IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.3008 OF 2020
IN
PUBLIC INTEREST LITIGATION NO.120 OF 2019

WITH

CIVIL APPLICATION NO.3009 OF 2020
IN
PUBLIC INTEREST LITIGATION NO.120 OF 2019

Shri Saibaba Sansthan Shirdi,
Tq.Rahata, Dist.Ahmednagar,
Through its Chief Executive Officer,
Arun S/o Kishor Dongre,
Aged:56 years,Occ:Service,
Dist.Ahmednagar APPLICANT

VERSUS

1. The State of Maharashtra
   Through the Principal Secretary to
   the Government of Maharashtra
   in Law & Judiciary Department,
   Mantralaya, Fort, Mumbai – 32

2. Suresh S/o Kashinath Haware,
   Age:Major, Occ:Politician

3. Rajendra S/o Rajbali Singh,
   Aged: Major, Occ:Business

4. Bhausaheb S/o Rajaram Wakchaure
   Aged:Major, Occ:Politician

5. Bipin S/o Shankarrao Kolhe

Aged:Major,Occ.Politician

6. Mohan S/o Motiram Jayakar,
Aged:Major, Occ:Legal Practitioner

(Non-applicants no.2 to 6 all
residents of C/o Chief Executive
Trust, Shirdi,Tq.Rahata,
Dist.Ahmednagar.

7. Uttamrao S/o Rambhaji Shelke
Aged:67 years,Occ:Agriculture,
R/o Sai Sharddha Niwas
Opp.Mothe Baba Temple,
Nagar-Manmad Road, Shirdi
Tq.Rahata, Dist.Ahmednagar RESPONDENTS

Mr Avinash S. Khedkar,Advocate h/f Mr N.R.Bhavar, Advocate for the applicant;
Mr S.S.Dande, A.G.P. for respondent/State;
Ms.P.S.Talekar and Mr Kiran Nagarkar, Advocate for respondent No.7;
Mr P.D.Jarare, Advocate for respondent No.4 in PIL;
Mr A.V.Hon,Advocate for respondent No.6 in PIL;
Mr V.R.Dhorde,Advocate for respondent No.3 & 7 in PIL;

CORAM : PRASANNA B. VARALE &
R.G. AVACHAT, JJ.

DATED : 9TH MARCH, 2020

ORAL ORDER:

The applicant-Shri Saibaba Sansthan Shirdi, by way of present applications, prays for permission to spend amount for the purposes mentioned in the paragraph-4 of Civil Application No.3009 of 2020 and implementation of Resolution Nos.48,58,68,77 and 80 adopted by Ad-hoc Committee on 6th February, 2020.

2. It is submitted by the learned Counsel for the applicant that to celebrate four occasions as a tradition being followed since long and traces of this celebrations is found in the bye-laws prepared in the year 1955. It is then submitted by him that though initially the four occasions,namely,ShriRamnavami, Gurupornima, Gokulashtami and the anniversary of Shri Sai Baba, were the occasions for the devotees to pay their respect to Shri Sai Baba, but, with the passage of time, this was limited to three occasions, namely, ShriRamnavami, Gurupornima and the anniversary of Shri Sai Baba. To make it more clear, the occasion of Gokulashtami is not being followed in recent times.

3. It is also submitted by the learned Counsel

for the applicant that as per the bye-laws of the sansthan, the tradition of forwarding the invitations to the devotees was being followed, since 1955 (शके १८४३) and copy of the document under the caption ‘Utsavacha Hishob’ is placed on record in Civil Application No. 3008 of 2020. Bare perusal of this document shows that there is donation from the devotees and then there is corresponding notice insofar as the expenses are concerned and Notice No.18 refers to the expenses for printing of the invitations.

4. There is a reference to a Judicial order in Civil Application No. 3008 of 2020 and the same is in a Charity Suit presented before the Bombay City Civil Court, Bombay, wherein a reference is made to the kinds of membership and subscription prescribed. There are three categories of members; Patron members, life members and ordinary members. Then there is a reference to rights and privileges of these members

who form the body under a title ‘Bhakta Mandal’. It may not be out of place to refer to a particular clause i.e. clause 4(i) in respect of the invitations and the same reads thus:

> “(4) The rights and privileges of the members of the Bhakta Mandal:
>
> (i) Invitations to members to attend the three utsavas of Shridi viz.Ramnavmi, Gurupornima and punyathi of Shri Sai Baba shall be extended by publishing the same in English and Marathi newspapers having wide circulation, personal invitation shall be extended to patrons and life members only but it would be in the discretion of the executive officer to extend personal invitation to ordinary members.”

5. A reference is made to a scheme approved by the State Government under Notification dated 20th October, 2013 about the description of the membership, classification of the membership and the composition

of these members a ‘Bhakta Mandal’ and the rights and privileges of these members. In the scheme framed in the year-2013 and approved in the year-2014, the privileges of these members are kept intact. It is also submitted by the learned Counsel for the applicant that the exercise undertaken by the Sansthan of forwarding invitations to these members received a positive response and this response is a two way response. The learned Counsel for the applicant- Shri Saibaba Sansthan Shirdi submitted that the devotees who are willing and in a position to attend these occasions, attend these occasions personally; this is the first positive response. Those devotees who are unable to attend these occasions personally, as a goodwill gesture, these devotees contribute something to the sansthan; this is a second positive response received by the sansthan.

6. Our attention is invited to the subject Nos.3, 13, 23, 36 and 40 referred in paragraph-4 of

the application alongwith the other subjects vide Resolution Nos. 48, 58, 68, 77, 80. Subject No. 23 is in respect of permission to expand tentative amount of Rs.87,76,300/- required for the purposes of Ramnavami Utsav and other related programmes.

7. The objection was raised by Ms.Talekar, learned Counsel for respondent No.7 is in the form of an apprehension. She submitted before this Court that as there is a reference to the very object in Resolution No.71 which is a part of the paragraph-4 of Civil Application No.3008 of 2020 and this subject covers the aspect of expenses to print invitation cards for the purpose of attending ShriRamnavmi, Gurupornima and Punyatithi in the year 2020. Ms. Talekar, learned Counsel submitted that it is the apprehension of respondent No.7 that there is a possibility of double accounting for the same purpose, namely, printing of invitation cards on the occasion of ShriRamnavmi, as this very subject is the subject

matter in Civil Application No.3009 of 2020. It is also submitted by Ms.Talekar, learned Counsel for respondent No.7, that in the proposed budgetary allocation of funds, a reference is made to in Civil Application No.3009 of 2020, more particularly at page No.19, in clause No.5 in respect of the printing of invitations and amount shown is Rs.14,00,000/-.

8. On perusal of the documents, we found that the apprehension expressed by Ms Talekar, learned Counsel is only on an assumption and our opinion is formed on the materials placed on record as well as the submissions of the learned Counsel for the applicant. Now, though Ms.Talekar, learned Counsel submitted that when there was reference to the expenditure of Rs. 14,00,000/-, there was no need to again refer to this subject in Civil Application No. 3008 of 2020, when in that application, Resolution No.71 refers to a composite reference to the three occasions, namely, ShriRamnavami, Gurupornima, and the

Punyatithi Utsav. In Civil Application No. 3009 of 2020, it was submitted that in the course of events, occasion of celebration of ShriRamnavami would arrive in near future and as such, to make necessary arrangements for printing and forwarding these invitation cards, specific prayer is made in Civil Application No.3009 of 2020 and though in application No. 3009 of 2020 again in subject No.23, a reference is made to the amount to the tune of Rs. 87,76,300/-. It is specifically stated that this is a tentative expenditure.

9. Our attention is also invited to page No.19, clause-5 of the Civil Application No.3009 of 2020 and the learned Counsel for the applicant submitted that even in this very reference, one can easily find that for the preceding year-2019, though the tentative expenditure for printing of cards was to the tune of Rs.15,00,000/-, actually amount spent for printing of cards was as good as 50% of the estimated cost and it

is to the tune of Rs.9,58,927/-.

10. Learned Counsel for the applicant further submitted that there is every possibility that even in this year, though the proposed amount of expenditure for printing invitation for the composite three occasions is to the tune of Rs.11,55,600/-, the applicant- Shri Saibaba Sansthan Shirdi may not spend proposed amount and the printing of invitation cards for this particular occasion of ShriRamnavami may need a much lessor amount than the proposed amount.

11. We see no reason not to accept these submissions of the learned Counsel for the applicant. In view of the details of expenditure submitted before us, for the preceding year- 2019 and it is the admitted position that in the preceding year, though the tentative amount of expenditure was 15,00,000/-, actual amount utilised for printing cards was to the tune of Rs.9,58,927/-. It is also submitted by learned

Counsel for the applicant that if the applicant-Sanstha, is in a position to save the amount against printing of invitation cards, such amount saved would be certainly utilised for some beneficial purpose or certainly be reverted back to the general funds or the permanent corpus of the sansthan.

12. Thus, though it is the submission of Ms.Talekar, learned Counsel for respondent No.7 that there is an apprehension of double accounting or some extra expenditure under one head, we are unable to accept these submissions of Ms.Talekar, learned Counsel for more than one reasons as referred to in our earlier part of the order.

13. Considering these facts, Civil Application No. 3008 of 2020 is allowed in terms of prayer clause (B).

14. In Civil Application No. 3009 of 2020, by way

of prayer clause (B), the applicant- Shri Saibaba Sansthan Shirdi, seeks permission to spend amount for the purposes mentioned in paragraph No.4 of the application and implementation of Resolution Nos.48, 58, 68, 77 and 80 adopted by Ad-hoc Committee on 6th February, 2020

15. Ms.Talekar, learned Counsel appearing for respondent No.7 had no objection insofar as the other subjects under Resolution Nos. 48, 58, 68 & 77 are concerned, but, had an objection to subject No.40 i.e. the subject under Resolution No.80, which deals with grant of approval for purchase of Cow-Ghee from M/s Harsh Fresh Dairy Private Limited, Bhagwanpur, Haridwar, of spending amount of Rs. 22,00,80,000/- in the year-2020. The thrust of objections raised by Ms.Talekar, learned Counsel was on two count; the first count was of a low price at which the bidder M/s Harsh Fresh Dairy Private Limited, Bhagwanpur, Haridwar is expressing its willingness to supply Cow-

Ghee to the Sansthan. It is the submission of Ms.Talekar, learned Counsel that when the price for purchase in open market is at the higher side, the willingness of the tenderer/bidder to supply Cow-Ghee at relatively lower price gives a cause of apprehension to respondent No.7 that by compromising in price, the bidder may supply sub-standard quality product. The another ground of objection is of non-compliance of the requirement of receiving the vendor's Audit Report on the aspect of the pricing.

16. The materials placed on record in the application is in the form of response received by the other bidders then the scrutiny of these proposals and then an exercise conducted by the Ad-hoc Committee of having a person to person discussion between committee members and representatives of the lowest bidder - M/s Harsh Fresh Dairy Private Limited, Bhagwanpur, Haridwar. These details are placed on record at page-29 under the caption 'Decision No.80'. Then, there is

also a reference for compliance of the requirement of receipt of the vendor’s audit report and it is stated that for such compliance, the applicant - Sansthan would permit one of the Ad-hoc Committee member - Shri Dilip Swami and the Deputy Chief Executive Officer- Shri Ravindra Thakare to visit the place of M/s Harsh Fresh Dairy Private Limited, Bhagwanpur,Haridwar, for their personal satisfaction.

17. In support of the objections raised, an affidavit is placed on record and filed on behalf of respondent No.7. Ms.Talekar, learned Counsel also submitted before this Court that in earlier point of time, the plant of M/s Harsh Fresh Dairy Private Limited, Bhagwanpur, Haridwar, was visited and a report was submitted. She invited our attention to the said documents placed at Exhibit R-5 annexed to affidavit-in-reply.

18. Per contra, the applicant- Sansthan has also

filed a detailed affidavit. Though this affidavit carried caption as 'Short Affidavit', various documents are placed on record alongwith with the affidavit. The report to which Ms.Talekar, learned Counsel refers to is also a part of the short affidavit filed by the applicant. As the copy of the report filed on record on behalf of respondent No.7 is wholly illegible, we are left with no option, but to refer the copy of the same documents placed on record along with the short affidavit filed by the applicant-Sansthan. This is a report submitted in the year 2018.

19. Though it was an attempt of Ms Talekar, learned Counsel for respondent No.7, to submit before this Court that this report refers to non-compliance of certain formalities and this report is under the signature of Food Safety Officer, our attention was invited to this report and document supporting submissions of Ms.Talekar, learned Counsel for

respondent No.7. On going through the report, we could find that though the report refers to certain negative marking in the communication of 4th April, 2018, issued through Dr.Ashish Kumar Singh, Principal Scientist (Food Science & Technology), ICAR- National Dairy Research Institute, Karnal, the overall remark reads thus:

> “Considering all the condition and production practice and record keeping, the plant comes in the fair category as per best knowledge of our plant practices”

20. Now, there is no dispute that this communication forwarded by the person, who is having a knowledge in the field, namely; Food Technology and discharge his duty in a National Dairy Research Institute, Karnal as Principal Scientist(Food Science & Technology. This Court cannot sit as an appellate authority over a certificate issued by someone who is an expert in the field. Therefore, we see no reason to

accept the submissions of Ms.Talekar, learned Counsel on the ground that there is something missing in compliance of necessary requirements by the successful bidder whose tender is accepted by the applicant-Sansthan.

21. It is also submitted by the learned Counsel for the applicant that the vendor's audit report is recently received by the applicant – Sansthan. As such, this requirement is also now complied.

22. Now, dealing with the submission of Ms. Talekar, learned Counsel in the form of an apprehension that the successful bidder M/s Harsh Fresh Dairy Private Limited, Bhagwanpur, Haridwar, expressed his willingness to supply the Cow-Ghee at a lower rate than the prevailing market rate and as such, there may be a possibility of supplying sub-standard product, this apprehension is also taken care of by the documents placed on record along with

the short affidavit filed on behalf of the applicant-Sansthan. The learned Counsel for the applicant-Sansthan invited our attention to the two purchase orders issued in favour of this very successful bidder M/s Harsh Fresh Dairy Private Limited, Bhagwanpur, Haridwar; first is the purchase order issued by Shri Gajanan Maharaj Sansthan, Shegaon. It is a common knowledge that Shri Gajanan Maharaj Sansthan is also one of the places being visited by large number of devotees and the purchase order placed on record shows that Shri Gajanan Maharaj Sansthan, Shegaon placed the purchase order for a large quantity of Cow-Ghee from M/s Harsh Fresh Dairy Private Limited, Bhagwanpur, Haridwar i.e. 6,000 Kgs and it's recent purchase order is dated 19th February,2020. Then there is another purchase order placed on record. This is of recent past i.e. of 19th April, 2019. This is issued, by probably, the place being visited by largest number of devotees, not only from the country but from outside the country i.e. Tirumala Tirupati

Devsthan. The said devasthanam is also receiving Cow-Ghee from M/s Harsh Fresh Dairy Private Limited, Bhagwanpur, Haridwar.

23. Perusal of the documents dated 19th April, 2019, shows that this work order was for procurement of 82,000 Kgs Cow-Ghee with Agmark Special Grade through tins for a period of six months. Then there is a reference to the specifications such as moisture content, Butyro refracto meter reading 40^{o}C, Free fatty Acide, R.M.Value-Minimum, Baudouin test for sesame oil, test for foreign colour, test for Rancidity, test for Mineral oil(TLC), Melting Point, etc.

24. The Purchase order states that the quality is paramount in Tirumala Tirupati Devsthanam, and the supplies will be accepted subject to lab-test. The supply should strictly be confirmed to the specifications and if any deviation is noticed in the lab report, the entire lot will be summarily rejected

and will be viewed very seriously and action will be taken as per the terms and conditions of the tender. It is informed that the said Cow-Ghee will be utilised for preparation of sacred prasadams in TTD local temples.

25. The learned Counsel appearing for the applicant- Sansthan submitted before this Court that, to ensure the quality of the product i.e. Cow-Ghee, the applicant- Sansthan would also include such a condition in the ultimate purchase of the product- Cow- Ghee from M/s Harsh Fresh Dairy Private Limited, Bhagwanpur, Haridwar.

26. The learned Counsel for the applicant firstly invited our attention to the copy of the agreement between the applicant- Sansthan and M/s Harsh Fresh Dairy Private Limited, Bhagwanpur, Haridwar, and he further submitted that Clause-4 of the agreement takes care of the cautionary measure. Clause 4 reads thus:

> "4) While supplying the pure cow ghee,there should be Batch Number and Manufacturing date on the bill. So also, there should be Test/Inspecting report of the Government/ Government approved laboratory annexed to every batch of pure cow ghee."

27. The learned Counsel for the applicant-Sansthan, on instructions, from the officer present in this Court, submitted before this Court that in addition to Clause-4, applicant- Sansthan is ready to put an additional condition as like prescribed by Tirumala Tirupati Devasthanam i.e. 'supply should strictly confirming to the specifications and if an deviation noticed in the lab report, entire lot will be summarily rejected and will be viewed very seriously and action will be taken as per terms and conditions of the tender'. It is also submitted by the learned Counsel for the applicant-Sansthan that the Sansthan is having its own lab and the applicant-

Sansthan would undertake an exercise of periodical check of the product through its lab.

28. Considering these cautionary measures, we are of the opinion that the applicant- Sansthan is taking every care and caution to see that the supply of product i.e. Cow-Ghee is of a standard quality and fit for human consumption.

29. In view of the above, we are of the opinion that the apprehension expressed by respondent No.7 is unjust. Accordingly, Civil Application No.3009 of 2020 is also allowed in terms of prayer Clause (B).

[R.G. AVACHAT, J.] **[PRASANNA B. VARALE,J.]**

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