IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **27.06.2017**

CORAM

THE HON'BLE MR.JUSTICE **P.KALAIYARASAN**

C.S.No.294 of 2003

1. K.T.Anbalagan
   Trustee,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

2. P.M.M.Nandagopal (Deceased)
   Trustee,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

3. A.Kesavan
   Trustee,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

4. N.Vijayalakshmi
   Trustee,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

5. K.Vanithamani
   Trustee,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

6. R.Saroja
   Trustee,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090. .. Plaintiffs

vs

1. Jai Bharath Charitable Trust
   Rep. by its Chairman,
   V.Dhandayuthapani,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

2. V.Dhandayuthapani
   Chairman,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

3. A.Jayamohan (Deceased)
   Managing Trustee,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

4. J.Mallikeswari
   Trustee,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

5. S.Nithiyanandam
   Trustee,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

6. T.Manoharan
   Trustee,
   Jai Bharath Charitable Trust,
   31/37, Astalakshmi Gardens,
   Besant Nagar, Chennai - 600 090.

7. C.K.Mani
Trustee,
Jai Bharath Charitable Trust,
31/37, Astalakshmi Gardens,
Besant Nagar, Chennai - 600 090.

8. A.N.Sekar

9. C.Padmavathi
W/o. A.Ekambaram .. Defendants

(4th plaintiff transposed as the 7th defendant's as per order dated 18.04.2007 made in A.No.3316 of 2003 and time extended as per orders dated 29.03.2011, 15.03.2012, 03.04.2012 and 12.04.2012)

(8th defendant impleaded as per order dated 11.07.2003 made in A.No.2458 of 2003 and time extended as per orders, dated 29.03.2011 15.03.2012, 03.04.2012 and 12.04.2012)

(9th defendant impleaded as per order, dated 29.03.2011 made in A.No.1410 of 2011 and time extended as per orders, dated 15.03.2012, 03.04.2012 and 12.04.2012)

Civil Suit filed under Section 92 (1) (d) and (g) of Civil Procedure Code read with Order VII Rule 1 of CPC and Order IV Rule 1 of Original Side Rule, seeking for a judgment and decree

(a) for a scheme providing for the better administration of the first defendant trust and its affairs and administration of the educational institutions of the first defendant trust;

(b) declaring that the defendants 2 and 3 are disqualified and ineligible to hold the post of Chairman and Managing Trustee respectively of the first defendant trust;

(c) removing the defendants 2 and 3 from the trusteeship of first defendant trust;

(d) for appointing a committee of management consisting of three life trustees of the first defendant trust, excepting the defendants 2 to 5;

(e) for a direction for accounts and enquiries into affairs of the trust from the date of establishment of the trust more particularly for the period from 1999 onwards to till the date of filing of suit and for costs.

For Plaintiffs : Mr.S.Thankasivan

For Defendants : Mr.P.B.Balaji for D1 and D2

M/s.Sampath Kumar & Associates
for D3

Mr.S.Karthikeyan
for M/s.Norton and Grant
for D4 to D6

Mr.P.Ranganatha Reddy
for M/s. King and Patridge
for Administrator

Mr.N.Anand Venkatesh
for D7 and D8

Ms.AL.Gandhimathi for D9

JUDGMENT

This suit for framing of a scheme under Section 92 CPC is pertaining to the first defendant Trust. The fourth plaintiff has been transposed as 7th defendant. The second plaintiff and third defendant are no more. All the plaintiffs and defendants are represented by their counsel.

2. This Court appointed interim Administrator and the interim Administrator, Hon'ble Mr.Justice V.Rengasamy, a former Judge of this Court has been conducting the affairs of the first defendant Trust from 2003. This Court in its order, dated 18.11.2016, after hearing all the parties adopted the following course to settle a scheme for D1 Trust without setting down the suit for trial (i) the learned counsel for plaintiffs as well as the defendants (except 9th defendant) shall file their objections to the draft scheme circulated by the 9th defendant in November 2014 and while doing so, all the parties shall send a copy of the objections to the learned counsel for the interim Administrator. (ii) The draft scheme circulated by the 9th defendant, plaintiffs and all the defendants (except 9th defendant) together with their objections shall be filed before the learned Administrator through his counsel. Accordingly, the draft scheme circulated by the 9th defendant and the draft scheme filed by the plaintiffs and other defendants (except 9th defendant) together with their objections was sent to the interim Administrator, who has been in the helm of affairs of the Trust from 2003 to give his views through his counsel. The interim Administrator also after analysing the draft schemes and objections filed his views.

3. In the absence of any appeal against the order of this Court, dated 18.11.2016, course adopted without setting down the suit for

trial by this Court is construed to have been accepted by all the parties. Acceptance of the said order is also fortified by the parties by filing objections to the draft scheme, one filed by D9 and another filed by the plaintiffs and all other defendants excepting D9 for placing the same to the interim Administrator for his views. Though D2 initially did not joint in the draft scheme filed by others, he joined with others to raise objections against the draft scheme given by D9.

4. This Court perused the Trust Deed, Draft Scheme filed by the plaintiffs and all the defendants excepting D9, Draft Scheme filed by D9 and the views given by the interim Administrator.

5. The views of the interim Administrator who has been in helm of service of the Trust from 2003 is considered practicable and very valuable. This Court is of the considered view that the draft scheme filed by the 9th defendant which suggest to exclude some Trustees from Trusteeship in the absence of any finding against them, appointing District Judge as Ex-officio Chairman and bringing MP and MLA as co-opted Trustees and for submitting Income and Expenditure report to the High Court once in six months is neither feasible nor acceptable.

6. The Draft Scheme given by the plaintiffs and some of the defendants other than 9th defendant with some modifications as suggested by the learned interim Administrator will be helpful for proper administration of the Trust.

7. After analysing all the aspects, this Court frames the following Scheme for proper administration of the first defendant Trust :

SCHEME OF THE TRUST

A. **Name of the Trust** : Jai Bharath Charitable Trust (as in the original Trust Deed, dated 28.12.1994)

B. **Place of Office** : Priyadharshini Engineering College premises at Vaniyambadi (PEC)

C. **Objects** : Same as in Clause 2 of the Deed of Trust, dated 28.12.1994.

D. **Board of Trustees** :

(i) **Number of Trustees** : Minimum of 7 and Maximum of 15

(ii) **Name of Trustees** :
1. K.T.Anbalagan
2. A.Kesavan
3. K.Vanithamani
4. Vijayalakshmi
5. R.Saroja
6. J.Malligeswari
7. S.Nithyanandam
8. T.Manohar
9. C.K.Mani
10. A.N.Sekar
11. V.Dhandayuthapani
12. C.Padmavathi

The above Trustees shall constitute the Board of Trustees.

(iii) **Tenure of Trusteeship** : The above said Board of Trustees shall continue in the office of Trustee till their life time or until they resign voluntarily provided they do not suffer any disqualification mentioned in the Trust Deed dated 28.12.1994 or in this scheme or found disqualified by a Court of Competent jurisdiction. Any New Trustee hereinafter appointed in the manner envisaged below shall also be the Trustee until their life time or until they resign voluntarily provided they do not suffer any disqualification.

(iv) **Manner of Appointment as Trustee** : (a) Each of the Board of Trustees shall have the right to appoint / nominate one Life Trustee to succeed / replace him / her. Any such appointment / nomination shall take effect only upon the resignation or demise of appointing life trustee. Insanity, insolvency, moral turpitude and conviction in any criminal cases involving immorality and offences warranting imprisonment exceeding two years etc, shall be a disqualification and persons who have suffered any of such disqualifications, shall not be entitled to get nominated. Further if any existing trustee suffers such disqualification during the currency of their trusteeship, such trustee shall be liable to be removed from the trust by the Board. A minimum of 3/4th majority is required to approve such nomination / appointment of any new Trustee by the existing Trustees and such nominated / appointed person shall be included in the Board of Trustees only after the approval of 3/4th of the Board of Trustees. The Board is entitled to reject any such nominee if he/she is found to be suffering from any disqualification or his / her induction would be detrimental to the interest of the Trust. A Trustee, i.e., one among the Board of Trustees or any Trustee subsequently appointed thereafter, if found disqualified as per this clause, shall lose his / her trusteeship and also forego his / her right to appoint / nominate new Trustee in his place apart from losing his right to continue as a Trustee.

(b) In addition to the provision of Clause D(iv) (a) herein above, the Board of Trustees can unanimously appoint any New Trustee subject to the condition that the maximum strength of Trustees shall not exceed 15 (fifteen).

However at no point of time, appointment of New Trustees shall be made by way of election or by voting. In the event of any of the existing trustees opposing appointment of a new trustee, a minimum of 3/4th (three fourth) majority of the Board is compulsory for appointing such a new Trustee.

(c) In any case the number of Trustees shall not exceed the maximum limit enumerated in Clause D(i) above. Both the Trustees in the First Board and the Trustee who assumed office subsequently shall be entitled to nominate / appoint only one Trustee during their life time. Such appointment / nomination can be made either by way of specific written communication to the Board or by any registered testamentary deed or in any other mode made known both to the proposed Trustee as well as to all the then existing Board members. The nomination shall be specific and unambiguous.

(d) In case if the Trustee fails to appoint / nominate any person as Trustee to succeed or replace him, the Board is at liberty to fill up such vacancy in consonance with

Clause D (iv) (b) above. In such case one among the legal heirs of such Trustee who had resigned or expired without nominating his / her successors can be considered and appointed subject to his / her eligibility, integrity and willingness to take up Trusteeship. This also requires 3/4th majority in the Board of Trustees. In case a person nominated by a life Trustee after resigning from the Board and such nominee is found to be not acceptable by 3/4th majority of the Board of Trustees, the said outgoing life trustee shall be entitled to either withdraw his resignation or to make a fresh nomination.

(v) **Disqualification of being Trustee** : Any person who has become insolvent and filed petition for adjudicating himself / herself as insolvent or adjudicated insolvent at the instance of his / her creditors or found guilty of any offence involving moral turpitude or offences warranting imprisonment exceeding two years or who took gainful employment in Government or Quasi Government organization, which prohibits engagement in other avocations including Trusteeship or who has became lunatic or affected by any kind of mental disorder or who is declared to have acted against the interest of the Trust or found to have caused loss to the Trust and / or embezzled misappropriated the Trust Funds and Assets for his / her personal benefits or that of his / her men by 3/4th majority of the Trustees in a meeting held by the Board of Trustees as contemplated hereunder.

(vi) **Office Bearers of the Trust** : The following office bearers, viz., Chairman, Managing Trustee, Treasurer and two correspondents, i.e., one for the Priyadharshini Engineering College and one for the remaining two institutions, viz., Priyadharshini Polytechnic College and Priyadharshini Industrial Training Institute shall be appointed by the Board of Trustees. The term of office bearers shall be two years.

(vi-a) **The mode of selection** : The mode of selection of office bearers shall be by rotation only. However if any allegations / complaints is pending against any of the trustees, the candidature of such trustee shall not be considered pending completion of enquiry by the Board of Trustees. Subject to the above, the senior most member (eldest by age) among the life Trustees, on his willingness, shall be appointed as Chairman and the next senior most person, on his willingness, shall be the Managing Trustee and the next senior most person shall be the Treasurer and similarly the senior most persons, on their willingness, shall be the Correspondents as referred above. In the event of any of the senior most persons on their turn opting not to accept such responsibilities, next willing senior most persons shall be given the post of office bearers in the same hierarchy. After the expiry of such one term of two years, the above posts shall be filled on rotation from among the remaining Life Trustees on the basis of seniority by age and willingness. In the event of such remaining trustees not willing to take up the responsibility, the senior most persons who have already held such posts, may be re-appointed by the Board of Trustees in the above said posts. All these office bearer posts are honorary and their appointment and functions shall be subject to the decisions of the Board of Trustees only.

(vii) **Meeting of the Board** : All notices regarding the meetings of the Board shall be issued by the Managing Trustee. A notice of minimum seven days shall be given to all the Trustees in writing. In the case of emergent circumstances three days notice will suffice. All notices shall be sent by registered speed post with acknowledgement to the residential address of each trustee as may be provided by them from time to time. The place of Board meetings shall be ordinarily in the PEC, Vaniyambadi. However, extraordinary Board meetings may be held in Chennai in the event of the Chairman and Managing Trustee deciding so by giving seven days clear advance notice to all the Trustees. All meetings shall be chaired by the Chairman of the Board. In the absence of the Chairman during the Board meeting, the Managing Trustee or the senior most member available there, shall chair the meeting. The quorum of the meeting shall be minimum 6 trustees. The meeting of the Board of the Trustees shall be convened once a month. While concluding a meeting, the date, time and place of next meeting may be fixed. If not fixed in the previous meeting, the notice of Board meeting shall be sent to all Trustees seven days prior to the date of next proposed meeting. In case of Extraordinary meetings considering the urgency, importance and necessity such seven days time could be dispensed with and the Trustees shall be informed by using email or by circulation in person through a messenger. The minutes of all the meetings shall be prepared at the end of the meeting and signed by all the members present. The extraordinary meetings of the Board can be held at the instance of the Chairman and the Managing Trustee or at the written request by 1/4th of the Trustees to the Chairman or the Managing Trustee. The meeting fee for each Trustee is fixed at Rs.5,000/- (Rupees Five Thousand) and in addition to that Travel expenses be allowed for the members coming from places beyond 30 Kms, subject to revision by the unanimous decision of the Board of Trustees.

(viii) **Powers of the Board** : (a) The Board shall have power for purchase of properties, development of existing properties, constructions of buildings, improvement of infrastructures, investment of trust monies for such development, amenities etc. The Board shall also have all powers to prescribe additional bye-laws, rules and regulations. For the purpose of introducing new rules and bye-laws, minimum 3/4th majority is required in the Board meeting. Excepting the issues where requirement of 3/4th majority is stipulated, a simple majority in the Board meeting shall be sufficient regarding routine business of the Trust. In such routine issues in the event of an equal decision, the Chairman of the Trust shall have the right of deciding vote.

(b) The Board shall have power for conducting enquiry regarding all allegations and complaints found or made against the Trustees, office bearers as well as the staff of the institutions of the Trust including the issue raised in C.S.No.294 of 2003. The Board shall conduct enquiry by appointing suitable persons from out of the Board of Trustees or experts from outside including Chartered Accountants, legal experts etc., if required. For appointing enquiry committee, a simple majority is required in the Board. If the decision of the committee appointed by the

Board of Trustees is challenged by anyone or any group of persons, such dispute shall be dealt with as per Clause xvi herein below.

(c) Powers of the Managing Trustee : The original documents of the Trust properties and other records shall be under the custody of the Managing Trustee in the office of the Trust (PEC), Vaniyambadi. He shall have the following powers :

a. To carry out the resolutions of the Board of Trustees.

b. To sign papers, receipts and documents relating to the Trust.

c. To pay moneys due by the trust and demand and obtain receipts therefor subject to the condition that all cheques shall be signed only jointly with the correspondent of the respective institutions.

d. To demand and receive moneys due to the Trust by way of cheques, demand drafts, bank transfers etc., and issue receipts for the moneys so received (No moneys of the Trust shall be received by way of cash or kind or in any form).

e. To open current account or savings account in the name of the Trust with any such Nationalised Bank or Banks as the Board may decide from time to time and to deposit or withdraw the monies of the Trust. Such accounts shall be operated jointly by the Managing Trustee and the Correspondent of the Institutions subject to clause (h) below.

f. To make, endorse, accept, sign, negotiate or transfer cheques promissory notes, hundies, bills of exchange, bills of lading, railway receipts, warrants and other negotiable or transferable instruments, Government securities.

g. To initiate prosecute, defend, compromise, refer to arbitration or abandon legal proceedings or dispute subject to approval of Board.

h. The Managing Trustee along with the Correspondent of the Institutions shall have powers to incur all day to day administrative and running expenses of the Trust and the Institutions. In case of any expenditure of more than Rs.3 lakhs, the Managing Trustee shall get the prior approval of the Board of Trustees.

(ix) **Bank Accounts of the Trust** : The powers empowered in the Mother Trust Deed is altered to that effect that all the three bank accounts maintained in the name of the Educational Institutions run by the Trust shall be maintained with only Nationalised Banks. The Managing Trustee as well as the respective Correspondent will be the joint signatories of all cheques to be drawn in the accounts of the Institutions. On change of the constitution of the Managing Committee, the true extract of the Board Resolution confirming such change should be forwarded to the respective Banks and the details of the signing authorities has to be replaced.

(ix-a) A sum not exceeding Rs.10,000/- (Rupees Ten Thousand only) shall be allowed to remain with the Correspondents of each educational institutions for meeting out petty cash expenses. All receipts shall be routed through challans directly to the Educational Institutions. The Bank statements should be collected quarterly in Triplicate, one shall be retained in the respective Educational Institution Office, one shall be retained in Trust office and one shall be forwarded to the Chartered Accountant for permanent records.

(x) **Service of Notice** : All notices to the life trustees shall be served either by hand delivery with acknowledgement or by registered or speed post with acknowledgement due. In the case of extraordinary meetings, notice by email to the trustees who have provided their email address is also permissible.

(xi) **Selection of staff** : The Board of Trustees shall from time to time constitute a Committee of Experts to select teaching and non-teaching staff and the Board shall appoint such selectees if they are found suitable.

(xii) **Admission of students** : The admission of students will be strictly on merit basis. The model being followed by the Hon'ble Administrator for the past several years shall be continued. Apart from the Government quota, the Board will select students according to the merits and the Rules and Regulations prescribed by the Directorate of

Technical Education of Government of Tamil Nadu. No capitation fee shall be collected under any circumstances.

(xii) **Funds** : The funds of the Trust shall be invested in the following manner subject to the provisions of Section 11 and 13 of the Income Tax Act.

a. In any of the approved securities authorised by Section 20 of the Indian Trust Act, 1882.

b. In the purchase of lands and buildings or in the construction of the buildings provided that no such investment shall be made unless with the previous sanction of the Board of Trustees recorded by means of a resolution passed at the meeting of the Board. All monies for such investments shall be routed only through cheques / demand drafts / bank transfers.

c. In current account and / or fixed deposits with any Nationalised Bank approved by the Board of Trustees by means of Resolution passed by the majority of the Trustees of the Board of Trustees.

d. The Income accumulated in any year or years by virtue of section 11 (2) of the Income Tax Act 1961 or any amendment thereof shall be invested in accordance with the provisions of that section.

e. The accounts of the Trust shall be maintained regularly and the accounts shall be audited by a Chartered Accountant every year ending 31st March and the accounts shall be submitted / placed before the Board of Trustees on or before 31st July of every year along with audited report.

(xiv) **Accounts and Audit** : The accounts of the Trust as well as the educational institutions shall be audited by a competent chartered accountant and shall be placed for approval in the meeting of the Board of Trustees before being submitted to the Income Tax Department.

(xv) **Vesting of properties** : All properties, both movable an the immovable of the Trust and the three educational institutions run by, it shall vest in the Board of Trustees.

(xvi) **Arbitration** : All disputes arising among the Trustees shall be resolved themselves in the Board of meeting amicably. In spite of all efforts from among the Trustees in the Board, if any dispute stands unresolved, the same shall be placed before the senior life trustee Mr.Anbalagan and he shall act as the sole Arbitrator for deciding the dispute. In the event of Mr.Anbalagan decides to appoint any expert or any third party to be the sole Arbitrator for resolving such dispute, he is fully entitled to do so. In such an event, such person appointed by Mr.Anbalagan shall act as sole Arbitrator. After the life time of Mr.Anbalagan, all disputes should be resolved only through arbitration by a single Arbitrator to be nominated by the Board of Trustees. If there is no unity regarding appointment of a single Arbitrator, parties shall approach Hon'ble High Court of Madras for appointing a sole Arbitrator. The place of arbitration shall be in Chennai and the decision of Mr.Anbalagan or the sole Arbitrator to be appointed by Mr.Anbalagan or by the Court after his life time shall be final and binding on all the parties. The language of arbitration shall be in Tamil or in English. This decision is unanimously taken by all the parties to this document.

(xvii) **Bye-laws and Rules and Amendments** : It shall be competent for the Board of Trustees to frame necessary bye-laws or rules as may be required for effective management and administration of the Trust and its Institutions subject to acceptance of 3/4th (three fourth) majority from time to time.

(xviii) As on 15th December 2016, Rs.34,15,40,441/- is in Fixed Deposit and sundry account of the Trust account in different Banks. Setting apart Rs.10 crores for meeting the daily expenses and salary of the staff members, the balance Rs.24 crores is to be kept as minimum balance in the Fixed Deposit. The amount accrued in excess to Rs.10 crores as set apart for the expenses after auditing is to be added with minimum balance in investment. If any expenses are to be incurred bringing down the minimum balance, the Board of Trustees is to approach this Court for permission to withdraw such a sum as may be required to meet the expenses.

8. Hon'ble Mr.Justice V.Rengasamy (Retired), who is now functioning as the Interim Administrator, shall hand over charge of all records as well as charge of administration to Chairman, within a week of receipt of a copy of this judgment.

9. The suit is decreed in terms of the Scheme indicated in paragraph 7 above. There will be no order as to costs.

27.06.2017

Speaking order

Index : Yes / No

tsvn

P.KALAIYARASAN, J

tsvn

Pre-Delivery Judgment
in
C.S.No.294 of 2003

27-06-2017