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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.05.2010
Pronounced on: 26.07.2010

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CS (OS) No. 193/2010, I.A. Nos. 1407/2010 & 1408/2010

SHISHIR BAJAJ & OTHERS

..... Plaintiffs

Through : Mr. Sudhir Chandra Aggarwal, Sr. Advocate with Sh. P.K. Mittal, Sh. Uday Kumar, Sh. Naveen Chawla and Ms. Roma Ahuja, Advocates.

versus

INDIA YOUTH CENTRES TRUST & OTHERS

..... Defendants

Through : Sh. Sanjay Jain, Sr. Advocate with Sh. Digvijay Rai, Advocate, for Defendant Nos. 1 and 2.

Sh. V.P. Chaudhry, Defendant No.3 in person.

Sh. G. Tushar Rao, Advocate, for Defendant Nos. 4, 5 and 6.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S. RAVINDRA BHAT

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1. The plaintiffs seek declaration challenging the appointments of the fourth, fifth and sixth defendants as the trustees of the first defendant (hereafter referred to as “the trust”); directing their consequential removal from the Board of Trustees; further, declaration that the resolutions in the meetings held on 19.09.2009 are illegal and void and injunction against the defendants from holding or participating in any meetings of the Board of Trustees in relation to the trust.

2. The facts to the extent they are relevant and undisputed are that the Trust was originally incorporated as “WAY India Youth Centres Trust” through a Deed dated 10.08.1961 - its founder trust included Shri Morarji Desai, Smt. Indira Gandhi, Shri Naval Tata and Shri R.K. Bajaj etc. On 05.06.1973, through a supplementary deed, Trust’s name was changed to “Indian

Youth Centres Trust”; the other terms of the Trust remained unchanged. The second and third defendants and the three plaintiffs are trustees. The manner of appointments as well as the appointment of 4th, 5th and 6th Trustees is challenged in the suit.

3. The plaintiffs rely upon some material terms of the Trust Deed, which are extracted below: -

“Clause 13

The number of Trustees shall not be less than 5 and more than 11 provided however that if the number of Trustees become less than 5 the surviving or the continuing Trustees shall be entitled to act with a view to appoint new Trustees or Trustees, so as to bring the number of Trustees to the minimum as herein provided.

Clause 14

The Trustees shall be entitled to appoint not more than two persons from amongst themselves as the Managing Trustee or Trustees with such power and for such period and upon such terms as the Trustees may from time to time decide.

Clause 15

Whenever any Trustee shall resign, die or become insolvent or be convicted of a criminal offence involving moral turpitude or desire to be discharged from or refuse or become unfit or incapable to act, then and in every such case, the surviving or the continuing Trustees or trustee for the time being, shall be entitled to appoint a Trustee or Trustees in place of the Trustee or Trustees so resigning or dying, or becoming involvement or being convicted or refusing or becoming unfit or incapable to act as aforesaid. The surviving or continuing Trustees shall also be entitled to appoint additional Trustee or Trustees from time to time as they may consider proper but so that the number of Trustees shall not be more than eleventh.

Clause 17

Every new Trustee appointed as aforesaid shall as well before as after such transfer of the Trust fund or property, have the same powers, authorities and discretions and shall in all respects act as if he had been originally appointed a Trustee under these presents.

Clause 18

Every resolution of the Trustees and every decision by them, unless unanimous shall be taken by majority of the Trustee present and voting and in case of equality of voters, the Chairman shall have a casting vote. The Trustees may pass any resolution by circular if it is unanimous.”

4. It is submitted that a joint reading of the above conditions mandates the prescribed procedure for appointment of trustees, i.e.

(i) The total number of trustees can be 11.

- (ii) The surviving and continuing trustees have to ensure that at all times at least 5 trustees are there.
- (iii) The power of appointing new trustees vests with surviving and continuing trustees.
- (iv) The decision for appointment of new trustees has to be taken by all, either unanimously or by majority of such surviving and continuing trustees.

5. The suit contends that on 23.10.2007, a meeting of the trustees was held in which the third defendant proposed for fresh appointments on the basis of suggestions from existing trustees, to be made to the second defendant who was, at that time, Chairman of the meeting. It is stated that the procedure stated was that such suggestions would be considered by the second defendant who would consult with the first plaintiff - the managing trustee and appointment two new trustees. This Resolution or proposal, say the plaintiffs, was not in conformity with the Deed of Trust. **They accordingly allege to have expressed their unwillingness.** It is alleged that the third defendant explained that the procedure was in accordance with the Trust Deed and in accordance with law, which the plaintiffs believed. On that date, i.e. 23.10.2007, the following Resolution was made: -

“2. Resignation letters of Shri P.T. Kuriakose and Dr. L.S. Kothari and appointment of new Trustees:

The Board then discussed the resignation letters forwarded by Dr. L.S. Kothari and Shri P.T. Kuriakose. The Board placed on record its deep sense of gratitude to the services rendered by Shri Kuriakose and Dr. Kothari, and accepted their resignations.

Shri Viresh Pratap Chaudhary stated that it would be in the fitness of things if the two vacancies that have occurred in the Board of Trustees, consequent to the resignation of Shri P.T. Kuriakose and Dr. L.S. Kothari, were filled as early as possible. After some deliberations, it was decided that the Trustees might recommend suitable names to the Chairman within a month and the Chairman, in consultation with the Managing Trustee, might then induct two more Trustees in the Board of Trustees.”

6. The plaintiffs next say that on 11.10.2008, Board of Trustees, including them and defendant nos. 2 & 3 again met; however, the appointment of trustees was kept in abeyance. The plaintiffs contend that despite lack of considerable time, the second defendant could not communicate the fate of recommendations made by the surviving trustees and in these

circumstances, the first two of them (the plaintiffs) met him, i.e. the second defendant on 26.02.2009 when request for filling vacancies was made. The plaintiffs next advert to a letter dated 03.04.2009 by the second defendant where he nominated four persons to act as Trustees, i.e. Dr. Bhishma Narain Singh, Shri Gopal Krishan Gandhi, Shri Anil K. Shastri and Shri R.N. Anil. These nominations, according to the suit, are illegal as the appointments were not in conformity with the procedure prescribed with the Trust Deed dated 05.06.1973, as there was no unanimity or majority backing of the existing and continuing trustees. The relevant extract of the said letter (produced with the suit, and which is not in dispute) reads as follows: -

*“Shri Shishir Bajaj
Managing Trustee, Indian Youth Centres Trust
C/o Bajaj Hindustan Ltd.
Bajaj Bhawan, 226, Nariman Point
Mumbai – 400 021.*

Dear Shri Shishir Bajaj

As you are kindly aware, the Board of Trustees of the Indian Youth Centres Trust at its Meeting held in October, 2007 had decided that the Trustees might recommend suitable names to fill the vacancies, to the Chairman and the Chairman in consultation with the Managing Trustee, might then induct the new Trustees. Since no names were received, the Chairman urged the Trustees to send the nomination for the three vacancies that had arisen.

I had received the recommendations from all the Trustees. I before taking decision, consulted the Managing Trustee, and as well as other Trustees.

Keeping in view the recommendations received and the consultations held, I decided that I should take the consent of the following four eminent persons to become Members of the Trust:

- 1. Dr. Bhishma Narain Singh*
- 2. Shri Gopal Krishna Gandhi*
- 3. Shri Anil K. Shastri*
- 4. Shri R.N. Ani.*

Accordingly, I wrote to each one of them. Only Shri Gopal Krishna Gandhi declined to send his consent, due to heavy burden of his work, as he is a Governor. The other three persons have sent their consents.

Accordingly, I have nominated the following as Trustees of the Indian Youth Centres Trust, with immediate effect: -

- 1. Dr. Bhishma Narain Singh*
- 2. Shri Anil K. Shastri*
- 3. Shri R.N. Anil”*

7. The plaintiffs talk about a reply to the above communication, by letter dated 09.04.2009 (by the first plaintiff), which after extracting the Board Resolution of 23.10.2007 went on to state as follows: -

“From the above it is clear that both your goodself and me were jointly given the responsibility by the present Trustees to only appoint 2 Trustees and not 3 Trustees, with mutual consent, in view of the resignation of Shri Kuriakose and Dr. Kothari.

As you may recall I and Rajat had met you at the Kendra’s office on 26th February 2009 and we had a discussion about the names of Trustees who could be considered for this August Body. In fact, I had discussed the names of Mr. Justice Chandrasekharji Dharmadhikari and Smt. Usha Gokhani, Chairman of Mani Bhavan, Mumbai, where Mahatma Gandhi had stayed for many years. She also happens to be the granddaughter of Mahatma Gandhi (daughter of Shri Ramdas Gandhi).

I also remember Rajat discussing the name of the candidate which he had proposed and few other names including that of Shri Gopal Gadhi. However, we frankly did not get a chance to discuss other recommended names given by the other present Trustees of the Indian Youth Centres Trust. In view of the same no two categorical names of the Trustees were finalized between yourself and me.

In the history of this August Body there has never arisen any dispute over the appointment of Trustees. Hence I would humbly request you to immediately put in abeyance the appointment of the above 3 Trustees.”

8. The plaintiffs rely upon a similar correspondence by one of them with the second defendant. It is stated that in reply to their protest - a letter of the first plaintiff dated 09.04.2009 - the second defendant responded by his letter dated 15.04.2009. The relevant portion of that letter reads as follows: -

“I find that some of the facts in your letter, as also the letter of Shri Rajat Narainji have not been correctly set out. The correct facts, so far as I know, are as under: -

You have in your letter under reference, set out correctly the relevant extracts of the Proceedings of the Meeting of the Board of Trustees held on 23.10.2007. However, when that matter came up again in the Meeting of the Board of Trustees held on 11.10.2008, Shri Viresh Pratap Chaudhryji pointed out that apart from two vacancies on the Board of Trustees, another vacancy on account of the demise of Shri Ravindra Vermaji had since arisen, and that the same should also be filled by the same process, as had been decided in the Meeting of the Board of Trustees held on 23.10.2007. This was agreed to in the Meeting. However, when the Draft Minutes of the Meeting held on 11.10.2008 were circulated by Shri Suresh Ambekar, Director of the Kendra, there was no mention of the said point in the Draft Minutes. I came to know that Shri Viresh Pratap Chaudhryji had sent a letter in response to the Draft

Minutes, for incorporation of the said point in the Minutes and Shri Chaudhryji has sent me a copy of the letter which he had written to Dr. Ambekar in this behalf. Even otherwise, the clear vacancy arose due to the sudden passing away of former Chairman Shri Ravindra Vermaji. Therefore there were three clear vacancies existed on the Board.

In furtherance of completing the process of inducting New Trustees, the Director of the Kendra sent me your letter dated 28.1.2009 in which you had recommended only one name of Shri K.S.Vaidyanathan. Shri Rajat Narainji also sent a letter dated 30.1.2009 to Shri Ambekar, recommending the name of Shri Kushagra Nain Bajaj. He acknowledged in that letter that Shri Kushagra Nain Bajaj was your son, but he stated that Shri Kushagra Nain Bajaj was in his own right eminently suited to be inducted as a new Trustee.

After all the Trustees had sent their recommendations. I had asked Shri Ambekar to prepare a list of all such recommendations and send a copy to you and to me. Shri Ambekar did so.

As I was to be in Delhi on 26.2.2009, I thought of discussing with you the names of the proposed Trustees, and invited you to meet me in the office of the Kendra. Earlier, I had also got in touch with Shri Rajat Narainji at Haridwar, requesting him to give some more names. Shri Rajat Narainji incidentally was also in Delhi on 26.2.2009. He had also accompanied you in your meeting with me in the office of the Kendra on that date. I had a free and frank discussion with you, as well as Shri Rajat Narainji, for quite some time. I also indicated my reservation for the names suggested by both of you. You then suggested to me the names of Mr. Justice Chandrasekharji Dharmadhikari and Smt. Usha Gokhani. Shri Rajat Narainji also suggested the name of Shri Gopalkrishna Gandhi. Regarding the names circulated to Managing Trustee and the Chairman, I had also consultation about the names with Shri Manohar Golpelwarji and Shri Viresh Pratap Chaudhryji. Neither you nor Shri Rajat Narainji indicated to me any reservation about the other names in the list prepared by Shri Ambekar. The name of Shri Gopalkrishna Gandhi appeared to me to be suitable. Therefore, I sent him a letter seeking his consent, but he declined. I had also sought consent of Dr. Bhishma Narain Singhji, Shri Anil K. Shastriji and Shri R.N. Anilji. They have sent their consents. Thereupon, I nominated them as new Trustees on the Board of Trustees of the Indian Youth Centres Trust and intimated them about their induction as new Trustees. By my letter dated 3.4.2009, I also intimated you and other Trustees about the said nominations.

In view of what I have stated above, I feel that it would not be correct to keep in abeyance the decision to induct the three New Trustees. That decision has already come into effect”

9. The plaintiffs have adverted to several other letters dated 16 & 17.04.2009, 13.05.2009 and 20.06.2009 written to the second defendant. The sum and substance of these letters is that the plaintiffs reiterated their objections to the appointment of the new Trustees, i.e. Defendant Nos. 4-6 and also to the procedure adopted on two counts. The second and third defendant, on the other hand, stated that there was no infirmity or legal irregularity, in the appointment of such new

trustees, in their subsequent correspondence, with the plaintiffs, starting with the second defendant's letter dated 22.06.2009. In this background of circumstances, a meeting of the Board of Trustees of the first defendant was held on 19.09.2009, which comprised of the three plaintiffs, the first two defendants and two out of the three new Trustees. This meeting appears to have been stormy where the subject of the appointment of three new trustees was raised. The discussion appears to have occurred along the predictable lines. In that, the plaintiffs recorded their protest to the three appointments stating that there was no consultation and also that in any event, the third trustee could not be appointed; the third defendant, on the other hand, supported the appointments.

10. The plaintiffs while instituting the suit stated in paragraph-2 as follows: -

“The present suit is being filed to address personal grievances and to assert personal rights, may be as the office bearers of the trust. It is not in the representative capacity or in the nature of public interest. This suit is filed for vindication of the own rights of the Plaintiffs”.

11. The defendants had at the preliminary stage stated that the Trust is a public charitable one and, therefore, beyond the ambit of the Indian Trust Act. They had denied the plaintiffs' *locus standi* to claim the reliefs. In these circumstances, the plaintiffs urged I.A. No.1407/2010 - which had been instituted earlier along with the suit on 03.02.2010, seeking leave to sue under Section-92 of the Code of Civil Procedure (CPC). The plaintiffs aver that the application is preferred as a matter of abundant caution so that no technical objection may be raised by the defendants.

12. The plaintiffs, during the course of hearing, reiterated their submissions; besides, they relied on judgments reported as *Swami Paramatmanand Saraswati & Anr. v. Ramji Tripathi and Another*, (1974) 2 SCC 695 to say that in case the Court holds that their interest is private, they can maintain the suit. It is urged, principally, however, that as the parties are agreed that the trust is a public charitable one, covered by Section 92, the Court should see the larger aspect and decide, unconstrained by the adversarial submissions, whether the appointments sought to be justified by the first two defendants, can be affirmed, in the light of the trust deed. It is submitted that the Trust, as well as the Trustees, are circumscribed, in their powers by the Deed, which clearly postulates that appointment of new trustees, has to be by *all* the surviving and continuing trustees, acting unanimously, or by majority. Counsel urged that this leaves no room for delegation of such essential powers to one or the other trustee. It is argued, alternatively, that if

for some reason, the Court were to uphold the resolution of 2007 whereby the second defendant could nominate two trustees, after due consultations with them (the plaintiffs), even then, the record, of the admitted minutes of meeting and correspondence do not indicate any such effective or meaningful consultation, but clearly point to a unilateral imposition of names. The plaintiffs urge that the suit is not as much a reflection on the suitability or eminence of the new trustees, as to the adherence to the terms of the Trust Deed, which forms the charter within the framework of which the parties had to conduct their affairs. The plaintiffs also relied on the express terms of Section 92 to say that once a Court finds that an appointment is irregular, then, regardless of other details, the declaration about the effect of such consequence has to follow, having regard to the wider interests of the public in the affairs of the trust, and its efficient and proper functioning.

13. The first two defendants have filed a common written statement contending that the plaintiffs are not entitled to leave under Section 92. It is stated that the Trust has been set up for public charitable purposes and that the grievances articulated about the so called illegal appointment of the new trustees, is a relief personal to them which does not impinge on the administration of the Trust. It is contended that the practice followed by the Trust in organising its activities for the last several decades is that even though the Board of Trust decides on policy aspects, their actual implementation is left to a highly qualified person, appointed as Director. The defendants rely on the fact that ever since 1996 till February, 2010 only 19 meetings of the Board of Trustees were held, which meant that such high level meetings took place barely once a year. The written statement mentions about appointment of the first plaintiff as Trustee on the demise of Shri Ram Krishan Bajaj when the then existing Managing Trustee had discussion with the Bajaj family and thereafter proposed that he should join the Board of Trustees to which the Board unanimously agreed. This is said to have occurred on 28.01.1995. It is stated that similarly the appointment of plaintiff nos. 2&3 and the defendant no.2 took place by unanimous consent and approval of the then Board of Trustees. The instance when the third defendant was appointed as Trustee on 26.10.2004 when the suggestions were accepted by the Board, has also been cited. The common written statement then mentions about the second defendant's appointment, which was unanimously approved by the Board of Trustees on 26.10.2006.

14. It is stated that in the light of the above practice when two Trustees had resigned and the matter came up for filling those vacancies, the Board of Trustees deliberated upon the issues on 23.10.2007 and resolved as they did that each one of them might recommend suitable names to the Chairman who would in consultation with the Managing Trustee induct two more Trustees. The written statement relies upon the Board of Trustees' meeting dated 11.10.2008 and states that the Minutes clearly record approval to the previous decision recorded on 23.10.2007, whereby the Chairman was given the discretion after due consultation with the Managing Trustee to nominate names for the two vacancies. The written statement goes on to mention about a letter dated 29.11.2008 by the third defendant and subsequently letter dated 04.11.2008 by the second plaintiff suggesting names of certain persons to fill the vacancies. It is submitted that in these circumstances, second defendant recommended the names of Shri Bhishma Narain Singh and Shri R.N. Anil. The first two defendants allude to a letter dated 28.01.2009 written by the first plaintiff proposing the name of Shri K.S. Vaidyanathan as one of the Board Trustees and similarly another letter by the third plaintiff to the Director of the Kendra on 30.01.2009. The latter had suggested the name of Mr. Kushagra Nain Bajaj, the first plaintiff's son to fill one of the vacancies. Copies of all these letters have been filed by the defendants.

15. It is contended that the plaintiffs M/s Rajat Narain and Shishir Bajaj met the second defendant on 26.02.2009 and held discussions for filling vacancies, during the course of which, the first plaintiff had suggested certain names, to which, the second defendant voiced reservations. It is submitted that in the light of all these consultations and taking into account the overall circumstances, the second defendant finally made up his mind and wrote the letter dated 19.03.2009 to M/s Bhishma Narain Singh, Anil K. Shastri, Gopal Krishan Gandhi and R.N. Anil enquiring if they were willing to act as Trustees. It is submitted that all of them, except Shri Gopal Krishan Gandhi, accepted and gave their concurrence whereas he did not do so. The defendants urge that there is nothing wrong in this procedure as it was in full concurrence with the procedure that all the Trustees had agreed upon in the meeting held on 23.10.2007. Urging that the plaintiffs cannot now go back upon those decisions, which were really in consonance with the past practice and the manner in which the Trust was functioning, the defendants rely upon the letter of the third defendant dated 10.04.2009, which according to them, sets the records straight. In that letter, the third defendant had mentioned that if the second defendant (as Chairman of the meeting) had nominated three new Trustees after effective consultation with all

the Trustees including the Managing Trustee, there was nothing wrong and that such appointments were legally valid and binding on the Trust. The written statement, like the suit goes on to mention about the subsequent *inter se* correspondences between the defendants and the plaintiffs starting with the letter dated 16.04.2009 and ending with an e-mail of the third plaintiff dated 14.09.2009, then adverts to the meeting of the Board of Trustees held on 19.09.2009 and discusses what transpired there, in detail. As narrated earlier that meeting appears to have discussed the validity of the three appointments and heated discussions appear to have taken place. It is submitted that despite repeated correspondences by the plaintiffs, there was no question of reopening the issue concerning appointment of defendant nos. 4-6 as it was in full conformity with the Board of Trustees' decision dated 23.10.2007.

16. The defendants argue that the Resolution of 23.10.2007 vested the Chairman (i.e. the second defendant) with the power of appointment of trustees, albeit after consultations with other trustees and the Managing Trustee. Relying on the judgment reported as *State of J & K v. A.R. Zakki*, AIR 1992 SC 1546, it is submitted that consultation does not mean approval. Emphasizing that the meeting of 23.10.2007 had settled the procedure to be followed for filling the vacancies of the trustees, it is argued by the defendants that the plaintiffs, being parties to the decisions, (which bind the Trust) cannot resile from it.

17. The first two defendants also argue that the plaintiffs' conduct disentitles them to any relief. Elaborating, it is argued that the plaintiffs admit to the meeting held with the second defendant on 26.02.2009, when the question of finalising names for appointment as Trustees was undeniably discussed. It is submitted that the plaintiffs had in turn proposed certain names to fill the vacancies, to which the second defendant voiced reservations. All these, say the defendants, reveal that the plaintiffs were aware of the procedure agreed to be adopted and actually followed, against which they are protesting now, almost three years later, after the attempt to have their nominees appointed to the vacancies, has been rendered unsuccessful.

18. It is submitted that there is nothing wrong, or irregular in the Trustees resolving to vest the power of appointment to one or more vacancy, even in a public charitable trust. In this context, it is submitted that though public charitable trusts are not governed by the Indian Trusts Act, 1882, the principles underlying that Act will apply. The decision in *Hoshier Singh Mann & Ors. v. Charan Singh & Ors.*, 162 (2009) DLT 208 is relied, for this purpose. The defendants

also rely on *J.P. Srivastava & Sons (P) Ltd. v. Gwalior Sugar Co. Ltd*, 2005 (1) SCC 172 and submit that if the Act were to apply, one trustee can act on behalf of the others, to bind them, and the Trust. It is lastly submitted that in any event, the impugned Resolution of 23.10.2007 cannot be faulted, as it reflected the collective wish of all the Trustees, and, therefore, the appointment of the new trustees is valid and binding.

19. The third defendant adopts arguments similar to the ones advanced by the first two defendants. He also submits that Indian Trusts Act does not apply to this case. He further submits that Clause-15 of the Trust Deed nowhere prohibits or forbids authorisation by all Trustees to one amongst them for the purposes of appointing a new Trustee. He too relies upon the Board of Trustees' Resolution dated 23.10.2007 and 11.10.2008. It is submitted that Supreme Court in its decision reported as *HEH, The Nizam's Jewellery Trust*, AIR 1980 SC 17 (decided on 31.08.1979), had stated that the act of one trustee done with the sanction and approval of the Board of Trustees can be regarded as that of the Board.

20. The third defendant denies all assertions and allegations of a personal nature levelled against him in the suit. He adopts the arguments of the first two defendants and in addition argues that in social, educational, charitable organisations and public trusts, quite often, the members of the governing or decision making body leave it to the Chairman or one particular member to decide or deal with a specific subject matter. Such practice, says the third defendant, is widely adopted and convenient in superior decision making because the larger body routinely adopts the decision of the authorised person. It is submitted that this practice of authorisation amongst the larger body of trustees or governing council members is based on prudence, wisdom and expediency and firmly rooted in convention. The third defendant emphasises that such a practice is necessary for harmonious functioning of a Trust or Society besides avoiding conflict and promoting goodwill amongst all members.

21. It is argued lastly that the meaning of consult does not expand to approval or concurrence. Reliance is placed upon the "New Shorter Oxford English Dictionary Vol-1 with regard to the meaning of the term "consult" which is extracted below: -

***"consult** – Deliberate, take counsel, confer (with someone; about, upon a matter)
Confer about, deliberate upon, consider, Meditate, plan, contrive, take in to
consideration, have consideration for, (the interest, feelings, good, etc., of a*

person or person). Ask advice of, seek counsel or a professional opinion from; refer to (a source of information); seek permission or approval from for a proposed action.”

22. Summons had been issued in the suit on 05.02.2010; the first three defendants entered appearance on the next date, i.e.16.03.2010. Subsequently, they filed their written statement. Defendant Nos. 4-6 appeared on 19.04.2010. They perhaps justifiably did not wish to enter the controversy and did not choose to file any written statement. Accordingly, the matter was heard on 29.04.2010 and subsequently on 12.05.2010. Counsel for the parties agreed that a formal trial in this case is unnecessary since the material documents are part of the record and the only question, which the Court has to decide, is as to the validity of the procedure adopted for appointments of new trustees and whether decisions taken by the Board of Trustees on 19.09.2009 with participation of such new trustees is legal and binding upon the Trust.

23. From the above discussion, this Court has to decide firstly, whether the present suit is maintainable, and if so, if procedure adopted by the trustees, in the appointment of the fourth, fifth and sixth defendants, was valid and legal.

24. In order to determine the first question, it would be necessary to extract Section 92, which is in the following terms:

“92. Public charities.

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person

entitled to the possession of such property];

(d) directing accounts and inquires;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (20 of 1863) or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States]], no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with provisions of that sub-section.

(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more the following circumstances, namely :-

(a) where the original purposes of the trust, in whole or in part,-

(i) have been, as far as may be, fulfilled; or

(ii) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust;

(b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or

(d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(e) where the original purposes, in whole or in part, have, since they were laid down,-

(i) been adequately provided for by other means, or

(ii) ceased, as being useless or harmful to the community, or

(iii) ceased to be, in law, charitable, or

(iv) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.”

It is apparent that the provision deals with suits in respect of public trusts. In order for Section 92 of the CPC apply, the following conditions must be satisfied:

1. There should be a trust created for public purposes of charitable or religious nature.
2. There is an alleged breach of such trust, or the direction of the Court is necessary for the administration of such trust.
3. The suit is instituted in accordance with the procedure and by the persons mentioned in the Section.
4. The suit is representative in character, instituted on behalf of the public, for a vindication of the public interest and not merely a private interest. It is filed by the Advocate General or by two or more persons having an interest in the trust and having obtained the leave of the Court.

25. In *R.M. Narayana Chettiar and Anr. v. N. Lakshmanan Chettiar and Ors.*, (1991) 1 SCC 48 the Supreme Court held that:

“16. A plain reading of Section 92 of the Code indicates that leave of the court is a pre-condition or a condition precedent for the institution of a suit against a public trust for the reliefs set out in the said section; unless all the beneficiaries join in instituting the suit, if such a suit is instituted without leave, it would not be maintainable at all. Having in mind, the objectives underlying Section 92 and the language thereof, it appears to us that, as a rule caution, the court should normally, unless it is impracticable or inconvenient to do so, give a notice to the proposed defendants before granting leave Under Section 92 to institute a suit. The defendants could bring to the notice of the court for instance that the

allegations made in the plaint are frivolous or reckless. Apart from this, they could, in a given case, point out that the persons who are applying for leave Under Section 92 are doing so merely with a view to harass the trust or have such antecedents that it would be undesirable to grant leave to such persons. The desirability of such notice being given to the defendants, however, cannot be regarded as a statutory requirement to be complied with before leave Under Section 92 can be granted as that would lead to unnecessary delay and, in a given case, cause considerable loss to the public trust. Such a construction of the provisions of Section 92 of the Code would render it difficult for the beneficiaries of a public trust to obtain urgent interim orders from the court even though the circumstances might warrant such relief being granted. Keeping in mind these considerations, in our opinion, although, as a rule of caution, court should normally give notice to the defendants before granting leave under the said section to institute a suit, the court is not bound to do so. If a suit is instituted on the basis of such leave, granted without notice to the defendants, the suit would not thereby be rendered bad in law or non-maintainable. The grant of leave cannot be regarded as defeating or even seriously prejudicing any right of the proposed defendants because it is always open to them to file an application for revocation of the leave which can be considered on merits and according to law.”

Earlier, in the decision reported as *Sugra Bibi v. Hazi Kummu Mia*, (1969) 3 SCR 83 it was held that:

“...it is not every suit claiming reliefs specified in Section 92 that can be brought under the Section; but only the suits which besides claiming any of the reliefs are brought by individuals as representatives of the public for vindication of public rights. As a decisive factor the Court has to go beyond the relief and have regard to the capacity in which the plaintiff has sued and the purpose for which the suit was brought.”

26. In the decision, cited in the present case, i.e. *Swami Paramatmanand Saraswati & Anr. v. Ramji Tripathi and Another*, (1974) 2 SCC 695 it was held that:

“10. A suit under Section 92 is a suit of a special nature which presupposes the existence of a public Trust of a religious or charitable character. Such a suit can proceed only on the allegation that there was a breach of such trust or that the direction of the court is necessary for the administration of the trust and the plaintiff must pray for one or more of the reliefs that are mentioned in the section. It is, therefore, clear that if the allegation of breach of trust is not substantiated or that the plaintiff had not made out a case for any direction by the court for proper administration of the trust, the very foundation of a suit under the section would fail; and, even if all the other ingredients of a suit under Section 92 are made out, if it is clear that the plaintiffs are not suing to vindicate the right of the public but are seeking a declaration of their individual or personal rights or the individual or personal rights of any other person or persons in whom they are interested,

then the suit would be outside the scope of Section 92 (see N.Shanmukham Chetty V. V.M. Govinda Chetty, AIR 1938 Mad 92, Tirumalai Devasthanams V. Udiavar Krishnayya Shanbhaga AIR 1943 466, Sugra Bibi v. Hazi Kummua Mia (1969) 3 SCR 83 and Mulla : Civil Procedure Code (13th edn.) Vol.1, p. 400). A suit whose primary object or purpose is to remedy the infringement of an individual right or to vindicate a private right does not fall under the section. It is not every suit claiming the reliefs specified in the section that can be brought under the section but only the suits which, besides claiming any of the reliefs, are brought by individuals as representatives of the public for vindication of public rights, and in deciding whether a suit falls within Section 92 the court must go beyond the reliefs and have regard to the capacity in which the plaintiffs are suing and to the purpose for which the suit was brought. This is the reason why trustees of public trust of a religious nature are precluded from suing under the section to vindicate their individual or personal rights. It is quite immaterial whether the trustees pray for declaration of their personal rights or deny the personal rights of one or more defendants. When the right to the office of a trustee is asserted or denied and relief asked for on that basis, the suit falls outside Section 92.”

27. In the above background, it would be instructive to notice that this court, in *Hoshiar Singh Mann & Ors.* (supra) held that:

“13. I do not find any merit in the contention of the Counsel for the defendants that the present suit is barred by Section 92 of the CPC. The present suit is not of the category covered by Section 92 of the CPC. The present suit is to address personal grievances and disputes and to assert personal rights, may be as the office bearers of the trust, but certainly not in public interest, or in a representative capacity. Every suit with respect or against a public charitable trust does not fall within the domain of Section 92 of the CPC. Where the suit is filed for vindication of private rights and not as representatives of the public or where the right as a trustee is asserted and is denied by the other, the suit is not covered under Section 92 of the CPC. Reference can be made to Swami Paramatmanand Saraswati & Anr. Vs. Ramji Tripathi and Another, AIR 1974 SC 2141 and to Vidyodaya Trust v. Mohan Prasad, II (2008) SLT 628 CLT 368 (SC)+2008 V.A.D. (SC 101).

23. The appointment of office bearers as pleaded by the plaintiffs themselves, according to me is not lawful. The trustees of a public charitable trust are to exercise their duties/functions themselves and not by delegation. The Indian Trust Act, though applicable to private charitable trusts, but principles whereof are applicable to public charitable trusts also, in Section 47 thereof, provides so. The Apex Court recently in J.P. Srivastava & Sons Pvt. Ltd. V. Gwalior Sugar Co. Ltd., II (2004) SLT 1072+I (2005) BC 142 (SC)=AIR 2005 SC 83, cited with approval Atmaram Ranchodhbhai V. Gulamhusein Gulam MANU/GJ/0112/1973 holding, whether a trust is a private trust governed by the Indian Trusts Act or is

a public charitable or religious trust, a trustee cannot delegate any of his duties, functions and powers to a co-trustee or to any person unless the instrument of trust so provides or the delegation is necessary or the beneficiaries competent to contract consent to the delegation or the delegation is in the regular course of business. It was further held that the trustees even by a unanimous resolution authorize one of themselves to act as managing trustee for executing the duties, functions and powers relating to the trust and everyone of them must join the execution of such duties, functions and powers.

24. *However, the trustees in the present case, as pr the plaintiffs, instead of electing the office bearers of the trust themselves, are informed to have authorized the defendant No.2 to nominate the office bearers. The same is dereliction of the duty as a trustee. The trustees are to exercise their discretion in the matter of electing/appointing the office bearers of the trust, in the best interest of the trust and its beneficiaries. I am therefore not inclined to grant any interim order restoring to the management of the trust, office bearers whose own appointment does not appear to be in accordance with the rules and regulations of the trust. The dispute as to whether plaintiff No.1 was elected or also nominated by defendant No.2 also requires trial."*

In *Vidyodaya Trust v. Mohan Prasad R.*, 2008 (4) SCC 115, the Supreme Court, after noticing the earlier rulings, held that while considering pleas under Section 92, relating to public charities, the Court has to take a wider approach, and go beyond the pleadings urged:

"...To find out whether the suit was for vindicating public rights there is necessity to go beyond the relief and to focus on the purpose for which the suit was filed. It is the object and purpose and not the relief which is material."

28. In this case, undoubtedly, the plaintiffs aver, in a sentence in Para 2 of the suit, that the present suit was initiated to vindicate their personal rights. However, it is a matter of record that all the plaintiffs are trustees; the first defendant, even according to the defendant's averments, is a public charitable trust, covered by provisions of Section 92. The appointment or wrongful appointment of a trustee, to such an institution cannot, (even though the plaintiffs have averred so) be a matter of personal *lis* involving existing trustees, and new trustees, or the Trust. The Court's obligation to scrutinize these precise issues is a matter of statute, mandated by Section 92 (1) (a) and (b), CPC. Furthermore, if there is wrongful assumption of the office of a trustee, that falls squarely within the domain of this Court's jurisdiction, as it is not the personal right of a few, but the right of the general public, who are deemed beneficiaries (of the trust) which is affected, or adversely impacted. In these circumstances, it is held that the purpose of the suit is to vindicate public rights, and having regard to the fact that all the three plaintiffs are trustees, it is

further held that they have *locus standi* to maintain the present suit. Leave to do so is hereby granted.

29. The next issue which this Court is concerned is with regard to the legality of the procedure, as well as the appointment of the new trustees, i.e. Defendant Nos. 4 to 6.

30. The two relevant stipulations in the Trust Deed, which deal with appointment of trustees, and the manner of the trustees' taking decisions, i.e. Clause 15 and Clause 18 read as follows:

“Clause 15

Whenever any Trustee shall resign, die or become insolvent or be convicted of a criminal offence involving moral turpitude or desire to be discharged from or refuse or become unfit or incapable to act, then and in every such case, the surviving or the continuing Trustees or trustee for the time being, shall be entitled to appoint a Trustee or Trustees in place of the Trustee or Trustees so resigning or dying, or becoming involvement or being convicted or refusing or becoming unfit or incapable to act as aforesaid. The surviving or continuing Trustees shall also be entitled to appoint additional Trustee or Trustees from time to time as they may consider proper but so that the number of Trustees shall not be more than eleventh.

Clause 18

Every resolution of the Trustees and every decision by them, unless unanimous shall be taken by majority of the Trustee present and voting and in case of equality of voters, the Chairman shall have a casting vote. The Trustees may pass any resolution by circular if it is unanimous.”

(emphasis supplied)

It is apparent that Clause 15 states that whenever a vacancy, in the office of trustee arises, for some reason, the surviving, or continuing trustees are entitled to appoint trustees, in respect of such vacancies. Additional trustees can also be appointed, (provided the overall number of trustees is kept at 11) by following the same procedure. Clause 18 clearly mandates that if resolutions of the board of trustees are not unanimous, they have to be through majority. The written statement by the Trust and the second defendant mentions that in the past, vacancies to the position of trustees, was filled by unanimity from amongst the Board of trustees. The Trust Deed nowhere contains any enabling clause or stipulation, by which the Managing Trustee, or any Trustees can delegate their functions (stipulated in the Deed) to each other or a few of them.

31. Every trustee, especially of public charitable trusts, like the first defendant, is circumscribed in the exercise of his powers and functions, by express provisions of the Deed

creating the Trust, and outlining his duties. It cannot be said that trustees can do something which they are prohibited from doing, or are permitted to do something, in a particular manner, when the manner of doing is clearly indicated to the contrary.

32. In *Adaikappa Chettiar v. Thomas Cook & Son (Bankers) Ltd.*, AIR 1933 PC 78 the principle of *ejusdem generis* was applied, in the interpretation of a document, to hold that general words following words conferring specifically enumerated powers "*cannot be construed so as to enlarge the restricted powers there mentioned*" in a document. In such cases, the intention of the parties to a deed must be gathered from the terms thereof examined in the light of the surrounding circumstances. [Ref. *Sohan Lal Naraindas v. Laxmidas Raghunath Gadit*, (1971) 1 SCC 276]. In *Delta International Ltd. v. Shyam Sundar Ganeriwalla*, (1999) 4 SCC 545], the Supreme Court observed that:

"17. For construction of contracts between the parties and for the interpretation of such document, learned Senior Counsel, Mr. Desai has rightly relied upon some paragraphs from The Interpretation of Contracts by Kim Lewison, Q.C. as under :

"1.03 For the purpose of the construction of contracts, the intention of the parties is the meaning of the words they have used. There is no intention independent of that meaning. 6.09 Where the words of a contract are capable of two meanings, one of which is lawful and the other unlawful, the former construction should be preferred."

"My first duty is to construe the contract, and for the purpose of arriving at the true construction of the contract, I must disregard what would be the legal consequences of construing it one way or the other way".

(emphasis supplied)

In this case, the Settlers to the Trust clearly intended, by clause 15 that all the surviving or continuing trustees would participate in the decision to fill each vacancy of a trustee. Clause 18 posits that decisions of Board of Trustees are to be taken either unanimously or through a majority. Neither condition envisions delegation of the power to appoint a trustee – which is fundamental to the functioning of the trust – to any one trustee, or a few of them. In such circumstances, the fact that all trustees agreed to a procedure, alien to that prescribed in the

Deed, on 23rd October, 2007, is of no avail. Such decision, or any decision taken, contrary to the procedure prescribed by the Deed, will not have the effect of binding the trust, having regard to its public charitable nature. In other words, a few (or even all) the trustees cannot change the manner in which the Trust has to function, and for which provision is made in the Trust Deed, unless such stipulation in the Deed, is itself amended, in the manner known to law, i.e. through a registered supplementary deed, as happened in 1973. In the circumstances, it is held that the decision whereby the power of appointment was left to the second defendant, is contrary to the Trust Deed, and therefore, unenforceable.

33. In view of the above findings, the suit has to succeed. It is, however, clarified that the Court has not adjudicated on any other allegation, including allegations levelled against the third defendant, as they are wholly unnecessary for adjudication as to the real issues in the suit. Accordingly a decree, declaring that the appointment of the fourth, fifth and sixth defendants is invalid, and not binding on the first defendant trust, shall be issued; a consequential injunction, permanently restraining them from acting in such capacity, is also issued. The suit is decreed in these terms. Having regard to the peculiar circumstances, there shall be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

JULY 26, 2010