the law on this issue stands settled until revisited by a larger Bench. In the facts of this case, by denying the role of the Travancore Family by erroneously citing the 26th Amendment, the Impugned Judgement of the Kerala High Court has infringed on the rights of the Deity of the Temple and has re-written the history of the Temple, which is constitutionally impermissible.

E. THE DENOMINATIONAL STATUS OF THE TEMPLE

19. A religious denomination derives its identity from the object of its faith and not vice versa. Further, in the absence of a definition of religious denomination, a definition spelt out by the judiciary cannot be rigidly applied on the same lines as a statutory definition. A perusal of the history of the Shirur Mutt case starting from the judgement of the Madras High Court in 1951 (Pages 776-834 of Part 3 of JSD 2) makes it abundantly clear that the spirit of the Shirur Mutt judgement of 1954 (part of JSD 1) of this Hon'ble Court has been misunderstood by the State Government of Kerala in denying the denominational status of the Temple. Following is the

definition of religious denomination from the Webster Dictionary used by the Madras High Court in the 1951 Shirur Mutt Judgement:

"of action of naming from or after something; giving a name to, calling by a name; a characteristic or qualifying name given to a thing or class of things; that by which anything is called; an appellation, designation or title; a collection of individuals classed together under the same name; ***now almost always specifically a religious sect or body having a common faith and organisation and designated by a distinctive name****."*

The definition in the Oxford dictionary at the relevant time was as follows:

1. the action of naming from or after something; giving a name to, calling by a name;

2. a characteristic or qualifying name given to a thing or class of things; that by which anything is called; an appellation, designation, title;

3. Arith. A class of one kind of unit in any system of numbers, measures, weight, money, etc., distinguished by a specific name;

4. A class, sort, or kind (of things or persons) distinguished or distinguishable by a specific name;

5. A collection of individuals classed together under a same name; ***now almost always specifically a religious sect or body having a common faith and organisation and designated by a distinctive name***

From Pages 720-760 of Part 3 of JSD 2, extracts of dictionary definitions of denomination have been placed on record, which reveal that the underscored portion of the fifth definition in the Oxford Dictionary is a reflection of the later development of Christian denominations, and was merely one of the definitions of a denomination.

20. The underscored portion from the Oxford dictionary was ultimately relied upon by this Hon'ble Court in Paragraph 15 of its judgement in Shirur Mutt. However, the verdict was delivered in the context of the following question which was posed by the Court to itself:

"What is the precise meaning or connotation of the expression "religious denomination" and whether a Math could come within this expression..."?

In light of this history and in light of one of the definitions from Oxford Dictionary quoted by this Hon'ble Court, it is evident that the Court did not reject the applicability of the rest of the definitions, which includes *"A class, sort, or kind (of things or persons) distinguished or distinguishable by a specific name".* The Padmanabhaswamy Temple is among the handful of Temples which subscribe to the Parashurama Padhati and are called Padhati Kshetras. Going by the

dictionary definition of a religious denomination, such Kṣhetras, including the Padmanabhaswamy Temple, would enjoy denominational status under Article 26, or at the very least a section thereof. This would not be against the dictum of *Shirur Mutt,* but would in fact be consistent with it. In this regard, reliance is also placed on the fact that the term Sampradaya, as used in the Hindi version of Article 26, more accurately describes Indic sects as opposed to "denomination" which is distinctly Christian and therefore cannot be used to understand Hindu sects or denominations or sections thereof.

21. In any event, the judgement of this Hon'ble Court in *Sri Venkataramana Devaru v. State of Mysore* 1958 SCR 895 clearly laid down that even in the context of denominational Temples which enjoy rights under Article 26, the reformative levers under Article 25(2) are available to the State through laws which are made to give effect to the objects of Article 25(2). It is submitted herein that this also means that regardless of the denominational nature of a Temple, the State's right to interfere with it must necessary be traceable to an express power granted under any provision of the Constitution. Since Article 25(2) is the only available provision for the State to make laws in the context of a non-denominational Temple, *arguendo* that the Padmanabhaswamy Temple is a non-denominational Temple, the State Government cannot exceed its powers under Article 25(2), and certainly cannot exercise such powers in

derogation of the rights of the Travancore Family under Article VIII of the Covenant since, as submitted earlier, that would attract the bar under Article 363.

F. THE HIGH COURT'S DIRECTIONS

22. The High Court's directions in the Impugned Judgement are entirely premised on the assumption that the 26th Amendment deprives the Travancore Family from exercising any rights in relationship to the Temple and therefore, the State Government or the High Court as *parens patria* can take over the Temple. In this regard, a judgement of the very same High Court merits reliance. The following extract from the judgement of the Kerala High Court in *M. Muraleedharan Nair vs State of Kerala And Ors.* AIR 1991 Ker 25 must be considered in examining the legality of the High Court's premise and directions:

"The Government of Travancore after taking necessary legal opinion came to the conclusion that the State's assumption of these Hindu Religious Institutions in the days of Col. Munro was an act done in the exercise of the traditional right of 'Malkoimn' inherent in the Hindu Sovereigns of the State and that it was not an act of confiscation. The Government therefore were under the undoubted obligation to maintain the Dovaswoms for all time properly and efficiently. The Government also came to the conclusion that for the proper discharge of this obligation the creation of a separate department which will devote its attention exclusively to the

administration of Devaswoms is necessary. Considering that it is the solemn right and duty of the Government to maintain efficiently and in good condition the Hindu Religious Institutions in the State of Travancore irrespective of the income from such institution or the cost of such maintenance and in pursuance of such right and duty of the State the Travancore Government issued the Devaswom Proclamation on 12th April, 1922 corresponding to 30th Meenom, 1097. It also constituted a Devaswom fund for the Doaswoms mentioned in the schedule to the proclamation. Section 7 of the Proclamation provided for creation of a Department for better and more efficient management and more effective control over the Devaswoms, Clause 7 is as under:

"7.(1) Our Government may for the better and more efficient management and more effective control of the Devaswoms mentioned in the schedule organised a Devaswom Department of the State consisting of such number of officers and other servants as they think fit."

Clearly, the erstwhile Rulers of the Princely States were Hindu sovereigns as recognized by the High Court in the aforementioned judgement. Since the India State is a secular State, it cannot arrogate to itself powers and rights enjoyed by Hindu sovereigns. This import and critical distinction does not find mention in the Impugned Judgement.

23. Further, the administrative set-up directed by the High Court is in direct contravention of Sections 18-23 of the TCHRI Act

1950, which is squarely in violation of the rights and guarantees under Article VIII of the Covenant, and therefore give rights to disputes under Article 363. Also, even for a takeover of a private property or institution by the State under Article 31A, the following must be borne in mind:

i. There must be a law in place to effect such takeover;

ii. Such takeover must be in order to secure public interest or proper management of the property;

iii. While Articles 14 and 19 would not come in the way of such laws, rights under Articles 25, 26 and 363 could certainly come in the way since no immunity has been provided for such laws in relation to the said provisions.

Therefore, as submitted earlier, Article 31A itself puts fetters on the State Government from taking over the Temple.

24. In view of the special relationship between the Temple and the Travancore Family, the only circumstances and the manner in which the Travancore Devaswom Board can assume management of the Temple are both exhaustively spelt out in Section 37 of the TCHRI Act of 1950. Further, this Hon'ble Court has laid down in the landmark Chidambaram Judgment namely *Subramaniam Swamy* v. *Union of India*, AIR 2015 SC 460 (Pages 234-250 of JSD 1), that the power of the State to interfere with the management of a religious institution is limited both in scope and by time. In other words, the administration of the Temple can be taken over by the Board in the manner prescribed by Section 37 only for the purposes enumerated in Section 37 and only

for a limited period of time, in order to address the specific circumstance. Once the said circumstance is addressed, the control of the Temple must revert to the Trustees of the Temple, in this case the Travancore Family. Reliance in this regard is placed on the judgements cited in JSD 1 from Serial No. 9 in the Index of documents. Further, given the denominational nature of the Temple and given the specific requirement that only Hindus can be appointed to the Committee of the Temple or as an Executive Officer, any appointments made to these positions either by the Board or by a Court must necessarily conform to these statutory requirements. Unfortunately, in proposing an alternative mechanism of management none of these critical and material nuances have been dealt with remotely by the High Court.

25. It is further submitted in this regard that since the amendments undertaken to the TCHRI Act, 1950 from 1958 are currently under challenge in an SLP filed by Dr. Subramanian Swamy on the ground that such amendments violate the Covenant and have morphed the Travancore Devaswom Board into a puppet of the State Government, the TDB cannot assume control of the Temple even under Section 37 of the TCHRI Act.

26. Critically, as evidenced from the text *Kerala Mahatmyam,* the treasures and assets of the Temple belong to the Deity whose status as a living person who is capable of owning

property is well-settled in law. Importantly, they must be treated as being part of Lord's jewels which the State cannot takeover and display in a museum for tourist attraction. While arguing against turning faith into a business, the High Court's directions themselves turn faith into business by failing to understand the sanctity of the Temple and its assets. Therefore, the High Court has exceeded its mandate in recommending takeover of the Temple's treasures and assets by the State Government. While the assets of the Temple do not belong to the Travancore Family, since the assets are owned by the Deity and the Family members are protectors of the Temple, the Family has the sole right as well as the duty to protect them in trust for the Deity as well as devotees. The State's supervisory role extends only to the revenues generated by the Temple from contributions by devotees to Hundis. However, it does not extend to taking over the treasures which were endowed by Lord Parashurama to the Temple, which is the belief according to the scripture, and which cannot be interfered with by any arm of the State.

27. Takeover of the Temple and entrenchment of the State in the Temple are not needed to undertake audits as prescribed by the TCHRI Act. Further, in view of the fact that the Travancore Devaswom Board has failed to protect the sanctity of the Sabarimala Temple and the State Government of Kerala has displayed a marked propensity to undermine Hindu religious institutions in Kerala, the Temple, its

traditions and its assets are safest in the hands of its traditional stakeholders. Therefore, the directions of the High Court with respect to the takeover the Temple's administration and the Lord's treasures are in violation of the Covenant, the TCHRI Act of 1950 and the Constitution. It is evident from a reading of the Impugned Judgement that it does not consider the history of the Temple, its sanctity and the implications of the sweeping approach of the High Court on the rights of the stakeholders of the Temple, namely the Deity, the Travancore Family and the Devotees. Instead, it proceeds on the assumption that the State is a stakeholder, which it says so expressly at several places in the judgement. The State is not a stakeholder in the Temple. Its role is limited by the history of the Temple and by Article 25(2)(a) only to secular aspects of administration. Nothing in the Constitution allows the State to treat the Temple or any Temple as an extension of the State since that would violate all canons of secularism which, by definition, requires the State to maintain an arm's length distance from all places of worship, including Hindu places of worship. The conduct of the State Government of Kerala and the directions of the High Court are directly at loggerheads with every established principle of secularism, and therefore cannot receive the imprimatur of this Hon'ble Court. Therefore, it is humbly submitted that the Impugned Judgement is liable to be set aside and the administration of the Temple must revert to the traditional stakeholders. Any and all measures with

respect to the Temple must be consistent with the Covenant and the TCHRI Act, 1950.

G. THE REPORT OF THE *AMICUS CURIAE* AND SHRI VINOD RAI

28. While the infirmities in the Reports and recommendations of the *Amicus* and Shri Vinod Rai have been extensively addressed by Senior Advocates Shri Krishnan Venugopal and Shri Arvind Datar, it is the limited submitted of Mr. J. Sai Deepak that both Reports are fatally defective on grounds of transgressions of mandate and one of the Reports is rendered unreliable owing to its reliance on "divine inspiration" as opposed to earthly inspirations and sources. Further, neither Report has considered the effect of its recommendations on the rights guaranteed to the Travancore Family under the Covenant in proposing alternative administrative mechanisms. However, this is not to scuttle issues of transparency and accountability under the garb of protecting tradition and rights under the Covenant. The limited submission that is being made is that it is possible to put in place audit mechanisms without affecting rights under the Covenant and therefore without attracting the bar under Article 363. Importantly, any mechanism that is put in place must not result in facilitating the entrenchment of the State Government or any Government directly or indirectly since that would be against the catena of decisions of this Hon'ble Court wherein it has been laid down that the role of the State under Article 25(2)(a) is limited to regulation or restriction of

secular activities which may be associated without religious practice, but not takeover or supersession of administration by the State. The ensuing portions of the Written Submissions will set out this position in greater detail.

H. Pernicious Effects of State Control of Temples

29. It is humbly submitted that while the State Government of Kerala did not seek to be a part of the Temple's administration before the High Court, it is evident from the proposal filed by it that it now seeks to use the High Court's judgement to legitimize its entry into the Temple's administrative framework, which is fraught with grave constitutional infirmities and will only result in the systematic bureaucratization and degradation of the Temple's ecosystem. The history of Government takeover of Temple administration in this country across the board is proof of that.

30. Government control of Temples dates back to 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. In 1796, the British administration followed a policy of centralized collection as well as distribution of all Temple revenues in the limited territories which were under colonial 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 centralized bureaucracy. By 1800, when the British administration expanded to what came to be known as the Madras Presidency, the Board of Revenue, which was established by the East India Company in 1789, was instructed to take charge of Temples in the Presidency and their endowments came under British control.

31. 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."

32. 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.

33. 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."

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

35. 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 applies to religious institutions of all faiths. 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.

36. The Madras Act of 1927 was challenged before the Madras High Court in a slew of Writ Petitions on February 12, 1951 by the Mathadhipati of the Shirur Math in present-day Karnataka and the Podhu Dikshitars of the Sabhanayagar Temple in Chidambaram, present-day Tamil Nadu. During the pendency of the Writ 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 writ 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)."

37. Against the said judgement of the Madras High Court, the HRCE Department preferred an appeal before this Hon'ble Court, which was dismissed in 1954 in the landmark judgement of *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt*, 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."

38. 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 along with HRCE legislations of Andhra Pradesh, Telangana and Puducherry, as they stand as on date, which are the subject of a pending challenge in W.P. (C) No. 476/2012 before this Hon'ble Court on grounds that they are squarely within the teeth of the Shirur Math judgement of 1954. Apart from that, the said HRCE legislations have resulted in the following:

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

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

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

iv. Irreparable and irreplaceable loss of heritage and antiques thousands of heritage temples, primarily in Southern India in the name of renovation and "development";

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

39. 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 39,000 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. State appointees, who go by the title of 'executive officers', 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 does not vacate once it enters the Temple's framework.

40. 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 judgement 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.

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

i. 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 Tirumala Tirupati Devasthanam which earns about INR 3000 Crores per annum does not have an external audit;

ii. 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;

iii. 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.

iv. 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., Veera Vasantharaya Mandapam on February 2, 2018 in the famous Sri Meenakshi Sundareswarar Temple, Madurai, Tamil Nadu that was resplendent with unique statues 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 borewells 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.

42. To prove that such instances are equally rampant in the State of Kerala, following are a few instances which are merely the tip of the iceberg of the rot prevalent in the administration of Hindu Temples and Endowments in the State of Kerala over which the State has direct and indirect control:

i. 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;

ii. 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:

a. 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 unauthorised 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 notices 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...."

43. It is evident from the above that the State Government of Kerala and the 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 the sole and primary mandate. Such being the case, entry of the State into the administrative framework of the Padmanabhaswamy Temple is not the solution to address issues, if any, which relate to the management of the Temple. It is humbly submitted that the way forward is to ensure that the Advisory Committee as prescribed in Sections 20-23 of the TCHRI Act 1950 is comprised of members who strike a balance between protection of religious practices and ensuring transparent and efficient administration of the Temple. Further, the said Advisory Committee could be assisted by an Oversight Committee which handles various aspects of the Temple's administration. This way a framework may be put in place that protects the structure and autonomy guaranteed in the Covenant and codified in Sections 18-23 of the TCHRI Act.

I. ADVISORY COMMITTEE

44. Following is the proposed structure of the statutory Advisory Committee which shall advise the Ruler in the discharge of his functions:

i. Representative of Chief Tantri (a religious person well versed in Tantra Sastras to be nominated by the Chief Tantri)

ii. One member from *Yogattil Potti* families to be nominated by the families

iii. A practicing Chartered Account with a practice of not less than 15 years from Trivandrum; or a person who served as a Vice President/Assistant General Manager or above in a Public Sector Company or a Public Limited Company with an annual turnover of Rs. 500 Crores or above and who is from the erstwhile Travancore Region and above 40 years of age

As provided in the Act, the Ruler shall have the power to appoint the Chairperson of the Committee from the above three members and the Executive Officer shall Act as the Secretary to the Committee.

45. Further, the State Government of Kerala in the name of security has heavily deployed police personnel and installed security equipment in the Temple. The present system of police deployment and security measures have caused inconvenience to the devotees as well as the local public. Usage of wireless sets very close to the sanctum sanctorum is adversely affecting the serenity of the Temple. Presently, the metal detector units and other equipment are wrongly placed inside the Temple compromising the very objective of

checking. Associations of Residents of the locality and Devotees have given several representations to various authorities for the redressal of their grievances on this issue. But a positive approach has not been seen so far from authorities. It is pertinent to note that the former CAG Shri Vinod Rai in his report has pointed on the security lapse and also states certain security installations as 'overdone'. A thorough study and analysis by competent authority on security threat and a scientifically devised foolproof security system suited for the Temple is what required at this juncture.

46. Tantri's interview/screening - Those employees who are directly connected with the Poojas and Rituals of the Temple, have to undergo interview/screening by the Tantri before getting appointed. The recruitment of Nambi/Shanthi/Dasar shall be done from those people who have obtained clearance from the Tantri.

47. Training to Employees - There shall be a syllabi for the different staff associated with the Temple's established Poojas, rituals and festivals. Such syllabi must be finalised as per the advice and guidance of the Tantri.

J. OVERSIGHT COMMITEE

48. There shall be an Oversight Committee consisting of 11 eminent persons who are staunch devotees of the Temple. They shall monitor the religious and temporal affairs of the

Temple and shall bring to the notice of the Advisory Committee any deficiencies in the management of the Temple, in the observances or conduct of the poojas, traditions and rituals and regarding any improvements that need to be made therein or generally. These members shall be residents of Trivandrum or within 15 kilometres of Trivandrum. Following is the proposed composition of the Oversight Committee:

i. One member from the Yogattil Potti Families to be nominated by the Yogattil Potti Families

ii. Chief Tantri or any representative from Tantri family nominated by Chief Tantri

iii. A Chartered Accountant and a Cost Accountant- To be appointed by the High Court

iv. A retired General Manager or of similar grade or higher grade who served in a Scheduled Bank and not less than 55 years of age- To be appointed by the Kerala High Court

v. A retired Judge of the Hon'ble Kerala High Court- To be appointed by the Ruler

vi. Two representatives – one each of the Two Pushpanjali Swamiars (Mathadhipatis) associated with the temple nominated by the Pushpañjali Swamiars

vii. A retired Police Officer of the Indian Police Service or a retired Officer from Indian Army, Air Force or Navy who was of the rank of not less than Colonel or Group Captain or Commander and who shall be an expert on Security matters- To be appointed by the Kerala High Court

viii. Two representatives from the residents of Fort Area of Trivandrum where the temple is situate and who shall be erudite devotees and of age not less than 35 years- One each to be nominated by the Yogattil Potti Member and the Chief Tantri

49. All members of the Oversight Committee except the representative of the Chief Tantri, Yogattil Potti representative and representatives of the Pushpanjali Swamiars shall be appointed for a period of two years. They are eligible for two more term of nomination unless there are disqualified. The representatives of Tantri, Potti families and the 2 mathas shall be eligible for further nominations without the above restriction. The Oversight Committee shall meet every month with at least 7 members present as quorum. The members shall be paid an honorarium and travel expenses to be fixed as per terms of appointment by the Ruler. The Advisory Committee Members cannot be Oversight Committee members. Any vacancy must be filled within 30 days of arising of such vacancy. All Overseeing Committee members shall expressly and in writing swear devotion to Sree Padmanabhaswamy, the Presiding Deity of the temple. They shall further state their avowed belief and adherence to the established usage and traditions of the temple and its rituals. All members of both Committees shall be practicing Hindus who believe in idol worship and who shall never act in any manner which compromises or dilutes their commitment to the Temple.

K. Audit and Accounting Standards

50. It is humbly suggested that the Temple maintain Double-Entry Book Keeping System by complying with the Accounting Standards (for short, 'AS') prescribed by the Institute of Chartered Accountants of India (ICAI) and it is further suggested in this regard that –

i. Inventories may be maintained and accounted for in the books of account in accordance with AS–2: "Valuation of Inventories";

ii. Cash Flow System may be prepared in accordance with the AS–3: "Cash Flow Statements"

iii. Depreciation may be provided on the Assets either on Written Down Value method at the rates prescribed under the Income Tax Act, 1961

iv. Revenue may be recognized as per the AS – 9 : "Revenue Recognition"

v. Fixed Assets may be recorded in the Books of Account as per the AS – 10 : "Fixed Assets"

vi. Investments made out of the Temple Funds may be accounted as per the AS – 13 "Investments"

vii. Leases made by the Temple may be accounted for and recorded in the books as per the AS – 19 "Leases"

viii. It is humbly suggested that the Temple maintain separate Accounting Team to take care of temple accounting, which shall be headed by one Chief Financial Officer (CFO)

whose qualification will be a qualified Chartered Accountant with at least 10 years of experience and who shall be assisted by staff with adequate accounting knowledge. It is suggested that the accounting shall be maintained *digitally* using any of the leading *Accounting Software*.

ix. It is further suggested that the Temple engage the services of any well-established local Audit Firm for conducting Monthly/Quarterly Internal Audit of the Temple affairs. The Report of the Internal Auditor shall be tabled first before the Audit Committee and thereafter before the Administrative Committee to discuss the observations made therein. The tenure of an Internal Auditor shall be 3 years and further extendable to 2 years.

x. It is further suggested that the Temple get its books of account audited annually by a Statutory Auditor who shall be a reputed Chartered Accountant Firm. The tenure of the Statutory Auditor shall be 3 years and further extendable to 2 years.

xi. The Due date of finalization of the Books of Account for each financial year shall be September 30 of the succeeding financial year.

xii. It is further suggested that an 'Audit Committee' may be constituted in this regard consisting of the following members:

a. A Royal Family member or their nominee

b. One Nominee of the Temple Advisory Committee

c. Chief Financial Officer

d. The Internal Auditor

e. Statutory Auditor

xiii. It is suggested that the Audit Committee meet every quarter for the following business –

a. To consider the report of the Internal Auditor;

b. To discuss the quarterly un-audited financial statements;

c. To discuss such other matters as may be delegated to Audit Committee by the Advisory Committee

d. To discuss the items wherein there is significant difference between the budgeted figures and actuals.

xiv. It is suggested that the Quarterly financial Statements shall be presented for discussion before the Advisory Committee and the Trustee, which thereafter shall publish the same on the Website of the Temple.

xv. It is further suggested that the Temple maintain Cash System of Accounting instead of Mercantile System of Accounting as it will enable easy appreciation of the state of affairs by the devotees not accustomed to accounting principles. It is further suggested in this regard that the Temple shall –

xvi. At the end of each financial year, prepare and present Budget for the succeeding financial year

xvii. At the end of each quarter, prepare revised budget for the current (running) year after adjusting for actuals pertaining to period elapsed.

xviii. It is further suggested that the Audit Committee shall, where there is lack of consensus on method of accounting on any aspect/matter, seek opinion from the *Expert Advisory Committee* of the *ICAI.*

51. It is humbly placed before this Hon'ble Court that all the above suggestions regarding accounting and audit procedures are only preliminary and a detailed Item-Wise Suggestion based on the survey of Temple Accounts and Affairs can be prepared if this Hon'ble Court is pleased to so direct.

CONCLUSION

52. In conclusion, it is submitted that the autonomy of the Temple which is guaranteed under the Covenant and protected by the TCHRI Act must be protected. Importantly, it is possible to achieve efficient management by putting in place mechanisms as proposed above which do not affect the framework provided under Sections 18-23 of the Act.

DRAWN BY FILED BY

J. SAI DEEPAK **SUVIDUTT M.S.**

ADVOCATE

ADVOCATE

Drawn on: 23.04.2019

Filed on: 24.04.2019

New Delhi