

PETITIONER:
S.P. MITTAL ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT 08/11/1982

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
CHANDRACHUD, Y.V. ((CJ)
BHAGWATI, P.N.
REDDY, O. CHINNAPPA (J)
ERADI, V. BALAKRISHNA (J)

CITATION:
1983 AIR 1 1983 SCR (1) 729
1983 SCC (1) 51 1982 SCALE (2) 1001
CITATOR INFO :
RF 1984 SC 51 (8A)
R 1987 SC 748 (19)
RF 1992 SC 1277 (22)

ACT:

Right to freedom of religion and to manage religious affairs-Constitution of India, 1950 Articles 25 and 26-Shri Aurobindo's teachings cannot be said to be of a religious nature-Aurobindo Society and the Auroville township do not fall within the meaning of religious denomination so as to be violative of Articles 25 and 26 of the Constitution.

Words & Phrases-'Religion' and 'Religious denomination' explained.

Auroville (Emergency Provisions) Act, 1980 (Act LIX of 1980) Preamble-Parliamentary competency to enact the Act-Whether inconsistent and in conflict with the provisions of the West Bengal Societies Registration Act, 1961 (Act XXVI of 1961) Sections 22 & 23 containing in built self-contained provisions for dealing with the management of the registered societies-Constitution of India 1950 Article 245, Schedule VII, List I Entry 32-Functions of the Lists, Explained.

Auroville (Emergency Provisions) Act 1980 providing for taking over the management only of Auroville township and its activities for a limited period is not violative either of Article 14, Articles 25 and 26 or Articles 29 and 30 of the Constitution.

HEADNOTE:

Sri Aurobindo, one of the Indian sages and philosophers, after a brilliant academic and administrative career engaged himself for sometime in political activities and revolutionary literary efforts, but later on gave them up to concentrate himself with the life of meditation and integral yoga at Pondicherry, in Tamil Nadu. Madam M. Alfassa a French Lady, who came to be known as the Mother became a disciple of Sri Aurobindo. Very soon more and more disciples came to join him from various parts of India and abroad and thus the Aurobindo Ashram came into being. The disciples and devoted followers of Sri Aurobindo and the Mother, with a

view to propagate and practise the ideals and beliefs of Sri Aurobindo formed a Society called Sri Aurobindo Society in the year 1960, which at all material times was and is still a society duly registered under the provisions of the West Bengal Societies Registration

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Act, 1961. This Society is completely distinct from Aurobindo Ashram in Pondicherry. The Society was established and registered for the purpose of carrying out in and out side India the several objects stated in the memorandum of the Society.

The management of the Society vested in its Executive Committee. Rules and regulations have been duly framed for the management of the Society and also for safe custody and protection of its assets, properties and funds.

Sri Aurobindo Society preaches and propagates the ideals and teachings of Sri Aurobindo, inter alia, through its numerous centres scattered throughout India by way of weekly meetings of its members.

The Mother as the founder-president also conceived of a project of setting up a cultural township known as 'Auroville' where people of different countries are expected to engage in cultural, educational and scientific and other pursuits aiming at human unity. The Society has been a channel of funds for setting up the cultural township known as Auroville.

At the initiative of the Government of India, the United Nations Educational, Scientific and Cultural Organisation being of the opinion that the Auroville project would contribute to international understanding and promotion of peace sponsored the project by proposing a resolution to this effect at its General Conference in 1966. This resolution was unanimously adopted at this conference. By a further resolution passed in 1968 the UNESCO invited its member States and international non-governmental organisations to participate in the development of Auroville as an international cultural township to bring together the values of different cultures and civilisations in harmonious environment with integrated living standards, which corresponds to man's physical and spiritual needs. In 1970 UNESCO had directed its Director-General to take such steps as may be feasible, within the budgetary provisions to promote the development of Auroville as an important international cultural programme. Sri Aurobindo Society received large funds in the shape of grants from different organisations in India and abroad for development of that township. The assistance included contributions from the State Governments of the value of Rs. 66.50 lakhs and the Central Government of the value of Rs. 26.14 lakhs.

After the death of the Mother on 17th of November, 1973 a number of problems of varying nature affecting the smooth running of the project cropped up. The Government of India on receiving complaints about mismanagement of the project and misuse of funds by Sri Aurobindo Society set up a committee under the chairmanship of the Governor of Pondicherry with representatives of the Government of Tamil Nadu and of the Ministry of Home Affairs in the Central Government to look into the matter. The Committee made a detailed scrutiny of the accounts of Sri Aurobindo Society relating to Auroville and found instances of serious irregularities in the management of the Society, mis-utilisation of its funds and their diversion to other purposes. Further, various other serious difficulties had arisen plaguing the Management of Auroville and rendering thereby any further growth of the township almost

impossible.

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In the circumstances the taking over of the management of Auroville became imperative to ensure growth of the township in tune with its objectives.

Keeping in view the international character of the project and considering the government's involvement in actively sponsoring the project through UNESCO, the growth and management of the project had become the primary responsibility of the Government of India. The ideals of the project formed India's highest aspirations, which could not be allowed to be defeated or frustrated. Sri Aurobindo society had lost complete control over the situation and the members of the Auroville approached the Government of India to give protection against oppression and victimisation at the hands of the said Society. There were internal quarrels between the various factions of Sri Aurobindo Society. There have also been instances of law and order situation. Financial management of the projects has not been sound and several instances of mismanagement, diversion of funds have been revealed. A large sum of money was given by Sri Aurobindo Society to AURO construction-an agency whose status is not at all defined, whose functions and capabilities for taking up large construction works also had not been made known. The Government in the circumstances could not be a silent spectator to the mismanagement of the project and internecine quarrels amongst its members, which if not checked could lead to the destruction of the project so nobly conceived. The Government, therefore, decided to issue a Presidential Ordinance. After the filing of the writ petition the ordinance has now been replaced by the Auroville (Emergency Provisions) Act, 1980.

The constitutional validity of the Act has been challenged on four grounds: (i) Parliament has no legislative competence to enact the impugned statute; (ii) The impugned Act infringes Articles 25, 26, 29 and 30 of the Constitution; (iii) The impugned Act is violative of Article 14 of the Constitution; and (iv) The Act was mala fide.

Dismissing the petitions, the Court

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HELD:

(Per Misra, J.)

1:1. The Parliament had the legislative competence to enact the Auroville (Emergency Provisions) Act, 1980 (Act LIX) of 1980. [770 D]

1:2. The subject matter of the impugned Act is not covered by Entry 32 of List II of the Seventh Schedule. Even if the subject matter of the impugned Act is not covered by any specific entry of List I or III of the Seventh Schedule of the Constitution it would in any case be covered by the residuary entry 97 of List I. [770 C-D]

1:3. The function of the Lists in the Seventh Schedule to the Constitution is not to confer powers. They merely demarcate the legislative fields. The Entries in the three Lists are only legislative heads or fields of legislation and the

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power to legislate is given to appropriate legislature by Articles 245 to 248 of the Constitution. [766 H, 767 A]

1:4. The Auroville Act even incidentally does not trench upon the field covered by the West Bengal Societies Registration Act, 1961 as it is in no way related to Constitution, regulation and winding up of the Society. [770 B]

R.C. Cooper v. Union of India [1970] 3 SCR 530 @ 563,

applied.

Attorney General for Ontario v. Attorney General for the Dominion [1896] AC 348 @ 366-67; Union of India v. H.S. Dhillon [1972] 2 SCR 33 @ 45; Board of Trustees, Ayurvedic and Unani Tibbia College v. The State of Delhi and Others [1962] 1 Supp. SCR 156; Katra Education Society v. State of Uttar Pradesh and Others [1966] 3 SCR 328, referred to.

2:1. The words "religious denomination" in Article 26 of the Constitution must take their colour from the word 'religion' and if this be so, the expression "religious denomination" must also satisfy three conditions:

- (i) It must be a collection of individuals who has a system of beliefs or doctrine which they regard as conducive to their spiritual well-being, that is, a common faith;
- (ii) Common organisation; and
- (iii) Designation by a distinctive name. [774 B-D]

2:2. The term 'religion' has been judicially considered in the Commissioner of Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiyar of Sri Shriur Mutt [1954] SCR 1005 and the following propositions of law laid down therein have been consistently followed in later cases including The Durgah Committee, Ajmer and Another v. Syed Hussain Ali & Others [1962] 1 SCR 383 @ 410-11 :

- (1) Religion means "a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being";
- (2) A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well;
- (3) Religion need not be theistic;
- (4) "Religious denomination" means a religious sect or body having a common faith and organisation and designated by a distinctive name;
- (5) A law which takes away the rights of administration from the hands of a religious denomination altogether and vests in another

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authority would amount to violation of the right guaranteed under clause (d) of Article 26." [773 E-H, 774A]

Per Majority [Misra, J for himself, Y. V. Chandrachud, C.J., P. N. Bhagwati and V. Balakrishna Eradi, JJ. and Chinnappa Reddy, J. dissenting.]

2:3. On the basis of the materials the Memorandum of Association of the Society, the several applications made by the Society claiming exemption under s. 35 and s. 80 of the Income-tax Act, the repeated uttering of Sri Aurobindo and the Mother that the society and Auroville were not religious institutions and host of other documents there is no room for doubt that neither the Society nor Auroville constitute a religious denomination and the teachings of Sri Aurobindo only represented his philosophy and not a religion. [793 D-E]

Numerous Uttering by Sri Aurobindo or the Mother unmistakably show that the Ashram or Society or Auroville is not a religious institution. There can be no better proof than what Sri Aurobindo and the Mother themselves thought of their teachings and their institutions to find out whether the teachings of Sri Aurobindo and his Integral Yoga constitute a religion or a philosophy. The Uttering made from time to time by Sri Aurobindo and the Mother hardly leave any doubt about the nature of the Institution. It was on the basis that it was not a religious institution, that

the Society collected funds from the Central Government, the Governments of States, other non-Governmental agencies. and from abroad. [792 B-D, 793 A]

Even assuming but not holding that the Society or the Auroville were a religious denomination, the impugned enactment is not hit by Articles 25 and 26 of the Constitution. The impugned enactment does not curtail the freedom of conscience and the right freely to profess, practise and propagate religion. Therefore, there is no question of the enactment being hit by Article 25. [793 E-F]

2:4. The impugned enactment does not stand in the way of the Society establishing and maintaining institutions for religious and charitable purposes, It also does not stand in the way of the Society to manage its affairs in matters of religion. [794 A-B]

2:5. Even assuming that the society or Auroville was a religious denomination, clause (b) of Art. 26 guarantees to a religious denomination a right to manage its own affairs in matters of religion. Besides the right to manage its own affairs in matters of religion, which is given by clause (b), the next two clauses of Art. 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in the matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can take away,
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whereas the former can be regulated by laws which the legislature can validity impose. It is clear, therefore, that question merely relating to a religions group or institution are not matters of religion to which clause of article applies.[800 H, 801 A-B]

2:6. The impugned Act had not taken away the right of management in matters of religion or a religious denomination, if the Society or Auroville is a religious denomination at all, rather it has taken away the right of management of the property of Auroville. Thus the impugned Act neither violates Article 25, nor Article 26 of the Constitution. [801 C-D]

The Commissioner of H. R. & C. E. Madras v. Lakshmindra Tirtha Swamiyar of Sri Sirur Mutt [1954] S.C.R. 1005; The Durgah Committee Ajmer and Another v. Syed Hussain Ali [1962] 1 S.C.R, 383; Tilkyat Shri Govindlalji Maharaj v. State of Rajasthan & others [1964] 1 S.C.R. 561; Sastri Yagnapurushadri & Others v. Muldas Bhudardas Vysya & Another [1966] 3 S.C.R. 242; Divyadassan Rajendra Ramdassji & Another v. State of Andhra Pradesh [1970] 1 S.C.R. 103; Nalaw Ramalingayya v. The Commissioner of Charitable and Hindu Religious Institutions and Endowments Hyderabad A.I.R. 1971 (AP) 320; T. Krishnan v. G.D.M. Committee A.I.R, 1978 Kerala 68; applied.

3. On an analysis of Articles 29 and 30 and the decided cases it is evident that the Auroville Act does not seek to curtail the right of any section of citizen to conserve its own language, script or culture conferred by Article 29. The benefit of Art. 30(1) can be claimed by the community only on proving that it is a religious or linguistic minority and that the institution was established by it. Since Auroville or the Society is not a religious denomination, Articles 29 and 30 would not be attached and, therefore, the impugned Act cannot be held to be violative of Articles 29 and 30 of the Constitution. [805 A-C]

In re: The Kerala Education Bill [1959] SCR 995; Reverend Sidhaibhai Serbhai and Others v. State of Bombay and Another [1963] 3 SCR 837 @ 856; State of Kerala v. Mother Provincial [1971] 1 SCR 734; applied.

4. The Auroville Take over Act cannot be said to be violative of Article 14 of the Constitution, which action was taken after full consideration of various aspects of the problem, for the reasons namely, (i) it has not been pointed out which were the other institutions where similar situations were prevailing; and (ii) there is a uniqueness with this institution inasmuch as the Government is also involved. Even a single institution may be taken as a class. The situation prevailing in the Auroville had converted the dream of the Mother into a nightmare. There had arisen acute law and order situation in the Auroville, numerous cases were pending against various foreigners, the funds meant for the Auroville had been diverted towards other purposes and the atmosphere was getting out of hand. In the circumstances the Government intervened and promulgated the Ordinance and later on substituted it by the impugned enactment.

[814 B-D]

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Budhan Choudhary v. The State of Bihar [1955] 1 SCR 1045; Shri Ramakrishna Dalmia v. Sri Justice S.R. Tendolkar and Others [1959] SCR 279; Raja Birakishore v. The State of Orissa [1964] 7 SCR 32, followed.

Ram Prasad Narayan Sahi and Another v. State of Bihar and Others [1953] SCR 1129; distinguished.

5:1. Whether the remedies provided under the Societies Registration Act were sufficient to meet the exigencies of the situation is not for the Court to decide but it is for the Government and if the Government thought that the conditions prevailing in the Auroville and the Society can be ameliorated not by resorting to the provisions of the Societies Registration Act but by a special enactment, that is an area of the Government and not of the Court. [818 E-F]

5:2. It is not correct to say that the facts stated in the preamble of the Act were non est. Obviously there were serious irregularities in the management of the said society. There has been mis-utilisation of funds and their diversion to other purposes. This is evident from the audit report. There was no material change in the situation on the date of the impugned ordinance or the Act, rather the situation had grown from bad to worse and the sordid situation prevailing in the Auroville so pointed out by the parties fully justified the promulgation of the Ordinance and the passing of the enactment. Of course, each party tried to apportion the blame on the other. Who so ever be responsible, the fact remains that the prevailing situation in the Auroville was far from satisfactory. The amount donated for the construction of the cultural township Auroville and other institutions was to the tune of Rs. 3 crores. It was the responsibility of the Government to see that the amount was not misutilised and the management was properly carried out. On a perusal of the audit report, which is a voluminous one, all that can be said is that on the facts found by the audit committee, the report is rather a mild one. There seems to be serious irregularities in the accounts. A substantial amount received by way of donations had not been properly spent, there being mis-utilisation and diversion of the funds. [819 B-F]

5:3. Even assuming that the facts brought to the notice of the legislature were wrong, it will not be open to the Court to hold that Act to be bad on that account. The Court would not do so even in case of a litigation which has

become final on the ground that the facts or the evidence produced in the case were not correct. The Parliament had to apply its mind on the facts before it.

[819 F-H]

We can normally assume that the Government would certainly appoint a responsible person as an administrator especially when there is a heavy stake in which the Government of India is also involved in as much as at the instance of the Government the UNESCO gave financial support to the institution.

[820 F-G]

6. The contention that the report of the committee was tainted as Shri Kulkarni the Chairman and Secretary were parties, is without any foundation. The allegation of the impugne Act being malafide is equally devoid of force.

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Kiriti Joshi cannot be said to have his own axe to grind in the matter or was instrumental in getting the impugned Ordinance and the Act passed. Allegations about mala fides are more easily made than made out. Merely because he made a complaint about the situation prevailing in the management of Auroville and the Society, it cannot be said that the impugned enactment was passed at his behest. [820 H, 821 B-C]

Per Chinnappa Reddy, J. (Dissenting)

1:1. Shri Aurobindo truly was a religious teacher and taught and was understood to have taught new religious doctrine and practice. Therefore, Aurobindoism, can certainly be classified if not as a new religion, as a new sect of Hinduism and the followers of Sri Aurobindo can be termed a religious denomination. Sri Aurobindo of course, disclaimed that he was founding a religion. No great religious teacher ever claimed that he was founding a new religion or a new school of religious thought. The question is not whether Sri Aurobindo refused to claim or denied that he was founding a new religion or a new school of religious thought but whether his disciples and the community thought so. There is no doubt that they did not only his disciples and followers, but religious leaders all the world over and of all faiths. Therefore, Aurobindo Society is a sect of a religious determination within the meaning of the expression in Article 26 of the Constitution. [754 G-H, 755 A-B, F-G]

1:2. The word 'religion' does not occur in the Preamble to the constitution, but the Preamble does promise to secure to its citizens "Liberty of thought, expression, belief faith and worship". The freedom of conscience and the Right to profess, propagate and practise religion guaranteed in Article 25 flow out of the idea so expressed in Preamble. Freedom of conscience is not to be separated from the Right to profess, practise and propagate religion. They go together and together they form part of the Right to Freedom of Religion. It is clear from Article 25 that secular activity may be associated with Religion. though the guarantee of the article does not extend to such activity. Article 26 guarantees that every religious denomination or any section thereof shall have the right, subject to public order, morality and health, to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law. Several provisions of the constitution where the expression 'religion' and 'religious denomination' are used are either those which are concerned with equality and equal opportunity or those which are concerned with freedom of religion. [742 D, F, G-H, 743

A, C]

1:3. Reading Art. 25 in the background of the proclamation regarding Liberty in the Preamble to the constitution, it is clear that (i) the constitution views religion as comprising thought, expression, belief, faith or worship, as involving the conscience and as something which may be professed, practised and propagated and which is any man's attribute in the same manner as race, sex, language, residence etc: (ii) economic, financial, political or other secular activity may be associated with religious practice though such activity is not covered by the guarantee of freedom of conscience and the right freely to

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profess, practise and propagate, religion; and so Religion is a matter of thought, expression, belief, faith and worship, a matter involving the conscience and a matter which may be professed, practised and propagated by anyone and which may even have some secular activity associated with it. [744 F-H, 745 A]

1:4. Religion undefined by the constitution, is incapable of precise judicial definition either. In the background of the provisions of the constitution and the light shed by judicial precedent, it can at best be said that religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience i.e. the spirit of man. It must be capable of overt expressions in work and deed, such as worship or ritual. So religion is a matter of belief and doctrine concerning the human spirit expressed overtly in the form of ritual and worship. Some religions are easily identifiable as religious; some are easily identifiable as not religious. There are many in the penumbral region which instinctively appear to some as religion and to others as not religions. There is no formula of general application. There is no knife-edge test. Primarily, it is a question of the consciousness of the community, how does the fraternity or sodality (if it is permissible to use the word without confining it to Roman Catholic Groups) regard itself, how do others regard the fraternity or sodality. A host of other circumstances may have to be considered, such as, the origin and the history of the community, the rituals observed by the community, what the founder, if any, taught, what the founder was understood by his followers to have taught, etc. In origin, the founder may not have intended to found any religion at all. He may have merely protested against some rituals and observances, he may have disagreed with the interpretation of some earlier religious tenets. What he said, what he preached and what he taught, his protest, his dissent, his disagreement might have developed into a religion in the course of time, even during his life-time. He may be against religion itself, yet, history and the perception of the community may make a religion out of what was not intended to be a religion and he may be hailed as the founder of a new religion. [750 B-G]

And, whatever the ordinary features of a religious denomination may be considered to be, all are not of equal importance and surely the common faith of the religious body is more important than the other features. [751 C]

The Commissioner of HR and C.E., Madras v. Lakshmindra Tirtha Swamiyar of Sri Shirur Mutt [1954] S.C.R. 1005; Ratilal Panachand Gandhi v. The State of Bombay [1954] S.C.R. 1055; Durgah Committee of Ajmer v. Sayed Hussain Ali

JUDGMENT:

Maharaj v. The State of Rajasthan and Others [1964] 1 S.C.R. 561; Raja Virakishore v. State of Orissa [1964] 7 S.C.R. 32;

Sasti Yagnapurushadji and Others v. Muldas Bhudardas Vaisnya and Another [1966] 3 S.C.R. 242; referred to.

1:5. Judicial definitions are not statutory definitions; they are mere explanations, every word of which is not to be weighed in golden scales. Law has a tendency to harden with the passage of time and judicial pronouncements are made to assume the form of statutory pronouncements. So soon as a word or expression occurring in the statute is judicially defined, the tendency is to try to interpret the language employed by the judges in the judicial definition. That is wrong. Always words and expressions to be interpreted are those employed in

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the statute and not those used by judges for felicitous explanation, Judicial definition is explanatory and not definitive. [751 C-E]

1:6. Religious denomination has not to owe allegiance to any parent religion. The entire following of a religion may be no more than the religious denomination. This may particularly be so in the case of small religious groups or 'developing' religions, that is, religions in the formative stage. So Aurobindoism can be termed as a religious denomination. The world and India treated and respected Shri Aurobindo as a religious teacher and the founder of a new religion. [751 E-G]

2:1. Auroville (Emergency Provisions) Act, 1980 did not take away or purport to take away the management of the Shri Aurobindo Society. Parliament concerned itself with the management of Auroville only and with no other activity of the Shri Aurobindo Society, including 'its affairs in matters of religion'. In fact, section 4(2) makes it explicit that, except for matters relating to the management of Auroville, the provisions of the West Bengal Societies Registration Act, 1961, under which the Society was registered, shall continue to apply to the Society in the same manner as before. [755 G-H, 757 C-D]

2:2. The management of the International, cultural township of Auroville cannot be said to be a matter of religion. Auroville is a township and not a place of the worship. It is a township dedicated, not to the practice and the propagation of any religious doctrine but to promote international understanding and world peace, surely, a secular and not a religious activity. The highest that can be said in favour of Auroville being a religious institution or its management being a religious matter, is that it was conceived by the Mother and shaped and sculpted by Shri Aurobindo's disciples and followers in the pursuit of one of the ideas and ideals of Shri Aurobindo, a great religious teacher. On the other hand, the ideal itself, that is, the promotion of international understanding and world peace is by no means a religious ideal and it was because of the nature of the ideal that the Government of India and the UNESCO adopted the project. Shri Aurobindo himself was not a mere religious teacher. He was a visionary, a humanist and a nationalist who had blossomed into an internationalist. Therefore, Auroville, though the child of the Mother and though nurtured by the devotees of Shri Aurobindo, has an individuality, distinctly secular of its own. Hence, Auroville (Emergency Provisions) Act which provides for the taking over the management of Auroville for a limited period does not offend the rights guaranteed by Articles 25 and 26 of the Constitution. [757 E-H, 758 C]

2:3. The rights guaranteed by Articles 29 and 30 cannot be said to have been infringed by the Auroville Emergency provisions Act. No section of citizens having a culture and

no religious minority has been denied the right to establish and administer an educational institution of its choice.

[758 D-E]

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ORIGINAL JURISDICTION: Writ Petition No. 5879 of 1980.
(Under Article 32 of the Constitution of India)

AND

Writ Petition No. 5877 of 1980.
(Under Article 32 of the Constitution of India)

AND

Transferred Case No. 29 of 1981.
(Calcutta High Court Writ Petition No. 11508 of 1981)

With

Civil Appeal No. 2819 of 1980.
(Appeal by special leave from the judgment and order dated 21st November, 1980 of the Division Bench of the High Court of Calcutta in F.M.A.T. No. 3408 of 1980)

Soli J. Sorabji, K.K. Venugopal, S. Rangarajan, S. Balakrishnan, M.K.D. Namboodiry, P. Radhakrishnan, N.A. Subrahmaniam, C.S. Vaidyanathan, M.N. Krishna Mani and Vinnet Kumar for the Petitioners and Appellant.

L.N. Sinha, Attorney General, K. Parasaran, Solicitor General, M.K. Banerji, Additional Solicitor General, Govind Swaminadhan, for R. 3, N. Nettar and Miss A. Subhashini for Respondents Nos. 1 to 4.

T.S. Krishnamoorthy Iyer and Raju Ramchandran for Respondent No. 5.

F.S. Nariman, Anil B. Divan, P.H. Parekh, Mrs. Vineeta Sengupta, Gautam Philip and Sanjeev Agarwal for Respondent Nos. 6 to 240 in WPs. & CA.

P.P. Rao, P.C. Kapur and R. Venkataramani for interveners 1-88.

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FOR APPLICANT/INTERVENERS

A.B. Patel:	-	R.B. Datar
Indra Sen:	-	N.M. Kshatriya,
R.K. Habbu:	-	B.R. Aggarwala,
Catholic Bishop Conference of India:	-	P.A. Francis, J.B. Dadachanji and D.N. Mishra

The following Judgments were delivered

CHINNAPPA REDDY, J. I have the good fortune of having before me the scholarly judgment of my brother Misra J., I agree with my brother Misra, J that the Writ Petitions must fail. With much that he has said, also, I agree. But with a little, to my own lasting regret, I do not agree. It is, therefore, proper for me to explain the points of my disagreement.

Quite a considerable part of the hearing of the petitions was devoted to a debate on the question, what is Religion? Religion: Everyone has a religion, or at least, a view or a window on religion, be he a bigot or simple believer, philosopher or pedestrian, atheist or agnostic. Religion, like 'democracy' and 'equality' is an elusive expression, which everyone understands according to his pre-conceptions. What is religion to some is pure dogma to others and what is religion to others is pure superstition to some others. Karl Marx in his contribution to the Critique of Hegel's Philosophy of Law described religion as the 'Opium of the people'. He said further "Basically religion is a very convenient sanctuary for bourgeois thought to flee to in times of stress. Bertrand Russell, in

his essay 'Why I am not Christian', said, "Religion is based, I think, primarily and mainly upon fear." It is partly the terror of the unknown and partly, as I have said, the wish to feel that you have a kind of elder brother, who will stand by you in all your troubles and disputes. Fear is the basis of the whole thing-fear of the mysterious, fear of defeat, fear of death. Fear is the parent of cruelty, and, therefore, it is no wonder if cruelty and religion have gone hand in hand. As a worshipper at the altar of peace, I find it difficult to reconcile myself to religion, which throughout the ages, has justified war calling it a Dharma Uddha, a Jihad or a

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Crusade. I believe that by getting mixed up with religion, ethics has lost 'much of its point, much of its purpose and a major portion of its spontaneity'. I apprehend I share the views of those who have neither faith nor belief in religion and who consider religion as entirely unscientific and irrational. Chanting of prayer appears to me to be mere jingoism and observance of ritual, plain superstition. But my views about religion, my prejudices and my predilections, if they be such, are entirely irrelevant. So are the views of the credulous, the fanatic, the bigot and the zealot. So also the views of the faithful, the devout, the Acharya, the Moulvi, the Padre and the Bhikshu each of whom may claim his as the only true or revealed religion. For our present purpose, we are concerned with what the people of the Socialist, Secular, Democratic Republic of India, who have given each of its citizens Freedom of conscience and the right to freely profess, practise and propogate religion and who have given every religious denomination the right to freely manage its religious affairs, mean by the expressions 'religion' and 'religious denomination'. We are concerned with what these expressions are designed to mean in Arts. 25 and 26 of the Constitution. Any Freedom or Right involving the conscience must naturally receive a wide interpretation and the expression 'religion' and 'religious denomination' must therefore, be interpreted in no narrow, stifling sense but in a liberal, expansive way.

Etymology is of no avail. Religion is derived from 'religare' which means "to bind". Etymologically, therefore, every bond between two people is a religion, but that is not true. To say so is only to indulge in etymological deception. Quite obviously, religion is much more than a mere bond uniting people.

Quite obviously, again, religion is not to be confined to the traditional, established, well-known or popular religions like Hinduism, Mahomedanism, Buddhism and Christianity. There may be and, indeed, there are, in this vast country, several religions, less known or even unknown except in the remote corners or in the small pockets of the land where they may be practised. A religion may not be wide-spread. It may have little following. It may not have even a name, as indeed most tribal religions do not have. We may only describe them by adding the suffix 'ism' to the name of the founder-teacher, the tribe, the area or the deity. The nomenclature is not of the essence. Again, a band of persons, large or small, may not be said to be

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adherents of a religion merely because they share some common beliefs and common interests and practise common rites and ceremonies; nor can pietistic recitation and solemn ritual combine to produce religion, on that account only. Secret societies dedicated to secular tasks and indulging in queer oaths and observances, guilds and groups

of persons who meet but to dine and wine but who subject their members to extravagant initiation ceremonies, village and tribal sorcerers and coven of witches who chant rant and dance in the most weird way possible are all far removed from religion. They appear to lack the 'spiritual connection'. But, all this is unsatisfactory. We are not arriving at any definition of religion. We are only making peripheral journeys and not getting any nearer to the core of the problem presented to us.

Let us examine the relevant provisions of the Constitution for such light as they may throw on the meaning of the expressions 'religion' and religious denomination'. They are not defined. The word 'religion' does not occur in the Preamble to the Constitution, but the Preamble does promise to secure to its citizens "Liberty of thought, expression, belief, faith and worship". The Freedom of conscience and the Right to profess, propagate and practice religion, flow of the idea so expressed in the Preamble. In Part-III of the Constitution, under the head "Right to Freedom of Religion", there are four Articles. Art 25(i) guarantees to all persons, subject to public order, morality and health and to the other provisions of Part-III of the Constitution, freedom of conscience and the right freely to profess, practise and propagate religion. Freedom of conscience is not to be separated from the Right to profess, practice and propagate religion. They go together and together they form part of the Right to Freedom of Religion. Clause (2) of Art. 25, however, stipulates that the freedom and the right guaranteed by cl. (1) shall not prevent the State from making any law regulating or restricting, any economic, financial, political or other secular activity which may be associated with religious practice. Or to provide for social welfare and reform or to throw open Hindu religious institutions of a public character to all classes and sections of Hindus. So, the Article makes it clear that secular activity may be associated with Religion, though the guarantee of the article does not extend to such activity, Art. 26 guarantees that every religious denomination or any section thereof shall have the right, subject to public order, morality and health, to establish and maintain institutions for

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religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law. Art. 27 prohibits compulsion for payment of taxes for promotion of any particular religion. Art. 28 bars religious instruction in any institution wholly maintained out of State funds and prevents compulsion to attend any religious instruction or religious worship in educational institutions recognised by the State or receiving aid out of State funds.

Apart from Articles 25 to 28, the word 'religion' occurs in Arts. 15(1), 15(2), 16(2), 16(5), 23(2), 29(2) and 30 of the Constitution.

Art. 15(1) prescribes that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Art. 15(2) provides, in particular, that no citizen shall, on ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or

partly out of State funds or dedicated to the use of the general public.

Art.16(2) guarantees that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State. Art. 16(5) exempts from the right guaranteed under Art. 16 the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Art. 23(2), while enabling the State to impose compulsory service for public purposes, prohibits the State from making any discrimination on grounds only of religion, race, caste or class or any of them.

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Art. 29(2) provides that no citizen shall be denied admission to any educational institution maintained by the State or receiving aid out of State funds on grounds of religion, race, caste, language or any of them.

Art. 30(1) guarantees to all minorities, whether based on religion or language the right to establish and administer educational institutions of their choice. Art. 30(2) further provides that the State shall not, in granting aid to educational institutions, discriminate against any educational institutions on the ground that it is under the management of a minority, whether based on religion or language.

It is readily seen that the several provisions of the Constitution where the expressions 'religion' and 'religious denomination' are used are either those which are concerned with equality and equal opportunity or those which are concerned with freedom of religion. Art. 15(1), Art. 16(2), Art. 23(2), Art. 29(2) are the several equality and equal opportunity clauses of the Constitution which bar discrimination on the ground of religion, and they place religion in equation with race, caste, sex, place of birth, residence and language for the purposes of the various aspects of equality dealt with by them. Art. 30 recognises the existence of minority groups based on religion along with minority groups based on language. Arts. 25 to 28 deal with the Right to Freedom of Religion which, as we said earlier is traceable to the idea of "Liberty of Thought, Expression, Belief, Faith and Worship" in the Preamble to the Constitution. Art. 25 guarantees freedom of conscience and the right freely to profess, practise and propagate religion, but saves laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. Reading Art. 25 in the background of the proclamation regarding Liberty in the Preamble to the Constitution, we may safely conclude that the Constitution views religion, as comprising thought, expression, belief, faith or worship, as involving the conscience and as something which may be professed, practised and propagated and which is any man's attribute in the same manner as race, sex language, residence etc. We also see that economic, financial, political or other secular activity may be associated with religious practice though such activity is not covered by the guarantee of freedom of conscience and the right freely to profess, practise and propagate religion. So, the Constitution considers Religion as a matter of thought, expression, belief, faith and worship, a matter

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involving the conscience and a matter which may be professed, practised and propagated by anyone and which may even have some secular activity associated with it. We have already said that any Freedom or Right involving the conscience must naturally receive a wide interpretation and the expressions 'Religion' and 'Religious Denomination' must, therefore, be interpreted in no narrow, stifling sense but in a liberal, expansive way.

How has the Court looked at the expression 'religion' and 'religious denomination' and how has the Court attempted to define them? We begin with the well-known Shirur Mutt case where Mukherjea J, speaking for himself and six of his colleagues, examined the question in some detail and, of course, with great erudition. We must first notice that the Court, there, was considering the question of the vires of the Madras Hindu Religious and Charitable Endowments Act 1951 which was sought to be made applicable to the institution known as Shirur Mutt, one of the eight Mutts situated at Udipi and reputed to have been founded by Shri Madhwa Charya, the renowned exponent of 'dualistic thesim' in the Hindu Religion. The trustees and the beneficiaries of the Mutt, it was claim and established, were the followers of Shri Madhwa Charya. The question arose whether the spiritual fraternity constituted by the followers of Shri Madhwa Charya could be said to be a 'religious denomination' within the meaning of Art. 26, entitling them to manage their own affairs in 'matters of religion'. The Court noticed that while cl. (b) of Art. 26 guaranteed to a religious denomination the right to manage its own affairs in matters of religion, other clauses of the Article dealt with the right of a religious denomination to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination having thus been placed on a different footing from the right to manage its own affairs in matters of religion, the Court said:

"the latter is a Fundamental Right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the Article applies."

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Mukherjea, J, then proceeded to consider what were matters of religion? He noticed that 'religion' was a term which was hardly susceptible of any rigid definition. He rejected the definition given in Davis v. Benson as neither precise nor adequate and went on to say,

"Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. 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 which are regarded as integral parts of religion, and these forms and dress."

Mukherjea, J., accepted the following observations of Latham,

CJ in *Vide Adelaide Company v. The Commonwealth*(1), as fully applicable to the protection of religion as guaranteed by the Indian Constitution:

"It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil Government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of section 116. The section refers in express terms to the exercise of religion, and, therefore, it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion."

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Mukherjea, J., thereafter, pointed out that freedom of religion under the Indian Constitution also was not confined to religious beliefs only, it extended to religious practices as well subject to the restrictions which the Constitution itself had laid down. Under Art. 26(b) he said, a religious denomination or organisation enjoyed complete autonomy in the matter of deciding as to what rites and ceremonies were essential according to the tenets of their religion they held and no outside authority had any jurisdiction to interfere with their decision in such matters. But, he said, the scale of expenses to be incurred in connection with the religious observances would be a matter of administration of property belonging to the religious denomination and to be controlled by secular authorities in accordance with any law laid down by a competent legislature. He added,

"It should be noticed, however, that under Art. 26 (d), it is the Fundamental Right of a religious denomination or its representative to administer its properties in accordance with the law; and the law, therefore, must leave the right of administration to the religious denomination itself, subject to such restrictions and regulations as it might choose to impose a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority, would amount to a violation of the right guaranteed under cl. D of Art. 26".

Mukherjea, J also considered the question whether the followers of Madhwacharya could be considered a religious denomination and whether Sivalli Brahmins constituted a section of that religious denomination. The meaning of the word denomination was culled out from the Oxford Dictionary where it has been defined to mean 'a collection of individuals classed together under the same name. a religious sect or body having a common faith and organisation and designated by a distinctive name". Reference was then made to "a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day". It was emphatically stated that each one of such sects or sub-sects could certainly be called a religious denomination as it was designated by a distinctive name-in many cases it was the name of the founder-and had a common faith and common spiritual organisation. It was observed," the followers of Ramanuja, who are known by the

name of Shri Vaishnobs, undoubtedly constitute a religious denomination; and so do the

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followers of Madhwacharya and other religious teachers. It is a fact well-established by tradition that the eight Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of these Maths profess to be followers of that teacher. The High Court has found that the Math in question is in charge of Sivalli Brahmins who constitute a section of the followers of Madhwacharya. As Art. 26 contemplates not merely a religious denomination, but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of this article."

So, in the Shirur Mutt case, Mukherjea J expressed difficulty in defining the term 'religion' with exactitude, but explained it as something founded upon beliefs or doctrines, regarded by those professing the religion as conducive to their spiritual well-being and attended by practices and observances viewed by the religious community as integral to the religion. Mukherjea J, however, found less difficulty in defining 'religious denomination' in the same terms as in the Oxford Dictionary.

Ratilal Panachand Gandhi v. The State of Bombay and Ors.(1) was decided by five of the Learned Judges who constituted the Bench which decided the Shirur Mutt case. What was said in the Shirur Mutt was reiterated and it was again emphasised that religion was not merely an opinion, doctrine or belief and that it had its outward expression in acts as well. The following observations of Davar J, in Jamshedjee v. Sunnabal(2) were approved: "If this is the belief of the community, and it is proved undoubtedly to be the belief of the Zoroastrian community, -a secular judge is bound to accept that belief-it is not for him to sit in judgment on that belief, he is not right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind". I have stated almost at the outset that judges' faith or lack of faith in religion is irrelevant in deciding what are matters of religion.

In the Durgah Committee Ajmer v. Syed Hussain Ali & others(3) the Court reiterated the position that the freedom guaranteed by Art. 25(1) was not only the right to entertain such religious beliefs as

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my appeal to his conscience but also afforded him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his ideas for the benefit of others. A note of caution was, however, struck and it was said that practices in order to qualify as matters of religion should be regarded by the said religion as its essential and integral part. Otherwise, it was pointed out, even purely secular practices which were not an essential or an integral part of religion were apt to be clothed with a religious form and stake a claim for treatment as religious practices. Mukherjea J's definition of 'religious denomination' in the Shirur Mutt case was also accepted and the case was permitted to be argued on the broad and general ground that the Chishtia Soofies constituted either a religious denomination or a section of a religious denomination.

In Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan and Ors.(1) the question was whether the famous Nath Dwara Temple was a public temple? It was held that it

was a public temple. It was assumed that the followers of Vallabha constituted a religious denomination.

In Raja Virakeshore v. State of Orissa(2)-one of the arguments sought to be advanced before the Supreme Court was that the worshippers of Lord Jagan Nath constituted a religious denomination and that the Shri Jagan Nath Temple Act, which took away the right of management from the denomination, contravened the Fundamental Right guaranteed by Art. 26(d) of the Constitution. The answer of the State was that the temple did not pertain to any particular sect, cult or creed of Hindus, but was a public temple above all sects, cults and creeds and, therefore, it was not the temple of any particular denomination. The Court however, did not permit the worshippers to raise the argument as the state of pleadings were found to be defective.

In Sasti Yagnapurushadji and Ors. v. Muldas Bhudardas Vaishya and Anr.(1) the question arose whether the Swaminarayan sect followed a religion distinct and separate from the Hindu religion and whether, consequently, the temple belonging to the sect was outside the ambit of Bombay Hindu Places of Public Worships (Entry 750

Authorisation) Act ? Gajendragadkar, CJ, on an exhaustive consideration of various Hindu Texts and the texts and history of the Swaminarayan sect, came to the conclusion that the Swaminarayan sect was not a religion, distinct and separate from the Hindu Religion.

It is obvious that religion, undefined by the Constitution, is incapable of precise judicial definition either. In the background of the provisions of the Constitution and the light shed by judicial precedent, we may say religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience i.e. the spirit of man. It must be capable of overt expression in word and deed, such as, worship or ritual. So, religion is a matter of belief and doctrine, concerning the human spirit, expressed overtly in the form of ritual and worship. Some religions are easily identifiable as religions, some are easily identifiable as not religions. There are many in the penumbral region which instinctively appear to some as religion and to others as not religions. There is no formula of general application. There is no knife-edge test. Primarily, it is a question of the consciousness of the community, how does the fraternity or sodality (if it is permissible to use the word without confining it to Roman Catholic groups) regard itself, how do others regard the fraternity or sodality. A host of other circumstances may have to be considered, such as, the origin and the history of the community, the beliefs and the doctrines professed by the community, the rituals observed by the community, what the founder, if any, taught, what the founder was understood by his followers to have taught, etc. In origin, the founder may not have intended to found any religion at all. He may have merely protested against some rituals and observances; he may have disagreed with the interpretation of some earlier religious tenets. What he said, what he preached and what he taught, his protest, his dissent, his disagreement might have developed into a religion in the course of time, even during his life-time. He may be against religion itself, yet, history and the perception of the community may make a religion out of what was not intended to be a religion and he may be hailed as the founder of a new religion. There are the obvious examples of Buddhism and Jainism and for that matter Christianity itself. Neither Buddha nor Mahavira, nor Christ ever thought of founding a

new religion, yet three great religions bear their names.

If the word 'religion' is once explained, though with some difficulty, the expression 'religious denomination' may be defined

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with less difficulty. As we mentioned earlier Mukherjea J, borrowed the meaning of the word denomination from the Oxford Dictionary and adopted it to define religious denomination as "a collection of individuals classed together under the same name, a religious sect or body having a common faith and organisation and designated by a distinctive name". The followers of Ramanuja, the followers of Madhwacharya, the followers of Vallabha, the Chishtia Soofies have been found or assumed by the Court to be religious denominations. It will be noticed that these sects possessed no distinctive name except that of their founder-teacher and had no special organisation except a vague, loose-un-knit one. The really distinctive feature about each one of these sects was a shared belief in the tenets taught by the teacher-founder. We take care to mention here that whatever the ordinary features of a religious denomination may be considered to be, all are not of equal importance and surely the common faith of the religious body is more important than the other features. It is, perhaps, necessary to say that judicial definitions are not statutory definitions, they are mere explanations, every word of which is not to be weighed in golden scales. Law has a tendency to harden with the passage of time and judicial pronouncements are made to assume the form of statutory pronouncements. So soon as a word or expression occur in the statute is judicially defined, the tendency is to try to interpret the language employed by the judges in the judicial definition as if it has been transformed into a statutory definition. That is wrong. Always, words and expressions to be interpreted are those employed in the statute and not those used by judges for felicitous explanation. Judicial definition, we repeat, is explanatory and not definitive. One remark requires to be added here. Religious denomination has not to owe allegiance to any parent religion. The entire following of a religion may be no more than the religious denomination. This may particularly be so in the case of small religious groups or 'developing' religions, that is, religions in the formative stage.

We may now consider whether Aurobindoism-if one may be excused for using the word 'Aurobindoism' to describe what Shri Aurobindo taught and practised and what he was understood by his followers to have taught and practised-was a religion and whether the followers of Shri Aurobindo could be called a religious denomination.

Shri Aurobindo was a poet, a savant, a philosopher and a mystic. Was he or was he not a religious teacher?

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The Encyclopaedia Britannica (1978 Edition) describes him as "seer, poet and Indian nationalist who originated the philosophy of cosmic salvation through spiritual evolution, a divine existence that will appear through the development of the "agnostic man" to usher in a transcendent spiritual age in which man and the universe are destined to become divine". The Encyclopaedia goes on to say, "he devoted himself for the rest of his life solely to the development of his unique philosophy. There (at Pondicherry) he founded an ashrama (retreat) as an international cultural centre for spiritual development, attracting students from all over the world. The only requirement for entrance was a sincere wish to develop spiritually."

"According to Aurobindo's theory of cosmic salvation, the paths to union with Brahman are two-way streets, or channels, Enlightenment comes to man from above, while the spiritual mind (supermind) of man strives through logic illumination to reach up-ward from below. When these two forces blend in an individual, agnostic man is created. This logic illumination transcends both reason and intuition and eventually leads to the freeing of the individual from the bonds of individuality and, by extension all mankind will eventually achieve mukti (liberation)".

"Thus, Aurobindo created a dialectic mode of salvation not only for the individual but for all mankind. Energy of sachidananda ("existence, thought, joy") comes down from Brahman (thesis) to meet energy from the supermind of man striving upward toward spirituality (antithesis) and melds in man to create a new spiritual superman (synthesis). From these evolved divine beings, a divine universe also evolved."

Under the head 'History of Hinduism'. Encyclopaedia Britannica again refers to Aurobindo and says :

"Another modern teacher whose doctrines have had some influence outside India was Sri Aurobindo, who began his career as a revolutionary. He withdrew from politics, however, and settled in Pondicherry, then a French possession. There he established an ashrama (a retreat) and achieved a high reputation as a sage. His followers looked on him as the first incarnate manifestation of super-beings whose evolution he prophesied, and apparently he did not discourage this belief. After his death, the leadership of the Aurobindo Ashram was taken over by "the Mother", Mme Mira

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Richard, a French-woman who had been one of his leading disciples."

The Encyclopaedia Britannica refers to Aurobindo again under the head 'Idealism' and says :

"Aurobindo, reinterpreting the Indian Idealistic heritage in the light of his own Western education, rejected the maya doctrine of illusion, replacing it with the concept of evolution, aguring that the "illumination of individuals will lead to the emergence of a divine community". Aurobindo founded the influential Pondicherry Ashram, a religious and philosophical community, and headed it until his death."

The Encyclopaedia of Philosophy (1972 Edition) says,

"Shri Aurobindo was an Indian metaphysician and founder of new religious movement with head-quarters at Pondicherry-The religious movement associated with him has increased its following in India, and has made some converts in the West.....God must 'descent' into human experience. This illumination of individual will lead to the emergence of a divinised community.....Aurobindo produced a synthesis between older Indian religious ideas and the world affirming attitudes of Christian theism."

The Dictionary of Comparative Religion says of Aurobindo :

"According to Aurobindo, there is a progressive evolution of the divine being through matter to higher spiritual forms, and the Aurobindo movement is held to represent vanguard of this evolutionary process in our own times. Aurobindo practised and taught an 'integral yoga' in which meditative and spiritual exercises are integrated with physical, cultural and intellectual pursuits."

Frederic Spiegelberg, in his book 'Living Religions of

the world' refers to Shri Aurobindo :

"We pass beyond specific religions to a synthetic vision of the religious impulse itself, a vision designed to embrace all previous and future history all previous and future paths. Shri Aurobindo is a man worshipped by hundreds of thousands and respected by

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millions.....In his retreat at Pondicherry he is less the philosopher of Hinduism than the philosopher of religion in general, the voice of that which comparative religion leaves undisputed."

On the topic Religion, the Gazetteer of India, published by the Govt. of India, has this to say :

"Shri Aurobindo gave new interpretations of the vedas and The Vedanta, and in his Essays on the Gita, he expounded what he called "the integral view of life". His great work, the Life Divine, is a summing up of his philosophy of "the Descent of the Divine into Matter". The importance of Sri Aurobindo's mission lies in his attempt to explain the true methods of Yoga."

It is clear from these extracts that the world and India treated and respected Shri Aurobindo as a religious teacher and the founder of a new religious movement whose principal thesis was the evolution or transformation of humanity into divinity through the practice of Integral Yoga. One may or may not accept Shri Aurobindo's thesis or teaching, but, without doubt, it was unique ; without doubt, it was novel; without doubt, it had never been so taught before. Shri Aurobindo first conceived the theory of Ascent and Descent, involution and evolution. He was the first expositor of the Integral Yoga. He expressly professed to depart from the Yoga of the Gita and dissented from the Maya Vada. Pedestrian minds like ours may not understand the niceties of the metaphysical exercises involved. We do not desire to enter into any polemics over Shri Aurobindo's teachings as it is not within the judicial province to do so except to the limited extent of finding out whether his teachings have the necessary spiritual content to qualify as religious doctrine and how his followers understood those teachings. So, we refrain from quoting Shri Aurobindo. But this fact stands out prominently that whatever else he was, he truly was a religious teacher and taught and was understood to have taught new religious doctrine and practice. I fail to see why 'Aurobindoism' cannot be classified, if not as a new religion, as a new sect of Hinduism and why the followers of Shri Aurobindo cannot be termed a religious denomination.

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Shri Aurobindo, of course, disclaimed that he was founding a religion. No great religious teacher ever claimed that he was founding a new religion or a new school of religious thought. The question is not whether Shri Aurobindo refused to claim or denied that he was founding a new religion or a new school of religious thought but whether his disciples and the community thought so. There is no doubt that they did, not only his disciples and followers, but religious leaders all the world over and of all faiths.

If the followers of Shri Aurobindo constitute a 'religious denomination', as, to my mind, they undoubtedly do, the members of Shri Aurobindo Society are certainly a distinct and identifiable section of the 'religious denomination'. The members of the society are followers and disciples of Shri Aurobindo. The society was formed to preach and propagate the beliefs and ideals of Shri

Aurobindo. The primary object of the society was "To make known to the members of the public in general the aims and ideals of Shri Aurobindo and the Mother, their system of Integral Yoga and to work for its fulfilment in all possible ways and for the attainment of a spiritualised society as envisaged by Shri Aurobindo." It is nobody's case that this is not the principal object of the society or that it is only a facade for other activities. However, it was argued that the Society had represented itself as, 'a non-political, non-religious organisation' and claimed exemption from income tax on the ground that it was engaged in educational, cultural and scientific research. If the society consists of the disciples and followers of Sri Aurobindo, if its primary object is to profess, practise and propagate the system of Integral Yoga, and, if, therefore, it is a section of a religious denomination, the circumstance that it is engaged in several secular activities and has represented itself to be a non-religious organisation for certain purposes cannot detract from the fact that it is a section of a religious denomination within the meaning of Art. 26. Therefore, we must hold, the Aurobindo Society is a section of a religious denomination within the meaning of the expression in Art. 26 of the Constitution.

But, the question is has the Fundamental Right guaranteed by Art. 26 been infringed by the Auroville (Emergency Provisions) Act, 1980. We have to notice straight away that the Act did not take away or purport to take away the management of the Shri Aurobindo Society. What it did or purported to do was "to provide for the

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taking over, in the public interest, of the management of Auroville for a limited period and for matters connected therewith or incidental thereto." The long preamble says,

"Whereas Shri Aurobindo Society, a non-governmental organisation had been a channel of funds for the setting up of a cultural township known as Auroville, where people of different countries are expected to live together in harmony in one community and are expected to engage in cultural, educational, scientific and other pursuits aiming at human unity."

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"AND WHEREAS Auroville was developed as a cultural township with the aid of funds received from different organisations in and outside India as also from the substantial grants received from the Central and State Governments;

AND WHEREAS pursuant to the complaints received with regard to the misuse of funds by Sri Aurobindo Society, a committee was set up under the chairmanship of the Lieutenant-Governor of Pondicherry with representatives of the Government of Tamil Nadu and of the Ministry of Home Affairs in the Central Government, and the said committees had, after a detailed scrutiny, of the accounts of Shri Aurobindo Society, found instances of serious irregularities in the management of the said Society, misutilisation of its funds and their diversion to other purposes ;

AND WHEREAS in view of the serious difficulties which have arisen with regard to the management of Auroville, it is necessary to take over, for a limited period, the management, thereof and any delay in taking over the management of Auroville would be highly detrimental to the interests and objectives of Auroville;

The long preamble itself explains what Auroville is. S. 3(c) of the Act defines Auroville as meaning "so much of the undertakings as form part of, or are relatable to, the township which is known as Auroville and the charter of which proclaimed by the 'Mother' on the 23rd day of February, 1968".

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Now, the idea of Auroville was conceived by Madame M. Alfasse, affectionately and respectfully known to the disciples and followers of Shri Aurobindo as the Mother. The idea of a cultural township which would promote international understanding and world peace had great appeal to the Government of India and the United Nations Educational, Scientific and Cultural Organisation and they extended their support to the project. But, things turned out to be not so smooth-sailing after all. There was dissension among the members of the Shri Aurobindo Society. Things came to such a pass that the impugned Act was necessitated. Misra J. has narrated the facts leading to the intervention of parliament. Parliament concerned itself with the management of Auroville only and with no other activity of the Shri Aurobindo Society, including 'its affairs in matters of religion'. In fact, section 4(2) makes it explicit that, except for matters relating to the management of Auroville, the provisions of the West Bengal Societies Registration Act, 1961, under which the Society was registered, shall continue to apply to the Society in the same manner as before. Since the only activity of the Society which was touched by the Act was the management of Auroville, the question arises whether Auroville is an institution established and maintained for religious and charitable purposes and whether its management of Auroville is 'a matter of religion'. Auroville is a township and not a place of worship. It is a township dedicated, not to the practice and propagation of any religious doctrine but to promote international understanding and world peace, surely, a secular and not a religious activity. The highest that can be said in favour of Auroville being a religious institution or its management being a religious matter, is that it was conceived by the Mother and shaped and sculpted by Shri Aurobindo's disciples and followers in the pursuit of one of the ideas and ideals of Shri Aurobindo, a great religious teacher. On the other hand, the ideal itself, that is, the promotion of international understanding and world peace is by no means a religious ideal and it was because of the nature of the ideal that the Government of India and the UNESCO adopted the project. Shri Aurobindo himself was not a mere religious teacher. He was a visionary, a humanist and a nationalist who had blossomed into an internationalist. It appears, therefore, that Auroville, though the child of the Mother and though nurtured by the devotees of Shri Aurobindo, has an individuality, distinctly secular, of its own. The management of the International, cultural township of Auroville is not, in our opinion, a matter of religion. We have mentioned earlier that laws regulating or restricting any economic, financial, political or other secular

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activity which may be associated with religious practice are excluded from the guarantee of freedom of conscience and the right freely to profess, practise and propagate religion. We have also pointed out that the administration of the property of a religious denomination is different from the right of the religious denomination to manage its own affairs in matters of religion and that laws may be made

which regulate the right to administer the property of a religious denomination. Questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of Art. 26 applies. It has been so decided in the Shirur Mutt case as well as other cases following it. We are, therefore, of the view that the Auroville Emergency Provisions Act which provides for the taking over the management of Auroville for a limited period does not offend the rights guaranteed by Arts. 25 and 26 of the Constitution.

A passing reference was also made in the course of argument to Arts 29 and 30 of the Constitution, and it was said that the rights guaranteed by those Articles were also infringed. We are entirely at a loss to understand how the rights guaranteed by Arts. 29 and 30 can be said to have been infringed by the Auroville Emergency Provisions Act. No section of citizens having a culture of its own has been denied the right to conserve that culture and no religious minority has been denied the right to establish and to administer an educational institution of its choice.

On the several other questions argued before us I accept the conclusion of Misra J. The Writ Petitions are accordingly dismissed but in the circumstances there will be no order regarding costs.

MISRA J. The first two petitions under Article 32 of the Constitution of India filed in this Court and the third under Article 226 of the Constitution filed in the Calcutta High Court and later on transferred to this Court, seek to challenge the vires of the Auroville (Emergency Provisions) Ordinance, 1980 (Ordinance No. 19 of 1980), later on replaced by the Auroville (Emergency Provisions) Act, 1980 (Act No. 59 of 1980). The fourth is an appeal by special leave against the order of the Division Bench of the Calcutta High Court dated 21st of November, 1980 vacating the interim order passed by a Single Judge in the writ petition. All these cases raise common questions of constitutional importance and, therefore, they were posted before the Constitution Bench.

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Man as a rational being, endowed with a sense of freedom and responsibility, does not remain satisfied with his material existence. He wants to know and realise the meaning of his life. It is this perennial urge in man that inspires him to indulge in great creative activities. He creates great cultures and civilisations and tries to realise the meaning and value of life in and through them.

To the biologist life is indefinable. It cannot be defined in terms of any things. The biologists have, however, explained and illustrated characteristics of life. But no formulation of the nature and characteristics of life has won general acceptance. It means that the insignia of life have not as yet been comprehended fully. Life has not been viewed in its proper perspective. It still seems to be a riddle, a mystery.

Life appears to be a mystery not only to the scientists but also to the philosophers. Philosophers may be said to be rather more conscious of the difficulties that the concept of life involves than the scientists. A philosopher is also aware of the fact that unless one is able to fathom the depths of life and has a full comprehension of its nature, one cannot understand and determine the nature of human personality and its destiny.

Similar other deeper and ultimate problems of life have been agitating the mind of seers and philosophers viz.,

Where did the world come from ? Was it created or evolved ? Is there any unity in diversity ? Each thinker tried to solve the ultimate problems in his own way. By and large they believed there is a real creative force behind the process of the world. Some called it as God, the others as ultimate truth, the conscience. According to some the objects, if left to themselves, would remain motionless and for their initial movement they must have required some external agency which might have set the universal ball rolling.

In early ages when man knew little about the laws of nature, he attributed all changes in nature to certain agencies, which due partly to his egocentric way of viewing things and partly to his conscious or sub-conscious awareness of the supremacy of man in the whole hierarchy of things in nature, were conceived after the image of man. Later on, in view of the supremacy of kings in all walks of life and their services to society, these unseen mighty agencies were fashioned specifically after them. Since God was conceived to be the supreme among such agencies. He naturally was sought to be represented by the supreme among kings. Thus anthropomorphism, i.e. the idea of

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God in terms of human figure is partly due to ignorance and partly due to the influence of uncommon persons in the society.

During 18th and 19th centuries the entire scientific thought sought to explain the universe mechanically and strived to do away with God completely. If it allowed anything like God to enter its universe at all, it did so only after transforming Him into a mechanical principle.

Later on with the formulation of the theory of relativity this isolationist view of things has given way to one of mutual relatedness of each object to every one else. Recognition of the immense potentiality of dynamism inherent in the mutual relatedness of objects in the universe has precluded the necessity of an extra-cosmic or metaphysical principle, such as the God of Aristotle who was supposed to have existed prior to the beginning of the world, and given it the first stroke of movement resulting in continuous motion ever since.

Thus, the idea of God has led to more or less its adjustment to fresh acquisition of knowledge in each epoch. A view of God which fails to do that tends to become discarded in favour of a new one. If it fails to keep pace with the expanding horizon of knowledge, it begins to lose its ground and shrink into a mere cult of only historical importance, it becomes fossilised and is liable to crumble at the vital touch of the present.

Our scriptures proclaimed from the very start that there is only one reality in the world which is described in different ways :

"Ekam Sad Wipra Bahuda Vadanti."

One of such Indian sages and philosophers was Sri Aurobindo. He was born on August 15, 1872 in Calcutta. When he was barely seven years old he was taken to England for education. In view of his amazing ability in learning languages he was offered scholarship to join Kings College, Cambridge. There he distinguished himself by his extraordinary ability to compose Greek and Latin verses. He is said to have won all the prizes for the year in Kings College for Greek and Latin verses. He sailed for India in 1893 and settled down at Baroda. He served in several capacities in Baroda State, sometimes as an administrator and at others as Professor of French and English. During his

stay there he learnt Sanskrit.

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The years from 1902 to 1910 were stormy ones for Sri Aurobindo as he embarked on a course of action to free India from British rule. As a result of his political activities and revolutionary literary efforts he was sent to jail in 1908. Two years later he fled from British India to refuge in the French Mandate of Pondicherry (modern Pondicherry) in South-East India. He took a decision to give up all political activities so as to concentrate himself with the life of meditation and yoga at Pondicherry.

Madam M. Alfassa, a French Lady, who came to be known as 'The Mother' became a disciple of Sri Aurobindo. Very soon more and more disciples came to join him from various parts of India and abroad and thus 'the Ashram' came into being. The disciples and devoted followers of Sri Aurobindo and the Mother with a view to propagate and practise the ideals and beliefs of Sri Aurobindo formed a Society called Sri Aurobindo Society in the year 1960. The petitioner Society at all material times was and is still a Society duly registered under the provisions of the West Bengal Societies Registration Act, 1961. This Society is completely distinct from Aurobindo Ashram in Pondicherry. The Society was established and registered for the purpose of carrying out inter alia the following objects in and outside India:

- (i) To make known to the members of the public in general the aims and ideals of Sri Aurobindo and the Mother, their system of integral yoga and to work for its fulfilment in all possible ways and for the attainment of a spiritualised society as envisaged by Sri Aurobindo;
- (ii) To Train selected students and teachers from all over the world in the integral system of education i.e., spiritual, psychic, mental, vital and physical;
- (iii) To help in cash and/or kind by way of donations, gifts, subsidies and in also other ways in the all round development of Sri Aurobindo International Centre of Education and to help similar centres of education;
- (iv) To establish study groups, libraries, Ashrams and other institutions, centres, branches and societies for study and practice of integral yoga of Sri Aurobindo and the Mother and to help the existing ones;

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- (v) To establish centres of physical culture, sports and volunteer organisations for inculcating and promoting the spirit of discipline, co-operation and service to others and to undertake activities for promotion of health and bodily perfection;
- (vi) To organise, encourage, promote and assist in the study, research and pursuit of science, literature and fine arts;
- (vii) To enquire, purchase, build, construct or take on lease or in exchange or hire any movable or immovable property, or gifts or privileges; and
- (viii) Generally to do all other acts, deeds and things necessary, conducive, suitable or incidental to or for the attainment of the above objects or any of them or part of them.

The management of the Society vested in its Executive Committee. Rules and regulations have been duly framed for the management of the Society and also for safe custody and protection of its assets, properties and funds.

Sri Aurobindo Society (hereinafter referred to as 'the Society') preaches and propagates the ideals and teachings of Sri Aurobindo inter alia through its numerous centres scattered throughout India by way of weekly meetings of its members.

The Mother as the founder-president also conceived of a project of setting up a cultural township known as 'Auroville' where people of different countries are expected to engage in cultural, educational and scientific and other pursuits aiming at human unity. The Society has been a channel of funds for setting up the cultural township known as Auroville.

At the initiative of the Government of India, the United Nations Educational, Scientific and Cultural Organisation being of the opinion that the Auroville project would contribute to international understanding and promotion of peace sponsored the project by proposing a resolution to this effect at its General Conference in 1966. This resolution was unanimously adopted at this Conference. By a further resolution passed in 1961 the UNESCO
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invited its member States and international non-governmental organisations to participate in the development of Auroville as an international cultural township to bring together the values of different cultures and civilisations in a harmonious environment with integrated living standards which correspond to man's physical and spiritual needs. 1970 UNESCO had directed its Director-General to take such steps as may be feasible, within the budgetary provisions to promote the development of Auroville as an important international cultural programme. Sri Aurobindo Society received large funds in the shape of grants from different organisations in India and abroad for development of the township. The assistance included contributions from the State Governments of the value of Rs 66.50 lakhs and the Central Government of the value of Rs. 26.14 lakhs.

After the death of the Mother on 17th of November 1973 a number of problems of varying nature affecting the smooth running of the project cropped up. The Government of India on receiving complaints about mismanagement of the project and misuse of funds by Sri Aurobindo Society set up a committee under the chairmanship of the Governor of Pondicherry with representatives of the Government of Tamil Nadu and of the Ministry of Home Affairs in the Central Government to look into the matter. The committee made a detailed scrutiny of the accounts of Sri Aurobindo Society relating to Auroville and found instances of serious irregularities in the management of the Society, misutilisation of its funds and their diversion to other purposes. Further, various other serious difficulties had arisen plaguing the management of Auroville and rendering thereby any further growth of the township almost impossible in the circumstances that taking over the management of Auroville became imperative to ensure growth of the township in tune with its objectives.

Keeping in view the international character of the project and considering the government's involvement in actively sponsoring the project through UNESCO, the growth and management of the project had become the primary responsibility of the Government of India. The ideals of the project formed India's highest aspirations, which could not be allowed to be defeated or frustrated. Sri Aurobindo Society had lost complete control over the situation and the members of the Auroville approached the Government of India to give protection against oppression and victimisation at

the hands of the said Society. There were internal quarrels between the various factions of Sri Aurobindo Society. There have also been instances

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of law and order situation. Financial management of the project has not been sound and several instances of mismanagement, diversion of funds have been revealed. A large sum of money was given by Sri Aurobindo Society to AURO Construction-an agency whose status is not at all defined, whose functions and capabilities for taking up large construction works also had not been made known. The Government in the circumstances could not be a silent spectator to the mismanagement of the project and intereine quarrels amongst its members, which if not checked could lead to the destruction of the project so nobly conceived. The Government, therefore, decided to issue a Presidential ordinance. After the filing of the writ petition the ordinance has now been replaced by the Auroville (Emergency Provisions) Act, 1980.

The constitutional validity of the Act has been challenged on four grounds:

1. Parliament has no legislative competence to enact the impugned statute.
2. The impugned Act infringes Articles 25, 26, 29 and 30 of the Constitution.
3. The impugned Act is violative of Article 14 of the Constitution; and
4. The Act was mala fide.

We take up the first ground first. According to Mr. Soli Sorabjee, counsel for petitioners, the Auroville (Emergency Provisions) Act, 1980, hereinafter referred to as the impugned Act, is a law relating to a matter in the State Legislative List and is, therefore, beyond the legislative competence of Parliament, hence unconstitutional and void. The impugned Act, according to him, provides for taking over the management of Auroville for a limited period from the Society. The management of Auroville was prior to the impugned Act vested in the Governing Body/Board of Trustees of the Society under the Provisions of the West Bengal Societies Registration Act and memorandum and rules and regulations of the Society, as is evident from section 5(5) of the impugned Act itself. The society was registered under the Societies Registration Act, 1860 but after the enforcement of the West Bengal Societies Registration Act, 1961 the Society was deemed to be

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registered under that Act. The West Bengal Societies Registration Act (for short 'the West Bengal Act') contains specific provisions to deal with the Society adequately. Sections 22 and 23 of the West Bengal Act empower the Registrar of the Societies to call for an information or explanation relating to the management of the affairs of any society registered thereunder and also to investigate into the affairs of the society, if there were circumstances suggesting that the society was guilty of mismanagement of its affairs or of any unlawful fact. The Registrar has also the power to prosecute and punish those persons found guilty of mismanagement. Under section 26 of the Act a society is also liable to be dissolved by the order of the Registrar on the ground inter alia of mismanagement. Obviously, therefore, the West Bengal Act contains in built self contained provisions for dealing with the mismanagement of the registered societies.

The West Bengal Act is a legislation exclusively relatable to Entry 32 of List II of Seventh Schedule. The

provisions of the West Bengal Act apply to the Society as is evident from section 2(f) and (g) of the impugned Act. Section 4(2) of the impugned Act, however, excludes the application of certain provisions of the West Bengal Act to the Society and declares that the provisions of the West Bengal Act will continue to apply to the Society subject however, to such exclusions. Section 8(2) provides that on relinquishment of management by the Central Government the management of the property of the Society forming part or relatable to Auroville shall vest in the Governing Body of the Society and shall be carried on in accordance with the provisions of the West Bengal Act. Section 11 of the impugned Act gives over-riding effect to the impugned Act over all other Acts (including the West Bengal Act) and instruments thereunder. Therefore, the object and purpose of the impugned Act is to take away the management of Auroville from the Society and to bring it under the management of the Central Government under the provisions of the impugned Act. This process necessarily involves during the takeover period the suspension of the provisions of the West Bengal Act and the memorandum and rules in so far as they are applicable to the management of the Auroville by the Society. Consequently, the impugned Act for a limited period abrogates, suspends or temporarily repeals certain provisions of the West Bengal Act or in other words the State Act is pro tanto overborne by the Central Act. Therefore, the question arises whether Parliament has legislative competence to repeal, permanently or temporarily, any provisions of the West

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Bengal Act which is a law made by the State Legislature in the exercise of its exclusive legislative competence under Entry 32 of the State Legislative List.

It was contended for the petitioners that the legislature has no authority to repeal statutes which it could not directly enact. The power to repeal or alter the statute is co-extensive with the power of direct legislation of a legislative body. In support of this contention reliance was placed on the Privy Council decision in Attorney General for Ontario v. Attorney General for the Dominion(1). The Parliament has no competence to enact the West Bengal Act, and therefore it had no power to repeal the provisions of the West Bengal Act by the impugned Act. Inasmuch as the Parliament has sought to repeal or override certain provisions of the West Bengal Act which are referable to Entry 32 in List II, and are exclusively within the competence of the State Legislature, the impugned Act by Parliament is without legislative competence and hence void.

It was further contended for the petitioners that the proper approach to the question is to see if the impugned legislation is covered by any of the entries in list II of the Seventh Schedule. It is not at all necessary to probe into the question as to whether the impugned legislation can be covered by any of the entries of List I or List III of the Seventh Schedule. Reliance was placed on the Union of India v. H.S. Dhillon(2) wherein the following proposition was laid down :

"It seems to us that the best way of dealing with the question of the validity of the impugned Act and with the contentions of the parties is to ask ourselves two questions, first, is the impugned Act legislation with respect to entry 49 List II ? and secondly, if it is not, it is beyond the legislative competence of Parliament ?

The positive case of the petitioners is that the

subject matter of the impugned Act is covered by entry 32, List II of the Seventh Schedule. The Solicitor General for the Union of India, however, tried to bring the impugned Act within the four corners of item 44, List I of the Seventh Schedule of the Constitution.

It may be pointed out at the very outset that the function of the Lists is not to confer powers. They merely demarcate the

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legislative fields. The entries in the three Lists are only legislative heads or fields of legislation and the power to legislate is given to appropriate legislature by Articles 245 and 248 of the Constitution. It would be appropriate at this stage to read entry 32, List II and entry 44, List I of the Seventh Schedule :

Entry 32, List II

"Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities ; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies."

Entry 44, List I:

"Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities."

For the petitioners, however, it was urged that the registration of the Society under the West Bengal Act does not make it a corporation. Halsbury's Laws of England, 3rd Edn., Vol. 9, p. 4, deals with corporations in the following terms:

"A corporation aggregate has been defined as a collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of the institution or the powers conferred upon it, either at the time of the creation or at any subsequent period of its existence."

A corporation has, therefore, only one capacity, namely, the corporate capacity. On an analysis it would appear that the essential elements in the legal concept of a corporation are: (1) a continuous identity, i.e., the original member or members or his or their successors are one, (2) the persons to be incorporated, (3) the name by which the persons are incorporated, (4) a place, and

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(5) words sufficient in law to show incorporation. In law the individual incorporators are members of which it is composed or something wholly different from the corporation itself, for a corporation is a legal person just as much as an individual. A corporation aggregate can express its will by deed under a common seal.

The Society was registered, as stated earlier, under the Societies Registration Act and later on was deemed to be registered under the West Bengal Societies Registration Act, 1961. Whether such a registered society can be held to be a corporation in the light of the functions of a corporation quoted above ? In the Board of Trustees, Ayurvedic and Unani Tibbia College v. The State of Delhi and Ors.(1) it was held that a society registered under the Societies Registration

Act may have the characteristics which are analogous to some of the characteristics of a corporation but is not a corporation. As it is not incorporated and remains an unincorporated society, therefore, it must come under the second part of entry 32 of List II. Reliance was placed in this case on *Taff Vale Railway v. Amalgamated Society of Servants*. (2) The petitioners also rely on *Katra Educational Society v. State of Uttar Pradesh and Ors.* (3) In that case also the appellant was a society registered under the Societies Registration Act 21 of 1860, which conducts an educational institution styled 'Dwarka Prasad Girls Intermediate College' at Allahabad. The management of the affairs of the society was entrusted by the memorandum of association to an executive committee whose membership was confined to the members of the society. The Intermediate Education Act was subsequently passed by the State Legislature. Section 8 of the Act authorised the State Government to promulgate regulations in respect of matters covered by sections 16A to 161 of the Act. The Regional Inspector of Girls Schools called upon the society to submit and get approved a scheme of administration of the institution managed by it. The sections were later on modified by subsequent amendment. The society challenged the Act on the ground that it was beyond the legislative competence of the State legislature inasmuch as in substance it sought to substitute the provisions of the Societies Registration Act, 1860, a field of legislation which was exclusively within the competence of Parliament and in any case the Act in so far as it affected the powers of the trustees of charitable institutions

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could not be enacted without conforming to the requirements of Article 254. The contention was repelled and it was held by this Court, relying on the Board of Trustees, Ayurvedic and Unani Tibia College v. The State of Delhi (supra) that by registration under the Societies Registration Act a society does not acquire corporate status. It cannot also be said that the pith and substance of the Act relates to charities or charitable institutions or to trusts or trustees. It was further held that the true nature and character of the Act falls within the express legislative power conferred by entry 11 of List II and merely because it incidentally trenches upon or affects a charitable institution or the powers of the trustees of the institution, it will not on that account be beyond the legislative authority of the State Legislature.

As the Society is an unincorporated society, says the counsel for petitioners, the impugned Act does not and cannot fall under entry 44 of List I of the Seventh Schedule and it would fall under entry 32 of List II of the Seventh Schedule and once it is covered by entry 32 of List II, it is not at all necessary to examine whether it may or it may not fall in other two lists of the schedule.

On the other hand, the stand of the Union of India as well as of the interveners, is that the first part of entry 32 of List II is not attracted as the subject matter of the impugned Act is not incorporation, regulation or winding up of a corporation. It has only taken over the management of Auroville from the Society for a short period in respect of the property. Auroville, of which the management has been taken over by the Central Government under the impugned Act means so much of the undertaking as form part of or relatable to the cultural township which is known as Auroville and the charter of which was proclaimed by the Mother on 25th day of February, 1968. The property of

Auroville is situated not in West Bengal but in Pondicherry in Tamil Nadu. The fact that the Society, which was registered under the West Bengal Act, has been a channel of funds for the setting up of the cultural township of Auroville and has been managing some aspects of Auroville, does not bring Auroville under the domain of the West Bengal Act. The right of management of property is itself a property right.

The Solicitor General also tried to bring the subject matter of the impugned legislation under various other entries of List I or List III of the Seventh Schedule viz., entries 10, 20, 41 and 42 of List III and entry 10 of List I. But it is not necessary for us to examine

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whether the subject matter of the impugned legislation falls under any of the entries of List I or List III if once we hold that the subject matter does not fall within the ambit of any of the entries of List II. Even if the subject matter of the impugned legislation is not covered by any specific entry of List I or List III, it will be covered by the residuary entry 97 of List I.

In our opinion the impugned Act even incidentally does not trench upon the field covered by the West Bengal Act as it is in no way related to constitution, regulation and winding up of the Society. In *R.C. Cooper v. Union*(1) it was laid down that a law relating to the business of a corporation is not a law with respect to regulation of a corporation.

Having heard the counsel for the parties, our considered opinion is that the subject matter of the impugned Act is not covered by entry 32 of List II of the Seventh Schedule. Even if the subject matter of the impugned Act is not covered by any specific entry of List I or III of the Seventh Schedule of the Constitution it would in any case be covered by the residuary entry 97 of List I. The Parliament, therefore, had the legislative competence to enact the impugned Act.

This leads us to the second ground of attack, namely, the impugned Act is violative of Articles 25, 26, 29 and 30 of the Constitution.

Article 25(1) confers freedom of conscience and the right freely to profess, practise and propagate religion. Of course, this right is subject to public order, morality and health and to the other Articles of Part III of the Constitution. Sub-clause (2) of this Article, however, provides that nothing in this Article shall affect the operation of any existing law or prevent the State from making any law-

- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

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Article 26 confers on every religious denomination or any section thereof, subject to public order, morality and health, the right-

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with

law.

In order to appreciate the contentions of the parties, it is necessary to know the implication of the words 'religion' and 'religious denomination'. The word 'religion' has not been defined in the Constitution and indeed it is a term which is hardly susceptible of any rigid definition. In reply to a question on Dharma by Yaksha, Dharmaraja Yudhisthira said thus:

tarko pratisth, sruty vibhinna
neko risiyasya matan pramanam
dharmaya tatwan nihitan guhayan
mahajano jein gatah sa pantha
Mahabharata-Aranyakaparvan 313.117.

(Formal logic is vacillating. Srutis are contradictory. There is no single rishi whose opinion is final. The principle of Dharma is hidden in a cave. The path of the virtuous persons is the only proper course.)

The expression 'Religion' has, however, been sought to be defined in the 'Words and Phrases', Permanent Edn., 36 A, p. 461 onwards, as given below:

"Religion is morality, with a sanction drawn from a future state of rewards and punishments.

The term 'religion' and 'religious' in ordinary usage are not rigid concepts.

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'Religion' has reference to one's views of his relations to his Creator and to the obligations they impose of re-verence for his being and character, and of obedience to his will.

The word 'religion' in the primary sense (from 'religare, to rebind-bind back), imports, as applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. In such sense we suppose there is no one who will admit that he is without religion.

'Religion' is bond uniting man to God, and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things.

'Religion' has reference to man's relation to divinity; to the moral obligation of reverence and worship, obedience and submission, It is the recognition of God as as object of worship, love and obedience; right feeling toward God, as highly apprehended.

'Religion' means the services and adoration of God or a god as expressed in forms of worship; an apprehension, awareness, or conviction of the existence of a Supreme Being; any system of faith, doctrine and worship, as the Christian religion, the religions of the orient; a particular system of faith or worship.

The term 'religion' as used in tax exemption law, simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets or belief, the content of such belief being of no moment.

While 'religion' in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and associations, and the term, "a religious purpose", as used in the constitutional provision exempting from taxation property used for religious purposes, means

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the use of property by a religious society or body of persons as a place for public worship.

'Religion' is squaring human life with superhuman life. Belief in a superhuman power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all 'religions'. The term 'religion' has reference to one's views on his relations to his creator, and to the obligations they impose of reverence for his being and character and obedience to his will.

The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

These terms have also been judicially considered in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt(1) where in the following proposition of law have been laid down:

- (1) Religion means "a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being".
- (2) A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well.
- (3) Religion need not be theistic.
- (4) "Religious denomination" means a religious sect or body having a common faith and organisation and designated by a distinctive name.
- (5) A law which takes away the rights of administration from the hands of a religious denomination altogether

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and vests in another authority would amount to violation of the right guaranteed under clause (d) of Art. 26."

The aforesaid propositions have been consistently followed in later cases including The Durgah Committee, Ajmer & Anr. v. Syed Hussain Ali & Ors(1) and can be regarded as well settled.

The words "religious denomination" in Article 26 of the Constitution must take their colour from the word 'religion' and if this be so, the expression "religious denomination" must also satisfy three conditions:

- (1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;
- (2) common organisation; and
- (3) designation by a distinctive name.

In view of the propositions laid down by the Court in the aforesaid reported cases we have to examine the teachings of Sri Aurobindo to see whether they constitute a religion. It will be appropriate at this stage to succinctly deal with the teaching of Sri Aurobindo.

According to Sri Aurobindo there is a divine consciousness pervading the whole universe. A portion of this consciousness by a process. Of involution through

various planes has finally resulted in the formation of the physical world, namely the stars, the planets, the earth and so on. Then came the reverse process of evolution i.e., from stone to plant, from plant to animal, from animal to man or in other words from matter to life, from life to mind and so on. This evolution will not stop with man who is only a transitional species. The evolution would go further transforming man into superman and the mind into supermind. The superman according to Sri Aurobindo would be totally different from man as man from animal and animal from plant. In this transformation back to all pervading divine consciousness in which man would become superman, man would lose his present character of body, vital and mind. His body would become a body of light, his vital a vital of light and his mind a mind of light.

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This transformation, or evolution of man into superman is bound to take place but in the course of thousands of years. This process, however, according to Sri Aurobindo can be accelerated by the practice of integral yoga. His theory of this transformation consists of two aspects:

- (a) An inner ascent of the consciousness to the Divine.
- (b) A descent of Divine consciousness in the mind, vital and body.

The distinctive feature of Sri Aurobindo's yoga is that it is universal. Any one born in any part of the world, born of parents professing any religion can accept his yoga. In short, he originated the philosophy of cosmic salvation through spiritual evolution. Divine existence that will appear through the development of the agnostic man will usher into a transcendental spiritual age in which man and universe are destined to become divine. D

Thus, according to Sri Aurobindo's theory of cosmic salvation the paths of union with Brahman are two way streets or channels. Enlightenment comes to man from above while the spiritual mind (supermind) of man strives through yogic illumination to reach upwards from below. When these two forces blend in an individual agnostic man is created. This yogic illumination transcends both reason and intuition and eventually leads to the freeing of the individual from the hands of individuality and by exclusion of all mankind, will eventually achieve Mukti or liberation. Sri Aurobindo created a dialectic mode of salvation not only for individual but for all mankind. Energy or Sachidananda (existence, consciousness and joy) comes down from Brahma to meet energy from the supermind of man striving upwards towards his spirituality (antithesis) and melts in man to create a new spiritual superman (synthesis). From these divine beings a divine universe is also evolved.

The Divine, though one, has two aspects—one is static and the other dynamic. The dynamic side of the Divine is the energy or the creative side. People in the past realised only the static aspect of the Divine and did not know much of the dynamic side as it is much more difficult to realise it. For this reason, the purpose of the creation was not understood by them and they declared the world to be futile and deceptive. That means either the Divine was unable to make a perfect world and He had no purpose in the creation or

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man has not been able to understand the same. Sri Aurobindo's yoga gives the full experience of both the aspects of the Divine, that is why he calls his Yoga the Integral Yoga or the Perfect Yoga. Sri Aurobindo says the

Divine is real and His creation is bound to be real. He has shown to the world the purpose of the creation and has declared that the world is still in an imperfect condition passing through the transitory Period towards its perfection.

Man is a creature of this world and he cannot know much of things other than this world. He has, however, a capacity in himself to develop to the next stage of evolution because Nature cannot stop with imperfect results and the present humanity must evolve further till the final perfection is obtained.

We look at things and happenings from the outer surface, having no knowledge whatsoever of the real causes and effects, the different forces and influences of the subtle worlds working behind them. We can see and feel only the results on the material plane and nothing more. Our senses have a very limited scope and they can give us the knowledge of the things which can only materialise. But in fact that is not all that we are. We have another part in ourselves which is veiled by the external consciousness and we call that as our soul-the spark of divinity within; which is one everywhere-the true self.

As our sense give us the knowledge of the external things by directing our consciousness outwardly, in the same way if we can direct our consciousness inwardly and rise into the inner consciousness, we can know the things of the higher worlds and go beyond the limitation of our physical sense, then only can we have the true knowledge of this world and the worlds beyond and that practice is called 'Yoga'.

The meaning of the word. 'Yoga' is to join-join our external consciousness with our true self.

According to Sri Aurobindo, humanity is under the sway of dark and ignorant forces and that is the reason for human sufferings, disease and death-all the signs of imperfection. It is clear that man has to progress towards a Light which brings knowledge, power, happiness! love, beauty and even physical immortality. The Divine is the essence of the whole universe and to realise and possess Him should be the supreme aim of human life. To acquire all the qualities of the Divine is the final purpose of Nature's evolution.

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The soul progresses by gathering experience in the ordinary life but A it is a very long, slow and devious process from birth to birth. Yoga hastens the soul's development. The progress that can be made in any lives is made in a few years by the help of Yoga. The Yoga of Sri Aurobindo is called the 'Integral Yoga' or the 'Supermental Yoga'. The Yogas of the past were only of ascent to the Spirit. Sri Aurobindo's Yoga is both of ascent and descent. One can realise the Divine in consciousness by the old Yogas but cannot establish the Divine on earth in a collective no less than in an individual physical life. In the old Yogas the world was considered either an illusion or a transitional phase: it had no prospect of having all the terms of its existence fulfilled. Sri Aurobindo on the other hand says that the world is a real creation of the Divine and life in it can be completely divinised down to the very cells of the body. The kingdom of God on earth can be brought about in the most literal sense by a total transformation of collective man. To put it in Sri Aurobindo's words:

"Here and not elsewhere the highest God head has to be found, the soul's divine nature developed out of the imperfect physical human nature and through unity with God and man and universe the whole large truth of

being discovered and lived and made visibly wonderful. That completes the long cycle of our becoming and admits us to a supreme result; that is opportunity given to the soul by the human birth and until that is accomplished, it can not cease."

For this transformation a new power called the 'supermind' which was sealed to this earth till now is needed, F

Shri Soli Sorabjee, for the petitioners, has contended that the followers of Sri Aurobindo satisfy the aforesaid three conditions and, therefore, they constitute a religious denomination. Strong reliance was placed on The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shitur Mutt (supra). In that case the followers of Rarnanuja, the fol lowers of Madhwacharya and the followers of other religious teachers were held to be the religious denomination. On the strength of this case it was contended that Sri Aurobindo was also a religious teacher and, therefore, there is no reason on principle which compels the conclusion that the followers of Aurobindo who share common faith and organisation and have a distinctive name do not constitute a

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religious denomination. A similar view was taken in Nalam Ramalingayya v. The Commissioner of Charitable and Hindu Religious Institutions and Endowments, Hyderabad(1). Dealing with the expression 'religious denomination', a Division Bench of the Andhra Pradesh High Court relying on Sri Lakshmindra's case (supra) observed as follows:

"To hold that there exists a religious denomination, there must exist a religious sect or a body having a common faith and organisation and designated by a distinctive name. Of course, any sect or sub. sect professing certain religious cult having a common faith and common spiritual organisation, such as Vaishnavites, Madhvites, Saivites may be termed as religious denomination but certainly not any caste, sub-caste or sect of Hindu religion, who worship mainly a particular deity or god."

It was further contended that the words "religion" and 'religious denomination' must not be construed in the narrow, restrictive and orthodox or traditional sense but must be given a broad meaning.

It may be observed that in the case of The Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (supra) different sects and sub. sects of the Hindu religion founded by various religious teachers were called a religious denomination on the ground that they being part of Hindu religion would also be designated as a religious denomination if the followers of Hindu religion constituted a religious denomination as the part must bear the impress of the whole. This observation was in this content. The other case taking a similar view viz. Nalam Ramalingayya v. The Commissioner of Charitable and Hindu Religious Institutions and Endowments, Hyderabad (supra) is also based on the same ground.

For the petitioners it was further submitted that Sri Aurobindo and the Mother were adverse to 'religion' as 'Religiosity' and "Religionism" but not to "True Religion". Reference was made to various writings of Sri Aurobindo and the Mother:

Sri Aurobindo

"In order to exceed our Nature and become divine, we must first get God, for we are the lower imperfect term of

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Our being. He is its higher perfect term, The finite to A become infinite, must know, have and touch infinity; the symbol being in order to become its own reality, must know, love and preceive that Reality. This necessarily is the imperative justification of religion; not of a church, creed or theology-for all these things are religiosity, not religion-but that personal and intimate religious temper and spirit which moves men to worship, to aspire to or to pant after his own idea of the supreme.

(SABCV 17, p. 54-55)

"It is true in a sense that Religion should be the dominant thing in life.. When it identifies with a creed or cult or system of ceremonial acts it may well become a retarding force There are two aspects of religion. Spiritual Religion and Religionism. True Religion is spiritual Religion, which seeks to live in spirit in what is . beyond the intellect.. Religionism on the other hand entrenches itself in some narrow pietistic exaltation of the lower members. It lays exclusive stress on intellectual dogmas, forms and ceremonies .

(SABCV 15, p. 166-67)

The Mother

"We give the name of religion to any concept of the world or the universe which is presented as the exclusive Truth in which one must have an absolute faith, generally because this Truth is declared to be the result of a revelation.

Most religions affirm the existence of a God and the rules to be followed to obey him, but there are some Godless religions, such as socio-political organisations which, in the name of an Ideal or the State, claim the same right to be obeyed

(MCV No. 13, p. 212-13)

"The first and principal article of these established and formal religions runs always "Mine is the supreme, the only truth, all others are in falsehood or inferior." For without this fundamental dogma, established religions could not have existed. If you do not believe and. proclaim that you

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alone possess the one or the highest truth, you will not be able to impress people and make them flock to you.

(MCV No. 3, p. 77)

"He who has a spiritual experience and faith, formulates it in the most appropriate words for himself. But if he is convinced that this expression is the only correct and true one for this experience and faith, he becomes dogmatic and tends to create a religion.

(MCV No. 13. p. 22)

"Imagine someone who, in some way or other has heard of something like the Divine or has a personal feeling that something of the kind exists, and begins to make all sorts of efforts, efforts of will, of discipline, efforts of concentration, all sorts of efforts to find this Divine, to discover what he is, to become acquainted with Him and unite with Him. Then this person is doing Yoga. Now if this person has noted down all the processes he has used and constructs a fixed system, and sets up all that he has discovered is absolute laws-for example he says, the Divine is like this, to find the Divine you must do this, make this

particular gesture, take this attitude, perform this ceremony and you must admit that this is the truth, you must say "I accept that this is the Truth and I fully adhere to it; and your method is the only right one, the only one which exists"- if all that is written down, organised arranged into fixed laws and ceremonies, it becomes a religion.

(MCV No. 8, p. 147)

Sri Aurobindo

"You express your faith in Sri Aurobindo with certain words, which are for you the best expression of this faith; this is quite all right. But if you are convinced that these very words are the only correct ones to express what Sri Aurobindo is, then you become dogmatic and are ready to create a religion."

(Sri Aurobindo Circle 21 No. 1965)

"That is why religions always blunder, always for they want to standardise the expression of an experience and impose it on all as an irrefutable truth. The experience was

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true, complete in itself, convincing-for him who had it. A The formulae he has made of it is excellent-for him; but to want to impose it on others is a gross error which has altogether disastrous consequences-always and which always takes away, far away from the Truth."

"That is why all religions, however fine they may be have always led men to the worst excesses. All crimes, all horrors that have been perpetrated in the name of religion are among the darkest spots in human history."

(Bulletin No. 1968, p. 129 31)

"You see, this is what I have learned : the failure of the religions. It is because they were divided. They wanted people to be religious to the exclusion of the other religious.. And what the new consciousness wants is: no more divisions. to find the meeting point."

(MCV No. 13, p. 293-94)

"There is no word so plastic and uncertain in its meaning as the word religion. The word is European and, therefore, it is as well to know first what the Europeans mean by it. In this matter we find them.. divided in opinion. Sometimes they use it as equivalent to a set of beliefs, sometimes as equivalent to morality coupled with a belief in God, sometimes as equivalent to a set of pietistic actions and emotions. Faith, works and pious observances, these are the three recognised elements of European religion...

Religion in India is a still more plastic term and may mean anything from the heights of Yoga to strangling your fellowman and relieving him of the worldly goods he may happen to be carrying with him. It would, therefore, take too long to enumerate everything that can be included in Indian religion."

-Sri Aurobindo (Glossary of Terms in Sri Aurobindo's Writings, p. 132)

Emphasis was also laid upon the opinion of the authoritative sources in support of the contention that the teachings of Sri Aurobindo constitute a religion and the Society a religious denomination. The Encyclopaedia of Philosophy (1972 ed., Vol. 1, pp.

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208-9) observes:

"Sri Aurobindo was an Indian metaphysician and founder of a new religious movement with headquarters at Pondichery. The religious movement associated with him has increased its following in India, and has made some converts in the West..... God must 'descend' into human experience. This illumination of individual will lead to the emergence of a divinised community,...Aurobindo produced a synthesis between older Indian religious ideas and the world affirming attitudes of Christian theism."

The Encyclopaedia Britannica talking about Sri Aurobindo says:

"Sri Aurobindo devoted himself to discover the way by which the Universe might be made divine...Sri Aurobindo has been acclaimed as the prophet of the Superman, as the hierophant of the 'new age'.....He has called his stand point that of a spiritual religion of humanity."

The Dictionary of Comparative Religion (1970 ed., p. 117) mentions:

"According to Aurobindo, there is a progressive evolution of the divine Being through matter no higher spiritual forms, and the Aurobindo movement is held to represent vanguard of this evolutionary process in our own times. Aurobindo practised and taught an 'integral yoga' in which meditative and spiritual exercises are integrated with physical, cultural and intellectual pursuits."

Encyclopaedia Americana (1966 Vol. 12, p. 634) states:

"He (Sri Aurobindo) abandoned politics to found a religious school(1910) at Pondicherry. A practising Yoga philosopher, he wrote numerous spiritual and mystical works."

The Gazetteer of India, published by the Government of India, Vol. 1, Country and People, Chapter 8, Religion, pp. 413-500, Section on Sri Aurobindo, states:

"Sri Aurobindo gave new interpretations of the vedas and the Vedanta. and in his Essays on the Gita he expoun-

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ded what he called "the integral view of Life". His great A work, The Life Divine, is a summing up of his philosophy of "the Descent of the Divine into Matter". The importance of Sri Aurobindo's mission lies in his attempt to explain the true methods of Yoga."

In the Newsweek (Nov. 20, 1972) the International Weekly, its 'religion' Editor, Woodward, writes:

"The Next Religion": Some students of oriental thought believe that Sri Aurobindo's spiritual vision and discipline may blossom into the first new religion of global scope since the rise of Islam thirteen centuries ago .. Sri Aurobindo left behind a nucleus of disciples in Pondicherry where the Master's work is carried on by 1800 devotees who live in India's largest Ashram or spiritual community."

Reference was also made to the opinions of the philosophers and professors of religion about the teachings of Sri Aurobindo. Frederic Spiegelberg, in his book 'Living Religions of the World', p. 190-205, writes that in Sri Aurobindo:

"We pass beyond specific religions to a synthetic vision of the religious impulse itself, a vision designed to embrace all previous and future history all previous and future paths.

Sri Aurobindo is a man worshipped by hundreds of

thousands and respected by millions.. In his retreat at Pondicherry he is less the philosopher of Hinduism than the philosopher of religion in general, the voice of that which comparative religion leaves undisputed."

Mr. Robert Neil Minor, Professor of Religion, University of Kansas, writes:

"on the level of Mind, then Aurobindo's system can not be falsified. It therefore cannot be verified on the level of Mind. But as a religion it is a total package. Aurobindo did not offer a religious view of which one could accept and reject parts. He offered an integral system based upon an integral vision. He offered, as well, the vision itself."

(Sri Aurobindo: The Perfect and the Good, 177)

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And, the opinions of similar other professors of religion and philosophers have been quoted to show that the teachings of Sri Aurobindo have been treated as religion by theologians and by professors and by important news agencies.

The interpretations of the term 'religion' used in different Acts were also referred to but it is not necessary to refer to them as we are to interpret the term 'religion' and 'religious denomination, with references to Articles 25 and 26 of the Constitution.

Mr. S. Rangarajan appearing for the petitioners in one of the other writ petitions substantially adopted the contentions raised by Mr. Soli Sorabjee and further supplemented the same by raising the following points. According to him the ingredients of religion are .

- (1) A spiritual ideal;
- (2) A set of concepts or precepts on God-Man relationship underlying the ideal;
- (3) A methodology given or evolved by the founder or followers of the religion to achieve the ideal; and
- (4) A definite following of persons having common faith in the precepts and concepts;

and in order to constitute a 'religious denomination' two further ingredients are needed:

- (5) The followers should have a common organisation;
- (6) They should be designated and designable by a distinct name-This may usually be the name of the founder himself.

The counsel contends that the ideal in Sri Aurobindo's religion is a 'Divine Life in a Divine Body' by Divinising Man and by trans forming his mind, vital and physical. According to Sri Aurobindo, in the beginning the whole universe was full of all-pervading Divine consciousness. He called the dynamic portion of the Divine as 'Supermind'. The Divine-the Supermind-according to him, wanted to see its manifestation even in matter. By a process of involution the Divine, which is the subtlest became grosser and grosser giving

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rise to various planes of consciousness. This was achieved through , Involution-Evolution and Divinisation of Man. The methodology for achieving the ideal was the 'Integral Yoga' which only means using all the methods-Bhakthi, knowledge, work meditation, concentration, attaining perfection to derive optimum benefits of each one of them, by total surrender to the Divine and by becoming the instrument of the Divine.

Sri Aurobindo has a definite following. In the beginning, this consisted of a few disciples. Slowly their

number increased and an Ashram grew. Then there are definite organisations, Ashrams, Sri Aurobindo Society with more than 300 centres the world over. The devotees of Sri Aurobindo are also referred to as Aurobindonians.

There are certain other attributes which indicate that the followers of Sri Aurobindo constitute a religious denomination, for example, chanting of Mantras, specially prepared by Sri Aurobindo, a particular symbol also used for identification, place of pilgrimage 1) is the Samadhi of Sri Aurobindo and the Mother, provision for meditation at the Samadhi. Flowers are offered at the Samadhi by the devotees.

The uniqueness of his philosophy and his teachings according to Mr. Rangarajan constitute religion and the special features in his philosophy also make the Society a religious denomination. Thus, all the ingredients of religion and religious denomination are satisfied and there is no reason why his teachings be not taken to be religious and the institutions viz, the Society and the Auroville be not taken to be a religious denomination within the meaning of Articles 25 and 26 of the Constitution.

The Solicitor-General for the Union of India and Mr. F.S. Nariman, counsel for the respondents Nos. 6 to 238, on the other hand contended that the teachings of Sri Aurobindo do not constitute religion nor is the Society and the Auroville a religious denomination, and in any case there is no violation of Article 26 of the Constitution inasmuch as the impugned Act has taken over only the management of Auroville from the Society and does not interfere with the freedom contemplated by Articles 25 and 26 of the Constitution. . H

Reference was made to rule 9 of the Rules and Regulations of 786

Sri Aurobindo Society, which deals with membership of the Society and provides:

"9. Any person or institution or organisation either in India or abroad who subscribes to the aims and objects of the Society, and whose application for membership is approved by the executive Committee, will be member of the Society. The membership is open to people everywhere without any distinction of nationality, religion, caste, creed or sex."

The only condition for membership is that the person seeking the membership of the Society must subscribe to the aims and objects of the Society. It was further urged that what is universal cannot be a religious denomination. In order to constitute a separate denomination, there must be something distinct from another. A denomination, argues the counsel, is one which is different from the other and if the Society was a religious denomination, then the person seeking admission to the institution would lose his previous religion. He cannot be a member of two religions at one and the same time. But this is not the position in becoming a member of the society and Auroville. A religious denomination must necessarily be a new and one new methodology must be provided for a religion. Substantially, the view taken by Sri Aurobindo remains a part of the Hindu philosophy. There may be certain innovations in his philosophy but that would not make it a religion on that account.

In support of his contention the Solicitor-General placed reliance on *Hiralal Mallick v. State of Bihar*(1). Dealing with meditation this Court observed:

"Modern scientific studies have validated ancient vedic insights a bequeathing to mankind new

meditational, yogic and other therapeutics, at once secular, empirically tested and transreligious. The psychological, physiological and sociological experiments conducted on the effects of Transcendental Meditation (TM, for short) have proved that this science of creative intelligence, in its meditational applications, tranquilizes the tense inside, helps meet stress

(1) [19781] SCR 301.

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without distress, overcome inactivities and instabilities and A by holistic healing normalises the fevered and fatigued man. Rehabilitation of psychiatric patients, restoration of juvenile offenders, augmentation of moral tone and temper and, more importantly, improvement of social behaviour of prisoners are among the proven finding recorded by researchers. Extensive studies of TM in many prisons in the U.S.A., Canada, Germany and other countries are reported to have yielded results of improved creativity, higher responsibility and better behaviour. Indeed, a few trial courts in the United States have actually prescribed TM as a recipe for rehabilitation. As Dr. M.P. Pali, Principal of the Kasturba Medical College, Mangalore, has put down:

"Meditation is a science and this should be learnt under guidance and cannot be just picked up from books. Objective studies on the effects of meditation on human body and mind is a modern observation and has been studied by various investigation at MEERU-Maharishi European Research University. Its tranquilizing effect on body and mind, ultimately leading to the greater goal of Cosmic Consciousness or universal awareness, has been studied by using over a hundred parameters. Transcendental Meditation practised for 15 minutes in the morning and evening every day brings about a host of beneficial effects.

To name only a few:

1. Body and mind get into a state of deep relaxation.
2. B.M.R. drops, less oxygen is consumed. F
3. E.E.G. shows brain wave coherence with 'alpha' wave preponderance.
4. Automatic stability increases. G
5. Normalisation of high blood pressure.
6. Reduced use of alcohol and tobacco.
7. Reduced stress, hence decreased plasma cortisol and blood lactate. H
8. Slowing of the heart etc."

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This Court dealing with punishment in a criminal case in *Giasuddin v. A . P. State*(1) again observed:

"There is a spiritual dimension to the first page of our Constitution which projects into penology. Indian courts may draw inspiration from Patanjali sutra even as they derive punitive patterns from the Penal Code (most of Indian meditational therapy is based on the sutras of Patanjali).

on the strength of these authorities it is contended for the Union of India that the integral yoga propounded by Sri Aurobindo is only a science and not a religion.

The Society itself treated Auroville not as a religious institution. Auroville is a township which was conceived, planned and developed as a centre of international culture for the promotion of the ideals which are central to the

United Nations Educational Scientific and Cultural organisation (UNESCO). These ideals have been explained and proclaimed extensively in the writings of Sri Aurobindo and the Mother. In the year 1966, Sri Aurobindo Society, devoted as it was to the teachings of Sri Aurobindo and guided by the Mother, proposed this cultural township to UNESCO for the commemoration of the 20th anniversary of the UNESCO. The Union of India took up the matter with UNESCO and it did so on the explicit understanding that Auroville as proposed was in full consonance and conformity with India's highest ideals and aspirations and that would help Auroville promote the aims and objects of UNESCO. Accordingly, at the Fourteenth Session of the General Conference of the UNESCO held in Paris in 1966, a resolution was passed noting that the proposal made by Sri Aurobindo Society to set up Auroville as a cultural township where people of the different countries will live together in harmony in one community and engage in cultural, educational, scientific and other pursuits and that the township will represent cultures of the world not only intellectually but also presenting different schools of architecture, paintings, sculpture, music etc. as a part of living, bringing together the values and ideals of civilisations and cultures, commended the project to those interested in UNESCO's ideals as the project would contribute to international understanding and promotion of peace.

(1) [1978] 1 SCR 153 @ 164.

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The said resolution of the UNESCO was followed by two other resolutions-one at the 15th Session in 1968 and the other at the 16th Session in 1970. In the second resolution the UNESCO had noted that the Society had taken steps to establish Auroville as an international cultural township which would fulfil the ideas of the UNESCO. The UNESCO invited the member States and nongovernmental organisations to participate in the development of Auroville as an international cultural township designed to bring together the values of different cultures and civilisations in harmonious environment. The foundation stone of Auroville was laid on 28 February 1968 with the participation of youth or many nations, representing the coming together of all Nations in a spirit of human unity. The UNESCO conceived Auroville township as an instrument of education, promoting mutual respect and understanding between people in keeping with the spirit of Universal Declaration of Human Rights and Universal Declaration of Principles of International Cultural Cooperation.

The Government of India took active part in making the 1 UNESCO interested in the project and take decision as aforesaid for the development of Auroville as an international cultural township with the participation of countries who are members of the UNESCO.

Sri Aurobindo Society had brought the proposal of Auroville to the Government of India and explained that Auroville was to be an international cultural township. This fact is evident from the brochure submitted by Sri Aurobindo Society to the Government of India.

The Charter of Auroville given by the Mother also indicates that it is not a religious institution, as is evident from the following: F

"1. Auroville belongs to nobody in particular. Auroville belongs to humanity as a whole. But to live in Auroville one must be the willing servitor of the Divine's consciousness. G

2. Auroville will be the place of an unending education, of constant progress, and a youth-that never ages.
3. Auroville wants to be the bridge between the past and the future. Taking advantage of all discoveries from without and from within, Auroville will boldly spring towards future realisations.

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4. Auroville will be the site of material and spiritual research for a living embodiment of an actual human unity.

On the own admission of the General Secretary of Sri Aurobindo Society, Pondicherry, Auroville was to be a symbol of international cooperation, an effort to promote international understanding by bringing together in close juxtaposition the values and ideals of different civilisations and cultures. The cultures of different regions of the earth will be represented in Auroville in such a way as to be accessible to all not merely intellectually in ideas, theories, principles and languages, but also in habits and customs; art in all forms-paintings, sculpture, music, architecture, decor, dance; as well as physically through natural scenery, dress, games, sports and diet. It will be a representation in a concrete and living manner; it will have a museum, an art gallery, a library of books, recorded music etc. It will also have other objects which will express its intellectual, scientific and artistic genius, spiritual tendencies and national characteristics.

While participating in UNESCO meeting "Design for Integrated Living Programme in Auroville" was presented and that also goes a long way to show that it was only a cultural township and not a religious institution.

Numerous utterings by Sri Aurobindo or the Mother unmistakably show that the Ashram or Society or Auroville is not a religious institution. In Sri Aurobindo's own words (The Teaching and the Ashram of Sri Aurobindo, 1934, p. 6):

"The Ashram is not a religious association Those who are here come from all religions and some are of no religion. There is no creed or set of dogmas, no governing religious body; there are only the teachings of Sri Aurobindo and certain psychological practices of concentration and meditation, etc., for the enlarging of the consciousness, receptivity to the Truth, mastery over the desires, the discovery of the divine self and consciousness concealed within each human being, a higher evolution of the nature."

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Sri Aurobindo himself said(1):

"I may say that it is far from my purpose to propagate any religion, new or old."

Sri Aurobindo says again(2):

"We are not a party or a church or religion,"

Sri Aurobindo exposes(3):

"Churches and creeds have, for example, stood violently in the way of philosophy and science, burned a Giordano Bruno, imprisoned a Galileo, and so generally misconducted themselves in this matter that philosophy and science had a self-defence to turn upon Religion and rend her to pieces in order to get a free field for their legitimate development."

The Mother said on 19.3.1973:

"Here we do not have religion."

Sri Aurobindo says again(4):

"Yogic methods have some thing of the same

relation to the customary psychological workings of man as has to scientific handling of the natural force of electricity or of steam to the normal operations of steam and of electricity. And the, too are formed upon a knowledge developed and confirmed by regular experiment, a practical analysis and constant results....All methods grouped under the common name of Yoga are special psychological processes founded on a fixed truth of nature and developing, out of normal functions, powers and results which were always latent but which her ordinary movements do not easily or do not often manifest."

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It is pertinent to quote Mother's answer to a question(1):

"Q. Sweet Mother, what is the difference between Yoga and religion;

Mother's Ans: Ah! My child.. It is as though you were asking me the difference between a dog and a cat."

There can be no better proof than what Sri Aurobindo and the Mother themselves thought of their teachings and their institutions to find out whether the teachings of Sri Aurobindo and his Integral Yoga constitute a religion or a philosophy. The above utterings from time to time by Sri Aurobindo and the Mother hardly leave any doubt about the nature of the institution. It was on the basis that it was not a religious institution that the Society collected funds from the Central Government and the Governments of States and from abroad and the other non-governmental agencies,

Mr. F.S. Nariman appearing for respondents Nos. 6 to 238 adopted the arguments advanced by the Solicitor General Mr. K. Parasaran, and supplemented the same. He submitted that the Society was registered under the Societies Registration Act, 1860 and a purely religious society could not have been registered under the Societies Registration Act. Section 20 of the Societies Registration Act provides what kind of Societies can be registered under the Act. It does not talk of religious institutions. Of course, it includes a society with charitable purposes. Section 2 of the Charitable Endowments Act, however, excludes charity as a religious purpose. It was further contended that the nature of the institution can be judged by the Memorandum of Association. The Memorandum of Association does not talk of any religion. The purpose of the Society was to make known to the members and the people in general the aims and ideals of Sri Aurobindo and the Mother; their system of Integral Yoga and to work for its fulfillment in all possible ways; to train selected students and teachers from all over the world in the Integral System of Education, i.e., the spiritual, psychic, mental, vital and physical; to help in cash or in kind by way of donations etc.; to organise, encourage, promote and assist in the study, research, and pursuit of science literature and fine arts etc. Nowhere it talks of propagating religion. This is the surest

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index to know whether the Auroville or the Society was a religious A institution.

It was further contended that a religious denomination must be professed by that body but from the very beginning the Society has eschewed the word 'religion' in its constitution. The Society professed to be a scientific research organisation to the donors and got income-tax exemption on the footing that it was not a religious institution. The Society has claimed exemption from income-tax under s. 80 for the donors and under s. 35 for itself on that ground. Ashram Trust was different from Auroville

Ashram. The Ashram Trust also applied for income-tax exemption and got it on that very ground. So also Aurobindo Society claimed exemption on the footing that it was not a religious institution and got it. They professed to the Government also that they were not a religious institution in their application for financial assistance under the Central Scheme of Assistance to voluntary Hindu organisations.

On the basis of the materials placed before us viz., the Memorandum of Association of the Society, the several applications made by the Society claiming exemption under s. 35 and s. 80 of the Income-tax Act, the repeated utterings of Sri Aurobindo and the Mother that the Society and Auroville were not religious institutions and host of other documents there is no room for doubt that neither the Society nor Auroville constitute a religious denomination and the teachings of Sri Aurobindo only represented his philosophy and not a religion.

Even assuming but not holding that the Society or the Auroville were a religious denomination, the impugned enactment is not hit by Article 25 or 26 of the Constitution. The impugned enactment does not curtail the freedom of conscience and the right freely to profess practise and propagate religion. Therefore, there is no question of the enactment being hit by Article 25.

Article 26 as stated earlier confers freedom to the religious denomination:

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and

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- (d) to administer such property in accordance with law.

The impugned enactment does not stand in the way of the Society establishing and maintaining institutions for religious and charitable purposes. It also does not stand in the way of the Society to manage its affairs in matters of religion. It has only taken over the management of the Auroville by the Society in respect of the secular matters. The position before the present Constitution came into force was that the State did not interfere in matters of religion in its doctrinal and ritualistic aspects treating it as a private purpose, but it did exercise control over the administration of property endowed for religious institutions (dedicated to the public) treating it as a public purpose, and this position has not changed even under the present Constitution.(1)

The scope and extent of the rights conferred by Articles 25 and 26 of the Constitution are now well-settled by the decision of this Court.

To start with, in *The Commissioner, Hindu Religions Endowments Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*(2) dealing with various aspects of Article 26 of the Constitution this Court observed as follows:

"The other thing that remains to be considered in regard to article 26 is, what is the scope of clause (b) of the article which speaks of management of its own affairs in matters of religion ? "The language undoubtedly suggests that there could be other affairs of a religious denomination or a section thereof which are not matters of religion and to which the guarantee given by this clause would not apply....."

It will be seen that besides the right to manage

its own affairs in matters of religion, which is given by clause (b), the next two clauses of article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing

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from the right to manage its own affairs in matters of A religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which clause (b) of the article applies

..... freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down. Under article 26(b), therefore, a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. Of course, the scale of expenses to be incurred in connection with these religious observations would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature; for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under article 26(b) it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under clause (d) of Article 26." G

The same principle was reiterated by this Court in The Durgah Committee, Ajmer and Anr. v. Syed Hussain Ali and ors.(1).

In Tilkyat Shri Govindlalji Maharaj v. The State of Rajasthan and ors.(2) it was held that the right to manage the properties of

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a temple was a purely secular matter and could not be regarded as a religious practice under Art. 25(1) or as amounting to affairs in matters of religion under Art. 26(b) consequently, the Nathdwara Temple Act in so far as it provided for the management of the properties of the Nathdwara Temple under the provisions of the Act did not contravene Arts. 25(1) and 26(b) of the Constitution.

In Sastri Yagnapurushadji and Ors. v. Muldas Bhudardas Vaishya and Anr.(1) the appellants who were the followers of the Swaminarayan sect and known as satsangis, filed a representative suit for a declaration that the relevant provisions of the Bombay Harijan Temple Entry Act, 1947 (as

amended by Act 77 of 1948) did not apply to their temples because, the religion of the Swaminarayan sect was distinct and different from Hindu religion and because, the relevant provisions of the Act were ultra vires. Dealing with the question this Court observed as will appear from the headnote:

"The Indian mind has consistently through the ages been exercised over the problem of the nature of godhead, the problem that faces the spirit at the end of life, and the interrelation between the individual and the universal soul. According to Hindu religion the ultimate goal of humanity is release and freedom from the unceasing cycle of births and rebirths and a state of absorption and assimilation of the individual soul with the infinites. On the means to attain this and there is a great divergence of views; some emphasise the importance of Gyana, while others extol the virtue of Bhakti or devotion, yet others insist upon the paramount importance of the performance of duties with a heart full of devotion and in mind inspired by knowledge. Naturally it was realised by Hindu religion from the very beginning of its career that truth was many-sided and different views contained different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponent's point of view. Because of this broad sweep of Hindu philosophic concept under Hindu philosophy, there is no scope for excommunicating any notion or principle as heretical and rejecting it as such. The development of Hindu religion and philosophy shows that from time to time saints and

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religious reformers attempted to remove from Hindu A thought and practices, elements of corruption and superstition, and revolted against the dominance of rituals and the power of the priestly class with which it came to be associated, and that led to the formation of different sects. In the teaching of these saints and religious reformers is noticeable a certain amount of divergence in their respective views; but underneath that divergence lie certain broad concepts which can be treated as basic and there is a kind of subtle indescribable unity which keeps them within the sweep of broad and progressive Hindu religion. The first among these basic concepts is the acceptance of the Vedas as the highest authority in religious and philosophic matters. This concept necessarily implies that all the systems claim to have drawn their principles from a common reservoir of thought enshrined in the Vedas. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma, it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not satisfy the traditional features of a religion or creed. It is a way of life and nothing more. The Constitution makers were fully conscious of the broad and comprehensive character of Hindu religion; and while guaranteeing the fundamental right to freedom of religion made it clear that reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion.

Philosophically, Swaminarayan was a follower of Ramanuja and the essence of his teachings is acceptance of the Vedas with reverence, recognition of the fact that the

path of Bhakti or devotion leads to Moksha, insistence or devotion to Lord Krishna and a determination to remove corrupt practices and restore Hindu religion to its original glory and purity. This shows unambiguously and unequivocally that Swaminarayan was a Hindu saint. Further, the facts that initiation is necessary to become a Satsangi, that persons of other religions could join the sect by initiation without any process of proselytising on such occasions, and that Swaminarayan himself is treated as a God, are not inconsistent with the basic Hindu religious and philosophic theory."

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In Digyadarsan Rajendra Ramdassji Varu v. State of Andhra Pradesh and Anr.(1) dealing with Articles 25 and 26 of the Constitution this Court on the facts and circumstances of the case held:

"It has nowhere been established that the petitioner has been prohibited or debarred from professing practising and propagating his religion. A good deal material has been placed on the record to show that the entire math is being guarded by police constables but that does not mean that the petitioner cannot be allowed to enter the math premises and exercise the fundamental right conferred by Art. 25(I) of the Constitution As regards the contravention of clause (b) and (d) of Art. 26 there is nothing in ss. 46 and 47 which empowers the Commissioner to interfere with the autonomy of the religious denomination in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion the denomination professes or practises nor has it been shown that any such order has been made by the Commissioner or that the Assistant Commissioner who has been put in charge of the day-to-day affairs is interfering in such matters."

On these observations the impugned Act in that case was upheld by the Court.

In 1. Krishnan v. G.D.M. Committee(2) a full Bench of the Kerala High Court dealing with Arts. 25 and 26 observed:

"...the real purpose and intendment of Articles 25 and 26 is to guarantee especially to the religious minorities in this country the freedom to profess, practise and propagate their Religion, to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire properties and to administer such properties in accordance with law subject only to the limitations and restrictions indicated in those Articles. No doubt, the freedom guaranteed by these two Articles applied not merely to religious minorities but to all persons (Article 25) and all

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religious denominations or sections thereof (Article 26). A But, in interpreting the scope and content of the guarantee contained in the two Articles the Court will always have to keep in mind the real purpose underlying the incorporation of these provisions in the fundamental rights chapter. When a challenge is raised before a court against the validity or any statute as contravening the fundamental rights guaranteed under Article 25 and 26 it is from the above perspective that the court will approach the question and the tests to be applied for adjudging the validity of the statutes will be the same irrespective of whether the person or

denomination complaining about the infringement of the said fundamental right belongs to a religious minority or not."

In Ramalingayya v. The Commissioner of Charitable and Hindu Religious Institutions & Endowments(1) dealing with 'religious denomination' the Andhra Pradesh High Court held:

"Thus it is the distinct common faith and common spiritual organisation and the belief in a particular religious teacher of philosophy on which the religious denomination is founded or based, that is the essence of the matter, but not any caste, or sub-caste or a particular deity worship by a particular caste or community."

In United States v. Daniel Andrew Seegar(2) the U.S. Supreme Court had to construe the provisions of s. 6(j) of the Universal Military Training and Service Act of 1948 which, as a prerequisite of exempting a conscientious objector from military service, requires 1? his belief in a relation to a Supreme Being involving duties superior to those arising from any human relation. Defendant's claim to exemption as conscientious objector was denied after he, professing religious belief and faith and not disavowing, although not clearly demonstrating any belief in a relation to a Supreme Being, stated that "the cosmic order does, perhaps, suggest a creative intelligence" and decried the tremendous "spiritual" price man must pay for his willingness to destroy human life. The expression 'Supreme Being' was liberally construed.

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The Court dealing with the idea of God quoted from various religious teachers thus:

"The community of all peoples is one. One is their origin for God made the entire human race live on all the face of the earth. One, too, is their ultimate end, God. Men expect from the various religions answers to the riddles of the human condition: What is man? What is the meaning and purpose of our lives 1 What is the moral good and what is sin? What are death, judgment, and retribution after death?"

Ever since primordial days, numerous peoples have had a certain perception of that hidden power which hovers over the course of things and over the events that make up the lives of man; some have even come to know of a Supreme Being and Father. Religions in an advanced culture have been able to use more refined concepts and a more developed language in their struggle for an answer to man's religious questions

The proper question to ask, therefore, is not the futile one. Do you believe in God? But rather, What kind of God do you believe in?

Instead of positing a personal God, whose existence man can neither prove nor disprove, the ethical concept is founded on human experience. It is anthropocentric, not theocentric. Religion, for all the various definitions that have been given of it, must surely mean the devotion of man to the highest ideal that he can conceive. And that ideal is a community of spirits in which the latent moral potentialities of men shall have been elicited by their reciprocal endeavours to cultivate the best in their fellow men. What ultimate reality is we do not know; but we have the faith that it expresses itself in the human world as the power which inspires in men moral purpose."

On an analysis of the aforesaid cases it is evident that even assuming that the Society or Auroville was a

religious denomination, clause (b) of Art. 26 guarantees to a religious denomination a right to manage its own affairs in matters of religion. It will be seen that besides the right to manage its own affairs in matters of

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religion, which is given by clause (b), the next two clauses of Art. 26 A guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to a religious group or institution are not matters of religion to which clause (b) of the article applies. The impugned Act had not taken away the right of management in matters of religion of a religious denomination, if the Society or Auroville is a religious denomination at all, rather it has taken away the right of management of the property of Auroville.

Thus the impugned Act neither violates Article 25, nor Article 26 of the Constitution.

The impugned Act was also feebly sought to be challenged as violating Arts. 29 and 30 of the Constitution. We are at a loss to understand how these two articles have any bearing on the impugned Act. These two articles confer four distinct rights:

- (i) Right of any section of citizens to conserve its own language, script or culture (Art. 29(1)).
- (ii) Right of all religious or linguistic minorities to establish and administer educational institutions of their choice (Art. 30(I)).
- (iii) Right of an educational institution not to be discriminated against in matter of state aid on the ground that it is under the management of a minority (Art. 30(2)).
- (iv) Right of a citizen not to be denied admission into a state maintained or state aided educational institution on grounds only of religion, race, caste, language (Art. 29(2)).

The impugned Act does not seek to curtail the rights of any section of citizens to conserve its own language, script or culture

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conferred by Art. 29. In order to claim the benefit of Art. 30(I) the community must show: (a) that it is a religious or linguistic minority, (b) that the institution was established by it. Without satisfying these two conditions it cannot claim the guaranteed rights to administer it.

In re The Kerala Education Bill(1) Article 30(1) of the Constitution which deals with the right of minorities to establish and administer education institutions, came for consideration. The Kerala Educational Bill, 1957, which had been passed by the Kerala Legislative Assembly was reserved by the Governor for consideration by the President.

The contention of the State of Kerala was that the minority communities may exercise their fundamental right under Article 30(1) by establishing educational institutions of their choice wherever they like and administer the same in their own way and need not seek recognition from the Government, but that if the minority communities desire to have state recognition they must submit to the terms imposed, as conditions precedent to recognition, on every

educational institution. The claim of the educational institutions of the minority communities, on the other hand was that their fundamental right under Art. 30(1) is absolute and could not be subjected to any restriction whatever. This Court, however, did not accept the extreme views propounded by the parties on either side but tried to reconcile the two. It observed:

Article 29(1) gives protection to any section of citizens residing in the territory of India having a distinct language, P script or culture of its own right to conserve the same the distinct languages, script or culture of a minority community can best be conserved by and through educational institutions, for it is by education that their culture can be inculcated into the impressionable mind of the children of their community. It is through educational institutions that the language and script of the minority community can be preserved, improved and strengthened. It is, therefore, that Art. 30(1) confers on all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice.

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The minorities, quite understandably, regard it as essential that the education of their children should be in accordance with the teachings of their religion, and they hold, quite honestly, that such an education cannot be obtained in ordinary schools designed for all the members of the public but can only be secured in schools conducted under the influence and guidance of people well versed in the tenets of their religion and in the traditions of their culture. The minorities evidently desire that education should be imparted to the children of their community, in an atmosphere congenial to the growth of their culture. Our Constitution makers recognised the validity of their claim and to allay their fears conferred on them the fundamental rights referred to above. But the conservation of the distinct languages, script or culture is not the only object of choice of the minority communities. They also desire that scholars of their educational institutions should go out in the world well and sufficiently equipped with the qualifications necessary for a useful career in life. But according to the Education Code now in operation to which it is permissible to refer for ascertaining the effect of the impugned provisions on existing state of affairs, the scholars of unrecognised schools are not permitted to avail themselves of the opportunities for higher education in the University and are not eligible for entering the public services. Without recognition, therefore, the educational institutions established or to be established by the minority communities cannot fulfill the real objects of their choice and the rights under Art. 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions."

In *Rev. Sidhaibhai Sabhai and Ors. v. State of Bombay and Anr.* (1) dealing with article 30(1) of the Constitution, this Court held:

"The right established by Art. 30(1) is a fundamental right declared in terms absolute. Unlike

the fundamental

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freedom guaranteed by Art. 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institutions, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution, the right guaranteed by Art. 30(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective an educational institution. Such regulation must satisfy a dual test-the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it."

In *State of Kerala v. Mother Provincial*(1) the provisions of the Kerala University Act, 1969 which was passed to reorganise the University of Kerala with a view to establishing a teaching, residential and affiliating University for the southern districts of the State of Kerala, were challenged. Some of the provisions effected private colleges, particularly those founded by minority communities in the State. Their constitutional validity was challenged by some members of those communities on various grounds in writ petitions filed in the High Court. This Court held:

"The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others."

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On an analysis of the two articles, Art. 29 and Art. 30 and the three cases referred to above, it is evident that the impugned Act does not seek to curtail the right of any section of citizens to conserve its own language, script or culture conferred by Art. 29. The benefit of Art. 30(I) can be claimed by the community only on proving that it is a religious or linguistic minority and that the institution was established by it. In the view that we have taken that Auroville or the Society is not a religious denomination, Articles 29 and 30 would not be attracted and, therefore, the impugned Act cannot be held to be violative of Articles 29 and 30 of the Constitution.

This leads us to the third ground, namely, the impugned Act being violative of Article 14 of the Constitution inasmuch as Sri Aurobindo Society has been singled out for hostile treatment, and the legislation is against this particular institution. In order to appreciate this argument it would be necessary to refer to the circumstances which

led to the passing of the impugned Act.

Sri Aurobindo Society is a society registered under the West Bengal Societies Registration Act, 1961. The main objective of the Society is inter alia to make known to the member, and people in general the aims and ideals of Sri Aurobindo and the Mother; their system of Integral Yoga and to work for its fulfillment in all possible ways and for the adoption of a spiritualised society as envisaged by Sri Aurobindo. The Society was engaged right from its inception in collecting funds for the promotion of works of Sri Aurobindo and the Mother. The Society contributes funds to Sri Aurobindo Ashram and its international Centre of Education, Auroville. As the work of the Society began to grow it needed larger and larger funds for the sustenance of its own activities. In due course the Society opened several centres all over India, particularly at Calcutta, Bombay, New Delhi and Madras. It has centres also in U.S.A., Zurich, Osaka and Nairobi. Sri Aurobindo Society has two registered offices, one at Calcutta and another at Pondicherry. In order to facilitate the work of Sri Aurobindo Society to collect funds, on a representation made by the Society the Income-tax Department of the Government of India gave exemption to the Society from income-tax under section 35(1)(iii) of the Income Tax Act. Income-tax exemption was claimed by the Society on the ground that it is engaged in educational, cultural and scientific activities and social sciences research. It was on this understanding that the exemption from income-tax was granted to the

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Society and it is through this exemption that the Society, had collected a huge amount from the public.

For the first few years the development of Auroville showed a remarkable progress and development and things were growing at a rapid pace. A number of Indians and foreigners settled down in Auroville and devoted themselves to various activities of planning, designing, agriculture, education, construction and other works such as those of hand-made paper and other crafts and industries. A remarkable harmony among members of Auroville was visible and this gave a promise to the Government of India of an early fulfillment of the ideals for which Auroville was established and encouraged by UNESCO and other international organisations of the world.

After the passing away of the Mother in 1973, however, the situation changed and the Government received information that the affairs of the Society were not being properly managed, that there was mismanagement of the funds of the Society and diversion of the funds meant for Auroville to other purposes.

The accounts of Sri Aurobindo Society were audited upto the year ending 31st December, 1974. For the years 1960 to 1971 the E; audit was conducted by late Sri Satinath Chattopadhyaya, Chartered Accountant and for the years 1972 to 1974 by Sri T. R. Thulsiram, Chartered Accountant and Internal Auditor of the Society. The letter addressed by him to the President, Sri Aurobindo Society dated May 26, 1976 relating to the affairs of Bharat Niwas as on 31st March, 1976 is revealing one and the relevant portion is extracted below:

"Thus we have an unutilised deficit of about 10 lakhs at the end of 31.12.74 and of about 12 lakhs at the end of 1975 or upto 31.3.76. The situation has not improved upto now. The activities of construction have almost come to a close after 31.12.74. Further, there are heavy bank overdrafts apart from the reduction in

O. D. facilities and freezing of the money in O. D. account. Therefore, in these circumstances it is clearly seen that government monies received for the specific purpose of Bharat Niwas have been diverted for other purposes and there are no more free liquid resources either as cash or in bank accounts. So we cannot explain saying that monies are immediately available for construction and that the construction activities are

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being continued without stop. This really is a serious matter A that calls for the proper solution.

Therefore, in the above circumstances it is absolutely necessary that earlier steps be taken to correct the situation before serious audit objections are raised by the Government Auditors. We are afraid to say that we ourselves would be constrained to make a qualified report of audit, if the state of affairs does not get corrected immediately."

The situation in Auroville became so acute that at the instance of the Ministry of Home Affairs, Government of India, an enquiry was conducted in 1976 by the Chief Secretary, Pondichery, into certain aspects of the functioning of Sri Aurobindo Society. The report of the Chief Secretary mentioned instances of serious irregularities in the management of the Society, suspected misuse of funds and auditors' comments about the misutilisation of funds and its diversion, and it was suggested that a further probe in the financial matters of the Society and organisations connected with the Auroville Project may be made by a team of competent auditors.

Considering the special position of Auroville as a cultural township of international importance, the substantial grants of the order of more than Rs. 90 lakhs given by the Government of India and the State Governments towards the fulfillment of the ideals of Auroville, the presence of a large number of foreigners in Auroville who had left their hearth and home for Auroville which had received sponsorship from Indian Government and UNESCO, the continued groupism and infighting which was bringing bad name to Auroville and the special responsibility of the Government of India in regard to the foundation and development of Auroville, the Government of India decided to set up a committee under the Chairmanship of the Lt. Governor of Pondichery with the Chief Secretary of the Tamil Nadu and Additional Secretary of the Ministry of Home Affairs as members by a resolution of the Ministry of Home Affairs Government of India, dated 21st December, 1976.

The above Committee got a quick audit made of the funds of the Society and the grants given to the Society for Auroville through a team of competent auditors.

An important finding of this Committee was that the earlier apprehension about instances of serious irregularities in the manage

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ment of the Society, misutilisation of the funds, and the diversion was confirmed. This Committee also submitted to the Government of India two volumes of the audit report. Some of the other important findings of the Committee based on audit reports were as follows:

"The professional services required from Architects for the construction of Phase I of Bharat Niwas were not rendered by them and still full payment was made to these architects.

Rs. 13.30 lacs sanctioned by various State

Governments for construction of pavillions of their respective States were diverted and utilised towards construction in Bharat Niwas for common zone facilities-this was without the approval of the State Government.

Whilst the books of Bharat Niwas show that there was an unutilised balance of Rs. 22.64 lacs the Project was without any liquid resources-thus showing that moneys received out of Govt. grants were diverted for other activities notwithstanding that this position was brought to the notice of the Society by their statutory auditor in its letter dated 26.5.76.

Although there was no fresh receipt of steel in Bharat Niwas Phase 2 the stock was purportedly revalued at a higher rate of Rs 2000 per metric ton against the earlier rate of Rs. 1700 per metric ton adopted on 31.12.73 This resulted in an over-statement of the value of stock to the amount of Rs. 42,000/-.

There was a transfer of materials of stock worth Rs. 2.30 lacs to Auro Stores by a journal entry on 31.12.1975 Auro Stores is a concern of Navjattas. The audit team concluded that as a result of this there was an unreal expenditure which had not resulted in outflow of resources and resulted in overstatement of expenditure on Bharat Niwas.

An undischarged amount of Rs. 1.45 lacs payable to the contractors Messrs E.C.C. Ltd. towards the construction of Bharat Niwas stood included in the total expenditure as on 31.12.74-the utilisation certificates furnished

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with regard to total expenditure were held to be incorrect to that extent.

Although materials purchased out of Govt. grants could not be hypothecated without the approval of the Government the Society hypothecated steel from Auro Stores and obtained a loan of Rs. 6.88 lacs from the State Bank of India-resulting in an expenditure of interest charge of Rs. 9561.40 which was held to be inadmissible and an irregularity.

Although the Society completed construction of Health Centre in Dec. 1973 at a total cost of over Rs. 2 lacs and the Health Centre started functioning from Dec. 1973 the Society had not furnished the utilisation certificates in the prescribed form nor was the completion report duly certified by the PWD authorities.

Rs. One lac was stated to have been received for the Project of World University"-and the money was stated to be utilised. There is no such World University in Auroville.

A difference of Rs. 1,29,848/- was noticed in the case of the value of a piece of land purchased-the value of the land said to have been purchased and not entered in the register was Rs. 88,5261/-and the amount said to have been paid in excess of the value for the land actually purchased was Rs. 31,322.

The operation of purchase of lands was through individuals who were given huge sums of money as advances. It was noticed that in one transaction an amount of Rs. 43,250/-representing the balance out of advance paid to one V. Sunderamurthy was adjusted as being the cost of stamp papers used during 1971. The said individual had already taken into account the cost of stamp papers whilst adjusting all other advances

during 1971. The voucher for this amount also did not give the details of the document numbers in respect of which stamp papers worth Rs. 43,250/ were used.

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In 1975-76 land to the extent of 23.86 acres was purchased at the cost of Rs. 91,496 but was registered in the names of four individuals and the value of the lands so registered in individual names were treated as advances to these individuals. The names of these individuals were "Maggi", "Kalit", "Shyamala" and "Ravindra Reddy".

The audit team found that assets and liabilities of the project were overstated to the extent of Rs. 5,10,670.

The balance-sheet of Auroville project has been so framed that the assets side does not throw any light as to whether the corresponding assets from donations have been acquired and the problem is aggravated by the fact that a register of assets is not maintained.

There was a complete lack of financial control which was the most serious drawback of the system and this want of financial control was revealed in a number of established and conventional procedure which would have serious implications.

It was not possible for the Audit Team to establish nor the Society could establish that moneys paid were really exchanged with certain materials or goods of corresponding value. The lack of adequate scrutiny resulted in the fact that in most of the cases the bills were not supported by adequate details of materials having been passed.

The expenditure of Auroville project working out to nearly 3 crores, there was no system of control of expenditure-no rules and regulations or procedures according to which a particular individual or office bearer could incur an expenditure only upto a particular limit and not above that. Persons who were authorised to operate bank accounts had full authority to draw as much as they wanted and there was no system of reporting or feed-back.

In view of the large scale construction activities, large amounts of stores materials of various descriptions were being handled by the project. We have not come across proper records of stores and stock accounts being maintained by the project, This indeed was a serious drawback

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since in the absence of such a system it was not possible to A verify from the records that the moneys which were shown as having been spent for purchase of materials were really paid in exchange of the materials of the required quantity and quality and whether the material purchased was actually received by the project, whether the quantity which was shown as having been utilised for the construction has been actually so utilised and the balance of stores which represented by the value was the real balance representing the various stock items.

Huge amounts of cash were being handled by persons operating the main account and the number of individuals who were given advances-there was no system under which cash could be verified at any interval.

Even apart from the audit report, one very important point may be mentioned. The Society has been claiming that they have been holding more than Rs. 20

lacs in reserve in the account of Aurobindo Society to meet their obligations with regard to Auroville. And yet the Society has incurred heavy debts in the name of Auroville and allocated huge accumulation of interest to the extent of Rs. 20 lacs."

The Committee came to the conclusion that the time was ripe for taking recourse to either of the following two alternatives:

- (a) Incorporation of Sri Auroville Society by a statute as a society of national importance and bringing it under Entry 63 of the Union List of the Seventh Schedule of the Constitution;
- (b) Takeover of the management of Auroville project by the Government for a limited period by legislation under Art. 31 A(1)(b) of the Constitution.

There was an intensive examination of the Committee's report as also of the audit report. All kinds of possibilities were explored by the Government of India for remedying the situation including several discussions with the managers of the Sri Aurobindo Society.

At the same time, it was apparent that the Government grants which were given for the construction works remained unutilised and

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diverted. The construction work itself was stagnant. The Auroville township had been conceived to be spread over 10 sq. miles (minimum) for about 50,000 people. Considering the multi-dimensional task, the work which was accomplished by 1976 was not even marginal. It became obvious that the work had already come to a standstill and that there was not much prospect of further growth of Auroville.

On a close examination of the audit report certain clarifications were sought from those at the helm of the affairs in the Sri Aurobindo Society on various points which had come to light through the audit report. An extensive correspondence on this subject was, therefore, undertaken. The Government of India received from the Sri Aurobindo Society answers which were often evasive and which only confirmed the findings of the Committee's report and audit report.

It may also be mentioned that the atmosphere in Auroville became so bad that it gave rise to law and order problem. The Government of Tamil Nadu was obliged several times to promulgate orders under s. 144 Cr. P. C. Even so, the situation remained so bad that there were about three instances in which residents of Auroville sustained injuries because of fighting between groups.

The Government of India examined the charges and counter charges in detail. Union Education Minister also paid a visit to Auroville towards the end of October, 1980. Thus after full consideration of various aspects of the problem, the Government of India decided to take recourse to the promulgation of an ordinance. Accordingly, the impugned ordinance was promulgated on 10th November, 1980.

Mr. K. K. Venugopal, appearing for the petitioners, however, referred to the decision of the respective Ministries on the audit report. During October-November, 1979, he contended the Ministry of Education and the Ministry of Home Affairs took decision on six major points. One of the points on which decision was taken was that there were no legal grounds for takeover of Auroville and neither the Government was interested. This decision, among others was later on endorsed by the respective Union Ministers. The report submitted by Mr. P. P. Srivastava, Joint Secretary, Ministry of Home Affairs, who visited Pondichery and

Auroville on a fact finding

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mission from 8th to 10th October, 1980, contained the following A observations:

"All along the view of the Ministry of Home Affairs has been that there is no case of takeover of the administration of Auroville. This is an internal matter and the Government need not interfere. The Government of Tamil Nadu should be asked to depute two officers to help the Shri Aurobindo Society for administering the finances and the administration."

The contention of Mr. Venugopal is that the audit report had once been considered and the Government did not choose to take any further steps on assurance given on the behalf of the Society that the irregularities pointed out by the audit report will be rectified and proper management would be carried out in future. There was absolutely no reason for Government to have come forward with the proposal of the impugned ordinance or the impugned Act taking over the management of the Auroville from the Society. The circumstances obtaining on the date of the impugned ordinance or the impugned Act were the relevant considerations for the enactment. And the earlier report of the audit which had already been considered by the Government and the irregularities having been condoned, they cannot be made the basis for the impugned ordinance or the Act.

For the respondents, however, it is contended that despite the assurance given by the office bearers of the Society nothing tangible had been done and the condition of the institution was going from bad to worse.

The Government was involved in this case inasmuch as it was at the instance of the Government that the UNESCO and other members of UNESCO had generously donated for the construction of Auroville, the cultural township to the tune of crores of rupees. It was, therefore, a matter of vital concern for the Government of India to see that the donations so generously received from Government of India and from other States as also from abroad were properly utilised to carry out the mission of Shri Aurobindo and the Mother.

In view of the prevailing situation in the Auroville and the Society the only way to put the management on the wheels was to take over the management of the institution.

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It was further contended by Mr. Venugopal that if the management of the institution had been taken over by the Government on the ground of mis-management, there could be other institutions where similar situation might be prevailing. There should have been a general legislation rather than singling out Shri Aurobindo Society for hostile treatment.

The argument cannot be accepted for two reasons. Firstly, because it has not been pointed out which were the other institutions where similar situations were prevailing. Besides, there is a uniqueness with this institution inasmuch as the Government is also involved. Even a single institution may be taken as a class. The C: situation prevailing in the Auroville had converted the dream of the Mother into a nightmare. There had arisen acute law and order situation in the Auroville, numerous cases were pending against various foreigners, the funds meant for the Auroville had been diverted towards other purposes and the atmosphere was getting out of hand. In the circumstances the Government intervened and promulgated the ordinance and

later on substituted it by the impugned enactment. It cannot be said that it is violative of Article 14 on that account. We get support for our view from the following decisions.

In *Budhan Chowdhury v. The State of Bihar*(1) a Constitution Bench of seven Judges of this Court explained the true meaning and scope of Article 14 as follows:

"It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupation or the like, what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that

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article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

These observations were quoted with approval by this Court in *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors.*(1) In this case the Court further laid down:

- "(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
- (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
- (c) that it must be presumed that the legislature under stands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
- (d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest,
- (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and
- (f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of

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always holding that there must be some undisclosed and unknown reasons for subjecting certain

individuals or corporations to hostile or discriminating legislation."

In *Ram Prasad Narayan Sahi and Anr. v. The State of Bihar and ors.*(1) the Court of Wards had granted to the appellant a large area of land belonging to the Bettiah Raj which was then under the management of the Court of Wards, on the recommendation of the Board of Revenue, at half the usual rates. The Bihar Legislature passed an Act called the Sathi Lands (Restoration) Act, 1950 which declared that, notwithstanding anything contained in any law for the time being in force the settlement granted to the appellants shall be null and void and that no party to the settlement or his successors in interest shall be deemed to have acquired any right or incurred any liability thereunder, and empowered the Collector to eject the appellants if they refused to restore the lands. The appellants challenged the constitutionality of the Act under Article 226. This Court held:

"The dispute between the appellants and the State was really a private dispute and a matter to be determined by a judicial tribunal in accordance with the law applicable to the case, and, as the Legislature had, in passing the impugned enactment singled out the appellants and deprived them of their right to have this dispute adjudicated upon by a duly constituted Court, the enactment contravened the provisions of article 14 of the Constitution which guarantees to every citizen the equal protection of the laws, and was void.

Legislation which singles out a particular individual from the fallow subjects and visits him with a disability which is not imposed upon the others and against which even the right of complaint is taken away is highly discriminatory."

The facts of this case are distinguishable from the case in hand. In that case the legislation was made only for a particular person. In the cases in hand on account of the uniqueness of the institution and on account of the involvement of the Government and the

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stake being a high one about public funds, Parliament could take a particular institution as a class by itself.

In *Ram Chandra Deb v. The State of Orrisa*(1) Sri Jagannath Temple Act, 1955 was sought to be challenged being violative of Article 14 of the Constitution inasmuch as the legislature had made a separate Act for a particular temple alone and there were adequate provisions in the Orrisa Religious Endowments Act, 1951 which was the general Act applicable to all public temples and religious institutions and contained adequate provisions to meet all situations similar contention as raised in the present cases was raised in that case that a particular temple had been singled out for hostile discrimination. It was contended that the Commissioner of Hindu Religious Endowments had ample powers under the Act to frame a scheme for the proper management of the temple also and the legislature by enacting a separate piece of legislation for the temple alone, ignoring the other temples of Orrisa such as those at Bhubaneswar where also there might be similar administration, bad contravened Article 14. This argument was, however, repelled by the Orrisa High Court with the following observations:

"The principles underlying Art. 14 of the Constitution have been reiterated in several decisions of the Supreme Court and it is unnecessary to repeat them in detail. All that article prohibits is class

legislation and not reasonable classification for the purpose of legislation so long as such classification is not arbitrary and "bears a rational relation to the object sought to be achieved by the statutes in question".. In Charanjit Lal v. Union of India (1950 SCR 869) a separate law enacted for one company was held not to offend Art. 14 of the Constitution on the ground that there were special reasons for passing legislation for that company."

When that case came up in appeal to this Court at the instance of the son of the petitioner, in Raja Birakishore v. The State of Orrisa(2) this Court held:

"There is no violation of Art. 14 of the Constitution. The Jagannath Temple occupies a unique position in the State of Orrisa and is a temple of national importance and

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no other temple in that State can compare with it. It stands in a class by itself and considering the fact that it attracts - pilgrims from all over India, in large numbers, it could be the subject of special consideration by the State Government. A law may be constitutional even though it related to a single individual if on account of special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself."

It was next contended that there were provisions in the Societies Registration Act itself to meet the situation arising in Auroville. There was no necessity for the impugned ordinance or the enactment. Shri Venugopal referred to the various provisions of the Societies Registration Act to show that it was open to the Registrar to call for an explanation from the Society for any illegality or irregularity committed by them or if there was a misappropriation of funds, inasmuch as the Act was a self-contained Code and there was absolutely no justification for any ordinance or the enactment. The law and order situation also could be controlled by resorting to the provisions of the Code of Criminal Procedure.

Whether the remedies provided under the Societies Registration Act were sufficient to meet the exigencies of the situation is not for the Court to decide but it is for the Government and if the Government thought that the conditions prevailing in the Auroville and the Society can be ameliorated not by resorting to the provisions of the Societies Registration Act but by a special enactment, that is an area of the Government and not of the Court.

Para 6 of the preamble of the Act gives the reasons for the enactment. It reads:

"AND whereas pursuant to the complaints received with regard to mis-use of funds by Shri Aurobindo Society, a Committee was set up under the Chairmanship of the Lt. Governor of Pondicherry with representatives of the Government of Tamil Nadu and of the Ministry of Home Affairs in the Central Government, and the said Committee had after detailed scrutiny of the accounts of Sri Aurobindo Society found instances of serious irregularities in the management of the said Society, mis-utilisation of its funds and their diversion to other purposes."

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On the basis of para 6 of the preamble it is argued that the grounds A given were non-existent at the time of the impugned ordinance or the enactment and, therefore, the law

made on that basis itself is bad.

We are afraid the argument has no substance. Obviously, there were serious irregularities in the management of the said Society as has been pointed out in the earlier part of the judgment. There has been mis-utilisation of funds and their diversion to other purposes. This is evident from the audit report. There was no material change in the situation on the date of the impugned ordinance or the Act, rather the situation had grown from bad to worse and the sordid situation prevailing in the Auroville so pointed out by the parties fully justified the promulgation of the ordinance and the passing of the enactment. Of course, each party tried to apportion the blame on the other. Whosoever be responsible, the fact remains that the prevailing situation in the Auroville was far from satisfactory. The amount donated for the construction of the cultural township Auroville and other institutions was to the tune of Rs. 3 crores. It was the responsibility of the Government to see that the amount was not mis-utilised and the management was properly carried out. So, the basis of the argument that the facts as pointed out in the preamble were non est is not correct.

Mr Venugopal tried to explain the various adverse remarks made by the auditors. On a perusal of the audit report, which is a voluminous one, all we can say is that on the facts found by the audit committee, the report is rather a mild one. There seems to be serious irregularities in the accounts. A substantial amount received by way of donations had not been properly spent, there being mis-utilisation and diversion of the funds.

The Attorney-General appearing for the Union of India contended that even assuming for the sake of argument, but not conceding that the facts brought to the notice of the legislature were wrong, it will not be open to the Court to hold the Act to be bad on that account.

We find considerable force in this contention. The Court would not do so even in case of a litigation which has become final on the ground that the facts or the evidence produced in the case were not correct. The Parliament had to apply its mind on the facts before it.

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The Attorney-General also raised a sort of preliminary objection on behalf of the Union of India, that in view of Art. 31A the petitioners could not challenge the Act on the ground of contravention of Art. 14 of the Constitution. In so far as it is material for the purposes of this case, Art. 31A reads:

"31A. (I) Notwithstanding anything contained in article 13, no law providing for-

- (a)
- (b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to assure the proper management of the property,
- (c)
- (d)
- (e)

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19."

We find this argument to be plausible but instead of expressing any concluded opinion on this point we preferred to deal with the various contentions raised by Mr. Venugopal on Art. 14 of the Constitution in view of the importance of the question involved in this case.

A subsidiary point was further submitted by Mr. Venugopal that no qualifications have been prescribed and, therefore any person could be appointed as an Administrator. We can normally assume that the Government would certainly appoint a responsible person as an administrator especially when there is a heavy stake in which the Government of India is also involved inasmuch as at the instance of the Government the UNESCO gave financial support to the institution.

It was further submitted that the report of the Committee was a tainted one as the Chairman, Kulkarni and the Secretary were parties. There is no foundation for this submission.

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We, therefore, hold that the impugned ordinance or the impugned Act is not violative of Article 14 of the Constitution.

Now we turn to the last but not the least important ground of mala fides. The Act is sought to be challenged on the ground that it is mala fide. This argument is on the basis that Kirit Joshi, who had his own axe to grind in the matter, was instrumental in getting the impugned ordinance and the Act passed. This argument has been advanced only to be rejected. Allegations about mala fides are more easily made than made out. It will be too much to contend that Kirit Joshi, who was only an Educational Adviser to the Government of India, Ministry of Education and Culture (Department of Education), was responsible for the impugned enactment. The impugned enactment was passed following the due procedure and merely because he made a complaint about the situation prevailing in the management of Auroville and the Society, it cannot be said that the impugned enactment was passed at his behest.

For the reasons given above all the writ petitions must fail. In view of the final decision on the writ petitions themselves, it is not necessary to pass any specific order in the appeal filed against the interim order in one of the writ petitions. The parties in the circumstances of the case are left to bear their own costs.

S. R.

Petitions dismissed.

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