CHAPTER XI

RELIGION AND STATE TAXATION

Introduction

The secular state does not identify itself with any particular religion. The government, in such a state, cannot levy taxes, the proceeds of which are devoted to the promotion or maintenance of any particular religion or religious denomination. It has been observed that the government, in the interest of public health and morality, has to render certain services such as sanitary arrangements, transportation services, accounting and auditing of the religious institutions, etc. The expenses incurred by the government in the performance of such services are usually recovered by the government from the institutions to whom these services are rendered. The imposition of such charges has been challenged by the authorities of religious institutions arguing that they are in the form of a tax and as such are in violation of Article 27 of the Constitution of India which reads:

"No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination."

The government on the other hand, has claimed these...
charges as fees and, therefore, beyond the scope of the application of Article 27. The purpose of this chapter is to see how the judiciary has tried to solve this controversial matter.

Article 27 makes compulsory taxation for religious purposes possible provided there is no discrimination in favour of any particular religion. This provision under the constitution has been similarly emphasised in the judgment of the Supreme Court of the U.S.A. in the Everson case,¹ where the court said "No tax in any amount, large or small can be levied to support any religious activities or institutions."

In the Swamier² case the Supreme Court had to deal with this problem of relationship of religion and state taxation. Section 76 of the Madras Hindu Religious and Charitable Endowments Act, 1951, the constitutionality of which was challenged in the Swamier case, authorised the levy of an annual contribution on all religious institutions, the maximum of which was fixed at five per cent of the income derived by them. The government was to frame rules for fixing rates within the permissible maximum and the section expressly stated that the levy was in respect of the services rendered by the government and its officers.

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The validity of the provision was challenged on the following considerations.

1) that the contribution was really a tax and as such it was beyond the legislative competence of the state legislature to enact such a provision.

2) that the contribution being a tax or imposition, the proceeds of which were specifically appropriated for the maintenance of a particular religion or religious denomination, it came within the mischief of Article 27 of the constitution, and was hence void.

The Supreme Court maintained that in so far as the first contention was concerned, it was not disputed that the legislation in the instant case was covered by entries 10 and 28 of List III in the Seventh Schedule of the Constitution. If the contribution payable under section 76 of the Madras Act was a fee, it might come under entry 47 of the concurrent list which dealt with 'fees' in respect of any of the matters included in that list. On the other hand, if it was a tax, this particular tax had not been provided for in any specific entry in any of three lists,

3 This entry refers to 'Trusts and Trusts'.

4 This entry reads - 'Charities and charitable institutions, charitable and religious endowments and religious institutions'.

5 The entry reads - 'Fees in respect of any of the matters in this (III) list, but not including fees taken in any court.'
it could therefore come only under entry 97 of the List I or Article 248(1) of the constitution, and, in either, the union legislature alone was competent to legislate upon it. On behalf of the appellant the contention raised was that the contribution levied was a fee and not a tax, and the learned Attorney General, who appeared on behalf of the Union of India as intervener in the case attempted to support this position.

The learned Attorney had argued that the constitution of India made a distinction between taxes and fees. His contention was that there were a number of entries in List I of the Seventh Schedule which related to taxes and duties of various sorts, whereas the entry 96 referred to 'fees' in respect of any of the matters dealt with in the list. The same was true with regard to some entries, namely entries 46 to 62 in list of the Seventh Schedule all of which related to taxes and the last entry dealt only with 'fees' leviable in respect of the different matters specified in the list. Articles 110 and 119 of the Constitution of India deal with 'Money Bills' and expressly provide that a bill will not be deemed to be a 'Money Bill' by reason only that it provides for the imposition of fines

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6 The Entry 97 of the List I and Article 248(1) deal with the residuary powers of the parliament including any tax not mentioned in either or those lists.

7 This entry reads - 'Fees in respect of any of the matters in this (I) list, but not including fees taken in any court.'
or for the demand or payment of fees for licences or fees for services rendered, whereas a bill dealing with the imposition or regulation of a tax will always be a Money Bill. Article 277 also mentions taxes, cesses and fees separately. The Court is not clear, however, whether the word 'tax' as used in Article 265 has not been used in the wider sense including all other impositions like cesses and fees, and, that, according to the court, is the apparent implication of clause 28 of Article 366 which defines taxation as 'including the imposition of any tax or impost, whether general, local or special. The Court admits that though levying of fees is only a particular form of the taxing power of the state, our constitution has placed fees under a separate category for purposes of legislation and at the end of each list it has empowered particular legislatures to enact legislation about the imposition of fees in respect of every one of the items mentioned in the list itself.

Admitting that the Constitution of India makes a distinction between taxes and fees as mentioned above, the Supreme Court, then proceeds to determine the characteristics that distinguished a 'Fee' from a 'Tax' proper.

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8 Article 265 mentions that no tax shall be levied or collected except by authority of law.

9 This clause deals with definitions of terms used in the Constitution.
The Supreme Court quotes with approval the definition of tax adopted by Chief Justice Latham as "a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered."\(^{10}\)

The Supreme Court admits that the essence of taxation is compulsion and that it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law.\(^{11}\)

The second characteristic of a tax is that it is an imposition made for public purposes without reference to any special benefit conferred on the taxpayer, in other words the amount collected from the levy of a tax forms part of the general revenues of the state. The object of a tax is not to confer any special benefit upon any particular individual and, therefore, there is no element of _quid pro quo_ between the taxpayer and the public authority.\(^{12}\)

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10 Matthews v. Chicory Marketing Board, 60 C.L.R. 263, 276.

In this connection it may be pointed out that the concept of a tax has undergone considerable changes in course of time. Early writers like Montesquieu and Blackstone emphasized the benefit principle in the definition of a tax in the sense that they considered a tax as a payment to the state by its subjects in return of the services rendered by the state for them. According to Montesquieu, 'a citizen gives over to the state a part of his property to be sure of the other part, or to enjoy it in comfort. He considers a tax as a price paid by the individual for the safety and security that he enjoys of his life and
The third feature of a tax according to the Supreme Court is that it is a part of the common burden and therefore the quantum of imposition upon the taxpayer depends, generally, upon his capacity to pay. A fee, on the other hand, is a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is, in some way or another, based on the expenses incurred by the government in rendering the service, though in many cases the costs incurred are arbitrarily determined. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay,\(^\text{13}\)

property from the expenditures incurred by the State. Blackstone maintains that the subject when properly taxed contributes only some part of his property in order to enjoy the rest.

The modern definition of tax, however, does not emphasise the benefit principle. Bastable defines tax as a compulsory contribution of the wealth of a person or body of persons for the service of public powers, while according to Adam, it is a contribution from the citizens for the support of the state. Seligman conceives tax as a compulsory contribution from a person to the state to defray the expenses in the common interest of all, without reference to special benefit conferred. Taussig maintains that the essence of a tax is the absence of a direct quid pro quo—something for something—between the taxpayer and the state. Dalton's definition of a tax as a compulsory contribution imposed by a public authority, irrespective of the exact amount of service rendered to the taxpayer in return, and not imposed as a penalty for any legal offence is sufficiently exhaustive and represents modern conception of a tax. All these definitions emphasise the element of compulsion involved in a tax but point out that the taxpayer cannot claim any quid pro quo or special benefit in lieu of tax payment.

as the case is in relation to a tax. The Supreme Court admits that as there are various kinds of fees, it is not possible to formulate a definition that could be applicable in all cases.

In the Swaminarayana case, the respondent had argued that fee is something voluntary which a person has to pay if he wants certain services from the government; but there is no obligation on his part to seek such services and if he does not want the services, he can avoid the obligation, e.g. 'licence fee'. The Court does not agree with this argument of the respondent and says that the element of compulsion or coerciveness is present in all kinds of impositions, though in different degrees and that it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees. The court points out that it is difficult to conceive of a tax, the incidence of which falls on all persons within the state (except Poll tax). House tax has to be paid only by those who own houses, the land tax by those who possess lands, while municipal rates or taxes will fall on those who have properties within a municipal area. Those who do not have such properties in the municipal area do not have to pay these taxes. Even then these impositions are included within the category of

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14 Supra n. 2 at p. 359.
taxes and no body can say that it is a choice of these people to own such properties, so that there is no compulsion on them to pay taxes at all. The court maintains that the element of compulsion lies in the fact that payment is enforceable by law against a man in spite of his unwillingness or want of consent, and this element is present in taxes as well as in fees. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of common burden, while a fee is a payment for special benefit or privilege. Fees confer a special capacity, although the special advantage as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest.\textsuperscript{15}

The Court points out that public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. The Court quotes with approval what Seligman says in this context - "It is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of state action."\textsuperscript{16}

The Court contends that if a fee is considered a


\textsuperscript{16} Seligman, Essays on Taxation, p. 408, quoted ibid., p. 359.
kind of return for services rendered, it is absolutely necessary that the levy of fees should be correlated to the expenses incurred by government in rendering these services. The Court, here, refers to two classes of cases where government imposes 'fees' upon persons. In case of the first, government simply grants a permission to a person to do something and extracts fees from him in return for the permission so granted. In such cases the tax element is predominant, for example, licence fee for motor vehicles. In case of the second category, the government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered. If the money so received by the state is appropriated specifically for the performance of a particular work and is not merged in the public revenues for the benefit of the general public, it could be considered as fees and not a tax. In this context the Court agrees with Seligman who believes that there is no generic difference between tax and fees and that the taxing power of a state may manifest itself in three forms, namely special assessments, fees and taxes; but it also points out that the Constitution of India makes, for legislative purposes, a distinction between a tax and a fee and that while there are various entries in the legislative lists regarding

17 Ibid., p. 409, quoted ibid., p. 360.
18 Ibid., p. 409, quoted ibid., p. 360.
different forms of taxes, there is, at the end of every list, a reference to fees which could be imposed in respect of any of the matters that are included in that particular list. This means that fees have a special reference to governmental action undertaken in respect of any of these matters.

After this theoretical discussion about the distinction between a tax and a fee, the Supreme Court proceeds to analyse whether the imposition implied in the Madras Act under Section 76 of the said Act is a tax or a fee and whether it is in conformity with Article 27 of the Constitution of India.

While analysing the implications of Section 76 of the Madras Act, the Supreme Court maintains that in so far as the said section speaks definitely of the contribution being levied in respect of the services rendered by the government, it has the appearance of fees. The Court further points out that religious institutions do not want these services to be rendered to them and these institutions do not consider this interference to be beneficial to them. The Court, however, defends such interference and says -

"In the present day concept of a state, it cannot be said that services could be rendered by the state only at the request of those who require these services. If in the larger interest of the public, a state considers it desirable that some special service should be done for
certain people, the people must accept these services, whether willing or not."\textsuperscript{19}

The Court, however, agrees with the High Court of Madras in considering the imposition under section 76 of the Madras Act as a tax and not a fee. The Supreme Court presents the following arguments in support of its stand.

First, that the contribution levied under section 76 of the Madras Act depends upon the capacity of the payor and not upon the quantum of benefit that is supposed to be conferred on any particular religious institution.

Secondly, that the institutions which come under the lower income group and have income less than Rs. 1000 annually, are excluded from the liability to pay the additional charges under clause 2 of the section. This imposition is analogous to income tax.

Thirdly, that the money raised by a levy of the contribution is not earmarked or specified for defraying the expenses that the government incurs in performing the services. All the collections from this imposition are credited to the consolidated fund of the state and all the expenses have to be met not out of these collections in particular but out of the general revenues by proper method of appropriation as is done in case of other government expenses.

Fourthly, that in this particular case of imposition under section 76 of the Madras Act, there is a total absence of any correlation between the expenses incurred by the government and the amount raised with the help of the contribution under the provisions of section 76 and, in these circumstances, the theory of return or counter-payment or quid pro quo cannot have any possible application.

The Supreme Court, on the basis of the arguments, referred to above, upholds the findings of the High Court of Madras 'that the contribution levied under Section 76 of the Madras Act is a tax and not a fee and consequently it was beyond the power of the state legislature to enact this provision.'

Even though the Supreme Court considers the imposition under section 76 as a tax and not a fee, it excludes the same from the purview of the latter part of the Article 27 of the Constitution of India, which forbids the specific appropriation of the proceeds of any tax in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. The Court argues -

"Ours being a secular state and there being freedom of religion guaranteed by the constitution, both to

20 Ibid., p. 361.
individuals and to groups, it is against the policy of
the Constitution to pay out of public funds any money for
the promotion or maintenance of any particular religion
or religious denomination. But the object of the contribu-
tion under section 76 of the Madras Act is not fostering
or preservation of the Hindu religion or any denomination
within it. The purpose is to see that religious trusts
and institutions, wherever they exist, are properly adminis-
tered. It is a secular administration of the religious
institutions that the legislature seeks to control and,
the object, as enumerated in the Act, is to ensure that
the endowments attached to the religious institutions are
properly administered and their income is duly appropriated
for the purpose for which they were founded or exist.
There is no question of favouring any particular religion
or religious denomination in such cases. In our opinion,
Article 27 of the constitution is not attracted to the
facts of the present case. "22

Thus, the Supreme Court held that the imposition
under section 76 of the Madras Act did not come within the
purview of Article 27 of the Constitution, however, it held

21 The preamble of the Act points out that the object
of the legislation is to amend and consolidate the law
relating to the administration and governance of Hindu
religious and charitable endowments and institutions in
the State of Madras.

22 Supra n. 2, p. 361. Italics mine.
section 76(1) as void, being beyond the legislative competence of the Madras State legislature.

In Matilal Panachand Gandhi v. The State of Bombay and others the Supreme Court had to deal with a similar question involving the provisions of the Bombay Public Trusts Act (XXIX of 1950). Section 58 of this Act deals with the levy of contribution upon each public trust, at certain rates to be fixed by the rules, in proportion to the gross annual income of such a trust. This together with the other sums as specified in clause (2) of section 57 makes up the Public Trusts Administration Fund, which, according to the Act is applied for payment of charges incidental to the regulation of Public Trusts and for carrying into effect the provisions of the Act.

The contention of the appellant was that the contribution payable under the section was in substance a tax and the Bombay State legislature was not competent to enact such provision within the limits of the authority exercisable by it under the Constitution. The whole controversy centred round a point as to whether the contribution leviable under section 58 was a fee or tax, because, if the imposition was held to be a tax, it could come either under entry 97 of List I, which includes taxes not mentioned in Lists II and III or under Article 248(1) of

the Constitution and in either case it was Parliament alone that was competent to legislate on the subject; and if, on the other hand, the imposition could be regarded as 'Fees', it could be brought under entry 47 of the Concurrent List, the Act itself being a legislation under entries 10 and 28 of that list.24

The Supreme Court adopts the same position as it did in the Swamier case and maintains that there is no generic difference between a tax and a fee and in fact there are different forms in which the taxing power of a state manifests itself. A tax is in the nature of compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. It is an imposition made for public purposes to meet the general expenses of the state without reference to any special advantage to be conferred upon the taxpayers. Tax is a common burden and the only return which the taxpayer gets is participation in the common benefits of the state. Fees, on the other hand, are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus in fees, there is an element of quid pro quo which is absent in a tax. If the government collection is to be considered as fees, there must be correlation between

24 Supra n. 3 and 4.
the levy imposed and the expenses incurred by the state for the performance of these services. Legislation itself must show that the collections are not merged in the general revenues of the state but are set apart and appropriated for rendering these services. The Court points out that the conditions which distinguish a fee from a tax are -

First, a fee must be levied in consideration of certain services which the individuals accept either willingly or unwillingly.

Secondly, that the amount collected must be earmarked to meet the expenses of rendering these services and must not go to form the general revenues of the state to be spent for general public purposes. Continuing its argument adopted in the Swaminar case, the Court maintains that too much stress should not be laid on the presence or absence of the coercive element.

On the basis of these arguments, the Supreme Court holds that the High Court of Bombay was right in holding that the contributions imposed under section 58 of the Bombay Act are fees and not taxes. The Court points out that the contributions under section 58 of the Bombay Act are to be credited to the Public Trusts Administration Fund.

25 Supra n. 2, p. 359.
26 Italics mine.
as constituted under section 57 of the said Act. This fund is intended for the exclusive application for the payment of charges incurred in the regulation of public trusts and for the implementation of the provisions of the Act. The custody of the moneys belonging to the fund is vested in the Charity Commissioner and the said moneys are to be disbursed not in the manner in which general revenues of the state are disbursed, but in accordance with the rules prescribed by the Act.

The collections are not, therefore, merged in the general revenues of the state as is done in case of a tax collection, but are earmarked and set apart for a particular purpose, namely, the one mentioned in the Act itself. The Court also points out that though salaries and allowances of the officers and servants are drawn from the consolidated fund of the state, this is done only with a view to facilitating the functioning of the administration with no intention of mixing the fund with the general revenues of the state. The Supreme Court agrees with the finding of the High Court of Bombay that all the expenses of the administration of the trust property are met from the Public Trusts Administration Fund and in fact these contributions are levied to enable the Government to meet the expenses of this administration. The Supreme Court, comes to the conclusion that Section 58 of the Bombay Public Trusts Act of 1950 is not ultra vires by reason of
the fact that it is not a tax but a fee which comes within the purview of entry 47 of List III in Schedule VII of the Constitution of India.

In Mahant Sri Jagannath Das and another v. The State of Orissa and another, the petitioners contended that section 49 of the Orissa Hindu Religious Endowments Act of 1939 was ultra vires of the constitution. Section 49 of the Orissa Act provides that every math or temple having an annual income exceeding Rs. 250 has to make an annual contribution for meeting the expenses of the commissioner and officers and servants working under him. The contention of the petitioners was that the contribution being in substance a tax, it was beyond the competence of the state legislature to enact such provision and that the payment of such tax or imposition is prohibited by Article 27 of the constitution.

The Supreme Court adopts the reasoning of the Swamij and Ratilal Sandhi cases and maintains that the contribution levied by section 49 of the Act will have to be regarded as a fee and not as a tax. The payment demanded is only for the purpose of meeting the expenses of the commissioner and his office which is the machinery set up for the due administration of the affairs of religious institutions, the collections made are not merged in the

general public revenues and are not appropriated in the manner laid down for appropriation of expenses for other public purposes. They go to constitute the fund which is contemplated by section 50 of the Act and this fund, to which also the provincial government contributes, both in the form of loan as well as grant, is specifically set apart for rendering services involved in carrying out the provisions of the Act. The Court maintains that the contribution could legitimately be regarded as fees and hence it was within the competence of the provincial legislature to enact such provision. Even though the amount of levy is graded according to the capacity of the payers giving it an appearance of an income tax, it is not a decisive test for considering it as a tax.

The Court states that the imposition implied in Section 49 cannot be said to be hit by Article 27 of the constitution. The object of Section 49 in levying the contribution is not to foster or preserve Hindu religion or any denomination within it but to see that religious trusts and institutions, wherever they exist, are properly administered. The legislature has tried to control the secular administration of religious institutions and, as there is no question of favouring any particular religion or religious denomination, Article 27 does not apply and, therefore, the said Section is not ultra vires of the constitution. The same reasoning is applied by the Supreme
Court in Mahant Moti Das and others v. S. P. Sahi, the special officer in charge of Hindu Religious Endowments and others,26 where the appellants had challenged the constitutional validity of Section 70 of the Bihar Hindu Religious Trusts Act, 1951, which according to them imposed an unauthorised tax and the Court concluded that Section 70 of the Bihar Act did not impose a tax but a fee and, as the preamble of the said Act provided for the better administration of Hindu Religious Trusts and for the protection and preservation of properties appertaining to such trusts, the provisions of Section 70 of the Bihar Act did not attract the provision of Article 27 of the Constitution of India and the said Section was not unconstitutional.

In H.H. Sudhindra Tirtha Swamiar v. The Commissioner for Hindu Religious and Charitable Endowments Mysore,29 the appellants had challenged the validity of Section 32(2) of the Act enacted by the Government of Mysore for the better administration of Hindu Religious and Charitable Endowments in that state. The Supreme Court concurs with the finding of the High Court of Mysore, and, continuing its own stand referred to above, maintains that the state legislature has power to levy a fee under the Seventh

Schedule, List III, item 28 read with item 47 for rendering services in connection with the maintenance, supervision and control over religious institutions and that the said legislature is competent to levy the fee retrospectively. The Court considered the amount received by the state as a fee collected by the commissioner under the provisions as amended\textsuperscript{30} and it declared Section 82 of the Act as intras vires and dismissed the appeal.

It has already been noted that the Supreme Court had held that Section 76 of the Madras Hindu Religious and Charitable Endowments Act which provided for the imposition of a liability for payment of contribution which was of the nature of a tax and not a fee, was beyond the competence of the state legislature. The legislature of Madras then amended the provisions of the Act in 1954 and the Government of Madras framed rules under the Act prescribing graduated scale of rates of contribution under section 76(1). In the Commissioner for Hindu Religious and Charitable Endowments in Mysore V. U.Krishna Rao and others,\textsuperscript{31} the validity of these amendments was tested by the Supreme Court. In 1959, the respondents in the case U.Krishna Rao and others were directed by the Commissioner

\textsuperscript{30} Madras Hindu Religious Endowments Act as amended after the States Reorganisation Act of 1956 and as made applicable to the areas included in the State of Mysore.

\textsuperscript{31} (1970) II S.C.J. at 393.
of Hindu Religious and Charitable Endowments Mysore to pay arrears of contributions and audit fee by a demand notice which was challenged by the respondents in the Mysore High Court. The High Court upheld the plea on the ground that no rules had been made under section 100 of the Act and therefore the demand for the levy of contribution was premature and the audit fee demanded by the Commissioner was without competence or authority of law. Here it must be noted that the respondents relied upon the judgment of the High Court of Madras in Devaraj Shenoy V. The State of Mysore,32 where the Court had observed in that case that the amount of contribution payable by the petitioners (respondents) should be prescribed by a rule. And since there was no rule so made, no such contribution could be recovered from the temple until such a rule was made. The Court thus considered this demand as a premature demand and quashed the same. The Supreme Court considers this view of the Mysore High Court as incorrect. The correct position in this case was the one which the Supreme Court had adopted in Sudhindra Tirth Swamiar V. Commissioner for Hindu Religious and Charitable and Endowments Mysore33 where the Court said:

"It is true that ordinarily a fee is uniform and no

account is taken of the varying abilities of different recipients. But absence of uniformity is not a criterion on which alone it can be said that it is of the nature of a tax. A fee being a levy in consideration of rendering a service of a particular type, correlation between the expenditure by the government and the levy must undoubtedly exist; a levy will not be regarded as a tax merely because of the absence of uniformity in its incidence, or because of compulsion in the collection thereof, nor because some of the contributions do not obtain the same degree of service as others may."34

The Supreme Court applies this logic in the instant case and maintains that under the Madras Act, a fee, though levied for rendering services of a particular type is not to be correlated to the services performed for each individual obtaining the benefit of the said services. According to the Court, the correlation must be established between the expenses incurred by the authority levying the fee for generally providing the service and the aggregate of the levy from the persons subjected to the same. The Court categorically comes to the corollary that under the Act, what is to be prescribed is the general rule regarding the levy of fee from religious endowments and not the rule governing individual endowments.

34 Ibid. Italics mine.
The Court further points out that the Madras Act as amended does not contemplate separate rules to be made in respect of each religious institution which is likely to obtain the benefit of services rendered by the state for which the contribution is to be levied. If services are provided by the Act, the contribution would be recoverable irrespective of the fact that the temple in question either does not need the service nor does it obtain the benefit of the services. Thus the Supreme Court sets aside the order of the High Court of Mysore upholding the claim of the respondents.

Another important question to be decided in the case was about the levy of audit fee. According to Section 76(2) of the Madras Act, the audit fee is not to be prescribed by rules. The Commissioner is to determine the fee for auditing the accounts of each religious institution or endowment, provided that

1) the annual income of the religious institution for the relevant preceding year is Rs. 1000 or more,

2) the fee does not exceed 1 1/2 per cent of the income,

3) the fee is levied for meeting the costs of auditing the accounts of religious institution.

35 Supra n. 31, pp. 397-98.
The High Court was of the view that the Commissioner had not determined the cost of auditing the accounts and, therefore, the fee was made without the competence or authority of law. The Supreme Court does not concur with this view. It maintains that the Commissioner has to determine the audit fee for meeting the cost of auditing accounts as a percentage of the income of each religious institution, on the basis of facts and circumstances obtaining in each case. That is to say, the Commissioner has to form an estimate of the reasonable cost incurred in making an effective audit and to state it in some percentage of the income. The percentage of income levied as audit fee must, necessarily, be based on an estimate, and the demand will not be struck down merely because it turns out that the amount demanded is not precisely equivalent to the cost actually incurred for auditing the accounts.

Conclusion

Even though the government of a secular state is prevented from the imposition of a tax, the proceeds of which cannot be specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination, the expenses incurred by the government in ensuring secular services in favour of religious institutions can be recovered from them in the form of fees. Whether a particular amount charged is a tax or a fee is a matter of delicate controversy and an
understanding of technical issues involved. As has been pointed out in this chapter, the courts in India have tried to strike a reasonable balance between the financial demands of the state and the claims of religious institutions by analyzing elaborately the evidence before them in the context of extremely technical economic issues involved therein.