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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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PART - 11 (15TH JUNE 2018)

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2018(2) L.S. 97 (Hyd.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr.Justice
D.V.S.S. Somayajulu

Tatineni Venkata Subba Rao (died LRs brought on record) ..Appellant

Vs.

Versus Kodali Jayalaxmi Devi ..Respondent

(INDIAN) STAMP ACT, Secs.35 & 49 - Civil Revision – IA filed by Respondent in lower Court to receive the documents - Petitioner filed a counter stating that documents cannot be received in evidence as it was not validly stamped and is also not registered as required - Lower Court allowed the IA – Order of lower Court is questioned by way of this instant appeal.

Held - Recitals in document in question are critical for deciding its admissibility - At time of admissibility of a document, recitals in document alone are critical and parties interpretation of the same either in pleading or elsewhere in not material – Civil Revision stands dismissed.

J U D G M E N T

This Civil Revision Petition is filed against order, dated 05.07.2013, in EA.No.48 of 2013 in OS.No.25 of 2017 on the file of the Court of the II Additional District Judge, Krishna at Vijayawada.

EA.No.48 of 2013 is filed under Order VII Rule 14 of CPC by the petitioner in the lower Court (by the claim petitioner in the claim petition) to receive the documents, which are filed along with the said application. The respondent filed a counter stating that the documents cannot be received in evidence. His particular objection was about document No.4, which is an agreement of sale dated 06.10.1974. The objection raised in the counter is that the document cannot be received as evidence as it is not validly stamped and is also not registered as required under law. The lower Court, after hearing the application, held that the objections raised are not sustainable in law and particularly, as the application is filed to condone the delay in receiving the documents. The application was allowed; the delay was condoned and the documents were directed to be received subject to proof and relevancy. It is this order that is questioned in this appeal.

This Court has heard Sri V.Narasimha Murthy, learned counsel appearing for the petitioner. Despite opportunities, the respondents did not appear and argue.

The short and simple question that involved is, whether document No.4 can be received in evidence or not. Learned counsel for the

revision petitioner argued that the document cannot be received in evidence as it is neither properly stamped nor registered. Learned counsel for the petitioner filed additional papers on 13.04.2018 in which a copy of the agreement of sale dated 08.10.1974 (document No.4) and the gift deed executed subsequent thereto were filed. The contention of the learned counsel for the petitioner is that document No.4, which is an agreement of sale, is a document of title and that therefore, it requires registration and stamp duty. Learned counsel relies upon the recitals in the gift deed dated 13.10.2005 (document No.4695/2005), wherein the vendor states that she has acquired title to the property by the document dated 08.10.1974. Therefore, the argument of the learned counsel is that as the parties treated the agreement dated 08.10.1974 as a sale deed transferring title to the property, it cannot be received in evidence at all. Learned counsel relied upon the following case laws:

1. Rachakonda Ramakoteswara Rao and others v. Manohar Fuel Centre, Nereducherla, Khammam (2003 (2) ALD 638)**,**

2. Pariti Suryakanthamma and another v. Saripalli Srinivasa Rao and another (2010 (2) ALT 648)**,**

3. Avinash Kumar Chauhan v. Vijay Krishna Mishra (2009) 2 SCC 532)**,**

4. Suraj Lamp and Industries Private Ltd., v. State of Haryana and another (2012) 1 SCC 656)**, and**

5. Omprakash v. Laxminarayan and others (2014) 1 SCC 618)**.**

Relying on these judgments, learned counsel vehemently argued that the agreement of sale dated 08.10.1974 cannot be received in evidence as it neither stamped nor registered. He relies upon the recitals of the gift deed for which this document dated 08.10.1974 is a link document. The vendor/donor states that she has acquired title through this document. Therefore, learned counsel's argument is that it is to be treated as a document of title and cannot be received in evidence.

The two applicable sections/provisions of law, which fall for consideration in this revision are Section 35 of the Indian Stamp Act, 1899 (for short 'the Stamp Act') and Section 49 (c) proviso of the Registration Act, 1908.

Section 35 of the Stamp Act is to the following effect:

> **35 - Instruments not duly stamped inadmissible in evidence, etc**. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that—

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898;

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by Section 32 or any other provision of this Act. Section 49 of the Registration Act is to the following effect:

Section 49 in The Registration Act, 1908

49. Effect of non-registration of documents required to be registered.—No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered: 54 [Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3

of 1877) 55, 56 [***] or as evidence of any collateral transaction not required to be effected by registered instrument. (emphasis supplied)

The provisos to both these Sections have a fundamental impact on the present case. Under Section 35 of the Stamp Act, it is clearly mentioned that no instrument chargeable with duty shall be admitted in evidence "for any purpose".

(emphasis supplied).

Whereas, Section 49 of the Registration Act, does not contain such express language and on the other hand, the proviso says that document can be received as evidence of any "collateral transaction" not required to be effected by a registered instrument.

(emphasis supplied)

In **Rachakonda Ramakoteswara Rao'**s case (1 supra)**,** the learned single Judge of this Court noticed the difference between Section 35 of the Stamp Act and Section 49 of the Registration Act and held that if a document is not properly stamped or insufficiently stamped, it cannot be received in evidence for any purpose under Section 35 of the Stamp Act. But under Section 49 of the Registration Act, if a document is not registered, it can be received for collateral purpose. He however concluded at para 4 as follows: "All of this will not have any significance once the requisite stamp duty and penalty are paid".

Similarly, in **Pariti Suryakanthamma'**s case (2 supra), the learned Judge clearly held that as the document is insufficiently stamped; it cannot be used for any purpose. Because it is not registered, it can be used for collateral purpose. In that case the learned Judge found that the parties were using the document for a main purpose and not a collateral purpose.

Next judgment cited is **Avinash Kumar Chauhan v. Vijay Krishna Mishra** (3 supra). In this case also the Hon'ble Supreme Court held that under Section 35 of the Stamp Act, unless the document is properly stamped, it cannot be received in evidence. The Hon'ble Supreme Court held that either for collateral purpose or for a main purpose, an insufficiently stamped document cannot be used in evidence. Therefore, the Court held that an insufficiently stamped agreement of sale cannot be acted upon by the Court. The word "any purpose whatsoever" were interpreted to mean both main and collateral purpose.

Suraj Lamp and Industries Private Ltd. (4 supra) is a case, wherein the Hon'ble Supreme Court of India reiterated the need for having a registered document for sale and held that GPA cum agreements of sale are not sale deeds.

In **Omprakash'**s case (5 supra), the Hon'ble Supreme Court again was called upon to decide a similar question and in paras 15 and 16, the Court held that unless the agreement of sale was adequately and properly stamped, it cannot be received in evidence. The Supreme Court also pointed

out that the recitals in the document are important. There was an explanation in the State of Madhya Pradesh, which was material in this decision. Therefore, the Supreme Court held that the document was inadmissible in evidence. The question that fell for consideration before the Hon'ble Supreme Court was whether the admissibility of a document would depend upon the recitals in the document or upon the pleadings. In this case, the Supreme Court clearly held that at the time of considering the question of admissibility of a document, it is the recitals in the document that would decide the admissibility of the document.

In the present case argued before this Court, it is recited in the document dated 08.10.1974 that the possession has been handed over to the vendee. However, the document also states that because of a bar/ban in the area for registration, the registration is being postponed and that when the bar is removed, the property would be registered either in the name of the vendee or his nominee. The document clearly mentions that for the present, registration is not possible and that immediately after the bar is removed, the registration will be affected.

Therefore, it is clear that this document by itself contemplates a future registration and the conveyance of title.

The submission of the counsel is that in the subsequent sale deed that is executed on 13.10.2005, (document No.4695/05), it is recited that the vendor acquired title under the document dated 08.10.1974. The counsel hence contended that the document dated 08.10.1974 is to be treated as a sale deed only and as it is not registered, it cannot be received in evidence at all.

This submission cannot be appreciated and the Court relies upon the findings of the Hon'ble Supreme Court in **Omprakash'**s case (5 supra), wherein the Hon'ble Supreme Court held that at the time of admissibility of a document, the recitals in the document alone are critical and the parties interpretation of the same either in the pleading or elsewhere in not material. As noticed, the document dated 08.10.1974 contemplates the execution of a further registered document. This Court also notices that a Division Bench of the Andhra Pradesh High Court in a case reported in **A. Kishore @ Kantha Rao vs. G. Srinivasulu (**2004 (3) ALD 817) held that an un-registered document can be marked for a collateral purpose. The Division Bench answered the reference made by considering the three judgments of the Hon'ble Supreme Court of India and ultimately came to the conclusion that an un-registered lease deed, which is compulsorily registerable can be admitted in evidence for a collateral purpose.

In **R.Suresh Babu v. G.Rajalingam and others (**2007 (1) ALT 668), a learned single Judge of this Court undertook a review of the case law on a very similar question and noticed the judgments of the Supreme Court of India in **K.B.Saha and Sons Pvt. Ltd. v. Development Consultant Ltd**. (2008 (8) SCC 564), and also the judgment of **M/s. Sms Tea Estates P.Ltd. v. M/s.**

Chandmari Tea Co. P. Ltd. (2011 AIR SCW 4484) and other judgments and ultimately held that for a collateral purpose the document can be received in evidence. Although this was a case relating to an agreement of sale, still the discussion in this case is valid and appropriate. In any view of the matter, the Division Bench in **A. Kishore'**s case (6 supra) is good law.

Another single Judge of this Court in **Nookala Krishnaiah and Anr. v. Nookala Dakshina Murthy and Ors. (**2007 (5) ALT 758) also held that for a collateral purpose an un-registered document can be received in evidence.

Therefore, on a review of the entire case law available on record, this Court is of the opinion that an insufficiently stamped document cannot be received in evidence for any purpose (main or collateral). If an insufficiently stamped document comes before a Court, a duty is cast upon the Court to impound the document by following the procedure under the Stamp Act and ensure that the requisite stamp duty is paid. Only after the requisite stamp duty is paid, the document becomes admissible in evidence. If the duty/penalty is not paid, it is wholly inadmissible.

In case of a document that is required to be registered under law, but is not registered, as per the proviso to Section 49 (c) of the Registration Act, which is a Central Act, the document can be received for a collateral purpose in terms of the proviso.

In this revision, as the issue involved is decided, this Court is not pronouncing on what is a "collateral or a main purpose". The witness is not before this Court and this Court cannot comment for what purpose the witness is tendering the documents. The Court that is faced with that question has to decide the purpose for which the document is being tendered-whether it is tendered in evidence for a main purpose or a collateral purpose.

For the purpose of answering and deciding this revision petition, it is enough to state that the recitals in the document dated 08.10.1974 are critical for deciding its admissibility. The mere fact that in a subsequent document this document dated 08.10.1974 is relied upon as a document by title is not very material as the Supreme Court clearly held that the subsequent conduct of the party is not important and the recitals in the document are important.

Therefore, the revision petition is dismissed.

In the result, the Civil Revision Petition is dismissed. No order as to costs.

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2018(2) L.S. 103 (Hyd.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Dr.Justice
B. Siva Sankara Rao

Shashikala & Ors., ..Petitioners
Vs.
Babita Sharma & Ors., ..Respondents

A.P.CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS, ACT - Secs.17 & 87(1)(h) - Founder Family Member/Founder Trustee – Recognition - Whether Endowments Tribunal has got Jurisdiction - Right of Founder Trustee to head the Board of Trustees as and when constituted - Discussed.

Held - Judgment rendered in Sri Vallabharaya Swamy Temple vs. Bellamkonda Subrahmanya Sarma is hit by Principles of Sub Silentio - Endowments Tribunal has got Jurisdiction to enquire and decide any application U/s.87(1)(h) r/w.Sec.17 irrespective of the fact that Temple/ institution is in Existence either prior or subsequent to Act 30/87 and whether any person was recognised or not prior to Act 30/87 as Member belongs to Founder Family or Founder Trustee – Civil Revision stands dismissed.

C.R.P.No.4596/2017 Date:2-5-2018

Mr.A. Narasimha Rao, Advocate for the Petitioners.

Mr.Kishore Rai, Advocate ffor the Respondent.

J U D G M E N T

. The revision petitioner Nos.1 to 5, are petitioners in I.A.No.396 of 2017 in the pending O.A.No.603 of 2012 before the Telangana Endowments Tribunal at Hyderabad and they were respondent Nos.4 to 8 in the main OA supra. Respondent Nos.1 to 3 in the main OA are the Assistant Commissioner of Endowments, Hyderabad, Regional Joint Commissioner of Endowments, Multi Zone-III, Hyderabad and Sri Bhagya Laxmi Temple, Charminar, Hyderabad. The OA petitioner Smt. Babita Sharma, daughter of late Mahant Ram Chandra Das is the 1st respondent to the I.A.No.396 of 2017 before the Tribunal vis-‡-vis to the revision petition herein. The revision is maintained against the order of the Tribunal in I.A.No.396 of 2017 supra dated 30.08.2017, dismissing the application of the revision petitioners/OA respondents 4 to 8 under Order 7 Rule 11(d) r/w Section 151 CPC for rejection of the O.A.No.603 of 2012 supra.

1(a). OA.No.603 of 2012 filed by said Smt. Babita Sharma against above referred eight respondents including the revision petitioners as referred supra is under Section 87(1)(h) of the Telangana Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') [by substitution of the word Telangana for the words Andhra Pradesh vide G.O.Ms.No.37, Revenue (Endowments-I)

Department, dated 01.11.2014 in adopting the Andhra Pradesh Act No.30/1987 as was applicable to the Telangana Region also earlier by applying to the separate State therefrom with effect from 02.06.2014].

1(b). The prayer in the main O.A.No.603 of 2012 filed on 20.11.2012 is to declare the petitioner herein as member of the founder family of Sri Bhagya Laxmi Temple, to set aside the declaration given in favour of respondent Nos.4 to 8 in the proceedings No.E/1424/1998 dated 24.11.1998 of the Assistant Commissioner of Endowments, Hyderabad, that is confirmed by the Regional Joint Commissioner of Endowments, MZ-III, Hyderabad, passed in RPS.No.32/1998 and 5/1999 vide common order dated 30.10.2000 by declaring respondent Nos.4 to 8 as if members of the founder family of Sri Bhagya Laxmi Temple and pass such other order or orders as the Endowments Tribunal may deem fit and proper. The cause of action mentioned as earlier writ petition impugning the revision order supra filed by her in W.P.No.3024 of 2001 that was disposed of on 24.07.2012 directing the OA petitioner to approach the Endowments Tribunal under Section 87(1)(h) of the Act to agitate her rights to avail said remedy sought.

1(c). The averments in the main petition show that the subject temple was constructed by the OA petitioner's father Sri Mahant Ram Chandra Das with his own funds as its founder that is also indicated in the column No.4 of Section 43 register of the Temple as hereditary trustee and founder and the petitioner being the daughter of the founder got right of the succession to certify, that the founder Mahant Ram Chandra Das (her father) executed will in her favour that was upheld by the civil Court including for withdrawal of the FDs that was on contest and she is daughter of the founder testator supra is also borne by school record and SSC certificate and bonafide certificate of intermediate issued by the Junior College and said will was marked as Ex.A1 in O.P.No.1594 of 1995 for withdrawal of the FDs in the name of Sri Mahant Ram Chandra Das from the Bank as successor in interest to him being the legatee despite respondent No.7 to the present OA as respondent No.4 to the OP.No.1594 of 1995 mainly contested and the matter also went to the High Court in CMA.No.3625 of 2003 and there was conclusion in upholding the will Ex.A1 for her entitlement therefrom to the FDs. The OA (respondent No.7) who contested the matter referred supra also relied on Ex.B1 said to have been executed by Ram Chandra Das at the time of adoption of father of respondent Nos.4 to 8 which document is not registered and is a fabricated one and thereby it was not believed. However, it is based on that the Assistant Commissioner was managed to give a declaration in favour of respondent Nos.4 to 8 by proceedings No.E/1424/98 dated 24.11.1998 as to what he relied upon with no any specific piece of document, but for it referred in Exs.A6, 7, 9 & 11 and they are no way members of the founders family of the temple in question nor any of their names indicated therein. One Raj Mohan Das is poojari of the temple from Section 43 register for the respondent Nos.4 to 8 claiming through him in performing archakatwam in the temple and even the birth certificate of father of respondent Nos.4

to 8 obtained from the Municipal Corporation shows their father's name was Nandlal Mishra and not Ramchandra Das. Respondent Nos.4 to 8 filed counter dated 08.04.2013 in said O.A.No.603 of 2012 in disputing the claim. Further, evidence affidavit in chief of the OA petitioner Smt. Babita Sharma was also filed and taken on oath and referred Exs.A1 to A40 in said evidence affidavit dated 21.09.2016.

2. It is after the PW.1's evidence in chief taken on record and while coming for her cross examination by mainly contesting respondent Nos.4 to 8 supra, they filed the IA.No.396 of 2017 for rejection of the OA. The averments in the petition seeking for rejection under Order 7 Rule 11(d) CPC are that as per the judgment of the High Court in CMA.No.590 of 2012 reported in **Sri Vallabharayeswara Swamy Temple rep. by its Managing Trustee Jalasutram Venkata Subbaiah Vs. Bellamkonda Venkata Subrahmanya Sarma and Another (**2014 (5) ALT 801), Section 87(1)(h) is only applicable to the institutions and endowments which came into existence after the commencement of the Act No.30/ 1987 and the present OA filed by the OA petitioner thereby is not maintainable as the institution/Bhagya Laxmi Temple is in existence even under the old Act No.17/ 1966 covered by the property registered under Section 38 of that Act and thereby the OA proceedings are barred by law and liable to be rejected.

3. Smt. Babita Sharma OA petitioner opposed the same in her counter saying this petition wont lie and it is filed only to drag on the proceedings and to put spokes to the disposal of main OA filed designedly, leave apart the facts and circumstances of that judgment in **Sri Vallabharayeswara Swamy Temple** supra are different to the facts on hand and the petition for rejection of the OA is liable to be dismissed.

4. The impugned order passed by the Endowments Tribunal which is subject matter of the present revision, speaks therefrom that though in a suit defendant can file an application for rejection of the plaint under Order 7 Rule 11 (a & d) CPC at any time before conclusion of trial and even in **Sri Vallabharayeswara Swamy Temple** supra it was held that Section 87(1)(h) of the Act 30/1987 shall be applicable to the institutions came into existence after commencement of the Act, the plaint cannot be rejected from the contest raised by the respondents but from the OA petition averments and as trial commenced, the maintainability also can be decided after full dressed enquiry from conclusion of trial and the petition is thereby dismissed.

5. Said dismissal order in IA.No.396 of 2017 dated 30.08.2017 impugned in the revision is by saying in view of the judgment of **Sri Vallabharayeswara Swamy Temple** supra observations particularly at Para 23 saying Court has no option other than reading down the provisions of Section 87(1)(h) of the Act to bring harmony between said provision and explanation I & II and Section 17(1) thereof to say Section 87(1)(h) is applicable to only in relation to institutions and endowments came into existence after the commencement of the Act No.30/1987 and the Tribunal not disputed the provisions should have acted upon said judgment of

Sri Vallabharayeswara Swamy Temple supra for rejection of the OA by holding as not maintainable and thereby the order of the Tribunal dismissing the OA rejection application is liable to be set aside by allowing the revision.

6. Learned counsel for the revision petitioners/OA respondent Nos.4 to 8 besides relied on the judgment in **Sri Vallabharayeswara Swamy Temple supra,** placed reliance on the two judge bench expression of the Apex Court in **Saleem Bhai & Others Vs. State of Maharashtra & Others (**AIR 2003 SC 759) that was referred even in the impugned order which speaks, a perusal of the Order 7 Rule 11 is clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments of the plaint and trial Court can exercise power under that provision at any stage of the suit before the conclusion of trial though no doubt averments of the plaint alone are germane and not the defence in the written statement of the defendant for that purpose.

7. Learned counsel for revision respondent/ OA petitioner supported the order of the Tribunal.

8. Heard both sides and perused the material on record.

9. The whole issue is whether the OA is liable to be rejected from contention of respondents relied upon the judgment in **Sri Vallabharayeswara Swamy Temple supra** and the dismissal order on the rejection application of OA respondents by the Tribunal is unsustainable?

10. The very OA averments particularly at cause of action para speaks, as referred supra, of the cause of action arisen pursuant to the orders in W.P.No.3024 of 2001 dated 24.07.2012 that was maintained against the revision order confirming the order of the Assistant Commissioner wherein, this Court directed the writ petitioner supra who is the OA petitioner (revision respondent herein) to approach the Endowments Tribunal under Section 87(1)(h) of the Act. Once such is the cause of action for the jurisdiction is subsequent expression of this Court interpreted under Section 87(1)(h) with Section 17(1) Explanation I of the Act, the judgment in **Sri Vallabharayeswara Swamy Temple** supra no way comes in the way and the OA is not liable to be rejected.

11. However, that is not the end of the matter herein from the elaborate arguments advanced by both sides by raised several contentions including on the correctness of the expression in **Sri Vallabharayeswara Swamy Temple** supra, which did not refer the expression of the Apex Court in **Pannalal Bansilal Pitti & Others Vs. State of A.P. & Another (**AIR 1996 SC 1023).

12. In fact in that judgment in **Sri Vallabharayeswara Swamy Temple** supra, the very base for Section 87(1)(h) incorporated to overcome the bar under Section 16 of the Act covered by **Pannalal Bansilal Pitti** supra was not at all referred to say to that extent the expression in **Sri Vallabharayeswara Swamy Temple** supra is hit by sub silentio based on the principle laid down in **M/s A-One Granites**

Vs. State of U.P. (AIR2001 SC 1203= 2001 (1) SCR 1085=2001(3)SCC 537=2001(5) JT 9=2001 (2) SCALE 85), referring to earlier expressions in **Municipal Corporation of Delhi Vs. Gurunam Kour (**1989 (1) SCC 101)**, State of U.P. Vs. Synthetics and Chemicals Limited** (1991) 4 SCC 139)and **Arneethdas Vs. State of Bihar (**2000 (5) SCC 488)including in so holding by referring to Article 141 of the Constitution of India that same no way a bar to hold any expression not binding on the principle of subsilentio.

12(a). In **M/s A-One Granites** it was held as follows:

> "This question was considered by the **Court of Appeal in Lancaster Motor Co. (London) Ltd. vs. Bremith Ltd**., (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment. Following the said decision, this Court in the case of **Municipal Corporation of Delhi vs. Gurnam Kaur**, 1989 (1) SCC 101 observed thus:-
>
> In **Gerard v. Worth of Paris Ltd.(k)**, (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimants debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the **Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd**., (1941) 1 KB 675, the court held itself not bound by its previous decision. **Sir Wilfrid Greene, M.R.**, said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided without argument, without reference to the crucial words of the rule, and without any citation of authority, it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed.

In **State of U.P. & Anr. vs. Synthetics and Chemicals Ltd. & Anr**., (1991) 4 SCC 139, reiterating the same view, this Court laid down that **such a decision cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141 of the Constitution of India** and observed thus:

> A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141.

In the case of **Arnit Das vs. State of Bihar**, 2000 (5) SCC 488, while examining the binding effect of such a decision, this Court observed thus:-

> **A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined**.

12(b). Some of said expressions were also relied by the Division Bench of this Court in **Gadda Balaiah vs. The Joint Collector, Ranga Reddy (**2005 (6) ALD 417, 2005 (6) ALT 572)in so holding. In **Gadda Balaiah** supra, it was observed that:

> The Supreme Court proceeded to examine question on a **subsilentio** assumption of the validity of the transaction. No arguments were advanced and the Court did not address itself to it. This judgment falls squarely within the description of sub silentio judgments. The test set out by **Salmond** was approved by the Supreme Court in **Municipal Corporation of Delhi V. Gurnam Kaur**. It is observed in Para 11 of said Judgment as under:
>
> ……..**Professor P. J. Fitzgerald, editor of Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio** at p. 153 in these words: "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, **the decision is not an authority on point B. Point B is said to pass sub silentio**."

12(c). In fact, the above expressions particularly of the Supreme Court in **A-One Granites** supra clearly laid down the law that a judgment sub silentio is even not law declared within the meaning of Article 141 of the Constitution of India.

12(d). It is also relevant here to refer a single Judge expression of this court in **Gudavalli Murali Krishna Vs. Gudavalli Madhavi (**2001 (1) ALD (Crl.) 689 (AP) at Paras 28 & 29 [that was approved in **Girish Sarwate Vs. State of A.P. (**2004 (6) ALD 855) at Para 31 page 862]; that the earlier judgment **though surveyed the case law on the point when not referred one of**

the Apex Court judgment which is a binding precedent from which law is clear, thereby the judgment pronounced against the principles again enunciated by the Apex Court became per incuriam and thereby though in the ordinary course I would have referred the matter for a larger bench for consideration, in view of the earlier expressions are directly opposite to that of the law of the Apex Court, there is no need to refer the matter to an equal or larger bench.

13. For that conclusion, from the principles laid down above are applicable to the case on hand, it is necessary to discuss the expression of the Apex Court in **Pannalal Bansilal Pitti** supra and the relevant provisions of the Act by the date of filing of the OA and the need of purposive interpretation if any of Section 17 rather than reading down Section 87(1)(h) in giving effect to Section 17(1) Explanation I of the Act by supplying **casus-omissus**.

14. No doubt supplying of **casus-omissus** is from necessity and as an exception to the general rule of the maxim **expressum facit cessare tacitum-** to mean what is expressed makes what is silent cease. The leading principles on sure and true interpretation of statutes summarized in **Haydon's case (**1524-76 English Reports 637) is that, four things are to be considered 1) What was the law before making of the Act, (2) What was the mischief or defect for which the law did not provide previously, (3) What remedy the parliament has resolved, to prevent the mischief or to cure the defect, (4) the true reason of the remedy, **and then the Courts have to construct the statute to prevent the mischief or to cure the defects and add force and life to the cure and remedy according to the time, the intent of the makers of the Act prebono publico.**

15. The next aspect to consider is how to gather the intention of the legislature to cure the defects for any supply of **casus-omissus** by referring to statements and objects or preamble or whole of the statute. **No doubt, as held i**n **Aswini Kumar Vs. Arabinda Bose (**AIR 1952 SC 369) **- Patanjali Sastri, C.J.**, speaking for the majority of the Court, that the Statement of Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of a Statute. This view was reiterated by the Supreme Court in **State of West Bengal Vs. Subodh Gopal (**AIR 1954 SC 92)*&* **Central Bank of India Vs. Their Workmen (**AIR 1960 SC 12)**.** However, later to it, in **State of West Bengal Vs. Union of India (**AIR 1963 SC 1241)**,** the Supreme Court held that: "It is, however, well-settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, though cannot be used to determine the true meaning and effect of the substantive provisions of the Statute, they can be used for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation". Thus, reference to the Statement of Objects and Reasons and the Preamble of the Act is meant to appreciate the background and purpose of the legislation. In this context it may refer with profit to the dictum in **Gujarat University and another Vs. Shri Krishna Ranganath Mudholkar and others (**AIR

1963 SC 703), where the majority view is as follows:-"Statements of Objects and Reasons of a Statute may and do often furnish valuable historical material in ascertaining the reasons which induced the Legislature to enact a Statute, but in interpreting the Statute they must be ignored." In **Shashikant Laxman Kale & another Vs. Union of India & another (**AIR 1990 SC 2114), a three-Judge Bench of this Court has expressed that: "For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady."

16. The object and purpose of a legislation assume greater relevance if language of the law is obscure and ambiguous. In **Dental Council of India V. Hari Prakash** (2001)8 SCC 61)at para-7 page 69 it was held that 'the intention of the legislature is primarily to be gathered from the language used in the Statute, thus paying attention to what has been said as also to what has not been said.

17. A proviso added to Section or Rule of enactment may be either to clarify or create an exception and/or to create a substantive right irrespective of what is in the main Section or Rule as held in **Shah BKOM & G Factory V. Subhash C.Y.Sinha (**AIR 1961 SC 1596).

18. From the above for ascertaining intention of the legislature, it is even to be kept in mind that - Words and phrases are symbols that stimulate mental references to referents. In **Institute of Chartered Accountants of India v. M/s Price Waterhouse (**AIR 1998 SC 74) it was held that the object of interpreting a statute is to ascertain the intention of the Legislature enacting it. The intention of the Legislature is primarily to be gathered from the language used, which means that **attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided**. Thouh it was observed in **Crawford v. Spooner** (1846 (6) Moore PC 1) that Courts cannot aid the Legislatures' defective phrasing of an Act, we cannot add or amend, and by construction make up deficiencies which are left there, there is a sweep change in the perception so as to read words into an Act where it is absolutely necessary as observed in **Stock v. Frank Jones (Tiptan) Ltd.** (1978 (1) All ER 948 (HL). **Thus rules of interpretation do not permit Courts to read words into an Act, unless the provision as it stands is meaningless or of doubtful meaning**. As Per **Lord Lore burn L.C**. in **Vickers Sons and Maxim Ltd. v. Evans** (1910) AC 445 (HL), Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. Same are quoted with approval

in **Jamma Masjid, Mercara v. Kodimaniandra Deviah (**AIR 1962 SC 847)**. Judge Learned Hand** said in **Lenigh Valley Coal Co. v. Yensavage** 218 FR 547, in holding that "Statutes should be construed not as theorems of Euclid", "but **words must be construed with some imagination of the purposes which lie behind them**". The above view was re-iterated by the Apex Court in **Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (**AIR 1990 SC 981).

19.**In Shiv Shakti Coop. Housing ... vs M/S. Swaraj Developers (**2003(6)SCC 659=AIR-2003 SC 2434)the Apex Court held as to how **casus-omissus** to be supplied that:

> **"Two principles of construction one relating to casus-omissus and the other in regard to reading the statute as a whole appear to be well settled**. Under the first principle **a casusomissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casusomissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature**. "An intention to produce an unreasonable result", said **Danackwerts, L.J. in Artemiou v. Procopiou** (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". **Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction**. **Lord Reid in Luke v. IRC** (1966 AC 557) at p.577 observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges". It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus-omissus, and that the law intended quae frequentius accidunt." "**But," on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom**"-

(See **Fenton v. Hampton** 11 Moore, P.C. 345). A **casus-omissus** ought not to be created by interpretation, save in some case of strong necessity. **Where, however, a casus-omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislatores, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - casus-omissus et oblivioni datus dispositioni communis juris relinquitur**; "a **casus-omissus**," observed Buller, J. in Jones v. Smart (1 T.R. 52), "can in no case be supplied by a court of law, for that would be to make laws."

The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: "**The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further**"- **Grey v. Pearson** 6 H.L. Cas. 61). The latter part of this "golden rule" must, however, be applied with much caution. "if," remarked **Jervis, C.J.**, "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. **Words may be modified or varied where their import is doubtful or obscure**. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" - **Abley v. Dale** 11, C.B. 378).

At this juncture, it would be necessary to take note of a maxim "**Ad ea quae frequentius accidunt jura adaptantur**"- **The laws are adapted to those cases which more frequently occur**.

Laws ought to be, and usually are, framed with a view to such cases as are of frequent rather than such as are of rare or accidental occurrence; or, in the language of the civil law, jus constitui oportet in his quoe ut plurimum accidunt, non quoe ex inopinato; for, neque leges neque senatusconsulta ita scribi possunt ut omnes casus qui quandoque inciderint comprehendantur, sed sufficit ea quoe plerumque accident contineri; laws cannot be so worded as to include every case which may arise, but it is sufficient if they apply to those things which most frequently happen. All legislation proceeds upon the principle of providing for the ordinary course of things, and to this principle frequent reference is to be found, in the reports, in answer to arguments, often speciously advanced, that the words of an Act cannot have a particular meaning, because in a certain contingency that meaning might work a result of which nobody would approve."

20. It is apt to quote what **Brahaspati**, the

greatest and erudite ancient Indian saint observed in his eloquence of '**Kevalam Shastram Ashritya Na Kartavyo Vinirnayah yuktiheeney vichare tu dharmahani prajayate**' to mean the Court should not give its decision purely based on letter of the law, for if the decision therefrom is wholly unreasonable it will result injustice that has to be averted. Same is quoted with approval by the Apex Court in Para 10 of its expression in **Vishnu Agarwal Vs. State of UP (**AIR 2011 SC 1232=14 SCC 813**).**

21. The Apex Court in **Directorate of Enforcement Vs. Deepak Mahajan (**AIR 1994 SC 1775), **held at Paras 24 to 32 on the purposive interpretation from the intention of the legislature and to supply casus-omissus if any to make the legislation workable, for ends of justice are more important to be kept in mind in this regard that**:

> †"24. **Keeping in view the cardinal principle of law that every law is designed to further the ends of justice but not to frustrate on the mere technicalities, we shall deal with all those challenges in the background of the principles of statutory interpretations and of the purpose and the spirit of the concerned Acts as gathered from their intendment**.
>
> 25. The concerned relevant provisions of the Acts with which we are concerned, no doubt, pose some difficulty in resolving the question ……. **Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation**.

26. In **Maxwell on Interpretation of Statutes, Tenth Edn. at page 229**, the following passage is found:

"**Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law….**"

27. In **Seaford Court Estates Ltd. v. Asher Denning, L.J**. said:

"**When a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ... and then he must**

supplement the written word so as to give 'force and life' to the intention of the legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

28. Though the above observations of **Lord Denning** were disapproved in appeal by the House of Lords in **Magor and St. Mellons v. Newport Corp.[(1951)2 All ER 839(HL)], Sarkar, J. speaking for the Constitution Bench in M. Pentiah v. Muddala Veeramallappa** (1961) 2 SCR 295: AIR 1961 SC 1107)**adopted that reasoning of Lord Denning**. Subsequently also, **Beg, C.J. in Bangalore Water Supply and Sewerage Board v. A. Rajappa** (1978) 2 SCC 213:1978 SCC (L&S) 215: AIR 1978 SC 548) **approved the observations of Lord Denning** stating thus: (SCC p. 285, para 148) **"Perhaps, with the passage of time, what may be described as the extension of a method resembling the 'arm-chair rule' in the construction of wills, Judges can more frankly step into the shoes of the legislature where an enactment leaves its own intentions in much too nebulous or uncertain a state**."
(Emphasis supplied)

29. It will be befitting, in this context, to recall the view expressed by **Judge Frank** in **Guiseppi v. Walling** which read thus:

"**The necessary generality in the wordings of many statutes, and ineptness of drafting in others frequently compels the Court, as best as they can, to fill in the gaps, an activity which no matter how one may label it, is in part legislative. Thus the courts in their way, as administrators perform the task of supplementing statutes. In the case of Courts, we call it 'interpretation' or 'filling in the gaps'; in the case of administrators we call it 'delegation' or authority to supply the details**."

30. **Subba Rao, C.J**. speaking for the Bench in **Chandra Mohan v. State of U.P. (**AIR 1982 SC 33)has pointed out that **the fundamental rule of interpretation is that in construing the provisions of the Constitution or the Act of Parliament, the Court "will have to find out the express intention from the words of the Constitution or the Act, as the case may be ..." and eschew the construction which will lead to absurdity and give rise to practical inconvenience or make the provisions of the existing law nugatory**. **A.P. Sen, J**. in **Organo Chemical Industries v. Union of**

India (AIR 1979 SC 1803) has stated thus: (SCR p. 89: SCC p. 586, para 23) "**A bare mechanical interpretation of the words literally 'devoid of concept or purpose' will reduce most of legislations to futility**. **It is a salutary rule, well established, that the intention of the legislature must be found by reading the statute as a whole**."

31. **Krishna Iyer, J**. has pointed out in his inimitable style in **Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee (**AIR 1977 SC 965): "**To be literal in meaning is to see the skin and miss the soul of the Regulation**."

32. True, normally Courts should be slow to pronounce the legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the enactment as affording the best guide, but **to winch-up the legislative intent, it is permissible for Courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane**. **In cases of this kind, the question is not what the words in the relevant provision mean but whether there are certain grounds for inferring that the legislature intended……it is permissible for courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile"**.

22. In **Tirath Singh vs Bachittar Singh (**AIR 1955 SC 830=1955 SCR(2)457(3JB)it was held that

> **"I**t is a rule of interpretation well established that, "**Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence**". (Referred **Maxwell**'s -Interpretation of Statutes, 10th Edition, page 229).

23. The general rule from the well-known

dictum of **Parke. V.** is that the statutes should be literally interpreted. The general difficulty however is that the drafting of statutes is very often far from being clear and definite rather ambiguous'. It is an undisputed fact that 'Statutes operate through interpretation by Courts. The Judge is an essential constituent of Court, to examine and decide truth, declare law and administer justice from his erudite pen. Law is a letter and the spirit lies on the Judge who administers it purposively to do justice.

24. No doubt, language, like other things human, is imperfect; and how great so ever be the precision with which it is chosen, however superior be the skill of the draftsman, the language of every code needs to be supplemented by the knowledge just described, and the mind of the reader is to be trained by this study thereof. **Society not only requires law, but also requires persons to handle the same with imagination and commitment to do justice with a beneficial out look towards men and matters in a purposive way**. It was well said by **Lord Champbell** that '**An ill-penned enactment, like too many others, putting Judges in an embracing situation of being bound to make a sense and reconcile what is reconcilable**'. **Austin** also very clearly said that '**The end purpose of statute must not only be ascertained but must be interpreted as reasonably as possible' i.e. when the words are of doubtful significance, the intention of the legislature must be interpreted'.**

25. In **Syam kishori Devi vs. Muncipal Corp**. (AIR 1966 S.C.1678) it was held by the Constitution Bench of the Apex Court that the well known rule of construction is to make the section or law workable though words generally cannot be added but for necessity (i.e. purposive interpretation) as held by **Champ bell**.

26. In **Swaran Singh vs. Kasturi Lal (**A.I.R. 1977 S.C.265 at 274), it was held vibrantly by the Constitution Bench of the Apex Court that the statutory interpretations have no conventional protocols. **The object and purpose of a legislation assumes greater relevance if the language is obscure and ambiguous**.

27. From what is discussed supra, it is very clear that legislative silence conveys signals to fill and thus it is the duty of the Court as its interpreter to interpret the meaning for its construction by identifying the legislative intent since the legislative authorities are **functus-officio** after the legislation is passed. **Justice Frankfurter of U.S Supreme Court** observed in his article published in (47 Columbia Law Reports 527) titled as some reflections on the reading of statutes in this regard that '**Legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose**.

28. The meaning of the word LAW in the phrase **DUE PROCESS OF LAW** is thus "not the Law as it is, but the Law as it

ought to be". As per **Lord Denning** – "if a defect appears in a legislation, Court cannot sit blaming the legislature and wait for the legislation to intervene, but for to interpret by iron of creases as the words are meant to serve and not govern." As per **Plowden** "the intent of statutes is more to be regarded and pursued than the precise letter of them….. and the best way to construe an act of Parliament is according to the intent rather than according to the words…….. Each law contains of two parts viz., of BODY and SOUL, the letter of the law is the body of the Law and the sense and reason of the Law is the Soul of Law".

29.**Keeping these principles in mind, coming to the relevant provisions with reference to the facts on hand:**

29(a). In fact among the Sections 1 & 2 of Chapter I of the Act, Section 1 of the Act speaks that it applies to all public charitable institutions and endowments whether registered or not in accordance with the provisions of this Act, other than of governed by the Wakf Act 1954, and the expression to all Hindu religious institutions and endowments in accordance with the provisions of this Act.

29(b). As per section 2(27) of the Act, 'Temple' means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as a right by the Hindu community or any section thereof, as a place of public religious worship and includes sub-shrines, utsava mandapas, tanks and other necessary appurtenant structures and land;

Explanation I:- A place of worship where the public or a section thereto have unrestricted access or declared as a private place of worship by Court or other authority but notwithstanding any such declaration, public or a section thereof has unrestricted access to such place and includes a temple which is maintained within the residential premises, if offerings or gifts are received by the person managing the temple from the public or a section thereof at the time of worship or other religious function shall be deemed to be a temple."

29(c). The institution is temple in question a religious endowment once it is duly invoked under Section 6 of the Act as a public religious institution, since the above referred, including from writ petition and counter affidavits, averments respectively supra shows it is a place of public worship since duly notified and same not in challenge as a public religious endowment within the control and general superintendence of the Commissioner of the Endowments under Section 8 of the Act.

29(d). Section 2(25) defines "specific endowment" to mean any property or money endowed for the performance of any specific service or charity in a charitable or religious institution or for the performance of any other charity, religious or otherwise;

Explanation 1-Two or more endowments of the nature specified in this clause the administration of which is vested in a common **trustee** or which are managed under a common scheme settled shall be construed as a single specific endowment for the purpose of this Act.

Explanation 2-Where a specific endowment attached to charitable or religious institution is situated partly within the State and partly outside the State, control shall be exercised in accordance with the provisions of this Act over the whole of the specific endowment provided the charitable or religious institution is situated within the State;

29(e). Section 2(22) defines "Religious endowments" to mean property (including movable property) and religious offerings whether in cash or kind, given or endowed for the support of a religious institution or given or endowed for the performance of any service or charity of a public nature connected herewith or of any other religious charity and includes the institution concerned and also the premises thereof.

Explanation I- All property which belonged to or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a religious endowment within the meaning of this definition, notwithstanding that, whether before or after the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed.

Explanation II- Any Inam granted to an archaka, service-holder or other employee of a religious institution for the performance of any service or charity in connection with a religious institution shall not be deemed to be a personal gift to the archaka, service-holder or employee, notwithstanding the grant of ryotwari patta to an archaka, service holder or employee under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 but shall be deemed to be a religious endowment;

29(f). Section 2(23) defines "Religious institution" to mean a math, temple or specific endowment and includes a Brindavan, Samadhi or any other institution established or maintained for a religious purpose.

29(g). Section 2(21) defines "religious charity" to mean a public charity associated with a Hindu festival or observance of a religious character, whether connected with a religious institution or not;

29(h). Section 2(3) defines "Charitable endowment" means all property given or endowed for any charitable purpose;

Explanation I- Any property which belonged to or was given or endowed for the support or maintenance of a charitable institution or which was given, endowed or used as of a right for any charitable purpose shall be deemed to be a charitable endowment within the meaning of this definition, notwithstanding that before or after the commencement of this Act, the charitable institution has ceased to exist or ceased to be used for any charitable purpose or the charity has ceased to be performed.

Explanation II- Any Inam granted to a service holder or to an employee of a Charitable Institution for the performance of any charity or service in connection with a charitable

institution shall not be deemed to be a personal gift to the service holder or to the employees notwithstanding the grant of ryotwari patta to such service holder or employee under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, but shall be deemed to be a charitable endowment;

29(i). Section 2(4) defines "Charitable institution" to mean any establishment, undertaking, organisation or association formed for a charitable purpose and includes a specific endowment and dharmadayam;

29(j). Section 2(5) defines "Charitable purpose" to include-

(a) relief of poverty or distress;

(b) education;

(c) medical relief;

(d) advancement of any other object of utility or welfare to the general public or a section thereof not being an object of an exclusively religious nature;

29(k). Section 2(25) defines "Specific endowment", to mean any property or money endowed for the performance of any specific service or charity in a charitable or religious institution or for the performance of any other charity, religious or otherwise.

29(l). Section 2(29) defines "**trustee" to mean any person** whether known as mathadhipati, mohanti, dharmakarta, Mutawalli, muntazim or by any other name, **in whom either alone or in association with any other person, the administration and management of a charitable or religious institution or endowment are vested**; and **includes a Board of Trustees**;

29(m). Section 2(16) defines "hereditary trustee" to mean the trustee of a charitable or religious institution and endowment, **the succession to whose office devolves according to the rule of succession laid down by the founder or according to usage or custom applicable to the institution or endowment or according to the law of succession for the time being in force, as the case may be**.

30.**Before going into the other specific provisions covered by Chapters II to XV of Sections 3 to 162 with three schedules and the rules framed time to time under the Act**, in Chapter II among Sections 3 to 13, Section 6 of the Act speaks that the Commissioner shall prepare separately and publish in the prescribed manner, a list of all religious or charitable institutions and endowments etc., all properties belonging to or given or endowed to the charitable or religious institutions or endowments, as the case may be, equally of public religious or charitable institutions or endowments. Section 8 deals with powers and functions of the Commissioner and the Additional Commissioner, that reads as follows:

(1) Subject to the other provisions of this Act, the administration of all Charitable and Hindu Religious institutions and endowments shall be under the general superintendence and control of the Commissioner and such superintendence

and control shall include the power to pass any order which may be deemed necessary to ensure that such institutions and endowments are properly administered and their income is duly appropriated for the purposes for which they were found or exist.

(2) Without prejudice to the generality of the foregoing provisions, the Commissioner shall exercise the powers conferred on him and perform the functions entrusted to him by or under this Act in respect of such institutions or endowments in the State as are included in the lists published under Clause (a), Clause (d) and Clause (e) of Section 6.

(3) The powers and functions of the Additional Commissioner shall be such as may be determined by the Government from time to time.

(4) The Commissioner may delegate to a Deputy Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act including the powers and functions of an Assistant Commissioner which may be exercised or performed by the Commissioner under sub-section (5) but not including the power and functions of the Commissioner under subsection (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institutions or endowments or any class or group of institutions or endowments in the State subject to such restrictions and control as the Government may by general or special order lay down and subject also to such limitations and conditions, if any, as may be specified in the order of delegation.

(5) The Commissioner may delegate to an Assistant Commissioner any of the powers conferred on or functions entrusted to the Commissioner by or under this Act except the powers and functions of the Commissioner under sub-section (1), Sections 6, 15, 49, 51, 66, 90, 92 and 132 in respect of any institution or endowment in the sub-division in charge of the Assistant Commissioner subject to such restrictions and control as the Government may, by general or special order, lay down and subject also to such limitations and conditions if any, as may be specified in the order of delegation.

(6) Notwithstanding anything in Sections 10 and 11, the Commissioner may, by order in writing, declare that the exercise and performance of all or any of the powers or functions by the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall be subject to such exceptions, limitations and conditions as may be specified in the order and he may himself exercise any power or perform the functions so excepted."

31. Now coming to Chapter III of the Act No.30/1987-(Sections-14- 42)-on the aspect of Administration and Management of Charitable and Hindu Religious Institutions and Endowments, the relevant Sections are Sections 14 to 24, 26 to 29. Out of which, as per Amended Act No.33 of 2007 (w.e.f.3-1-2008), before coming to the other sections, Section29 relevant to refer with Section 8&6 reads that

31(a). Section 29- Appointment and duties of Executive Officer:- There shall

be an Executive Officer for every Charitable or Religious Institution or Endowment to be appointed by the Government in the case of institutions and Endowments having income of rupees one crore and above and by the Commissioner in the case of other Institutions and Endowments included in the lists published under clauses (a) and (b) of Section 6. In respect of charitable or religious institutions or endowment having income of less than rupees two lakhs per annum, and included in the list published under clause (c) of Section 6, it shall not be necessary to appoint an executive officer. The cadre of Executive Officers to be appointed under this section for the respective institutions on the basis of the income of the Institution or Endowment shall be as may be prescribed:

Provided that, where there is no Executive Officer in respect of any Charitable or Religious Institution or Endowment, **the trustee or the Chairman of the Board of Trustees or any employee of any Institution or Endowment where the income exceeds Rs.2 lakhs, but is less than Rs.25 lakhs per annum**, duly authorised by the Commissioner in this behalf shall exercise the powers and perform the functions and discharge the duties of an Executive Officer:

Provided further that it shall be competent for the Commissioner to appoint an Executive Officer to any institution having income of less than Rs.2 lakhs per annum if there are substantial immovable properties to the institution or if he is satisfied that such appointment is necessary in the interest of better administration of the institution or for any other reason to be recorded in writing:

Provided also that, it shall be competent for the Commissioner to constitute such number of Charitable and Hindu Religious Institutions and Endowments as may be necessary, into a single group for the purpose of appointing an Executive Officer or any other employee to such group.

(2) The number of Executive Officers in each grade shall be as may be prescribed by the Government from time to time and the Commissioner shall be the appointing authority for the Executive Officer of Grades I, II and III:

Provided that forty percentum of vacancies in third grade Executive Officers posts and twenty percentum of the vacancies in other two grades of Executive Officers shall be filled by the employees belonging to the institutions or Endowments of prescribed grade:

Provided further that it shall be competent for the Government to appoint a Regional Joint Commissioner as an Executive Officer to any institution and it shall be competent for the Commissioner to appoint a Deputy Commissioner or an Assistant Commissioner as an Executive Officer to any institution basing on the annual income of such institution.

(3) The Executive Officer appointed and exercising the powers and discharging the duties shall be a person professing Hindu Religion and shall cease to exercise those powers and discharge those duties when

he ceases to profess that religion.

(a) The Executive Officer appointed under this section shall be responsible for carrying out all lawful directions issued by such trustee from time to time;

(b) The Executive Officer shall, subject to such restrictions as may be imposed by the Government;

(i) be responsible for the proper maintenance and custody of all the records, accounts and other documents and of all the jewels, valuables, money, funds and other properties of the Institution or Endowment;

(ii) arrange for the proper collection of income and for incurring of expenditure;

(iii) sue or be sued in the name of the institution or Endowment in all legal proceedings;

Provided that any legal proceedings pending immediately before the commencement of this Act by or against an institution or Endowment in which any person other than an Executive Officer is suing or being sued shall not be affected;

(iv) deposit of money received by the institution or Endowment in such Bank or treasury as may be prescribed and be entitled to sign all orders or cheques against such moneys;

Provided that the Executive Officer shall not encash the fixed deposit certificates pertaining to any scheme or specific endowment under any circumstances;

(v) have power in cases of emergency to direct the execution of any work or the doing of any act which is provided for in the budget for the year or the immediate execution or the doing of which is in his opinion necessary for the preservation of the properties of the institution or endowment or for the service or safety of pilgrims resorting thereto and to direct that the expenses of executing such work or the doing of such work or the doing of such act shall be paid from the funds of the institution or endowment:

Provided that the Executive Officer shall report forthwith to the Trustee, any action taken by him under this sub-clause and the reasons therefore and obtain approval;

(c) The Executive Officer shall, with the prior approval of the trustee institute any legal proceedings in the name of the institution or endowment or defend any such legal proceeding;

(d) The Executive Officer appointed under this section shall be the employee of the Government and the conditions of his service shall be such as may be determined by the Government. The salary, allowances, pension and other remuneration of the Executive Officer shall be paid out of the consolidated fund of the State and later recovered from the Endowment Administrative Fund.

(e) It shall be the duty of the Executive Officer of every Religious or Charitable Institution to foster faith, devotion and ethical conduct in the society, by facilitating formation of a Bhaktha Samajam attached

to each Institution, on voluntary basis, consisting of the devotees thereof in order to periodically organize Bhajans, Religious discourses devotional and other Religious programmes such as Nagara Sankeertans etc., appropriate to the Custom, Usage, Tradition and Sampradayams of the Institution concerned.]"

31(b). Section 14 says all properties belonging to, or given or endowed to a charitable or religious institution or endowment shall, vest in the charitable or religious institution or endowment, as the case may be.

31(c). Section 15 says in respect of a Charitable or Religious Institution or Endowment,…

(1).Included in the list published under clause (a) of Section 6,

(i).where the income for the Institution exceeds Rupees one crore per annum, the Government shall constitute a Board of Trustees consisting of fourteen (for 9 substituted in 2016 June) persons appointed by them;

(ii).where the income of the institution is between Rs.25 lakhs to Rupees one crore per annum, the Dharmika Parishad shall constitute a Board of Trustees consisting of fourteen (for 9 substituted in 2016 June) persons;

(2) Where the income of the institution is between Rs.2.00 lakhs to Rs.25 lakhs per annum, the Commissioner shall appoint a Board of Trustees consisting of seven (for 5 substituted in 2016 June) persons and where the income of the intuitions is less than Rs.2.00 lakhs per annum, the Deputy Commissioner concerned may constitute a Board of Trustees consisting of five (for 3 substituted in 2016 June) persons in respect of each such temple keeping in view the traditional sampradayams and wishes of the devotees.

Provided that the Deputy Commissioner may either in the interest of the institution or endowment or any other sufficient cause or for reasons to be recorded in writing appoint a single trustee instead of a Board of Trustees.

Provided that in the case of a religious institution, the Archaka or where there is more than one Archaka, the Pardhana Archaka thereof shall be an ex-officio member of the Trust Board notwithstanding clause(g)of sub-section (1) of Section 19(ii).:

Provided further that where the Board of Trustees is not constituted for any reason, the recognized founder or Member of the founder's family shall discharge the functions of the Board of trustees till a new Board of Trustees is constituted:

Provided that where there is no Executive Officer or Founder Family member to any institution or where the Government or the authority competent to constitute a Trust Board has not constituted the Trust Board within the period specified under this sub-section, the Commissioner shall make such arrangement as he deems fit to look after the affairs of the institution during the

interregnum period between the date of expiry of the terms of the Trust Board and constitution of the new Trust Board:

Provided also that one of the members of the Board of Trustees shall be a prominent donor with a long, track record of Philanthropy and support to Hindu Religious Institutions.

31(d). Section 16. Abolition of hereditary trustees- Notwithstanding any compromise or agreement entered into or scheme framed or judgment, decree, or order passed by any court, tribunal or other authority or in a deed or other document prior to the commencement of this Act and in force on such commencement, **the rights of a person for the office of the hereditary trustee or Mutawalli or dharmakarta or muntazim or by whatever name it is called shall stand abolished on such commencement**.

31(e). Section 17- Procedure for making appointments of trustees and their term:- (1) **In making the appointment of trustees under Section 15**, the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall have due regard to the religious denomination or any such section thereof to which the institution belongs or the endowment is made and **the wishes of the founder**:

Provided that the founder or one of the members of the family of the founder, if qualified as prescribed shall be appointed as one of the trustee. [Same is substituted for trustees shall be from the family of the founder, if qualified by amended Act 27/2002 w.e.f. from 26.08.2002.]

[Explanation I- '**Founder**' means,-

(a) in respect of Institution or Endowments existing at the commencement of this Act, the person who was recognized as Hereditary Trustee under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 **or a Member of his family recognized by the Competent Authority**;

(b) In respect of an Institution or Endowment established after such commencement, **the person who has founded such Institution or Endowment or a member of his family and recognized as such by the competent authority**.]

Explanation II- '**Member of the family of the founder**' means **children, grand children and so in agnatic line of succession for the time being in force and declared or recognised as such by the relevant appointing authority**.

Explanation III- Those persons who founded temples by collecting donations partly or fully from the public as well as those who founded them on public lands **shall not be recognised as founder trustees by any means**.]

(2) Every trustee appointed under Section 15 shall hold office for a term of [two years] from the date of taking oath of office and secrecy.

[Provided that every trustee who completed

a term of office of one year at the commencement of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments (Amendment) Act, 2000, shall cease to hold office forthwith and every Trustee whose term of office exists after such commencement shall continue to hold office for a period of two years from the date of taking oath of office and secrecy].

Explanation- Where the oath of office and secrecy are administered on different dates, the period of **1**[three years] shall be reckoned from the earlier of those dates for the purpose of this subsection.

(3) The procedure for calling for application for appointment of trustees, verification of antecedents and other matters shall be such as may be prescribed.

(4) No person shall be a trustee in more than one Board of Trustees.

[(5) In every Board of Trustees, **there shall be atleast one woman member** and one member belonging to the Scheduled Castes or the Scheduled Tribes whose population is larger in the concerned village and one member belonging to Backward Classes:

Provided that it shall not be necessary to appoint-

(a) a woman member where any person appointed to represent the Scheduled Castes or the Scheduled Tribes or the Backward Classes is a woman;

(b) a member of the Scheduled Castes or the Scheduled Tribes where any woman member appointed belongs to the Scheduled Castes or the Scheduled Tribes;

(c) a member of the Backward Classes where any woman member appointed belongs to the Backward Classes.]

(6) All properties belonging to a charitable or religious institution or endowment, which on the date of commencement of this Act, are in the possession or under the superintendence of the Government, Zilla Praja Parishad, Municipality or other local authority or any company, society, organisation, Institution or other person or any committee, superintendent or manager appointed by the Government, shall, on the date on which a Board of Trustees is or is deemed to have been constituted or trustee is or is deemed to have been appointed under this section, stand transferred to such Board of Trustees or trustee thereof, as the case may be, and all assets vesting in the Government, local authority or person aforesaid and all liabilities subsisting against such Government, local authority or person on the said date shall, devolve on the institution or endowment, as the case may be.

31(f). Section 18 Qualifications of Trusteeship: A person shall be qualified for being appointed as or for being a trustee of charitable or religious institution or endowment,-

(a) if he has faith in God;

(b) if he possesses good conduct, and reputation and commands respect in the locality in which the institution is situated;

(c) if he has contributed for construction, renovation or development of any institution or performance of any Utsavam or Ubhayam or any charitable cause;

(d) if he has sufficient time and interest to attend to the affairs of the institution; and (e) if he possesses any other merit.

31(g). Section 20 Chairman of the Board of Trustees:

(1)(a). In the case of charitable and religious institution or endowment for which a Board of Trustees is constituted under Section 15, the members of the Board of Trustees shall, within such period not exceeding sixty days and in such manner as may be prescribed, elect from among themselves, the Chairman; and if no Chairman is so elected within the prescribed period the Government in the case of a Board of Trustees constituted under clause (a) of sub-section (1) of Section (15) and the Commissioner in the case of any other Board of Trustees shall nominate one of the members as Chairman.

(b) Where the founder or a member of the family of the founder is appointed as Trustee, he shall be the Chairman of the Board of Trustee.

(2) A Chairman elected or nominated under Clause (a) of subsection (1) or who becomes a Chairman under clause (b) shall hold office so long as he continues to be a member of the Board of trustees. [Same is substituted for sub section 1 as 1(a) and by insertion of 1(b) and suitably amending sub section (2) by amended Act 27/2002 w.e.f. from 26.08.2002.]

31(h). From the above and at the cost of repetition, among Sections 17 & 15, particularly if one peeps from the provisos of Section 15; Section 15 proviso (1) clearly speaks that the Deputy Commissioner may either in the interest of the institution or endowment or any other sufficient cause or for reasons to be recorded in writing appoint a single trustee instead of a Board of Trustees. Second proviso says that if there are more than one Archaka, the Pardhana Archaka thereof shall be an ex-officio member of the Trust Board, notwithstanding clause (g) of subsection (1) of Section 19. Third proviso says that where the Board of Trustees is not constituted for any reason, the recognized Founder or Member of the Founder's Family shall discharge the functions of the Board of trustees till a new Board of Trustees is constituted. Fourth proviso says that where there is no Executive Officer or Founder Family member to any institution or where the Government or the authority competent to constitute a Trust Board has not constituted the Trust Board within the period specified, the Commissioner shall make such arrangement as he deems fit to look after the affairs of the institution during the interregnum period between the date of expiry of the terms of the Trust Board and constitution of the new Trust Board. Further the last proviso says that one of the members of the Board of Trustees shall be a prominent donor with a long, track record of Philanthropy and support to Hindu Religious Institutions, which is in consonance with Section 18(c) of the original Act itself

irrespective of originally hereditary trusteeship, was abolished by introducing Section 16 in the original Act. However, the fact remains that the hereditary trusteeship is restored by subsequent amendments made in the Act by the amended Acts 27/ 2002 & 33/2007.

31(i). No doubt the appointment of Executive Officer is different from appointment of trust board. In fact as can be seen from the provisions and also can be seen from the expressions of the Apex Court particularly in **Annadana Samajam Vs. Commissioner (**1971 SCWR 22)**,** the duties of Executive Officer to discharge secular duties are different to the discharge of religious and charitable duties by a trust board (hereditary/non-hereditary as the case may be). Thus for every religious and charitable institution for discharge of religious and charitable duties there must be a trust board. It was in the absence of reconstitution new trust board from the life of earlier trust board expired and other than to such institutions there is no founder or member from the family of the founder as the case may be, a person in charge of management or as single trustee as the case may be and only as a stop gap arrangement that can be made for a short tenure till such reconstitution that too in case of non-hereditary trust board from tenure of earlier one ceased and new one not constituted as in case of trust board that to be invariably headed by its hereditary trustee as chairman in case where there is a founder or member from the family of the founder as the case may be he/she can even after expiry of tenure of trust board and till constitution of new trust board that to be appointed, act as person in charge for no others that can be as can be seen from the provisions referred supra, more particularly with reference to the amendments including by the Act 33/2007 to the Act. It is also for the reason, the Executive Officer's powers and functions are as can be seen from Section 29(3) of the Act for carrying out all lawful directions issued by such trustee/trust board from time to time and subject to such restrictions as may be imposed by the Government, responsible for the proper maintenance and custody of all the records, accounts and other documents and valuable jewellery, money, funds and other properties of the Institution or Endowment, arrange for the proper collection of income and for incurring of expenditure, sue or be sued and to continue in pending legal proceedings and in cases of emergency to direct the execution of any work subject to limitation and with the prior approval of the trustee institute any legal proceedings in the name of the institution or endowment or defend any such legal proceeding and shall be the employee of the Government and the conditions of his service being determined to draw salary, allowances out of the consolidated fund of the State and later to be recouped from the Endowment Administrative Fund, leave about other and general duties as being ordained by the trust board to the Executive Officer in the interest of the institution and its devotees or disciples as the case may be and in order to foster faith, devotion and ethical conduct in the society, by facilitating formation of a Bhaktha Samajam on voluntary basis, consisting of the devotees to periodically organize Bhajans, Religious

discourses devotional and other Religious programmes such as Nagara Sankeertans etc., appropriate to the Custom, Usage, Tradition and Sampradayams etc. Thus an Executive Officer of any religious or charitable institution cannot supersede a trustee/trust board once there is any trustee/ trust board duly appointed and in case once there is a hereditary trustee to such institution being its founder or member of the family of the founder. So far as trustees concerned, unless the trustee/s is/are suspended or removed under Section 28 of the Act is/are entitled to act during the tenure of the trust board other than for hereditary trustees recognized by the amended Act No.33/2007 w.e.f. 31.01.2008 including in saying the constitution of trust board under Section 15 shall be with inclusion of a founder or member of the family of the founder besides archaka being Ex-Officio member. From this it cannot be ignored of the change of law after the amendment by Acts 27/2002 & 33/2007 including by amendment to Sections 29, 15 & 17 of the Act in particular.

31(j). Section 144 of the original Act speaks of the Abolition of shares in Hundi and other rusums with non-absentee clause that, notwithstanding any judgment, decree or order of any Court, Tribunal or other authority or any scheme, custom, usage or agreement, or in any manual prepared by any institution or in any Farmana or Sanad or any deed or order of the Government to the contrary governing any charitable or religious institution or endowment, all shares which are payable or being paid or given or allowed at the commencement of this Act to any trustee, Dharmakarta, Mutawalli, any office holder or servant including all offerings made in the premises of the Temple or at such places as may be specified by the Trustee, all Prasadams and Panyarams offered either by the Temple or devotee, and such other kinds of offerings, all shares in the lands of the institution or endowment allotted or allowed to be in possession and enjoyment of any archaka, office holder or servant towards remuneration or otherwise for rendering service and for defraying the 'Paditharam' and other expenses connected with the service or management of the temple, shall stand abolished with effect on and from the commencement of this Act. However, **the provisos added by amended Act 33/2007 with effect from 03.01.2008 speaks that**, provided that the above said provision is applicable only for those institutions whose annual income as defined under Section 65 exceeds Rs.5,00,000/-. Provided further that notwithstanding anything contained in this Section, the Commissioner shall be competent to frame a separate scheme in case of such institutions where satisfies himself for the reasons to be recorded in writing that framing of such a scheme is necessary stipulating the conditions of service and payment of emoluments to the Archakas, office holders and servants of the institution. Such a scheme shall come into force only after the approval of the Dharmika Parishad.

31(k). **Section 154 which speaks of Exemptions,** that the Government may by notification, exempt from the operation of any of the provisions of this Act or any of the rules made there under –

(a) any charitable institution or endowment the administration of which was or is for the time being vested –

(i) in the Government either directly or through a Committee or Treasurer of Endowments, appointed for the purpose;

(ii) in the official Trustee or in the Administrator General; (b) any charitable institution or endowment founded for educational purpose or for providing medical relief ; or

(c) any institution or endowment which is being well managed by the founder; or

(d) any institution or endowment ; and may likewise vary or cancel such exemption.

31(l). Section 155 speaks on Repeals and Savings that (1) The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 and the Tirumala Tirupathi Devasthanams Act, 1979 are hereby repealed.

(2) Notwithstanding such repeal –

(a) all rules made, notifications or certificates issued, orders passed, decision made, proceedings taken and other things done by any authority or officer under the repealed Acts shall in so far as they are not inconsistent with this Act be deemed to have been made, issued, passed, taken or done by the appropriate authority or officer under the corresponding provisions of this Act and shall have effect accordingly until they are modified, cancelled or superseded under the provisions of this Act;

(b) all powers conferred and all duties imposed by any scheme in force before the commencement of this Act on any court or judge or any other person or **body of persons not being a trustee**, an honorary officer or servant of the charitable or religious institution or endowment shall be exercised and discharged by the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, in accordance with the provisions of this Act;

(c) all proceedings pending before the Government, any officer, or authority or a trustee under the provisions of the repealed Acts at the commencement of this Act may, in so far as they are not inconsistent with the provisions of this Act, be continued by the appropriate authority under this Act;

(d) any remedy by way of right of application, suit or appeal which is provided by this Act, shall be available in respect of proceedings under the repealed Acts pending at the commencement of this Act, as if the proceedings in respect of which the remedy is sought had been instituted under this Act;

(e) Every member of the Board of Trustees other than a hereditary trustee, Chairman and members of the Tirumala Tirupathi Devasthanams Board lawfully holding office on the date of commencement of this Act shall be deemed to have been duly appointed or as the case maybe duly nominated under this Act and shall continue to act as such

for the residue of the term of his office and every Board of Trustees or the Board lawfully constituted on the date of commencement of this Act, shall be deemed to have been duly constituted as a Board of Trustees under this Act, and thereupon exercise all the powers and discharge all the duties entrusted to them under this Act;

(f) Every trustee whose term of office had expired prior to the date of commencement of this Act, but who continues in office beyond such date with the concurrence of the competent authority, shall continue as such until a new trustee is appointed under this Act unless in the meanwhile he is removed, dismissed or has resigned or otherwise ceases to be a trustee.

(3) The mention of particular matters in this section shall not be held to prejudice or affect the general application of Sections 8 and 18 of the Andhra Pradesh General Clauses Act, 1891, with regard to the effect of repeals.

31(m). Coming to Sections 8 and 18 of the Andhra Pradesh General Clauses Act, 1891 which read that:

Section 8 Effect of repealing an Act: Where any Act, to which this Chapter applies, repeals any other enactment, then the repeal shall not;

(a) affect anything done or any offence committed or any fine or penalty incurred or any proceedings begun before the commencement of the repealing Act; or

(b) revive anything not in force or existing at the time at which the repeal takes effect; or

(c) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(d) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(e) affect any fine, penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(f) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation liability, fine, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted , continued or enforced and any such fine, penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

Section 18 References to provisions in Acts repealed and re enacted: Where an Act repeals and re enacts, with or without modification, all or any of the provisions of a former Act, references in any other Act to the provisions so repealed shall be construed as references to the provisions so re enacted, and if notifications have been published proclamations or certificates issued, powers conferred, forms prescribed, local limits defined, offices established, orders, rules and appointments made, engagements entered into, licences or permits granted, and other things duly done,

under the provisions so repealed, the same shall be deemed, so far as the same are consistent with the provisions so re enacted, to have been respectively published, issued, conferred, prescribed, defined, established, made, entered into, granted or done under the provisions so re-enacted.

31(n). Thus, from the above, irrespective of abolition of founder and founder family trusteeship by the Act 30/1987 by Section 16 of the Act commences with non-absente clause of what is contained in the repealed Act 1966, by the wording of Section 155(2) supra of notwithstanding such repeal the rules, notifications, orders, decisions and powers and proceedings and right and remedy including in relation to member of Board of trustees other than a hereditary trustee …… shall be deemed made and provided and enforceable under the Act and it clearly speaks from Section 155(3) referring to Sections 8 & 18 of the A.P. General Clauses Act, 1891 supra with regard to effect of the repeals. No doubt, Section 16 with non-absente clause prevails over Section 155 supra.

31(o). So far as the term FOUNDER is used in Section 154 clause (c) also no doubt will not override the word HEREDITARY TRUSTEE used in Section 16 of the Act 30/1987, but for to say both to understand with same meaning of the FOUNDER OR MEMBER OF THE FAMILY OF THE FOUNDER ELIGIBLE IS THE HEREDITARY TRUSTEE, from its reading with Section 2(16) which defines **hereditary trustee** as trustee of the succession to whose office devolves to the rule of succession laid down by the founder or as per usage, custom **or law of succession for the time being in force as the case may be**.

32. It is also necessary to keep in mind what the statement of objects and reasons in bringing the Act 30/1987 by repealing the earlier Act 1966 and the TTD Act 1979 by consolidation speaks that it is from the proposal to enact a comprehensive law providing the better management of the properties and utilization of the funds of the institutions and endowments, abolishing the hereditary rights of Archakas, Mirasidars and other servants without disturbing the present incumbents, but to continue them on regular cadre in their place and to afford proper training to the existing Archakas and to other servants of the institutions and endowments wherever it is necessary. It is also proposed to abolish the hereditary system of trusteeship and make provision for adequate representation to women in board of trustees——.

33. From this coming to the challenge made at the behest of hereditary trustees of the institutions governed by the Act before the Division Bench of the Apex Court of the constitutional validity of Sections 15, 16, 17, 29(5) and 144 of the Act 30/1987, prior to the amendments made to it, in **Pannalal Bansilal Pitti** supra, while recognizing the fact that the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments, 1966 (17 of 1966) (for short, 'the Predecessor Act of 1966') recognized their hereditary right and made them Chairman of the respective trusts, in the event of constituting a board of trustees with non-hereditary trustees and the religious

institutions and endowments or charitable institutions many were established on charity which every Hindu wishes to perform; referred to the contentions of the petitioners of establishment of charitable and religious institutions or endowments is a part of freedom of conscience and right to maintain the institutions founded by them and the Act, while purporting to regulate administration and governance of Hindu charitable and religious institutions or endowment cannot violate the constitutional rights under Articles 25 and 26 of the Constitution; **when Section 18 of the Act recognizes and gives right to representation to a member of the family in the board of trustees, abolition of hereditary trusteeship under Section 16 is contended as unconstitutional, besides the statutory abolition would dry up the pious wish or charitable disposition zeal to establish a religious or charitable institution or endowment including to perpetuate the memory of the founder, who was inspired with religious piety or charitable disposition and from which the members of his family are entitled to be members of the trust, and the right to chairmanship of the board ensures that the work would be carried out as set out in the deed of endowment. Further, the trustee appointed by the donor's family would work with dedication which would be wanting in the officers or non-hereditary trustees, since the latter do not have any personal interest in the efficient or proper management of the institution or the endowment and denial of that right to do service to the religious institution or endowment to the founder or the members of the family is, therefore, arbitrary, unfair and unjust offending Article 14 of the Constitution**. The contrary contention of the State further reproduced is that the Act is applicable to all Hindu religious or charitable institutions or endowments in particular and to all public charitable institutions and endowments, whether registered or not, in accordance with the provisions of the Act other than Wakfs governed under the Wakfs Act, 1954 in general and therefore it does not violate Article 14 from the procedure for appointment of a non-hereditary trustee, which is a fair procedure for due administration and maintenance of religious or charitable institutions and endowments.

33(a). It was in answering the same, the Apex Court having referred to and relied upon the earlier expressions particularly of the expression in **the Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** (1954) S.C.R. 1005), **known as Shirur Mutt case** at page 1029 **from where it was held that a law which takes away the right to administration to the religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of Article 26**; **so a law would not totally divest the administration of a religious institution or endowment, but the State has general right to regulate the right to administration of a religious or charitable institution or endowment; and such a law may chose to impose such restrictions whereof as are felt most acute and provide a remedy**

therefor. Further in **Ratilal Panachand Gandhi vs. the State of Bombay & Others** (1954) S.C.R. 1055) at page 1063, this Court further had pointed out the distinction between clauses (b) and (d) of Article 26 thus: **in regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislation can take away**. On the other hand, as regards administration of property which a religious denomination is entitled to own and acquire, it has undoubtedly the right to administer such property, but only in accordance with law. This means that the State can regulate the administration of trust properties by means of laws validly enacted; but here again it should be remembered that under Article 26(d), it is the religious denomination or general body of religion itself which has been given the right to administer its property in accordance with any law which the State may validly impose. **A law, which takes away the right of administration altogether from the religious denomination and vests it in any other or secular authority, would amount to violation of the right which is guaranteed by Article 26(d) of the Constitution**. In that case, the Court found that the exercise of the power by the Charity Commissioner or the Court to divert the trust property or funds for purposes which he or it considered expedient or proper, although the original objects of the founder can still be carried out, was an unwarranted encroachment on the freedom of religious institutions in regard to the management of their religious affairs. It is ultimately observed that religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. Religion, undoubtedly, has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion conducive to their spiritual well being. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship etc. guarantee under the Constitution not only protects the freedom of religious denomination but it also protects ceremonies and modes of worship which are regarded as integral parts of religion; and the forms and observations might extend even to interests of food and dress. **What Article 25(2) (a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution. The guarantee is in-built to every religion to establish and maintain institutions for religious and charitable purposes and their management in matters of religion to own and acquire movable and immovable properties.** But they are subject to Article 25 and other provisions of the Constitution. Founding a temple or a charitable institution is an act of religious duty and has all the aspects of Dharma. It would thus be clear that the right to establish a religious institution or endowment is a part of religious belief or faiths, but its administration is a secular part which would be regulated by law appropriately made by the legislature. The regulation is only in respect of the administration of the secular part of the religious institution or endowment, and not of beliefs, tenets, usages and practices, which are integral part of that religious belief or faith. **It is true that Section 16 of the Act, which has**

been reproduced earlier, abolishes the hereditary right in trusteeship but not the right to trusteeship itself. It is obvious that Section 18 itself recognizes the right to management of a religious or charitable institution or endowment or specific endowment by one of the members belonging to the family of the founder as trustee; but, of course, as a member of the board of non-hereditary trustees. It is settled law that the legislature within its competence may amend the law. The language in Section 16 seeks to alter the preexisting operation of the law. The alteration in language may be the result of many factors. It is settled legislative device to employ non obstante clause to sustainability alter the pre-existing law, consistent with the legislative policy under the new Act to provide the remedy for the mischief the legislature felt most acute. Section 17 to 19 recognize general right to every qualified Hindu to claim appointment as trustee. Section 16 intends to remove discrimination on grounds of heredity which otherwise is violative of Article 15(1). Article 13 declares such inconsistent custom as void. The predecessor Act 1966 recognised customary right, which the legislature has power to take away such recognition and order every eligible Hindu to be considered for appointment as trustee in the manner prescribed by law. Hereditary principle being inconsistent with Article 15(1), the legislature thought it fit to abolish the same…… **Instead of management by a single person Chapter III introduced in Sections 15, 17, 18 and 19 as a composite scheme prescribing disqualifications and qualifications for trusteeship, procedure for appointment of trustees and appointment and constitution of the board of trustees so as to have collective proper and efficient administration and governance of the institution and endowment.** The abolition of the right to hereditary trusteeship, therefore, cannot be declared to be unconstitutional.

33(b). The further observations are that the Act entrusted the collective responsibility to the board of trustees appointed under Section 15. Section 15 makes a distinction in respect of the charitable or religious institutions or endowments covered by clauses (a) to (c) of Section 6 as distinct classes. In respect of the charitable or religious institutions or endowments covered by clause (a) of Section 6 whose annual income is Rs.10 lakhs and above, the board of trustees consisting of 9 persons shall be appointed under clause (a) of sub-section (1) of Section 15. The appointing authority of such board of trustees shall be the Government. In case the income does not exceed Rs.10 lakhs, the Commissioner has been given power to appoint board of trustees consisting of 7 persons. In respect of charitable or religious institutions or endowments included in the list published under clause (b) of Section 6, the Deputy Commissioner having jurisdiction has been empowered to constitute a board of trustees consisting of 7 persons as envisaged under sub-section (2) of Section 15. In the case of charitable or religious institutions or endowments included in the list published under clause (c) of Section 6, the Assistant Commissioner having jurisdiction has been empowered to appoint trustees and constitute board of trustees consisting of five persons. In the case of charitable or

religious institutions or endowment covered by clause (c) of Section 6, obviously based upon the factual matrix, in the interest of the institution or endowment or for any other sufficient cause after recording reasons in writing, the Assistant Commissioner is empowered by the proviso to subsection (3) of Section 15 to appoint a single trustee to a charitable or religious institution or endowment instead of appointing and constituting a board of trustees. It could be seen that the scheme of appointment of the trustees and appointment and constitution of the board of the trustees being an integral part and having evolved policy to entrust collective responsibility of management and administration of charitable and religious institution or endowment instead of entrusting such responsibility to a single individual, Section 15 was brought on statute to effectuate the said policy. The legislative competence is not questioned. The policy involved cannot be faulted nor can it be assailed as unconstitutional when it seeks to achieve a public purpose, viz., secular management of the charitable or religious institutions or endowments to effectuate efficient and proper management and governance of the said institutions.

33(c). It was observed therefrom that accordingly we are of the considered view that abolition of the hereditary right in trusteeship is unexceptionable, it being a part of due administration, which is a secular activity. Being a permissible law under Article 25(2), it is not violative of Article 25(1) of the Constitution. It cannot further be held that either Section 15 or Section 16 of the Act is ultravires the Constitution. **But immediate question is whether taking away of the management and vesting the same in the board of non-hereditary trustees, constituted under Section 15, is valid in law?** It is seen that the perennial and perpetual source to establish or create any religious or charitable institution or endowment of a specific endowment is the charitable disposition of a pious persons or other benevolent motivating factors, but to the benefit of indeterminate number of people having the common religious faith and belief which the founder espouses. **Even a desire to perpetuate the memory of a philanthropist or a pious person or a member of the family or founder himself may be the motive to establish a religious or charitable institution or endowment or specific endowment**. **Total deprivation of its establishment and registration and take over of such bodies by the State would dry up such sources or acts of pious or charitable disposition and act as disincentive to the common detriment……..** The question then is whether legislative declaration of the need for maintenance, administration and governance of all charitable and Hindu religious institutions or endowments or specific endowments and taking over the same and vesting the management in a trustee or board of trustees is valid in law……. **Section 17 of the predecessor Act of 1966 had given power to a hereditary trustee to be the chairman of the board of non-hereditary trustee**. **Though abolition of hereditary right in trusteeship under Section 16 has already been upheld, the charitable and religious institution or endowment owes its existence to the founder or**

members of the family who would resultantly evince greater and keener responsibility and interest in its proper and efficient management and governance. The autonomy in this behalf is an assurance to achieve due fulfilment of the objective with which it was founded unless, in due course, foul in its management is proved. Therefore, so long as it is properly and efficiently managed, he is entitled to due freedom of management in terms of the deed of endowment or established practice or usage. In case a board of trustees is constituted, the right to preside over the board given to the founder or any member of his family would generate feeling to actively participate, not only as a true representative of the source, but the same also generate greater influence in proper and efficient management of the charitable or religious institution or endowment. Equally, it enables him to persuade other members to follow the principles, practices, tenets, customs and sampradayams of the founder of the charitable or religious institution or endowment or specific endowment. Mere membership along with others, many a times, may diminish the personality of the member of the family. Even in case some funds are needed for repairs, improvement, expansion etc., the board headed by the founder or his family member may raise funds from the public to do the needful, while the executive officer, being a Government servant, would be handicapped or in some cases may not even show interest or inclination in that behalf. With a view, therefore, to effectuate the object of the religious or charitable institution or endowment or specific endowment and to encourage establishment of such institutions in future, making the founder or in his absence a member of his family to be a chairperson and to accord him major say in the management and governance would be salutary and effective. The founder or a member of his family would, thereby, enable to effectuate the proper, efficient and effective management and governance of charitable or religious institution or endowment or specific endowment thereof in future. It would add incentive to establish similar institutions.

33(d). The further observation therefrom is that, keeping this pragmatic perspective in consideration, the question that emerges is: whether Sections 17 and 29(5) are valid in law? Reading down the provisions of an Act is a settled principle of interpretation so as to sustain their constitutionality, as well as for effectuation of the purpose of the statute. With the above in mind, we may examine the validity of Section 17 and 29(5). These statutory provisions are grounded on the findings of the report of Challa Kondaiah Commission, which indicated mismanagement and mis-utilization of funds of charitable and Hindu religious institutions and endowments in a big way. This is, however, a general finding; and we are prepared to agree with the learned counsel for the petitioners that all the charitable and religious institutions may not be painted with the same brush. We have no doubt that there would be charitable or

religious institutions in the State which are neither mismanaged nor there is mis-utilization of funds. Even so, if the legislature acted on the general findings recorded by the Commissioner, due weightage has to be given to the same. **Our view is that the board of trustees should be headed either by the founder or a member of his family, would go a long way in seeing the fulfillment of the wishes and desires of the founder**. Sections 17 and 29(5) cannot, therefore, be faulted. Whatever rigor these sections have, would be duly get softened by the requirement of the board being headed by the founder or any of his family members, as the case may be. **Subject to this rider, we uphold the validity of these two Sections**. ——— ——— So, we uphold the validity of Sections 15, 16, 17, 29(5) and 144, subject to the rider mentioned earlier qua Sections 17 and 29(5). The writ petitions and the transfer cases are disposed of accordingly.

33(e). In fact, from the very expression by reading down Sections 17 and 29(5), it was categorically held that: o**ur view that the board of trustees should be headed either by the founder or a member of his family, would go a long way in seeing the fulfillment of the wishes and desires of the founder**. Sections 17 and 29(5) cannot, therefore, be faulted. Whatever rigor these sections have, would be duly get softened by the requirement of the board being headed by the founder or any of his family members, as the case may be. **Subject to this rider, we uphold the validity of these two Sections**. As held by the Constitution Bench of the Apex Court in **D.S.Nakara Vs. Union of India (**1983 (1) SCC 305) reading down process arises when an unconstitutional portion unrelated to the object sought to be achieved so as to severe and omit it from the otherwise constitutional provision.

33(f). Once such is the case, whatever incorporated in Section 17 pursuant to the above expression, by adding a proviso to sub Section 1 of Section 17 by the amended Act 27/2002 w.e.f. 26.08.2002 and the further adding of explanation I of what is meant by founder by the amended Act 33/2007 w.e.f. 03.01.2008, have to be understood for all purposes of Section 17 cannot prevail over the recognition and entitlement of the founder or founder family member which is a recognized and statutorily interpreted right that was earlier in existence by its refinement and not by total abolition by Section 16 but to read with reference to clause (c) of Section 18 and Section 154 (c) and 155 of the Act and as such, the question of again reading down Section 87(1)(h) or the above Sections to give literal meaning to Section 17(1) explanation I (a) does not arise much less take away the right provided unending by the above expression. Further what the Section 87(1)(h) by amendment brought was in fact along with Section 17(1) explanation I (a) by the amended Act 33/2007 w.e.f. 03.01.2008 and none are earlier more particularly Section 87(1)(h) even to say by any stretch of imagination of the later amendment even of the earlier provision prevails over a subsequent provision and the law is fairly settled in this regard particularly by the expression of the Apex Court in **Dharangadhara Chemical Works vs. Dharangadhara Municipality (**1985(4)

SCC-91at92=AIR-1985-SC-1729(A)para-9) that if there is any repugnancy between two pieces of legislations dealing with the same subject matter (since the subject matter is same as it is relating to founder family member's recognition and declaration which is an unending process for such of them to continue to man the institutions by representing the same as Chairman of the trust board where there is a trust board and in the absence, in that original capacity as hereditary trustee from the family of the founder even if founder is no more so to represent from the right of succession provided), to such an extent that both can not stand together and operate simultaneously, the later will have the effect of impliedly repealing the former. Thus, the expression in **Sri Vallabharayeswara Swamy Temple** supra of the single judge of this Court is not good law and if not per-incuriam for same is running contrary to the expression of the Apex Court in **Pannalal Bansilal Pitti** supra which clearly laid down that Section 17 must be read down to reconcile the same with Section 29 and thereby Section 17 must be read down to reconcile the same with Section 87(1)(h), at least hit by subsilentio for same has ignored the expression of the Apex Court in **Pannalal Bansilal Pitti** supra which is a binding precedent and directly on the issue for the same clearly laid down that **the board of trustees should be headed either by the founder or a member of his family, would go a long way in seeing the fulfillment of the wishes and desires of the founder.** Once Section 17 (1) Explanation I(a) is to be literally construed in its isolation, it is running contrary to the above and thus question of Section 87(1)(h) to read down to give prevalence to Section 17 (1) Explanation I(a) does not arise; leave about such a conclusion in **Sri Vallabharayeswara Swamy Temple** supra of the single judge of this Court is also running contrary to the settled principle of the earlier provision will not prevail over a subsequent provision even of the same statute and brought in by same amendment, particularly of its reiteration by the Apex Court in **Dharangadhara Chemical Works** supra that if there is any repugnancy between two pieces of legislations dealing with the same subject matter (since the subject matter is same as it is relating to founder family member's recognition and declaration which is an unending process for such of them to continue to man the institutions by representing the same as Chairman of the trust board where there is a trust board and in the absence, in that original capacity as hereditary trustee from the family of the founder even if founder is no more so to represent from the right of succession provided), to such an extent that both can not stand together and operate simultaneously, the later will have the effect of impliedly repealing the former.

33(g). It is also to be kept in mind in this regard and by this expression in **Pannalal Bansilal Pitti** supra, though founder or member of the family of the founder in succession as hereditary trustee of the institution earlier by the Act 1966 was totally recognized and by the Act 30/1987 from repeal of Act 1966 abolished the sole hereditary trusteeship under Section 16 of the Act, by providing for constitution of trust boards where the founder or member of the

family of the founder be given due consideration under Section 18 of the Act, with a view, therefore, to effectuate the object of the religious or charitable institution or endowment or specific endowment and to encourage establishment of such institutions in future, making the founder or in his absence a member of his family to be a chairperson and to accord him major say in the management and governance would be salutary and effective; the founder or a member of his family would, thereby, enable to effectuate the proper, efficient and effective management and governance of charitable or religious institution or endowment or specific endowment thereof in future; it would add incentive to establish similar institutions and our view thereby is that the board of trustees should be headed either by the founder or a member of his family, would go a long way in seeing the fulfillment of the wishes and desires of the founder. Once such is the case, for the unending process of the founder or member of the family of the founder recognition whenever there is a dispute including inter se among the family members of the founder and from any third party claim against such requires adjudication that what is contemplated by Section 87(1)(h) of the amended Act 33/2007 and it is in pursuance of the expression of the Apex Court interpreting Section 17 already and as such, it cannot be said from the literal meaning of Section 17(1) Explanation I to confine any such adjudication to the institutions existing prior to the Act 1987 if at all already recognized and not otherwise for such is not the spirit of law from reading of the provisions of the Act as a whole and its interpretation by the Apex Court in **Pannalal Bansilal Pitti** supra, but for restoration of the hereditary trusteeship for one of the family members of the founder where the founder is no more, so to represent as one of the trustees among other trustees to act as Chairman and in the absence of trust board, as hereditary trustee without need of appointing person in charge or person in management.

34. In this context, it is necessary to reproduce Section 87 of the A.P Endowments Act 30/1987 amended by Act 33/2007 as follows:

"87. Power of Endowments Tribunal to decide certain disputes and matters:—

(1) **The Endowments Tribunal having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question**:

(a) whether an institution or endowment is a charitable institution or endowment :

(b) whether an institution or endowment is a religious institution or endowment:

(c) whether any property in an endowment, if so whether it is a charitable endowment or a religious endowment:

(d) whether any property is a specific endowment;

(e) whether any person is entitled by custom or otherwise to any honour, emoluments or perquisites in any charitable or religious institution or endowment and what the

established usage of such institution or endowment is in regard to any other matter;

(f) whether any institution or endowment is wholly or partly of a secular or religious character and whether any property is given wholly or partly for secular or religious uses; or

(g) where any property or money has been given for the support of an institution or endowment which is partly of a secular character and partly of religious character or the performance of any service or charity connected with such institution or endowment or the performance of a charity which is partly of a secular character and partly of a religious character or where any property or money given is appropriated partly to secular uses and partly to religious uses, as to what portion of such property or money shall be allocated to secular or religious uses.

(h) **whether a person is a founder or a member from the family of the founder of an Institution or Endowment**.

(2) The Endowments Tribunal may, pending its decision under sub- section (1), pass such order as it deems fit for the administration of the property or custody of the money belonging to the institution or endowment.

(3) The Endowments Tribunal may while recording its decision under sub-section(1) and pending implementation of such decision, pass such interim order as it may deem fit for safeguarding the interest of the institution or endowment and for preventing damage to or loss or misappropriation or criminal breach of trust in respect of the properties or moneys belonging to or in the possession of the institution or endowment.

(4) The presumption in respect of matters covered by Clauses (a), (b), (c), (d) and (e) in sub-section (1) is that the institution or the endowment is a public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment, as the case may be.

(5) **Notwithstanding anything contained in the above sub sections the Deputy Commissioner having jurisdiction shall continue to enquire into and decide the disputes referred to in sub-section (1) until the constitution of the Endowments Tribunal**."

34(a). Thus in this Section, among sub Section (1) clauses (a)-(g), clauses (a)&(b) deal with nature of institution, clauses (c)&(d) deal with nature of property, clause (e) deals with personal entitlement if any of emoluments, honours or perks etc., clause (f) deals with combination of the above and clause (g) deals with any property or money given for the support of, or performance of any service or charity connected with, the institution or endowment is partly secular and partly religious and at what proportions and whereas clause (h) deals with enquiry into and to decide any dispute as to the question whether a person is a founder or a member from the family of the founder of an Institution or Endowment

and it is not confined to those already recognized as such for such of the institutions existing by the time the Act 30/1987 came into force and not otherwise for any entitlement of any enquiry and decision in this regard. Thus, so far as in respect of an institution or endowment existing at the time of commencement of the Act,30/1987, by virtue of the amended Act 33/2007, from combined reading of Section 87(1)(h) and Section 17, the person who was recognized as hereditary trustee under the old Act 1966 or a member of his family recognized by the competent authority, is with in the meaning of **Founder** as per the Explanation I to Section 17(1) of the Act, though he was not but for his ancestor if any was the real founder and that does not mean those not recognized by any adjudicatory process earlier and even acting from any dispute later arisen cannot be decided from the literal wording of Section 17(1) Explanation I. In the other single judge expression of this High Court in **A.V.Ranga Rao Vs. State of A.P39,** it was held that the person who was recognised as hereditary trustee under the Repealed Act 17/66 automatically comes within the definition of Founder and thus he is entitled to be appointed as one of the trustees as per the amended Act 33/2007 as per the Explanations I&II therein. In fact to understand fully this Founder concept, it is needful to refer the Sec.2(15) & Sec.77 of the old Act,17/1966. Under Sec.77(1) of the old Act 17/1966, the Deputy Commissioner was conferred with jurisdiction to decide eleven types of disputes and among which the Sec.77(1)(c) empowers the Deputy Commissioner to decide whether trustship is hereditary or not in case of any dispute in that regard. If there is no dispute the question of approaching for deciding the same by the Deputy Commissioner does not arise and that does not mean those not recognized by adjudication not entitled to act as such much less to obtain any decision from any dispute in this regard. It is for the reason in such case, there is only recognition of hereditary trustee by entering in the book of Endowment or in the 39 2011(1)ALT-274 trust deed or the like. It is in fact clear for so concluding, from the meaning of **hereditary trustee** defined under Sec.2(15)of the old Act,17/1966. As per Sec.2(15) of the old Act,17/1966 **"Hereditary trustee"** means the trustee of a charitable or religious institution or endowment the succession to whose office devolves (i).**according to the rule of succession laid down by the founder** or (ii).**according to usage and custom applicable to the institution or endowment** or (iii).**according to the law of succession for the time being in force** as the case may be". Same is the meaning given by 2(16) of the Act 30/1987. From the above definition it is clear that, it is not always devolution of office of trustee of a religious or charitable institution by succession according to law of succession for the time being in force, as it can be even according to rule of succession laid down by the founder in the trust deed or some other document or book of endowment or records of endowment as to who have to act as hereditary trustees in future and in the absence of which it may be according to usage and custom applicable to the institution or endowment to regard such office as hereditary in nature and such

trustee as hereditary trustee, leave about the proper way is according to the rules of succession. In fact, from the wording of the amended Explanation II to Section 17(1) of the Act **"Member of the family of the founder"** means children, grand children and so in agnatic line of succession for the time being in force and declared or recognized as such by the relevant appointing authority. The line of succession above referred arises only after the death of the person for claim by his agnatic lineal descendents as Members of Founder's Family. The line of succession provided by the Act is only in agnatic line which is running contrary to the general rules of succession covered by the Hindu Succession Act and other personal statutory laws, leave about same even offending Articles 14 to 16 of the Constitution of India, though it is not the issue here for the present revision petitioner being daughter of the founder is in agnatic line descendent to the founder from the very claim to adjudicate the factual dispute for nothing in any manner to decide the claim from any bar of law to reject the application for adjudication in O.A.No.603 of 2012. It is because of what is discussed supra and further from the factum of once there is a hereditary trustee so recognised under the old Act 17/1966, he is founder within the meaning of the Explanation I to Section 17(1) of the Act 30/87 amended by Acts 27/2002 & 33/2007 and a member of his(such a founder) family recognized by the competent authority under the Act is Founder Family Member and for anybody to claim even not already recognized before the Act 30/87 came into force, so to apply for recognition for no such bar from very wording of Section 87(1)(h) to prevail over the Section 17(1) particularly Explanation I for the purposive construction otherwise thereby required to read for all purposes by supplying the words "**including those who are** entitled to be so recognized" from the only conclusion on over all spectrum of the provisions and propositions discussed supra to read in the wording of Explanation I- of 'Founder' to mean (a) in respect of Institution or Endowments existing at the commencement of this Act, the person who was recognized as Hereditary Trustee under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 or a Member of his family recognized by the Competent Authority, **including those who are** entitled to be so recognized as the very proviso to it also clearly speaks that the founder or one of the members of the family of the founder, if qualified as prescribed shall be appointed as one of the trustee. [Same is substituted for trustees shall be from the family of the founder, if qualified by amended Act 27/2002 w.e.f. from 26.08.2002.]. In fact, the above proviso to sub-section (1) of Section 17 casts an obligation on the appointing authority to appoint founder and if founder is not alive among the recognized members of the founder's family that is either one or more of the members of the family of the founder to be the trustees in the trust Board as also laid down by the Apex Court in **Pannalal Bansilal Pitti** supra.

34(b). Further, on the above concept from the scope of Sections 87(1)(h) r/w 15-19, after the amended Acts 27/2002 & 33/2007 to the Act,30/1987, as held by another expression of this Court in **Andal Raghavan vs. Deputy Commissioner, Endowments**

Department, Kakinada (2007(4)ALT 509)at Para 10, that "The declaration of a person as founder or member of the founder's family under section 87(1)(h) of the Act by the Deputy Commissioner of Endowments or by any competent authority before coming into force of Section 87(1)(h), is altogether different from the appointment of a qualified founder or a qualified member of founder's family as trustee under Sec.17(1) of the Act (see-**G.Rajendranadh Goud vs. State of AP-2006(1)ALD705**). Every founder or member of the founder's family cannot be said to have an enforceable right for being appointed as a trustee or Chairman of Trust Board as a matter of course. Such person has to fulfill the qualifications prescribed in Section 18 of the Act, Rule 8 of the Rules, and should not incur any disqualifications under Section 19 of the Act. Further, even in a case where the number of applications received by the competent authority is equal to the number of trustees to be appointed, even then, no applicant can be said to have any right for appointment. The antecedents of all the applicants have to be verified by the subordinate officers and the verification report has a bearing on the exercise of the power by the competent authority. Therefore, unless and until the application is made by the person claiming to be founder or member of the founder's family giving all the details in Form No.II and unless and until the antecedents of such person are verified by the Verification Officer, such person cannot be appointed as a trustee. Rule 7 of the Rules clearly lays down that, "competent authority shall scrutinize the applications along with the report of the Verifying Officer and pass orders appointing trustees". Therefore, the submission of the learned counsel for the petitioner that there is no necessity for the founder or member of the founder's family to apply in Form No.II under Rule 5(1) of the Rules, after publication of notice in Form No.1, cannot be countenanced. If the same is accepted and a member of the founder's family is appointed without there being an application, it would lead to number of complications besides showing up problems and difficulties in a case where there are more than one recognized member from the founder's family". It no way speaks even of those not recognized as such already of the institutions in existence prior to the Act 30/1987 came into force cease to be so recognized or to adjudicate any dispute in relation thereto. Even another division bench expression of this Court in **K.Girijakumari Vs. G.Rajendranath Goud (**1998(3)AnWR 76 DB)**,** it was held that Member of the family of the founder of the Temple though got no right of claim as hereditary trustee, yet shall have a right in the trust board to be constituted as Chairman, unless disqualified otherwise as the management shall remains with the members of the family of the founder as laid down by the Apex Court in Pannalal supra. Further, in the case of **Executive Officer, Group Temple, Dhulipudi Vs. D.S.Rao (**1999(3)ALT 466-DB), referring to the decisions of the Apex Court in Pannalal supra and the division bench expression of this Court in **K.Girijakumari Vs. G.Rajendranath Goud** supra, it was held that a hereditary trustee, if qualified entitled to be appointed as a trustee in Board of trustees when constituted. When U/s 15 of the Act, a Board of Trustees is constituted in respect of an institution or endowment, the founder trustee or the hereditary trustee

as the case may be should be one of the said members of the board and should be an honorary Chairperson of the said Board. The hereditary trustee has no right except of being appointed as a trustee in the board of trustees when constituted, subject to being qualified under the provisions of the Act (Sec.17-19). Furthermore, in the case of **Govt. of A.P rep. by Commissioner of Endowments Vs. Rajandranath Goud and others (**1999(5) ALT 761-DB), referring to the decisions of the Apex Court in **Pannalal Bansilal Pitti** supra, it was held that hereditary trustee, unless incurred any disqualification in terms of Sec.18/19 of the Act, is entitled to be appointed as a trustee in Board of trustees when constituted. However he is not entitled to even any honorarium much less other remuneration though earlier it was paying since such right stood abolished by Sec.144 of the Act 30/1987. From the above there is no need of recognition earlier and no bar to appoint as one of the trustees to head the trust board as its Chairman by a person if he belongs to the family of the founder, if founder is no more even, provided he/she is one of the lineal descendants of the founder in the line of succession to make a claim of entitled to be recognized and declared as Member of Founder Family of the temple as per Sections 15 to 20 r/w 87(1)(h) of the Act 30/87 amended by Acts 27/2002 & 33/2007, for bound to consider as Member of Founder Family for trusteeship as one among others to the Trust Board of the temple being constituted u/s.15 of the Act, by the Endowments Department from time to time, subject to disqualifications u/s.19 of the Act as there is no any exemption of application of Sections-15-19 of the Act for Member of founder family to become Chairman of the board of trustees, ex-officio or otherwise. This Hon'ble High Court also held in W.P.No.18719/2007 reported in 2008(2) ALD 123, that there is jurisdiction and power to question the illegal order of recognition even given, on having came to know of the same irrespective of the same was earlier not challenged. Way back the full bench of the Madras High Court in **Gauranga Sahu Vs. Sudevi Matha (**AIR 1918 Mad (FB) 1278) that it is competent to decide when questioned by any heir of the founder of the shrine or other institution for any non-appointment in trusteeship from the failure to recognize him in the line of original trustee as an unending right.

35. Accordingly and in the result, by holding that the judgment of the High Court reported in **Sri Vallabharayeswara Swamy Temple** supra is hit by sub-silentio principle and there is no bar for any legal heir of the founder or member of the family of the founder of any institution even existing since prior to the Act 30/1987 came into force and even not recognized earlier to, to make a claim of entitlement to act as one of the trustees of the institution for any non-appointment in trusteeship or from the failure to recognize despite entitlement in the line of original trustee on such showing for same is as an unending right and the cause of actions for such claim accrue from time to time for the descendents in continuity of succession and as such, the order of the Endowments Tribunal in dismissing the application for rejection of the OA based on the claim of bar of law from the expression in **Sri Vallabharayeswara**

Swamy Temple supra, is perfectly right and thereby the Civil Revision Petition is dismissed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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2018(2) L.S. 145 (Hyd.)

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Dr.Justice
B. Siva Sankara Rao

D. Ramakrishna
& Ors., ..Petitioners

Vs.

State A.P. & Ors., ..Respondents

CONSTITUTION OF INDIA, Art.226 – A.P. EXCISE ACT,Secs.2, 31 & 34(a) – A.P. EXCISE (GRANT OF LICENSE OF SELLING BY SHOP CONDITIONS LICENCE) RULES 2012 – Suspension of licence – Petitioners/Licencees sought to set aside proceedings of suspension of licence issued by Superintendent Prohibition and Excise as illegal, arbitrary, unconstitutional.

Held – Proviso to Sec.31 of Act reads that no licence or permit shall be cancelled or suspended unless holder thereof is given opportunity of making his representation against action proposed – Though, in most of cases, show cause notice issued and Licensee had not submitted explanation within stipulated time – Licensee has deliberately violated conditions of A-4 shop licence and Rules and hence in public interest suspended licence – There is no illegality or unconstitutionality or anything contrary to Act and Rules and also not any violation of principles of natural justice to set aside proceedings – While, in those cases, order of suspension passed without show cause notice, in such case, proceedings of suspension set aside by giving liberty to Respondents to issue show cause notice.

Mr.O. Manohar Reddy, Rajagopallavan Rayi, Mangena Sree Rama Rao, Srinath Atmakur, N. Niyatha, K.V. Raghu Veer, T. Nagarjuna Reddy, S.V. Ramana, K. Durga Prasad, N. Siva Reddy, Advocates for the Petitioners. Govt.Pleader for Proh& Excise, Advoates for the Respondents.

J U D G M E N T

1. All the petitioners in the 19 writ petitions respectively are the licensees of the wine shops in different parts of the State of Andhra Pradesh. Impugning the proceedings of suspension of the licence respectively by the Superintendent Prohibition & Excise of the concerned Districts, these writ petitions are filed.

2(a). So far as W.P.No.1359 of 2018 concerned the same is filed by one Sri D.Ramakrishna of M/s.D.J.Wines, GS.No.

EG/128/2017-19, Guripudi Village, Karapa Mandal, East Godavari District, and the respondent Nos.1 to 5 are State of Andhra Pradesh, Revenue (Excise-II) Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Kakinada, The Prohibition and Excise Superintendent, Kakinada and the Station House Officer, Prohibition and Excise Station, Tallarevu, East Godavari District. The prayer in the writ petition is to issue a writ of mandamus or any other appropriate writ or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in RC.No.PESKKD-IMLOO the/3/2018-JA-A3(P&E)-KKDEG- 1 dated 12.01.2018 and the consequential show cause notice issued in RC.No.PESKKD-IMLOO the/3/2018-JA-A3(P&E)-KKD-EG-1 dated 12.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(b). So far as W.P.No.1377 of 2018 concerned the same is filed by one Sri Pullaiah of M/s. Guru Wines, Muddanur Village and Mandal, YSR Kadapa District, and the respondent Nos.1 to 5 are State of Andhra Pradesh, Revenue (Excise-II) Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, YSR Kadapa, The Prohibition and Excise Superintendent, YSR Kadapa, and the Station House Officer, Prohibition and Excise Station, Muddanur, YSR Kadapa District. The prayer in the writ petition is to issue a writ of mandamus or any other appropriate writ or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No.A4/340/2017 dated 08.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(c). So far as W.P.No.1405 of 2018 concerned the same filed by one Sri Ede Srinivasa Rao of M/s. Raghu Wines, Arthamuru Village, Bantumilli Mandal, Krishna District, and the respondent Nos.1 to 5 are State of Andhra Pradesh, Revenue (Excise) Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Vijayawada, The Prohibition and Excise Superintendent, Machilipatnam, and the Station House Officer, Prohibition and Excise Station, Bantumilli, Krishna District. The prayer in the writ petition is to issue a writ of mandamus or any other appropriate writ or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in RC.No.228/2017/B4 dated 17.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(d). So far as W.P.No.1427 of 2018 concerned the same filed by one Sri K. Venkataramaiah of M/s. Swagath Wines, Machavaram Mandal, Guntur District, and the respondent Nos.1 to 5 are State of Andhra Pradesh, Revenue (Excise-II) Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Guntur, The Prohibition and Excise Superintendent, Narasaraopet and the Station House Officer, Prohibition and Excise Station, Piduguralla, Guntur District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No.305/2017/A4 dated 06.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(e). So far as W.P.No.1456 of 2018 concerned the same filed by one Sri B. Venkateswarlu of M/s. Sri Rama Wines, Sirigiripadu Village, Veldhurthy Mandal, Guntur District, and the respondent Nos.1 to 5 are State of Andhra Pradesh, Revenue (Excise-II) Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Guntur, The Prohibition and Excise Superintendent, Narasaraopet and the Station House Officer, Prohibition and Excise Station, Macherla, Guntur District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent -Excise Superintendent cum licensing authority issued in Rc.No. 09/2018/A4 dated 14.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(f). So far as W.P.No.1708 of 2018 concerned the same filed by one Smt. D. Swarna Gowri of M/s. RVT Wines, Punganur Town and Mandal, Chittoor District, and the respondent Nos.1 to 4 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Chittoor and the Prohibition and Excise Superintendent, Chittoor District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No.14/ 2018/A1 dated 17-1-2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(g). So far as W.P.No.1740 of 2018 concerned the same filed by one Sri N. Hari Prakash Reddy of M/s. Bhanu Wines,

Rajampet, YSR Kadapa District, and the respondent Nos.1 to 4 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, YSR Kadapa and the Prohibition and Excise Superintendent, YSR Kadapa District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No-A2/293/ 2017 dated 17.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(h). So far as W.P.No.1745 of 2018 concerned the same filed by one Sri B. Venkata Durga Parameswara Rao of M/s. Kick Wines, Venkatapuram, Durganagar Post, Visakhapatnam District, and the respondent Nos.1 to 5 are State of Andhra Pradesh, Revenue (Excise-II) Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Visakhapatnam, The Prohibition and Excise Superintendent, Gajuwaka and the Station House Officer, Prohibition and Excise Station, Sabbavaram, Visakhapatnam District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in PE-STAOOTH /48/2018- JA(A4)-ESGWK, dated 19.1.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(i). So far as W.P.No.1783 of 2018 concerned the same filed by one Sri Sade Subhani Kumar of M/s. SS Wines, Vemavaram, Gudlavaleru Mandal, Krishna District, and the respondent Nos.1 to 5 are State of Andhra Pradesh, Revenue (Excise) Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Vijayawada, The Prohibition and Excise Superintendent, Machilipatnam, and the Station House Officer, Prohibition and Excise Station, Gudivada, Krishna District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in RC.No.126/ 2017/A1 dated 17.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(j). So far as W.P.No.1901 of 2018 concerned the same filed by one M/s. Sai Krishna Wines, Mopur, Venkatagiri Unit, SPSR Nellore District, rep. by its licence holder K.Sulochanamma, and the

respondent Nos.1 to 5 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Nellore, the Prohibition and Excise Superintendent, Gudur and the Sub Inspector of Police, Prohibition & Excise, Venkatagiri, SPSR Nellore District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No-367/2017/A6 dated 19.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(k). So far as W.P.No.1953 of 2018 concerned the same filed by one Smt. G.Gayatri of M/s. Navyasri Wines, Anantapuramu, Anantapuramu District and the respondent Nos.1 to 4 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Anantapuramu, the Prohibition and Excise Superintendent, Anantapuramu, Anantapuramu District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No-05/2018/B dated 05.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(l). So far as W.P.No.1985 of 2018 concerned the same filed by one M/s. Sai Krishna Wines, Dakkili, Venkatagiri Unit, SPSR Nellore District, rep. by its licence holder P.Venkata Krishnaiah, and the respondent Nos.1 to 5 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Nellore, the Prohibition and Excise Superintendent, Gudur and the Sub Inspector of Police, Prohibition & Excise, Venkatagiri, SPSR Nellore District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No-366/2017/A6 dated 19.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(m). So far as W.P.No.2152 of 2018 concerned the same filed by one M/s. Chirudeep Wines, Nandalur, YSR Kadapa District, rep. by its licence holder Sri G.Gopala Krishna and the respondent Nos.1 to 3 are State of Andhra Pradesh, Prohibition

and Excise Dept., rep. by its Principal Secretary, the Prohibition and Excise Superintendent, Kadapa, YSR Kadapa District and the Inspector of Prohibition & Excise, Siddhout, YSR Kadapa District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 2nd respondent-Excise Superintendent cum licensing authority issued in Rc.No-A3/184/2017/2 dated 17.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(n). So far as W.P.No.2797 of 2018 concerned the same filed by one Sri Jogi Siva Prasad of M/s.Sri Red Lip Wines, Mallavolu, Krishna District and the respondent Nos.1 to 4 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Vijayawada and the Prohibition and Excise Superintendent, Machilipatnam, Krishna District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No-257/2017/A2 dated 16.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(o). So far as W.P.No.2835 of 2018 concerned the same filed by one M/s. Maridimamba Wines, Parawada, Visakhapatnam District, rep. by its licence holder K.Venkata Surya Subbi Reddy and the respondent Nos.1 to 5 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Visakhapatnam and the Prohibition and Excise Superintendent, Visakhapatnam and the Sub Inspector of Police, Prohibition & Excise, Gajuwaka, Visakhapatnam District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No-164/2017/A4 dated 23.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(p). So far as W.P.No.2995 of 2018 concerned the same filed by one Sri S.Narasimhulu of M/s. L.N.Wines, Anantapuramu, Anantapuramu District and the respondent Nos.1 to 5 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Anantapuramu, the

Prohibition and Excise Superintendent, Anantapuramu and the Sub Inspector of Police, Prohibition & Excise, Anantapuramu, Anantapuramu District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No-05/2018/B dated 25.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(q). So far as W.P.No.3055 of 2018 concerned the same filed by one M/s. Sri Wines, Gullepalli Village, Subbavaram Mandal, Visakhapatnam District, rep. by its licence holder Smt.K.Nandini and the respondent Nos.1 to 3 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada and the Prohibition and Excise Superintendent, Visakhapatnam, Visakhapatnam District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 3rd respondent-Excise Superintendent cum licensing authority issued in File.No.PE-FIN/11/2018/JA(A4)-ESGWK, dated 29.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

2(r). So far as W.P.No.3491 of 2018 concerned the same filed by one M/s. Babu Wines, Timmarajupeta, Anakapalli, Visakhapatnam District, rep. by its licence holder T.A.R.Narsinga Rao and the respondent Nos.1 to 5 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Visakhapatnam and the Prohibition and Excise Superintendent, Visakhapatnam and the Sub Inspector of Police, Prohibition & Excise, Yellamanchili, Visakhapatnam District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No-369/2017/A4 dated 30.01.2018 as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders; and

2(s). So far as W.P.No.3595 of 2018 concerned the same filed by one M/s.Sindu Wines, Chendodu, Kota Mandal, SPSR Nellore District, rep. by its licence holder Sri V.Venkateswarlu, and the respondent Nos.1 to 5 are State of Andhra Pradesh, Prohibition and Excise Dept., rep. by its Principal Secretary, The Commissioner of Prohibition and Excise, Vijayawada, The Deputy Commissioner of Prohibition and Excise, Nellore, the Prohibition and Excise

Superintendent, Gudur and the Sub Inspector of Police, Prohibition & Excise, Vakadu, SPSR Nellore District. The prayer in the writ petition is to issue a writ of mandamus or other appropriate writ or order or direction declaring the proceedings of the 4th respondent-Excise Superintendent cum licensing authority issued in Rc.No-07/2018/A3, dated 23.01.2018, as illegal, arbitrary, unconstitutional and contrary to A.P. Excise Act, 1968 and the rules made thereunder and in violation of principles of natural justice, consequently set aside the proceedings and be pleased to pass such other or further orders.

3. All writ petitions impugned orders mentioned as suspension pending enquiry with no time limit, but for insofar as 2(b). W.P.No.1377 of 2018 concerned by limiting for eight(8)weeks and however in so far as three writ petitions concerned in 2(j).W.P.No.1901 of 2018, 2(l).W.P.No.1985 of 2018 and 2(s).W.P.No.3595 of 2018, there is no mention of the suspension is pending enquiry and there is a mention of right of appeal against the order of suspension and thus those are deemed final orders, if not final orders, passed in question.

4. The writ petition supporting affidavit averments respectively in all these cases in nutshell so far as impugnment of the proceedings respectively concerned are that they are doing the business without contravention of any of the conditions of the licence or the provisions of the A.P. Excise Act (for short 'the Act') and the Rules made thereunder.

5. It is also the general averment in almost all cases that even Section 31 of the Act empowers the licensing authority either to cancel or to suspend the licence, the proviso to Section 31 reads that no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed to say the licensing authority thereby has no power to pass an order of suspension in a routine way even pending enquiry without opportunity of making representation. They placed reliance on the Full Bench expression of this Court in **Tappers Cooperative Society, Maddur Vs. Superintendent of Excise, Mahaboobnagar (**1984 (2) APLJ 1)which speaks that the power to pass order of suspension pending enquiry is an incidental power conferred on the licensing authority, however same cannot be exercised in a routine way or as a matter of course; the licensing authority is bound to exercise the discretion reasonably, bonafide and without negligence in considering the circumstances of the case, when such an interim suspension is necessary and if it is possible to give an opportunity to the petitioner and the circumstances do not warrant such a drastic step, the licensing authority is bound to afford an opportunity as the power of suspension pending enquiry should not be exercised as an invariable rule or mode of making an enquiry nor it should be allowed to continue for an unduly long period. The authorities are bound to complete the enquiry as early as possible and any undue delay when it constitutes abuse of power makes the order liable to be set aside. Whether the suspension of licence must be preceded by notice or opportunity must depend upon various factors such as, degree

of urgency involved, the duration of suspension, the nature of the breach, public danger to be avoided and other similar circumstances which warrant an immediate action where it is not feasible or possible or even advisable to give an opportunity to the holders of the licences before passing interim orders of suspension.

6. It is also the general averment vis-‡-vis the respective oral submissions of the learned counsel for the petitioners in support of their respective affidavits in almost all cases that:

a) merely because a person in possession of liquor of more than prescribed quantity, alleged as purchased from the shop of the licensee, same cannot be a ground,

b) any confession of any third party in possession cannot be a basis to pass an order of suspension of licence pending enquiry as held by this Court in **V.P. Thimmaiah Vs. Commissioner of Prohibition and Excise, Government of AP, Hyderabad and Others (**2001 (6) ALD 201)**,** in the absence of any grave allegations or by other independent material warranting suspension pending enquiry to validate the same,

c) in some of the proceedings respectively nothing mentioned of which rules or conditions of the licence that are violated much less deliberately in coming to any conclusion of suspension pending enquiry,

d) the impugned proceedings are nothing but pre-determined,

e) in some of the proceedings respectively it was without prior show cause notice for enquiry with opportunity, leave apart if any show cause notice even prior or along with order of suspension pending enquiry issued is an empty formality and the suspension if at all shall be for the reasons mentioned in the show cause notice and not on fresh reasons as held by the Constitution Bench of the Apex Court in **Mohinder Singh Gill Vs. the CEC, New Delhi (**AIR 1978 SC 851), as such in some cases including (2-i)-W.p.No.1783 of 2017, despite show cause notice issued and no reply given that cannot be a basis for suspension for reasons shown otherwise to the show cause notice reasons,

f) apart from the fact that such a drastic step of suspension pending enquiry is not as a matter of course to pass without material to any necessity of avoiding public danger or in public interest and thereby the respective impugned proceedings are liable to be set aside,

g) in some of the cases supra, it is the contention that the so called surprise visit/ raid including any bar or permit room and found any person in possession of any quantity or to rely any so called confession of such person even not a basis to initiate proceedings much less to suspend the licence including on any allegation of loose sale or diluted, a suspension to serve as a measure of punishment as a final order after enquiry thus could not have been resorted,

h) in some of other cases supra, it is the contention that the so called finding of bottles of the shop outside the licensed

premises is also cannot be made a ground of suspension that too without enquiry,

i) in another set of cases in respect of other allegations as to sale against the MRP rate above to it is also baseless and without enquiry and opportunity any suspension thereby cannot be passed leave about a confession cannot be basis of some other person other than the licensee or person referred as noukarnama,

j) in some other set of cases the averment further is by virtue of the enabling provision under Section 47 of the Act even application made to compound the offences the action of suspension without considering the same is illegal and unsustainable.

7. The learned counsel for the respective petitioners thereby reiterating the respective facts of the writ petition affidavit averments and by drawing attention to the full bench expression and one or other subsequent expressions on the scope of Section 31 of the Act of suspension either final or deemed final or even suspension pending enquiry and opportunity of hearing and any confession of any person cannot be a basis and once bar licence granted the finding of any bottle with opening of seal cannot be a ground to suspend and for all these reasons the impugned proceedings are liable to be set aside by allowing the writ petitions as sought for.

8. Whereas it is the submission of the learned Government Pleader from the oral instructions in the respective writ petitions that the impugned orders no way require interference for this Court by entertaining the writ petition and there are neither factual errors nor legal infirmities in the orders passed and it is in the larger interest of the public only these orders are passed as fit cases of suspension pending enquiry and Section 31 proviso is applicable only to the final orders as a measure of punishment and not for incidental orders from the very full bench judgment of **Tappers Cooperative Society** supra and the case facts on each of the impugned proceedings show the violations and the necessity and not solely based on the so called confession of any third party. Leave apart there are final orders respectively being passed after show cause notice if not already served by so serving and with opportunity of submitting explanations and on considering the same with hearing if any by conducting enquiry, leave apart there are statutory remedies of appeal/revision under Sections 63&64 of the Act if at all to impugn and there is no fundamental right under Article 19(g) to a liquor licensee and thereby sought for dismissal of the writ petitions.

9. Heard both sides and perused the prayer in the respective writ petitions with supporting affidavits and other material on record and the legal provisions and propositions.

10. Availability of effective alternative remedy is different from the bar in entertaining of the writ petition. Once the violation of the statutory provisions or basic principles of natural justice of opportunity and hearing are alleged leave about availability or otherwise and shall be followed or not, the writ petitions can be maintained despite alternative remedy. Thus the contention that

there is a revision remedy to approach the Government to take either suo-mottu or on application of any aggrieved to call for and examine the records, is not a bar to maintain a writ petition, equally against any final or deemed final order providing with appeal remedy; once there is contention of violation of statutory provision and principles of natural justice. Leave about in each case to consider whether said contention is for contention sake or real to interfere and if so to what extent.

11. Coming to the legality and correctness of the impugned suspension proceedings respectively concerned, before coming to the facts now to consider the relevant provisions and propositions:

11-a). Section 31 of the Act deals with the power to cancel or suspend licence etc., and other sections like Sections 15,47 and the Rules amended from time to time and now governed by GOMs No.112 Rev.(Ex.II) Dept. dt.22.03.2017that also relevant to refer in this regard which read as follows:

"**Section 31-Power to cancel or suspend licence etc**.

(1) Subject to such restrictions as may be prescribed, the authority granting any licence or permit under this Act may cancel or suspend it irrespective of the period to which the licence or permit relates.

(a) if any duty or fee payable by the holder thereof is not duly paid; or

(b) in the event of any breach by the holder thereof, or by any of his servants or by any one acting on his behalf with his express or implied permission, of any of the terms and conditions thereof; or

(c) if the holder thereof or any of his servants or any one acting on his behalf with his express or implied permission, is convicted of any offence under this Act, or

(d) if the holder thereof is convicted of any cognizable and nonbailable offence or of any offence under the Narcotics Drugs and Psychotropic Substances Act 1985 (Central Act 61 of 1985) or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or under the Trade and Merchandise Marks Act, 1958 or under Section 481, Section 482, Section 483, Section 484, Section 485, Section 486, Section 487, Section 488, Section 489 of the Indian Penal Code or of any offence punishable under Section 112 or Section 114 of the Customs Act, 1962, irrespective of the fact whether such conviction relates to the period earlier or subsequent to the grant of licence or permit; or

(e) if the conditions of the licence or permit provide for such cancellation or suspension at will:

Provided that no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed.

(2) Where a licence or permit held by any person is cancelled under clause (a), clause (b), clause (c) or clause (d) of sub-section (1), the authority aforesaid may cancel any

other licence granted or permit issued to such persons under this Act, or under the Opium Act, 1878.

(3) The holder of licence or permit shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof."

11-b). **"Section 15. Sale or buying of excisable article without licence prohibited**:

(1) **No person shall sell or buy any intoxicant except under the authority and in accordance with the terms and conditions of a licence granted in this behalf**:

Provided that a person having a licence to draw toddy from an excise tree, may sell such toddy to a person licenced to buy toddy under this Act without obtaining a licence for such sale but subject to such restrictions and conditions as the Commissioner may, by general or special order, specify.

(2) A licence for sale or buying under sub-section (1) shall be granted –

(a) by the Prohibition and Excise Superintendent, if the sale or buying is within the district:

(b) by the Deputy Commissioner of Excise, if the sale or buying is in more than one district within his jurisdiction: and

(c) by the Commissioner, if the sale or buying is in an area within the jurisdiction more than one Deputy Commissioner:

Provided that, subject to such conditions as may be determined by the Commissioner, a licence for sale or buying granted under the excise law in force in any other part of India may be deemed to be a licence granted under this Act.

(3) Nothing in this section shall apply to the sale of any liquor lawfully procured by any person for his private use and sold by him or on his behalf or his representative in interest upon his quitting a station or after his decease.

(4) Not withstanding any thing in sub-sections (1) and (2), no club or hotel shall supply liquor to its members or customers on payment of a price or any fee or subscription except under the authority and in accordance with the terms and conditions of a licence granted in that behalf by the Commissioner on payment of such fee as may be fixed by him according to scale of fees prescribed therefor."

11-c). **"Section 47. Compounding of offences**:

(1) The Collector or any Prohibition and Excise Officer specially empowered in that behalf may accept from any person whose licence or permit is liable to be cancelled or suspended under clause (a) or clause (b) of sub-section (1) of Section 31 or who is reasonably suspected of having committed an offence falling under clause (b), clause (c), or clause (g) of Section 34; clause (a), clause (e), clause (f), clause (g) or clause

(h) of Section 36; clause (b), clause (c) or clause (d) of Section 37; or Section 42, a sum of money not exceeding one lakh rupees and subject to such minimum as may be prescribed, in lieu of such cancellation or suspension or by way of compensation for the offence which may have been committed as the case may be, and in all cases in which any property, has been seized is liable to confiscation under this Act, may release the same on payment of the value thereof as estimated by such officer;

Provided that where the property so seized is a liquor manufactured in contravention of this Act, such liquor shall not be released but shall be disposed of in such manner as may be prescribed.

(2) On payment by the person, the sum of money or the value or both, as the case may be in accordance with the provisions of sub-section (1) or Section 47-A, such person, if in custody shall be set at liberty, and all the property seized may be released and no proceedings shall be instituted or continued against such person in any Criminal Court. The acceptance of compensation shall be deemed to amount to an acquittal and in no case any further proceedings be taken against such person or property with reference to same Act."

Undoubtedly Section 47 from the very wording supra gives discretion may accept from any person whose licence or permit to be liable to be cancelled or suspended under Section 31 of the Act or who is reasonably suspected of having committed an offence under Section 34 or 36 or 37 or 42, with release of seized liquor other than that manufactured by contravention of the provisions of the Act, on such conditions and in such manner as prescribed from time to time. Once the discretion is chosen to exercise even a criminal case is deemed acquittal by acceptance of the compensation and compounding to say no further proceedings against such person or property sustainable including person in custody to be set at liberty and property seized may be released as referred supra. Section 47-A of the Act speaks the special powers of Commissioner in this regard to the compounding of offences.

11-d). Coming to relevant definitions under Section 2 of the Act:

Section 2(1) says arrack includes, unless the context otherwise requires, all liquor produced or manufactured in India and supplied by the Government, other than Foreign Liquor and Indian Made Foreign Liquor and For the expression "Indian Liquor" the expression: Indian Made Foreign Liquor" also substituted by Act 17 of 2006 to say therefrom wherever the word Indian liquor used Indian made foreign liquor to be read as applicable.

So far as bar licence concerned, the definition of bar in Section 2(1-A) means, unless the context otherwise requires, the privilege granted under the Act to an establishment, where food is served, for sale of Indian Made Foreign Liquor and Foreign Liquor in loose for consumption on the licenced premises.

Section 2(18-A) in-house means the privilege granted under the Act for sale of Indian Made Foreign Liquor and Foreign Liquor by club, Guest House of A.P. Tourism Development Corporation, Military Canteen, Airport Transit lounge for International Air passengers. (Clause-18-A inserted by Act 35 of 2005, effective from 20.05.2005).

Indian made foreign liquor as per Section 2(18) means liquor produced manufactured or compounded in India after the manner of Gin, Brandy, Whisky or rum imported from Foreign Countries and includes Wine, Beer, Milk Punch' and other liquors consisting or containing any such spirit, but does not include foreign liquor.

As per Section 2(8) denatured means subjected to a process prescribed for the purpose of rendering unfit for human consumption.

As per Section 2(15) Foreign Liquor includes every Liquor imported into India other than Indian Made Foreign Liquor and Arrack.

Import defined in Section 2(17) means import except in the phrase Import into India.

Import into India means (a) to bring into any area of the State to which this Act extends from any other area of the State to which this Act does not extend. (b) to bring into the State otherwise than from a customs station, as defined in Section 2 of the Customs Act 1962 (Central Act 52 of 1962).

As per Section 2(21) liquor includes-(a) Spirits of wine, denatured spirits, methylated spirits, rectified spirit, wine, beer, toddy and every liquid consisting of or containing alcohol; and (b) Any other intoxicating substance which the Government may by notification, declare to be liquor for the purpose of this Act.

As per Section 2(24) place includes a house, building, booth, shed, enclosure, shop, tent, vessel, raft and vehicle.

As per Section 2(28-A) shop means the privilege granted under the Act for exclusive sale of Indian Made Foreign Liquor or Foreign Liquor in sealed or capsuled bottles or packages or tins to an individual in quantities not exceeding the limits as prescribed without permitting consumption on the licensed premises.

As per Section 2(28) sale or selling includes any transfer otherwise than by way of gift.

11-e). **From the above,** coming to the A.P.Excise (Grant of licence of selling by shop conditions licence) Rules 2012, vide G.O.Ms.391 R&E(EX-II) Dept. Dt.18.06.2012, u/sections 72, 17, 28 and 29 of the Act and in supercession of the earlier Rules issued in G.O.Ms.No.998, R REV(Ex.11) Dept.24.05.2005 and further added by G.O.Ms.No.357 REV.Ex.II Dept. Dt.22.06.2013 and further amended by **G.O.Ms. No.112, dt.22.03.2017,** which speak that:

Rule 4 speaks on **Establishment of Shops** that, subject to such directions, which the Government may issue in this regard from time to time, the Commissioner of

Prohibition and Excise, having due regard to the requirement, public order, health, safety and other factors as he thinks fit, may fix the number of shops to be established in a Mandal/Nagar-Panchayat/ Municipality/Municipal-Corporation (substituted for the words an area/locality) before the publication of notification under Rule 5 and may re-locate any un-disposed shops any where in the State (substituted for the words from any area/locality) as he thinks fit.

Rule 15 speaks that selected applicant shall submit application in **Form 4(A)** (substituted for the words 'obtain licence) after fulfilling the required formalities and **satisfying the rules in respect of the premises where the shop will be located**.

Rule 16 speaks on licence fee and privilege fee for retail shops, mode of levying and method of payment that:

(1) The annual licence fee for the shop licence (A-4) shall be levied on the basis of population and at the rates notified by the Government from time to time.

Provided that if a shop cannot be disposed of even after the commencement of the licence period and 30th April or 31st July, as the case may be(substituted for the words 'upto 31st July) the licence fee shall be reduced so as to be proportionate to the unexpired period, part of a month being treated as a full month.

[2(a)]. The licensee of a shop, the licence period of which commences from 1st April shall pay the licence fee for the licence period either in one lump-sum or in three installments at his option

[2(b)]. The licensee of a shop, the licence period of which commences from 1st July shall pay the licence fee for the licence period either in one lump-sum or in two equal installments at his option.

[3(a)]. Where the selected applicant opts to pay the licence fee in three installments, he/she shall pay the licence fee for the first three months period from 1st April to 30th June of the first year for the shop less the amount remitted under sub-rule(2)(iii) of Rule-12 on the day of selection or the succeeding working day by way of Challan. He/she shall also submit two Fixed Deposit Receipts of Bank Guarantees in Form A-5, each equal to the annual licence fee, valid for 4 months and 16 months respectively issued by a Scheduled Bank situated in Andhra Pradesh, within fifteen days of his/her selection and obtain the licence.

[3(b)]. Where the selected applicant opts to pay the licence fee in two installments, he/she shall pay the licence fee for the first year of the licence period of the shop less the amount remitted under sub-rule(2)(iii) of Rule-12 on the day of selection or the succeeding working day by way of Challan. He/she shall also submit a Fixed Deposit Receipt or Bank Guarantees in Form A-5, equal to the annual licence fee, valid for 16 months issued by a Scheduled Bank situated in Andhra Pradesh, within fifteen days of his/her selection and obtain the licence.

(4) for sub-rule (4), the following shall be substituted, namely,-

(4) (a) The Licensee of a shop, the licence period of which commences from 1st April shall remit the 2nd installment sum equal to the annual licence fee, on or before 20th June of the first year.

(b) The Licensee of a shop, the licence period of which commences from 1st July shall remit the 2nd installment sum equal to the annual licence fee, on or before 20th June of the succeeding year.

(c) The Licensee of a shop, the licence period of which commences from 1st April shall remit the 3rd installment sum equal to the annual licence fee, on or before 20th June of the succeeding year.

(d) The Licensee shall also remit Rs.5,00,000/- (Rupees Five lakhs only) towards non refundable re-registration charge on or before 20th June of the succeeding year.

(5) The licence fee shall be paid into the concerned Government treasury in the District in which the licensed premises is located.

(6) In case of default in payment of any installment, the fixed deposit receipt or the Bank Guarantee amount shall be adjusted against the installments of licence fee on the due dates.

(7) All interest accruing on the fixed deposit receipts shall vest in the Government and may be adjusted towards the Government dues including interest, if any, outstanding against the Licensee and if there be no such dues it shall be refunded to the Licensee at the end of the Licence period.

(8) If a Licence is surrendered in the middle of the Licence period, the fixed deposits/ Bank Guarantees and the Licence fee paid shall be forfeited to the Government.

Rule 20 on Issue and commencement of Licence speaks that, **mere selection of application does not entitle the applicant or confer on him any right to commence business until the licence has actually been issued. It shall be the responsibility of the successful applicant to (complete the formalities contemplated in Rule 16 within the time specified and) execute the counterpart agreement referred to in Rule 19 and (obtain a licence). If the successful applicant fails to do so his selection shall stand cancelled automatically.**

Rule 21 speaks of Bar on renewal of Licence that, a Licence granted under these rules for the period from (1st April or 1st July of an year for a period of 27 months or 24 months, as the case may be, or part thereof (substituted for the words "1st July, of an year to 30th July of the succeeding year') or part thereof shall not be considered for renewal for the subsequent year(s).

Rule 25 (as amended by G.O.Ms.No.218,Rev.(Ex.II).Dept. dt.22.06.2015 & **G.O.Ms. No.112 dt.22.03.2017**) speaks on selection of premises that,

1.(a). Subject to the approval of the Prohibition & Excise Superintendent the selected applicant shall select suitable premises for sale of IMFL and FL within the Municipal Corporation, Municipality, Nagar Panchayat or Mandal, as the case may be, as notified in the District Gazette. It shall be at least 100 meters away from the places of Public worship, Educational Institutions and Hospitals.

(b) "No shop for the sale of liquor shall be (i) visible from a national or state highway (ii) directly accessible from a national or state highway and (iii) situated within a distance of 500 Mts. of the outer edge of the national or state highway or of a service lane along the highway".

(c) "No signages and advertisements of the availability of liquors shall be permitted both on national and state highways." Explanation: For the purpose of this rule-

(a) "Place of public worship" means a temple registered with the Endowment Department, Mosque registered with Wakf Board and Church and includes such other religious institutions, as the State Government may by order specify in this behalf;

(b) "Educational Institutions" means any Primary school, Middle School and High School recognized by the State Government or Central Government, Junior College or any College affiliated to any University established by law:

(c) "High Way" means National High way or State Highway as notified by the competent authority.

(d) "Hospital" means any hospital which is managed or owned by a local authority, State Government or Central Government or any private hospital having a provision of at least thirty (30) beds.

(2) The holder of Licence in Form A-4 shall be licenced in Form A-4(B) to have a Permit Room.

Provided that no permit room licence in Form A4 (B) shall be granted to the Shop licensees in respect of Hybrid Hyper Markets or Malls. The premises selected for permit room must be adjacent to the existing A-4 Licenced premises and it must have a minimum plinth area of 15 sq.mtrs.for consumption of liquor with facilities of sanitation such as wash basin, water closet and drinking water.

Provided that the selected premises for permit room shall be at least 100mtrs away from the places of public worship, educational institutions and hospitals.

Provided further that the selected premises for permit room shall not be (i) visible from a national or state highway (ii) directly accessible from a national or state highway and (iii) situated within a distance of 500 Mts. of the outer edge of the national or state highway or of a service lane along the highway".

(3) The distances referred above shall be measured from the mid-point of the entrance of the Licenced premises along the nearest

path by which a pedestrian would ordinarily reach the mid-point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the Institution/ place of public worship.

(4) The boundaries of the premises shall be indicated in the licence.

(5) There shall be a single door for entry and exit for the licenced shop and sales shall be conducted without giving entry to the customers inside the premises.

Rule 26 speaks of licence fee for permit room and method of payment. Rule 28 speaks of (1). The licensee shall sell liquor only at the premises specified in the licence.

(2). No change or alteration of the licenced premises shall be made nor the licenced premises shifted else where.

(3). Shifting of the licenced premises may be permitted for valid reasons within the same notified Mandal/Nagar Panchayat/ Municipality/ Municipal Corporation, subject to conditions as may be specified by the Commissioner of Prohibition & Excise and subject to payment of 1% of licence fee or Rs.25,000/- whichever is higher.

Provided that the Commissioner of Prohibition and Excise may consider and permit for valid reasons shifting of the licenced premises of Shop located in the 2 KM belt area from the periphery of a Municipality or 5 KM belt area from the periphery of a Municipal Corporation within the same belt area from the periphery of a Municipality or a Municipal Corporation only, without affecting the total number of notified shops in the Mandal/Nagar Panchayat/Minicipality/Municipal Corporation subject to conditions as may be specified by the Commissioner of Prohibition & Excise and subject to payment of 1% of licence fee or Rs.25,000/- whichever is higher.

Rule 33 speaks of licensee not to declare any person to be or not to be his partner, without prior permission of the Commissioner.

Rule 34 speaks of licensee not to stock unauthorized Indian Made Foreign Liquor and liquor.

Rule 35 speaks of licensee not stock Indian Made Foreign liquor or foreign liquor at unauthorized place.

Rule 36 speaks of licensee to sell IMFL and FL of specified strength.

Rule 37 speaks IMFL or FL not to be adulterated.

Rule 38 speaks of such an adulterated IMFL or FL to be seized where unfit for use or standard or adulterated or spurious or belief that same substance had been admixed by any process or manner and to be stopped from being sold and seized the same or to take such other further action.

Rule 39 speaks IMFL or FL shall not be given or sold to lunatics, persons known or believed to be in a state of drunkenness, persons about whom it is known or suspected of they are likely to participate in the commission of sedition, insurrection, breach of peace or any other similar offence threatening public peace and tranquility, soldiers in uniform and camp servants of military officers in uniform and persons below 21 years of age.

Rule 40 speaks of every bottle of IMFL or FL in a licenced premises shall carry excise adhesive label or hologram on the cap of the bottle in addition to the manufacturers label as approved by the commissioner.

Rule 41 speaks of sale of only duty paid IMFL or FL.

Rule 42 speaks of maximum retail price that to be indicated on the labels of the bottle and to issue bills.

Rule 43 speaks of Harbouring of certain persons prohibited.

Rule 44 speaks of Employment of servants.

Rule 45 speaks of Intimation to Excise officer.

Rule 46 speaks of Consignments to be opened only in the presence of the excise officer.

Rule 47 speaks of No breakages or losses in transit allowed

Rule 48 speaks of Licensee to maintain accounts

Rule 49 speaks of Licensee to maintain brand-wise accounts.

Rule 50 speaks of Entries in the daily accounts register.

Rule 51 speaks of Statements of accounts to be furnished.

Rule 52 speaks of Monetary transactions with officers prohibited.

Rule 53 speaks of Officers authorized to inspect premises.

Rule 54 speaks of Inspection book to be maintained.

Rule 55 speaks of Licence to be surrendered to the Prohibition and Excise Superintendent on expiry

Rule 56 speaks of Licensees to abide by provisions of the Act etc.

Rule 57 speaks of Suspension, withdrawal or cancellation of a, licence or permit.

Rule 58 speaks of Stocks on cancellation of licence

Rule 59 speaks of Stocks on withdrawal of licence Rule 60 speaks of No Remission for closure

Rule 61 speaks of Removal of difficulties

In Form A-1 (as per Rule 6(i)) declaration

of prospective licensee to abide by the A.P.Excise (Grant of licence of selling by shop conditions licence) Rules 2012(as amended time to time) and other terms. In Form A-2 (as per Rule 6(ii)) affidavit of prospective licensee as per the A.P.Excise (Grant of licence of selling by shop conditions licence) Rules 2012(as amended time to time) and other terms with declaration of nature of right/ownership over property and not to alienate etc., undertakings.

In Form A-3(A) application for grant of A-4 licence (as per Rule 12 of the A.P.Excise (Grant of licence of selling by shop conditions licence) Rules 2012(as amended time to time) and other terms with particulars **including as per condition 8 the details of premises to be licenced.**

In Form A-4 (as per Rule 15 of the A.P.Excise (Grant of licence of selling by shop conditions licence) Rules 2012(as amended time to time) and other terms in giving the A-4 licence with **the details of premises to be licenced as to Door number, boundaries and other description furnished in form 3(A).**

In Form A-4(A) application (as per Rule 24 of the A.P.Excise (Grant of licence of selling by shop conditions licence) Rules 2012(as amended time to time) and other terms for permit room in Form A-4(B) permit/licence.

11-f). From this now coming to Section 31 of the Act referred supra, the Full Bench of this Court in **Tappers Cooperative Society** supra, on reference on interpretation of the scope of proviso to Section 31(1) and Section 15 of the Act and Rule 18 of the AP Rectified Spirit Rules observed that, no doubt once a licence is granted valuable right would accrue to the licensee and that can be taken away as per the provisions of the Act. But as a rule of construction, the proviso cannot have a larger effect than it intended to govern the final disciplinary proceedings of suspending or cancelling a licence of permit. If the proviso to sec.31 (1) is sufficient and the authorities are bound to issue the notice even for suspension pending enquiry, the sub-rule(2) with its proviso is unnecessary as the law presumes such power pending enquiry. The rule specially provided an opportunity even for suspension pending enquiry. It shall be noticed that under Rule 18 of Andhra Pradesh Rectified Spirit Rules there is no suspension as a substantive punishment but provides only for cancellation and a suspension pending enquiry.

The specific provision in Sec.31(l) proviso of the Act, whether operates as a prohibition against the powers of the licensing authority to pass such orders as an incidental or ancillary power of granting such licence or permit or of passing final orders of suspension or cancellation, is the issue. The view of the division bench in Writ Appeal No.588/77, dated 7.12.77 answering the question in the affirmative is challenged and that was why the reference was made.

In order to answer this question as to Sec.31(1) proviso of the Act whether operates as a prohibition, it is to examine the distinction between a suspension as

a penalty and a suspension as a temporary measure.

The next question to be examined is whether the rule of audialterem- partem is excluded in the case of an order suspending a licence as a temporary measure but not as a penalty?

In para 32 end it is observed that in case of intoxicants, the Govt. has got full control and the State has got power to part with those rights for a consideration as privileges, and Article 19(1)(g) has no application (vide, Har Shankar Vs. Dy.E&T.Commissioner (AIR 1975 SC 1121**). The judicial review of administrative action if the violation is not a right but a privilege will be undoubtedly of a different degree and content. Hence under the impugned proceedings the petitioners have to establish the violation of statutory provisions in respect of the privilege conferred upon by the state under the licences granted to them**.

In para 33 it is observed that- the next question……In Lewis Vs Heffer5, the court of appeal held that the right to a hearing depends on the distinction between a suspension as a temporary measure or a penalty. In that case Lord Denning MR accepting the view of Megary J. that an expulsion of a member protanto operates as a penalty and the rules of natural justice applies**,……But they do not apply to suspensions which are made as a holding operation pending enquiries.**

In para 35 it is observed that, the power of the court to grant exparte injunctions and stays are well known instances of excluding the rule of natural justice, but a tentative one and the violation of natural justice cannot be complained…….**De-smith in his judicial review of administrative action, fourth edition at page 199 observes- "where an act or proposal is clearly the first step in a sequence of measures which may culminate in a decision detrimental to a person's interests, the courts will generally decline to accede to that person's submission that he is entitled to be heard in opposition to this initial act, particularly if he is entitled to be heard at a later stage"……..Whether suspension of a licence should be preceded by notice and opportunity to be heard may depend on various factors**-e.g.,the degree of **urgency involved**, the **duration of the suspension**, whether suspension **involves a finding of guilt,** whether it **entails material financial loss** and **whether it is a purely temporary measure pending full review**". **So it is clearly seen that if the denial of opportunity is only postponed considering the urgency, the law allowed it, as the public interest will be defeated if prior notice of opportunity is necessary as a condition precedent in every case**. **It is not as if, that such power can always be exercised invariably. If orders are passed which constitute abuse of power or excess and unreasonable, this court can always interdict the proceedings…..**.

The Full Bench expression in its majority further held in Paras 43 to 45 as follows:

> "(43). Recently the Supreme court while sustaining the constitutional validity of a provision in Punjab Foodgrains Dealers Licensing And Price Control Order, 1978 providing suspension pending enquiry observed in **M/s. Sukhwinder Pal Bipin Kumar Vs State of Punjab (**AIR 1982 SC 65) that the power of suspension is a necessary concomitant of the power to grant a privilege or a licence and the power of suspension is a necessary adjunct of the power to grant licence.

(44). The power of suspension which is concomitant or adjunct is no doubt restricted by the statutory provision under the proviso in question to pass final orders of suspension but that power cannot be said to have taken away the power to pass an interim order of suspension not intended to be a penalty but only interim measure to pass effective orders. This conclusion of ours applies with greater force when we notice that **we are concerned with the liquor licences in which the citizen has no right guaranteed under Article 19(1)(g) of the Constitution of India but only a privilege**. No doubt once a licence is granted valuable right would accrue to him and that can be taken away as per the provisions of the Act. But as a rule of construction the proviso cannot have a larger effect than it intended to govern the final disciplinary proceedings of suspending or cancelling a licence or permit.

Rule 18 of the Andhra Pradesh Rectified Spirit Rules, 1971 is as follows:

> "18. (1) if the licensee or permit - holder under these rules is guilty of breach of any of the rules, his licence or permit is liable for cancellation and he will also be prosecuted under the relevant provisions of the Act. Provided that subject to the provision of sec.47 of the Act, the licensing authority may accept from any person guilty of breach of any provision of the Act or the Rules or from any person whose property is liable to confiscation, such compounding fees as may be necessary, subject to a maximum of Rs.1,000/-, in lieu of punishment for breach of any of the provision of the Act or of the Rules or of confiscation of the property.
>
> (2) the licence is also liable to be suspended by the licensing authority pending investigation or enquiry into breach of these Rules or licence conditions by the licensee or by any person in his employ.
>
> Provided that revocation under sub-rule(1) and suspension under sub-rule(2) shall not be made until the holder of the licence has been given an opportunity showing cause against the action proposed to be taken.
>
> (3) **Every such order shall be in writing and shall specify the reasons for the suspension or revocation and shall be communicated to the licensee**.
>
> (4) When a licence is cancelled or suspended under this Rule, the holder of the licence shall not be entitled to claim from the government any compensation or refund of licence fee for such cancellation or suspension."

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IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Chief Justice of India Dipak Misra &
The Hon'ble Mr.Justice A.M.Khanwilkar &
The Hon'ble Dr.Justice D.Y.Chandrachud

E. Sivakumar ..Appellant
Vs.
Union of India & Ors., ..Respondents

Petitioner challenges transfer of investigation of the crime in question to Central Bureau of Investigation (CBI) – High Court has issued writ of mandamus to transfer investigation of criminal case concerning illegal manufacture and sale of Gutkha and Pan Masala, containing Tobacco and/or Nicotine, to CBI.

Held - High Court has cogitated over all issues exhaustively and being fully satisfied about necessity to ensure fair investigation of crime, justly issued writ of mandamus to transfer investigation to CBI – It does not intend to deviate from conclusion reached by High Court that in peculiar facts and circumstances of case, it is appropriate that investigation of crime in question must be entrusted to CBI – Petition dismissed.

J U D G M E N T

(Per the Hon'ble Mr.Justice A.M. Khanwilkar)

1. This special leave petition takes exception to the judgment and order of the High Court of Judicature at Madras dated 26th April, 2018 in Writ Petition No.19335 of 2017, whereby the High Court has issued a writ of mandamus to transfer the investigation of a criminal case concerning the illegal manufacture and sale of Gutkha and Pan Masala, containing Tobacco and/or Nicotine, to the Central Bureau of Investigation ("CBI").

2. The petitioner has been named as an accused in the FIR because of his alleged involvement in the crime under investigation. The petitioner at the relevant time was posted on deputation as Food Safety Officer in the Food Safety and Drug Administration Department, Ministry of Health. The stated crime was being investigated by the State Vigilance Commission, constituted by the State of Tamil Nadu, headed by a Vigilance Commissioner. The gravamen of the challenge to the impugned judgment is on four counts:

(i) First, that the prayer for transfer of investigation of the crime in question to the CBI has already been considered and negatived by the Coordinate Bench of the same High Court in Writ Petition No.1846 of 2017 vide judgment dated 27th January, 2017 and again in Writ Petition No.12482 of 2017 vide judgment dated 28th July, 2017. These decisions have been completely disregarded in the impugned judgment.

(ii) Second, the petitioner though named

as an accused in the FIR was not given an opportunity of hearing nor was made a party in the public interest litigation in which the impugned judgment has been passed. Resultantly, the judgment under appeal is a nullity and liable to be set aside only on this score.

(iii) Third, no special circumstances have been noted by the High Court in the impugned judgment for transferring the investigation to CBI. The High Court has not even bothered to examine the efficacy of the status report regarding the investigation done by the Vigilance Commission. In other words, there was no tangible ground for directing investigation of the crime in question by the CBI.

(iv) Lastly, it is contended that the writ petition filed as public interest litigation was politically motivated having been filed by a member of the Legislative Assembly in the State of Tamil Nadu.

3. To buttress the above-mentioned grounds of challenge, reliance is placed on the decision of this Court in the case of **State of Punjab Vs. Davinder Pal Singh Bhullar and Ors.** (2011) 14 SCC 770 .

4. The admission of this special leave petition is opposed by respondent No.14 (writ petitioner). It is urged on behalf of respondent No.14 that the High Court has considered all aspects of the matter and being satisfied about the imperativeness of a fair investigation of the crime in question involving high ranking officials and the tentacles of the conspiracy in commission of the crime transcending beyond the State of Tamil Nadu and into different States, it deemed it appropriate to issue a writ of mandamus to transfer the investigation to CBI. It is contended that there is no merit in the objections raised on behalf of the petitioner.

5. We have heard Mr. Mukul Rohatgi, learned senior counsel appearing on behalf of the petitioner and Mr. P. Wilson, learned senior counsel appearing on behalf of respondent No.14.

6. On a careful consideration of the impugned judgment, we agree with respondent No.14 (writ petitioner) that the High Court has cogitated over all the issues exhaustively and being fully satisfied about the necessity to ensure fair investigation of the crime in question, justly issued a writ of mandamus to transfer the investigation to CBI. As regards the first point raised by the petitioner, we find that the High Court was alive to the fact that the Coordinate Bench of the same High Court had occasion to decide Writ Petition No.1846 of 2017 and Writ Petition No.12482 of 2017, as can be discerned from the discussion in paragraphs 107 to 122 of the impugned judgment. As regards Writ Petition No.1846 of 2017, that was filed by one P. Wilson, a lawyer by profession. Indeed, it was filed as public interest litigation to initiate an inquiry/investigation into the allegation of corruption, investigate, prosecute and ferret out the truth regarding the connivance of senior police officers as noted by the Commissioner of Police, Chennai City, in his letter dated 22nd December, 2016 addressed to the Principal Secretary, Home Department, Government of Tamil Nadu. The Court, however, found that the said

petition lacked specific ground and material and, more so, the Court doubted the bona fides of the petitioner therein and thus summarily rejected the petition vide judgment dated 27th January, 2017. As regards Writ Petition No.12482 of 2017, filed by one K. Kathiresan, a lawyer by profession, as public interest litigation, the relief claimed was primarily to quash an order dated 30th June, 2017 granting extension of service to respondent No.5 therein and further, to direct registration of a case in reference to the communication sent by the Commissioner of Police, Chennai, in respect of sale of banned substances, namely, Gutkha and Pan Masala in the State of Tamil Nadu and to constitute a Special Investigation Team to investigate the case under the direct monitoring of the High Court. Thus, the primary concern in the said writ petition was about the appointment of respondent No.5 therein as Director General of Police on account of his name being referred to in the incriminating documents seized by the Income Tax Department from the partners of a gutkha manufacturing concern. In the analysis of the case, the Coordinate Bench vide its judgment dated 28th July, 2017 noted the prayer of the said writ petitioner to direct the CBI to take over the investigation by constituting a Special Investigating Team. The Court did advert to the question of entrusting the investigation to CBI in paragraphs 25A to 25D of the said judgment. However, after perusal of the case diary of the Director of Vigilance and Anti Corruption, the Court opined that the investigation of the crime was in progress. Therefore, it only issued directions to strengthen the investigation by Vigilance Commissioner in paragraph 30 of the said judgment. In that context the Court noted that it was not necessary to transfer the inquiry/ investigation to CBI. That is the thrust of the analysis of the previous judgments, if read in proper perspective. These aspects have been duly taken note of in the impugned judgment in paragraphs 107 onwards, including the legal position on the doctrine of res judicata and finally answered in paragraphs 141 to 144 of the impugned judgment in the following words:

"141. As observed by K.K. Sasidharan and G.R. Swaminathan,JJ. in K. Kathiresan, supra, the Vigilance Commission headed by the Vigilance Commissioner has extensive powers to curb corruption and initiate action against government servants and servants of public sector undertakings for acceptance of illegal gratification and matters incidental thereto. The State Vigilance Commission might enquire into allegations of corruption against officials of the State Government. The State Vigilance Commission might also conduct a detailed enquiry to fix the responsibility for the loss of the file containing incriminating materials handed over to the then Chief Secretary by the Principal Director of Income Tax (Investigation) on 12.8.2016 and ensure that the guilty are brought to book and appropriate action taken in accordance with law. However, investigation by the Vigilance department is from the angle of vigilance. The aim is to detect corruption. The power of the Vigilance Commission to investigate would not extend to an enquiry into the modus operandi of the gutkha mafia, the mode and manner of import from other States, distribution and sale of gutkha and

other chewable forms of tobacco, and detection of the sources of supply. Enquiry by the Vigilance Department would not unearth secret storage and manufacturing units. Nor would such investigation be able to detect incidents of illegal import, supply and sale or nab those actually manufacturing, supplying, importing, selling or otherwise dealing with prohibited food items containing tobacco and nicotine such as gutkha.

142. Investigation by a centralized agency like the CBI would be more comprehensive and cover all aspects of the illegal manufacture, import, supply, distribution and sale of banned chewable tobacco items, including the detection of all those involved in such illegal import, manufacture, supply, distribution and sale, as also the detection of corruption and complicity of public servants and/or government servants in this regard. As observed above, there is no conflict between CBI investigation and investigation by the State machinery. Investigation can be carried out more effectively with the CBI and the Vigilance Department working in cooperation.

143. The underground gutkha business is a crime against society which needs to be curbed. We, therefore, deem it appropriate to direct the CBI to investigate into all aspects of the offence of illegal manufacture, import, supply, distribution and sale of gutkha and other forms of chewable tobacco which are banned in the State of Tamil Nadu and the Union Territory of Puducherry, including detection of and action against those involved in the offence as aforesaid, whether directly or indirectly, by aiding abetting the offence or interfering with attempts to curb the offence.

144. This order is, in our view, not only imperative to stop the menace of the surreptitious sale of gutkha and chewable forms of tobacco which pose a health hazard to people in general and in particular the youth and to punish the guilty, but also to instill faith of the people in the fairness and impartiality of the investigation. We see no reason for the State to view the entrustment of investigation to the CBI as an affront to the efficiency or efficacy of its own investigation system and we make it absolutely clear that this direction is not to be construed as any definite finding of this Court of the complicity of any constitutional functionary or of any specific official of the State Government."

7. The view so taken by the High Court in the facts of the present case, in our opinion, being a possible view, the ground under consideration is devoid of merit. Suffice it to observe that it is not a case of disregarding the binding decision or precedent of the Coordinate Bench of the same High Court. We say so because, in the impugned judgment the decision of the Coordinate Bench has been distinguished. Besides, the question regarding the necessity to ensure a fair and impartial investigation of the crime, whose tentacles were not limited to the State of Tamil Nadu but transcended beyond to other States and may be overseas besides involving high ranking officials of the State as well as the Central Government, has now been directly answered. For instilling confidence in the minds of the victims as well as public at

large, the High Court predicated that it was but necessary to entrust the investigation of such a crime to CBI. Viewed thus, there is no infirmity in the conclusion reached by the High Court in the impugned judgment, for having entrusted the investigation to CBI.

8. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In paragraph 129 of the impugned judgment, reliance has been placed on **Dinubhai Boghabhai Solanki Vs. State of Gujarat and Ors.** (2014) 4 SCC 626), wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed in the case of **Narender G. Goel Vs. State of Maharashtra and Anr. (**2009) 6 SCC 65), in particular, paragraph 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity.

9. Our attention was invited to the observations made in paragraph 73 in the **State of Punjab** (supra), which in turn adverts to the exposition in **D. Venkatasubramaniam & Ors. Vs. M.K. Mohan Krishnamachari & Anr.**, (2009) 10 SCC 488)wherein it has been held that an order passed behind the back of a party is a nullity and liable to be set aside only on this score. That may be so, if the order to be passed behind the back of the party was to entail in some civil consequence to that party. But a person who is named as an accused in the FIR, who otherwise has no right to be heard at the stage of investigation or to have an opportunity of hearing as a matter of course, cannot be heard to say that the direction issued to transfer the investigation to CBI is a nullity. This ground, in our opinion, is an argument of desperation and deserves to be rejected.

10. The third contention urged by the petitioner, that neither special reasons have been recorded nor the status report of the investigation already done by the Vigilance Commission has been considered, also does not commend us. As noted earlier, the High Court in the impugned judgment has exhaustively analysed all aspects of the matter as can be discerned from paragraphs 84 to 87, 91 to 97, 100 to 107; and again in paragraphs 141-144 which have been extracted hitherto. In our opinion, in the peculiar facts of the present case, the High Court has justly transferred the investigation to CBI after due consideration of all the relevant aspects, which approach is consistent with the settled legal position expounded in the decisions adverted to in the impugned judgment, including the decision in **Subrata Chattoraj Vs. Union of India and Ors.**, (2014) 8 SCC 768)which predicates that transfer of investigation to CBI does not depend on the inadequacy of inquiry/investigation carried out by the State police. We agree with the High Court that the facts of the present case and the

nature of crime being investigated warrants CBI investigation.

11. In the case of **Dharam Pal Vs. State of Haryana and Ors.**, (2016) 4 SCC 160) †this Court has underscored the imperativeness of ensuring a fair and impartial investigation against any person accused of commission of cognizable offence as the primary emphasis is on instilling faith in public at large and the investigating agency. The dictum in paragraph 24 and 25 of this reported decision is quite instructive which read thus:

"24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idÈe fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like

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