

**Twelfth Kerala Legislative Assembly**  
**Bill No. 223**

THE MADRAS HINDU RELIGIOUS AND CHARITABLE  
ENDOWMENTS (AMENDMENT) BILL, 2008

*A*

*BILL*

*further to amend the Madras Hindu Religious and Charitable Endowments Act, 1951 and for certain matters connected therewith.*

*Preamble.*—WHEREAS, it is expedient further to amend the Madras Hindu Religious and Charitable Endowments Act, 1951, for the purpose hereinafter appearing and for certain matters connected therewith ;

BE it enacted in the Fifty-ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008.

(2) It shall be deemed to have come into force on the 9th day of January, 2008.

2. *Amendment of section 6.*—In section 6 of the Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951) (hereinafter referred to as the principal Act),—

(1) for clause (2), the following clause shall be substituted, namely:—

“(2) “Assistant Commissioner” means the Assistant Commissioner appointed under sub-section (4) of section 8C;”;

(2) for clause (3), the following clause shall be substituted, namely:—

“(3) “Board” means, except for the purposes of Chapter XI, the Board constituted under sub-section (1) of section 7 of this Act;”;

(3) for clause (5), the following clause shall be substituted, namely:—

“(5) “Commissioner” means the Commissioner appointed under sub-section (1) of section 8C;”;

(4) for clause (7), the following clause shall be substituted, namely:—

“(7) “Deputy Commissioner” means the Deputy Commissioner appointed under sub-section (4) of section 8C;”;

(5) after clause (9), the following clause shall be inserted, namely:—

“(9a) “Malabar area” means the area comprised in the Malabar District referred to in sub-section (2) of section 5 of the States Re-organisation Act, 1956 (Central Act 39 of 1956).”.

3. *Amendment of the Heading of Chapter II.*—In the heading of Chapter II of the principal Act, for the words “The Commissioner and other Controlling Authorities”, the words “The Board and its Officers” shall be substituted.

4. *Substitution of new section for section 7.*—For section 7 of the principal Act, the following section shall be substituted, namely:—

“7. *Constitution of the Malabar Devaswom Board.*—(1) As soon as after the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008, the Government shall, by notification in the Gazette, constitute a Board by name “the Malabar Devaswom Board”.

(2) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of both movable and immovable properties and to enter into contracts and may sue and be sued in the name of the Board.

(3) The Board shall consist of the following nine Hindu members, namely:—

(a) one philosopher of Hindu religion ;

(b) one social reformer of Hindu religion ;

(c) one member from any of the Temple Advisory Committees constituted under section 14 ;

(d) one woman, wellversed in Hindu devotional songs ;

(e) one member from Scheduled Caste Communities ;

(f) one member from Scheduled Tribe Communities ;

(g) one woman member ;

(h) two other members.

*Explanation.*—For the purpose of this section, “Scheduled Castes” and “Scheduled Tribes” shall have the same meaning as is assigned to them in clauses (24) and (25) respectively, of article 366 of the Constitution of India.

(4) The members mentioned in clauses (a) to (f) shall be nominated by the Hindus among the Council of Ministers of the State and the members mentioned in clauses (g) and (h) shall be elected by the Hindus among the Members of the Kerala Legislative Assembly as provided in section 7 I.

(5) The Hindus among the Council of Ministers of the State shall also nominate a member of the Board as its President.

(6) The head office of the Board shall be at Kozhikode.

(7) In the absence of a duly constituted Board, the Government may, by notification in the Gazette, appoint a Secretary to Government, who is a Hindu, as the Chief Commissioner to exercise all powers and perform all duties of the Board under this Act.

5. *Insertion of new sections 7A to 7L.*—After section 7 of the principal Act, the following sections shall be inserted, namely:—

“7 A. *Term of office of the members.*—(1) Every member of the Board shall be entitled to hold office for a period of two years from the date of his nomination or election, as the case may be.

(2) A person who ceases to be a member of the Board by reason of expiration of his term of office shall, if he is otherwise qualified, be eligible for re-nomination or re-election :

Provided that such a member shall not be eligible for re-nomination or re-election consecutively.

7B. *Qualification for membership.*—A person shall be qualified for nomination or election as a member of the Board only if he,—

(i) is a permanent resident of the Malabar area;

(ii) professes the Hindu religion;

(iii) is a believer of temple worship; and

(iv) has completed the age of fifty years in the case of male members and sixty years in the case of female members.

7C. *Oath by a member.*—Where a person has been elected or nominated as a member of the Board, before entering the office as a member, he shall take an

oath before the Commissioner of the Board stating that he is a person professing Hindu religious rites and is a believer of God and temple worship.

7D. *Disqualification for membership.*—No person shall be eligible for nomination or election as a member of the Board, if he,—

(i) is of unsound mind ; or

(ii) is an undischarged insolvent ; or

(iii) is an office-holder or a servant of the Government, a Local Authority, or a Devaswom Board ; or

(iv) is interested in an existing contract for the supply of any material to the Board or for executing any work on behalf of the Board ; or

(v) has been convicted by a criminal court for any offence involving moral turpitude ; or

(vi) is a Member of the Parliament or of the Legislature of any State or of a Local Self Government Institution ; or

(vii) has been removed from holding any office in pursuance of a court order ; or

(viii) involves in the business of production or sale of liquor.

7E. *Supervening disqualifications.*—(1) Where the Government are satisfied that a person elected or nominated as a member of the Board has become subject to any of the disqualifications specified in clause (i) to (viii) of section 7D or does any act prejudicial to the interest of the Board or absent himself from three consecutive meetings without any sufficient reason or ceases to profess the Hindu religion, it may, by order, for reasons to be stated therein, remove such member from office:

Provided that a member shall not be removed under this sub-section, unless he is given a reasonable opportunity of showing cause against his removal.

(2) A member of the Board may also be removed from his office by the Government on the ground of proved misbehaviour or incapacity, based on a complaint received from a Hindu, after conducting a detailed inquiry in the prescribed manner.

*Explanation.*—If a member does any act, which is intended or is likely to endanger communal harmony or which tends to promote feelings of enmity or hatred among different classes of citizens, he shall, for the purpose of this sub-section be deemed to be guilty of misbehaviour.

7F. *Resignation by a member.*—A member of the Board may, by writing under his hand, addressed to the Government Secretary in charge of Devaswom Department, resign his membership and the resignation shall take effect on the date of acceptance of the same by the Government.

7G. *Filling up of temporary vacancies.*—When the office of a nominated or elected member of the Board becomes vacant due to death, resignation, removal or otherwise, a new member shall be nominated or elected, as the case may be, in his place, in accordance with the provisions contained in this Act and such member shall hold office so long as the member, in whose place he is nominated or elected, would have held office, had such vacancy not occurred.

7H. *Honorarium and travelling allowances of President and members.*—The President and the members of the Board shall be entitled for a monthly honorarium at the rate of Rs. 5,000 and Rs. 3,500 respectively and for travelling allowance as payable to the Class I officers of the Government and shall not be eligible for any other perquisites or facilities:

Provided that nothing contained in this section shall prevent the Board from providing a conveyance facility to the President.

7 I. *Procedure for election of the members of the Board.*—(1) A meeting of the Hindus among the Members of the Legislative Assembly of the State shall be summoned under the authority of the Governor of Kerala by any person authorized in this behalf by the Governor, to meet at such time and place and on such date as may be fixed by him in this behalf, for the election of members to the Board.

(2) The election shall be held in accordance with the rules specified in the Schedule II, by the person commissioned by the Governor to preside over the meeting.

7J. *Meetings of the Board.*—(1) Meetings of the Board shall be convened by the Secretary of the Board on the direction of the President.

(2) Meetings of the Board shall be presided over by the President and in his absence by a member chosen by the members present from among themselves.

(3) The quorum for a meeting shall be five.

(4) In case of difference of opinion among the members, decisions shall be taken by a majority of votes, and where the votes are equally divided the President or the person presiding shall have and exercise a casting vote.

(5) The Secretary shall keep the minutes of the proceedings of each meeting in a book to be kept for the purpose which shall be signed by the President or the person presiding and the members present at such meeting.

7K. *Validation of proceedings.*—No act or proceedings of the Board shall be deemed to be invalid merely by reason of any defect in its constitution or on the ground that the President or any member thereof was disqualified for or had ceased to hold office or by reasons of such act or proceedings having been done or taken during the period of any vacancy in the office of the President or any member of the Board.

7L. *Standing Committees of the Board.*—(1) The Board shall constitute, for its proper functioning, the following Standing Committees with 3 members each, namely:—

- (i) Standing Committee on Finance and Resource Mobilization ;
- (ii) Standing Committee on Works, Development and Environment;
- (iii) Standing Committee on Establishment, Temple Arts and Devotional service ;

(2) The Board shall nominate one member of each Standing Committee as its Chairman who shall preside over its meetings ;

(3) The Board shall specify the various duties and responsibilities of the Standing Committees ;

(4) The Standing Committees shall meet at least once in a month ;

(5) The recommendations of the Standing Committees shall be unanimous and in case of any difference of opinion among the members in respect of any subject it shall be placed before the Board for decision.”.

6. *Substitution of new section for section 8.*—For section 8 of the principal Act, the following section shall be substituted, namely:—

“8. *Vesting of Power in the Board.*—All powers and duties under this Act, in respect of the various religious institutions of the Malabar area, that have been exercised or performed by the Commissioner, Deputy Commissioners, Assistant Commissioners and Area Committees before the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008, shall vest in the Board, or its constitution.”.

7. *Insertion of new sections 8A to 8D.*—After section 8 of the principal Act, the following sections shall be inserted, namely:—

“8A. *Supervision and control by the Board.*—Subject to supervision and control of the Board, and other provisions of this Act, the Commissioner Deputy Commissioners, Assistant Commissioners and Area Committees exercising any power or performing any duty under this Act, before the commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008, shall continue to exercise such powers and perform such duties, as officers of the Board, as if those powers are delegated to them by the Board.

8B. *Assumption of the direct administration of religious institutions on request of the trustees.*—The Board shall have the power to assume the direct management of any religious institution provided the trustees request the Board to take over its management unconditionally.

8C. *Officers and Employees of the Board.*—(1) The Government may appoint an officer not below the rank of a Joint Secretary to Government who is professing Hindu religion and is a believer of God and temple worship, as the Commissioner of the Board on such terms and conditions as may be fixed by the Government, who shall also function as the Secretary of the Board.

(2) He shall be the Chief Executive Officer of the Board who shall implement all decisions of the Board.

(3) He shall submit reports to the Government, once in three months, with respect to the working of the Board.

(4) The Board may appoint such number of Deputy Commissioners, Assistant Commissioners, and such other officers and staff as are necessary for discharging its functions under this Act.

(5) The Board may create, with the approval of the Government, such number of posts of officers and employees of the Board, as it requires.

(6) The pay and allowances and other conditions of service of the officers and employees of the Board, appointed under sub-section (4), shall be such, as may be prescribed.

8D. *Appointment to be made through Kerala Public Service Commission.*—All appointments of officers and employees of the Board, except the Commissioner, for which direct recruitment is resorted to, shall be made from a select list or candidates belonging to Hindu religion furnished by the Kerala Public Service Commission in accordance with the law made for the exercise of this additional function by the Kerala Public Service Commission.”

8. *Amendment of section 13.*—In section 13 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) Every Area Committee shall consist of the following members appointed by the Government, namely:—

(a) one philosopher of Hindu religion ;

(b) one social reformer of Hindu religion ;

(c) one member from any of the Temple Advisory Committees constituted under section 14 ;

(d) one member from Scheduled Caste or Scheduled Tribe Communities ;

(e) one woman member ;

(f) two other members.

(1A) Every Area Committee shall, in its first meeting, elect a member of the committee as its Chairman.”.

9. *Substitution of new section for section 14.*—For section 14 of the principal Act, the following section shall be substituted, namely:—

“14. *Temple Advisory Committees.*—(1) For the purpose of ensuring adequate participation of Hindu devotees, a committee may be constituted for each temple in the name “(name of the temple) Temple Advisory Committee”, not inconsistent with the existing custom and practices.

(2) The Temple Advisory Committees formed under sub-section (1) shall be approved by the Board.

(3) The composition of a Temple Advisory Committee under sub-section (1) shall be in such manner as may be prescribed.”.

10. *Amendment of section 15.*—In section 15 of the principal Act, after the words “Area Committee” the words “and Temple Advisory Committees” shall be inserted.

11. *Amendment of section 16.*—In section 16 of the principal Act, for the words “Area Committee” wherever they occur, the words “Area Committee or Temple Advisory Committee” shall be substituted.

12. *Insertion of sections 19A and 19B.*—After section 19 of the principal Act, the following sections shall be inserted, namely:—

“19A. *Transfer of files and proceedings.*—(1) Notwithstanding anything contained in this Act, the Board shall have the power to call for any file or



proceedings pending before any of its officers or Area Committees and either dispose it of by itself or transfer it to another officer of the Board for disposal.

(2) Any party aggrieved by an order of the Board under sub-section (1), not being an order against which a suit or an appeal to a court is provided under this Act may appeal to the State Government within three months from the date of receipt of order by him:

Provided that the State Government shall not pass any order prejudicial to any party without giving him a reasonable opportunity of being heard.

19B. *Appointment of Commission.*—(1) Notwithstanding anything contained in this Act, the Government may, by notification in the Gazette, appoint a Commission to enquire into and report on the allegations, if any, of any irregularities, corruption, mal-administration or misappropriation of funds by the Board.

(2) The Commission appointed under sub-section (1) shall be a sitting Judge of the High Court of Kerala, who is a Hindu, in consultation with the Chief Justice:

Provided that, if the service of a sitting Judge of the High Court of Kerala is not available, a retired Judge of the High Court of Kerala, who is a Hindu, shall be appointed as such Commission.

(3) The term and other conditions of appointment of the Commission shall be such as may be specified in the order appointing such Commission.”

13. *Insertion of new Chapter.*—After Chapter II of the principal Act, the following Chapter shall be inserted, namely:—

“CHAPTER II A

**Abolition of Hindu Religious and Charitable Endowments (Administration) Department and Transfer of their Assets, Liabilities and Staff to the Board**

19C. *Transfer of assets and liabilities of the Hindu Religious and Charitable Endowments (Administration) Department to the Board.*—(1) On constitution of the Board under section 7, the existing Hindu Religious and Charitable Endowment (Administration) Department (hereinafter referred to as the abolished Department) shall stand abolished and all its assets and liabilities shall stand transferred to, and vest in the Board, constituted under this Act.

(2) The assets referred to in sub-section (1) shall be deemed to include all rights and powers and all properties, whether movable or immovable, belonging to or vested in that Department or under their management and control, their

funds, cash balance, if any, investments, deposits and all other interests or rights in or arising out of such property and all books of accounts or documents kept or maintained by them and its liability shall be deemed to include all debts, liabilities and obligations of whatever kind existing and pertaining to that Department at the time of its abolition.

19D. *Effect of vesting of assets and liabilities in the Board.*—(1) Unless otherwise expressly provided by or under this Act, all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the abolition of the Department and to which the Department, or any of its officers or authorities is a party or which is in their favour shall be of full force and effect against or in favour of the Board constituted under this Act, and may be enforced or acted upon as fully and effectually as if, instead of the abolished Department, or of its officers or authorities the Board had been a party thereto or as if they had been entered into or issued in favour of the Board.

(2) If any suit, appeal or other legal proceedings of whatever nature by or against the abolished Department is pending, the same may be continued, prosecuted and enforced by or against the Board.

19E. *Employees of the abolished Department.*—(1) On constitution of the Board under section 7, every full-time employee of the abolished Department shall be deemed to be the employee of the Board by protecting their pay and allowances and shall hold office therein with the same terms and conditions of service and with the same rights and privileges, if any, as if he would have held the same if the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008, had not been enacted, until altered by the Board.

(2) Nothing in sub-section (1) shall prevent an employee of the abolished Department from exercising option to serve in other Departments of the Government, by protecting their pay and allowances within such period as may be specified by the Government.

(3) The Government may, after consulting the Board, direct, by general or special order, that the employees, who have exercised option within the time specified by the Government under sub-section (2), and specified in the order shall stand allotted to serve in such other Departments of Government with effect from such date as may be specified therein.

(4) With effect from the date specified in the order under sub-section (3), the person specified in such order and allotted to serve in other Departments of the Government shall cease to be employees of the Board.

(5) Every person who becomes an employee of the Government under sub-section (4) shall hold his office therein, with such designation as the Government may determine and with the same remuneration and on the same terms and conditions of service and with same rights and privileges, if any, as he would have held the same if the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008, had not been enacted and shall continue to do so unless and until his remuneration and terms and conditions of service are duly altered by the Government.

(6) Notwithstanding anything contained in the foregoing provisions of this section, the remuneration and other terms and conditions of service of an employee shall not be varied to his disadvantage.

(7) The liability to pay pension and gratuity, if any, to the employees referred to in sub-section (1), except in respect of those employees transferred to other Departments accepting their option under sub-section (3), shall be the liability of the Board.

(8) If any question arises as to whether any person was a full-time employee of the abolished Department, the question shall be referred to the Government, whose decision thereon shall be final.

19F. *Transfer of accumulation in Provident Fund and other like funds.*—The sums standing to the credit of the provident fund accounts and to the superannuation fund and other like funds, if any, of the persons referred to in sub-section (1) of section 19E except in respect of those employees transferred to other Departments accepting their option under sub-section (3) shall be transferred to the Board by the abolished Department, and the liability in respect of the said funds, shall be the liability of the Board.” .

14. *Amendment of section 21.*—In sub-section (1) of section 21 of the principal Act, for the words “The Commissioner, Deputy Commissioner, Assistant Commissioner or such officers or servants of a religious institution as may be authorized by the Commissioner,” the words “Any Member of the Board or Area Committee or Advisory Committee or the Commissioner, Deputy Commissioner or Assistant Commissioner or such officers or employees of the Board or of a religious institution as may be authorized by the Board, the Commissioner” shall be substituted.

15. *Amendment of section 21A.*—In section 21A of the principal Act.—

(i) in the marginal heading, for the words “Commissioner etc.” the words “The President, Member or Commissioner etc.,” shall be substituted;

(ii) for the words “Commissioner, Deputy Commissioner, Assistant Commissioner, every member of an Area Committee and every other persons exercising the powers of superintendence or control” the words “The President,

Member of the Board or of the Area Committee or of the Advisory Committee, Commissioner, Deputy Commissioner, Assistant Commissioner and every other person exercising the powers of superintendence or control or advice” shall be substituted.

16. *Amendment of section 23.*—In section 23 of the principal Act, after the word “Government” the word “Board” shall be inserted.

17. *Amendment of section 76.*—In section 76 of the principal Act,—

(i) for the word “Government” wherever they occur, the word “Board” shall be substituted.

(ii) sub-section (4) shall be deleted.

18. *Amendment of section 77.*—In section 77 of the principal Act, after the words “State Government” the word “Board” shall be inserted.

19. *Amendment of section 78.*—In sub-section (8) of section 78 of the principal Act, after the words “State Government” occurring in two places, the words “or Board” shall be inserted.

20. *Amendment of the heading of Chapter IX.*—In Chapter IX of the principal Act, for the heading “Endowments Administration Fund” the heading “Malabar Devaswom Fund” shall be substituted.

21. *Substitution of new section for section 80.*—For section 80 of the principal Act, the following section shall be substituted, namely:—

“80. *Grants by the Government.*—The State Government shall, after due appropriation made by the State Legislative Assembly by law in this behalf, pay to the Board by way of grants, such sums of money as the State Government may think fit, for being utilized for the purposes of this Act.”.

22. *Substitution of new section for section 81.*—For section 81 of the principal Act, the following section shall be substituted, namely:—

“81. *Funds of the Board.*—(1) Subject to the provisions of this Act, the Board shall constitute a fund called the “Malabar Devaswom Fund” and on such constitution the “Hindu Religious and Charitable Endowments Administration Fund” vested in the Board shall be credited in the Fund so constituted by it.

(2) The Board shall account the following items of receipt under their respective accounts, namely:—

(a) all contributions payable under section 76(1) and the further sums payable under section 76 (2) ;

(b) grants and loans, received from the Government ;

(c) grants and donations, received from the public and other bodies and institutions ;

(d) the money realized from time to time by the sale of movable properties belonging to the Board ;

(e) profits and interest received from investments of funds of the Board ;  
and

(f) all other moneys belonging to or other income received by the Board.”.

23. *Insertion of new sections 81A to 81C.*—After section 81 of the principal Act, the following sections shall be inserted, namely:—

“81A. *Audit.*—(1) The Board shall keep regular accounts of all receipts in and disbursements from the Fund.

(2) The accounts of the Board shall be audited annually.

(3) The audit shall be conducted by the Director of Local Fund Audit in accordance with the provisions contained in the Kerala Local Fund Audit Act, 1994 (14 of 1994).

81B. *Deposit and investment of funds.*—Subject to the provisions of this Act, the Board may deposit its funds in any Nationalized Bank, Co-operative Bank or Government Treasury or invest the same in any security of the State Government or the Government of India.

81C. *Budget and Administration Report.*—(1) The Board shall, in each year prepare a Budget for the next financial year before the expiry of three months of the preceding financial year showing the probable receipts and disbursements of the temples, institutions and endowments under the management of the Board during the financial year.

(2) The Board shall within two months after the expiry of each financial year prepare an annual administration report for that year and submit within one month there after 10 the Government such number of copies thereof, as the Government may direct.

(3) The Government shall place the Administration Report before the Legislative Assembly within one month from the date of its receipt.”.

24. *Insertion of new section 94A.*—After section 94 of the principal Act, the following section shall be inserted, namely:—

“94A. *Applicability of the Kerala Land Conservancy Act, 1957.*—All lands belonging to the Board and religious institutions shall be deemed to be the

property of the Government for the purpose of the Kerala Land Conservancy Act, 1957 (8 of 1958) and all the provisions of that Act shall, so far as they are applicable, apply to such lands.”.

25. *Amendment of section 99.*—In sub-section (i) of section 99 of the principal Act, after the words “The State Government may call for and examine the record of the” the word “Board” shall be inserted.

26. *Insertion of new section 100A.*—In Chapter XI of the principal Act, before section 101, the following section shall be inserted, namely:—

“100A. *Definition.*—For the purposes of this Chapter “Board” means the Board constituted under section 10 of the Madras Hindu Religious Endowments Act, 1926.”

27. *Insertion of new Schedule.*—After Schedule I of the principal Act, the following Schedule shall be inserted, namely:—

“SCHEDULE II

[See section 7 I (2)]

1. The person commissioned by the Governor to preside over the meeting for the election of members to the Board (hereinafter in these rules referred to as the Chairman) shall fix the date, the time and the place for the presentation of nomination papers and intimate the Hindu Members of the Legislative Assembly with the details of the number and category of seats to be filled up by the election before seven clear days from the date fixed for the presentation of nomination papers.
2. Any Hindu Member of the Legislative Assembly of the State may nominate a qualified person belonging to the category of vacancy, who is not subject to any disqualification for election as a member of the Board by delivering to the Chairman, between the hours fixed by the Chairman for the receipt of nomination papers, a nomination paper signed by the proposer and another Hindu member of the Legislative Assembly of the State as seconder and stating the name of the person nominated. The person nominated shall affix his signature to the nomination paper before it is delivered to the Chairman, stating that he is willing to serve as a member of the Board, if elected.

3. The Chairman shall, as soon as the time fixed for the receipt of nomination papers is over, scrutinize the nomination papers in the presence of the candidates, proposers or seconders present and reject any invalid nomination.
4. Any person, who has been nominated may withdraw his candidature at any time before the Chairman proceeds to hold the election.
5. (1) If there is only one candidate for a seat, the Chairman shall declare him duly elected.  
(2) If the number of contesting candidates for a seat is more than one, a poll shall be taken on the same day or another day as may be fixed by the Chairman.  
(3) If there is no candidate for a seat, election proceedings shall be started afresh for filling up the vacancy in all respects as if for a new election.
6. For the purpose of these rules, Member of the Legislative Assembly shall mean a Member who has taken the Oath prescribed for the Members of the Legislative Assembly and signed the register of members of the Legislative Assembly.
7. Every Hindu Member of the Legislative Assembly shall have one vote for the election to the seat of woman member under clause (g) of subsection (3) of section 7 of the Act and one vote each for the seats of the other two members under clause (h) thereof.
8. The poll shall be held on the date, time and place fixed by the Chairman and the counting of votes shall take place immediately after the close of the polling.
9. The candidate for each seat who obtained the highest number of votes shall be declared elected by the Chairman.
10. In the case of equal number of votes, the result shall be decided by draw of lots.”.

28. *Repeal and Saving.*—(1) The Madras Hindu Religious and Charitable Endowments (Amendment) Ordinance, 2008 (36 of 2008) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

## STATEMENT OF OBJECTS AND REASONS

The Hon'ble High Court of Kerala initiated suo moto proceedings based on a newspaper report on the plight of the temple employees of Malabar area and issued certain directions to the Government in its judgment dated 21st July, 1994. The main directions were (1) to pay better wages to the temple employees from 1st January, 1995; (2) to prepare a scheme for the purpose; (3) to utilise the income derived from the vested forests for this purpose (4) to revise the annuity periodically; (5) to constitute a 'Malabar Devaswom Board' for the temples of Malabar area and (6) to constitute a unified Devaswom Board for the three regions viz. Travancore, Cochin and Malabar.

2. In order to constitute a unified Devaswom Board, a Bill, namely, the Hindu Religious and Charitable Institutions and Endowments Bill, 1997, was introduced in the Tenth Kerala Legislative Assembly and it was referred to the select committee for eliciting public opinion. While so, the Tenth Kerala Legislative Assembly was dissolved on the 16th of May, 2001 and by virtue of Article 196(5) of the Constitution, the Bill had lapsed.

3. In the 12th Kerala Legislative Assembly, the Hon'ble Minister for Co-operation, Coir and Devaswoms had given an assurance in the House that Government would introduce a Bill in the Kerala Legislative Assembly in 2007 itself for the constitution of the Malabar Devaswom Board.

4. The existing Madras Hindu Religious and Charitable Endowments Act, 1951 does not contain sufficient provisions to ensure social justice and also appointments in the Devaswom Departments called for much public criticism raising allegations of rampant corruption. Hence it was felt necessary to amend the said Act so as to constitute the Malabar Devaswom Board and to provide for its term of office, qualification for membership, honorarium and travelling allowances of President and members and also to bring in transparency by entrusting the appointments of the said Board to the Public Service Commission. Further it is necessary to incorporate provision to empower the Government to appoint a Commission to enquire into the affairs of the Board as and when required, especially, when there are instances of irregularities, corruption, mal-administration or misappropriation of funds by the Board.

5. For the smooth administration of the Board, Standing Committees assigning specific functions have to be constituted from among the members of the Board. To ensure participation of devotees and local people Temple Advisory Committees for particular temples are required to be constituted by including necessary provisions in the Act. Also provision regarding the transfer of assets and liabilities of Hindu Religious and Charitable Endowments (Administration)



Department to the said Board has to be inserted. Provisions have to be made for constituting Malabar Devaswom Fund and to credit in the Fund the Hindu Religion and Charitable and Endowments Administration Fund, and audit of account of the Fund. Provision has to be inserted regarding applicability of the Kerala Land Conservancy Act, 1957 in respect of the lands belonging to the Board and religious institutions.

6. In view of the above, Government felt it necessary to bring in amendments to the Madras Hindu Religious and Charitable Endowments Act, 1951.

7. As the Legislative Assembly of the state of Kerala was not in session and the proposals had to be given effect to immediately, the Madras Hindu Religious and Charitable Endowments (Amendment) Ordinance, 2008 (2 of 2008) was promulgated by the Governor on the 9th day of January, 2008 and was published in the Kerala Gazette Extraordinary No. 73 dated 9th January, 2008.

8. A Bill to replace the Ordinance No. 2 of 2008 by an Act by the State Legislature could not be introduced in, and passed by, the Legislative Assembly during its session which commenced on the 20th day of February, 2008 and ended on the 19th day of March, 2008. Therefore, the Madras Hindu Religious and Charitable Endowments (Amendment) Ordinance, 2008 (9 of 2008) was promulgated by the Governor on the 1st day of April, 2008 and the same was published in the Kerala Gazette Extraordinary No. 660 dated 1st April, 2008.

9. A Bill to replace Ordinance No. 9 of 2008 was published as Bill No. 194 of 12th Kerala Legislative Assembly, but the same could not be introduced in, and passed by, the Legislative Assembly during its session which commenced on the 23rd day of June, 2008 and ended on the 24th day of July, 2008. Therefore, the Madras Hindu Religious and Charitable Endowments (Amendment) Ordinance, 2008 (36 of 2008) was promulgated by the Governor on the 1st day of August, 2008 and the same was published in the Kerala Gazette Extraordinary No. 1684 dated 2nd August, 2008.

10. The Bill seeks to replace the Ordinance No. 36 of 2008 by an Act of the State Legislature.

#### FINANCIAL MEMORANDUM

At present, every year the following expenditure is met by Government for Hindu Religious and Charitable Endowments (Administration) Department, namely:—

- (i) Salary and other expenditure of present staff of Hindu Religious and Charitable Endowments (Administration) Department. The amount now spent by Government is Rs. 198.85 lakhs under the head of account 2250-00-102-99 (NP).

- (ii) Special Grant for temples in Malabar Area, Rs. 82.5 lakhs under the head of account 2250-00-103-95.
- (iii) Special Grant to Malabar Devaswom Management Fund Rs. 3 crores under the head of account 2250-00-103-90.

Thus a total amount of Rs. 581.35 lakhs is at present being spent out of the Consolidated Fund of the State. As the Hindu Religious and Charitable Endowments Administration Fund is proposed to be credited to the Malabar Devaswom Fund to be constituted, no additional expenditure from Consolidated Fund of the State is expected on this account.

The new Section proposed to be inserted as 19B in the principal Act vide clause 12 of the Bill empowers the Government to appoint a Commission to enquire into and report on the allegations, if any, of the irregularities, corruption, mal-administration or misappropriation of Funds by the Malabar Devaswom Board. Appointment of such Commission would involve non-recurring expenditure from the Consolidated Fund of the State. The expected expenditure of the functioning of the Commission will be Rupees 2 lakhs.

The non-recurring expenditure cannot be assessed or calculated with any degree of accuracy at this stage.

#### MEMORANDUM REGARDING DELIGATED LEGISLATION

Clause 7 of the Bill which proposes to insert new section 8C in the principal Act seeks to empower the Government to fix the terms and conditions applicable to the Commissioner of the Board and also to prescribe the pay and allowances and other condition of service of the officers and employees of the Board. The above matter is routine and administrative in nature. The delegation of legislative power is, thus, of a normal character.

G. SUDHAKARAN

EXTRACT FROM THE RELEVANT PORTION OF THE MADRAS HINDU  
RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 1951

(MADRAS ACT XIX OF 1951)

6. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context.

(1) “Area Committee” means, in relation to any temple or specific endowment, the Area Committee constituted under this Act and having jurisdiction over such temple or endowment ;

(2) “Assistant Commissioner” means an Assistant Commissioner appointed under section 8 ;

(3) “Board” means the Board constituted under section 10 of the Madras Hindu Religious Endowments Act, 1926 ;

(4) “Charitable Endowment” means all property given or endowed for the benefit of, or used as of right by, the Hindu or the Jain community or any section thereof, for the support or maintenance of objects of utility to the said community or section such as rest-houses, choultries, patasalas, schools and colleges, houses for feeding the poor and institutions for the advancement of education, medical relief and public health or other subjects of a like nature; and includes the institution concerned ;

(5) “Commissioner” means the Commissioner appointed under section 8 ;

(6) “Court” means.—

(i) XXX

(ii) in relation to a math or temple 4 [XXX], the Subordinate judge’s Court having jurisdiction over the area in which the math or temple is situated, or if there is no such Court, the District Court having such jurisdiction ;

(iii) in relation to a specific endowment attached to two or more maths or temple, the Court which would have jurisdiction as aforesaid relation to the math or temple ;

(iv) in relation to a specific endowment attached to two or more maths or temples, any Court which would have jurisdiction as aforesaid in relation to either or any such maths or temples ;

(7) “Deputy Commissioner” means the Deputy Commissioner appointed under section 8 ;

\*\*

\*\*

\*\*

(9) “hereditary trustee” means the trustee of a religious institution succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force ;

## CHAPTER II

### **The Commissioner and other Controlling Authorities**

7. *Authorities under Act.*—There shall be the following classes of authorities under this Act, namely:—

- (a) The Commissioner ;
- (b) Deputy Commissioners ;
- (c) Assistant Commissioners ; and
- (d) Area Committees.

8. *State Government to appoint Commissioner, etc.*—The State Government shall appoint the Commissioner and such number of Deputy and Assistant Commissioners as they think fit.

\*\*

\*\*

\*\*

13. *Strength of Area Committees and term of office and disqualifications of members.*—(1) Every Area Committee shall consist of such number of members as may be appointed by the State Government, not being less than three nor more than five.

(2) Save as otherwise, expressly provided in this section, a member of an Area Committee shall be entitled to hold office for three years from the date on which his appointment is notified in the \*[Kerala Government Gazette].

(3) A person shall be disqualified for being appointed as, or for being, a member of an Area Committee.—

- (a) if he does not profess the Hindu religion ;
- (b) if he has applied or applies to be, or has been, or is adjudicated an insolvent ;
- (c) if he is of unsound mind a deaf-mute or suffering from contagious leprosy ;

\*\*

\*\*

\*\*

14. *Chairman of Area Committee.*—(1) The Assistant Commissioner of the division for which or part of which an Area Committee is constituted shall be its Chairman and shall be entitled to preside over its meetings and take part in its proceedings, but shall not be entitled to vote.

(2) He shall forward to the Commissioner a copy of the minutes of the proceedings at every meeting of the Area Committee within a week from the date of the meeting.

15. *Power of State Government to make rules.*—The state Government (may make rules regarding the convening of meetings of Area Committees, the quorum for, and the conduct of business, at such meetings, and all matters relating to the transaction of their business.

16. *Act of Area Committee not to be invalidated by informality.*—No act of an Area Committee shall be deemed to be invalid by reason only of a defect in its constitution or on the ground that the Chairman or any member thereof was disqualified for, or had ceased to hold, his office, or by reason of such act having been done during the period of any vacancy in the office of the Chairman or any member of such Committee.

\*\*

\*\*

\*\*

19. *Other powers of Commissioner in relation to Deputy and Assistant Commissioners and Area Committee.*—(1) The Commissioner shall have power at any stage—

(a) to transfer any proceeding pending before a Deputy or an Assistant Commissioner to his own file and dispose of it himself, or

(b) to transfer it to another Deputy or Assistant Commissioner for disposal.

(2) If the Commissioner is satisfied that a Deputy or an Assistant Commissioner has failed to exercise any power or discharge any duty which he ought to have exercised or discharged, the Commissioner may himself exercise such power or discharge such duty.

(3) If the Commissioner is satisfied that an Area Committee—

(a) has failed to exercise any power or discharge any duty which it ought to have exercised or discharged, or

(b) is unable for any reason to exercise any power or discharge any duty, the Commissioner may himself exercise such power or discharge such duty or authorise the Assistant Commissioner to do so :

Provided that in cases falling under clause (a), the Commissioner shall first fix a period for the exercise of the power or the performance of the duty by the Area Committee and shall exercise the right conferred on him by this sub-section only if the power is not exercised or the duty is not performed by the Area Committee within the period so fixed.

(4) Notwithstanding anything contained in this Act, where the office of a Deputy or an Assistant Commissioner is vacant, the Commissioner may, until the vacancy is filled—

(a) himself exercise the powers and discharge the duties assigned by or under this Act to the Deputy or Assistant Commissioner, or

(b) authorize another Deputy or Assistant Commissioner to exercise the said powers and discharge the said duties.

(5) Any party aggrieved by an order of the Commissioner under sub-section (1) (a), (2), (3) or (4) (a), not being an order against which a suit or an Appeal to a Court is provided in this Act, may appeal to the State Government within three months from the date of the receipt of the order by him :

Provided that the State Government shall not pass any order prejudicial to any party without hearing him or giving him a reasonable opportunity of being heard.

### CHAPTER III

#### RELIGIOUS INSTITUTIONS

##### **General Provisions**

20. *Powers and duties of the Commissioner in respect of religious endowments.*—Subject to the provisions of this Act, the administration of all religious endowments shall be subject to the general superintendence and control of the Commissioner; and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist.

21. *Power to enter religious institution.*—(1) “The Commissioner, Deputy Commissioner, Assistant Commissioner or such officers or servants of a religious institution as may be authorised by the Commissioner” Deputy Commissioner, or Assistant Commissioner in this behalf, shall have power to enter the premises of any religious institution or any place of worship for the purpose of exercising any power conferred, or discharging any duty imposed by or under this Act.

(2) If any such officer or servant is resisted in the exercise of such power or discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such officer or servant, direct any police officer not below the rank of Sub Inspector to render such help as may be necessary to enable the officer or servant to exercise such power or discharge such duty.

(3) In entering the premises of a religious institution or place of worship, the person authorised by, or under sub-section (2) or the police officer referred to in sub-section (2) shall, if practicable, give notice to the trustee and shall have due regard to the practices and usages of the institution.

21A. *Commissioner, etc., to observe appropriate forms and ceremonies.*—The Commissioner, Deputy Commissioner, Assistant Commissioner, every member of an Area Committee and every other person exercising powers of superintendence or control under this Act, shall so far as may be, observe forms and ceremonies appropriate to the religious institution in respect of which such powers are exercised and in the case of a math, act in conformity with the usages of a math in his dealings with the head of the math.

\*\*

\*\*

\*\*

23. *Trustee bound to obey orders issued under Act.*—The trustee of a religious institution shall be bound to obey all lawful orders issued under the provisions of this Act by the \*[State Government], the Commissioner, the Deputy Commissioner, Area Committee or the Assistant Commissioner.

\*\*

\*\*

\*\*

76. *Religious institutions to Pay an annual contribution to the State Government.*—(1) In respect of the services rendered by the State Government and their officers and for defraying the expenses incurred on account of such services every religious institution shall, from the income derived by it, pay to the State Government annually such contribution not exceeding five per centum of its income as may be prescribed.

(2) Every religious institution, the annual income of which, for the “Calendar year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is not less than one thousand rupees, shall pay to the \*[State Government] annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income as the Commissioner may determine.

(3) The annual payments referred to in sub-sections (1) and (2) shall be made, notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act for the religious institution concerned.

(4) The State Government shall pay the salaries, allowances, pensions and other beneficial remuneration of the Commissioner, Deputy Commissioners, Assistant Commissioners and other officers and servants (other than executive officers of religious institutions) employed for the purposes of the Act and the other expenses incurred for such purposes, including the expenses of Area Committees and the cost of auditing the accounts of religious institutions.

(5) Wherever there is any surplus after meeting all the charges referred to in the forgoing sub-section, it shall be lawful for the Commissioner acting *suo motu* or on an application to make grants to poor and needy religious institutions for carrying out repairs and renovation subject to such rules as may be framed by State Government in this regard;

\*\*

\*\*

\*\*

77. *Recovery of costs and expenses incurred on legal proceedings.*—All costs, charges and expenses incurred by the State Government, the Commissioner, a Deputy Commissioner, an Area Committee, or an Assistant Commissioner, as a party to, or in connection ‘with, any legal proceeding in respect of any religious institution, shall be payable out of the funds of such institution, except in cases where a liability to pay the same has been laid on any party or other person personally and the right to reimbursement under this section has been negated in express terms.

78. *Assessment and recovery of contributions and costs and Expenses.*—(1) The contributions, costs and expenses payable under sections 76 and 77 shall be assessed on and notified to the trustee of the religious institution concerned in the prescribed manner.

(2) (a) Such trustee may, within fifteen days from the date of the receipt of such notice or within such further time as may be granted by the Commissioner, prefer his objection thereto, if any, to the Commissioner in writing. Such objection may relate either to his liability to pay or to the amount specified in the notice. The Commissioner shall consider such objection and give his decision confirming withdrawing, or modifying his original notice.

(b) Within one month from the date of receipt of the notice of assessment, or when objection has been preferred, within one month from the date of the decision of the Commissioner, or within such further time as may be granted by him, such trustee shall pay the amount specified in the original notice or the amount as fixed by the Commissioner on objection.



(3) If the trustee fails to pay the amount aforesaid within the time allowed the Collector of the district in which any property of the religious institution is situated shall, on requisition made to him in the prescribed manner by the Commissioner and subject to the provisions of this section, recover such amount as if it were an arrear of land revenue.

(4) (a) On receipt of a requisition under sub-section (3), the Collector shall issue a notice to the trustee concerned.

(i) requiring him, within fifteen days from the service thereof, to pay the amount mentioned in the requisition and specified in the notice; and

(ii) stating that on default, such amount will be recovered as if it were an arrear of land revenue.

(b) If, within the period of fifteen days aforesaid, the amount demanded is not paid, the Collector shall proceed to recover the amount specified in the notice (with the charges of collection) as if it were an arrear of land revenue.

(5) The Collector shall, on receipt of a requisition under sub-section (3), withhold the amount mentioned therein out of the tasdik or any other allowance payable by the \* [State Government] to the religious institution concerned, but where the tasdik or other allowance is insufficient for the purpose, the Collector shall withhold the amount available, and recover the balance as if it were an arrear of land revenue.

(6) Places of worship, including temples and tanks and places where utsavams are performed, idols, vahanams, jewels and such vessels and other articles of the religious institutions as may be necessary in accordance with the usage of the institution for purposes of worship or processions shall not be liable to be proceeded against in pursuance of sub-sections (3), (4) and (5).

(7) Instead of selling the property after attachment thereof under the provisions of the Madras Revenue Recovery Act, 1864, it shall be open to the Collector at the instance of the Commissioner to appoint a Receiver to take possession of the property or such portion thereof as may be necessary and collect the income thereof until the amount sought to be recovered is realized. The remuneration, if any, paid to the Receiver, and the other expenses incurred by him shall be paid out of the income of the institution concerned.

(8) No suit, prosecution or other legal proceeding shall be entertained in any Court of law against the State Government, or any officer or servant of the State Government for anything done or intended to be done in good faith in pursuance of this section.



(2) The State Government may stay the execution of any such decision or order, pending the exercise of their powers under sub-section (1) in respect thereof.

\*\*

\*\*

\*\*

CHAPTER XI

**Transitional**

101. *Abolition of Board and devolution of its assets and liabilities.*—On and from the date on which this Act comes into force, the Board shall cease to exist, and all its assets and liabilities shall devolve on the State Government.

## SCHEDULE I

(See Section 90)

## Court-fees payable for documents

<i>Section</i>	<i>Description of document</i>	<i>Proper fee (Rs.)</i>
31 (4)	Suits against the order of the Commissioner	50
31 (5)	Suits to set aside or modify Court's order	50
31 A (2)	Suits to modify or set aside direction of trustee	50
52	Suit for removal of trustee of math or specific endowment attached to math	50
62	Suits against order of the Commissioner	50
**	**	**
70 (4)	Appeal to Deputy Commissioner against order of Area Committee regarding budget	10
74 (4)	Appeal to *[State Government] against order of surcharge	20
83 (2)	Appeal to the Board of Trustees by office-holder or servant against order of punishment by executive officer	2
83 (3)	Appeal to Commissioner by office-holder or servant against appellate order of the Board of Trustees	2
103 (f)	Appeal to Commissioner under the section	25