

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5321 OF 2017

Avinash S/o. Ganpatrao Shegaonkar,
Aged about 49 years, Occu. - Service,
R/o. Dhantoli, Nagpur

.... **PETITIONER**

// VERSUS //

- 1) The Joint Charity Commissioner,
Nagpur.
- 2) Sanjay Dayanand Gupta,
Age - Major, Occu.- Businessman,
66637/159, Radha Anand Nagar,
Manewada, Nagpur – 440024.
- 3) Prashant Prabhakar Pawar,
Age : Major, Occu.- Businessman,
25-A, Hindustan Colony,
Amravati Road, Nagpur-440033.
- 4) Rajiv Pyarelal Jaiswal,
Age : Major, Occu.- Businessman,
103, Saishraddha, Bidoba Housing
Society, Bante Layout, Near Narayan
School, Wardha Road,
Somalwada, Nagpur-440015.
- 5) Mrs. Anita Rajiv Jaiswal,
Age : Major, Occu.- Housewife,
103, Saishraddha, Bidoba Housing
Society, Bante Layout, Near Narayan
School, Wardha Road,
Somalwada, Nagpur-440015.

- 6) Ramnarayan Ramchandra Mishra,
Age : Major, Occu.- Businessman,
6, Avantika, 18, Khare Town,
Dharampeth, Nagpur-440010.
- 7) Aniruddha Ramnarayan Mishra,
Age : Major, Occu.- Businessman,
6, Avantika, 18, Khare Town,
Dharampeth, Nagpur-440010.
- 8) Sudhakar Motiramji Kadu,
Age : Major, Occu.- Businessman,
Plot No.336, Raja Kothi Appt.
Flat No.A-601, Civil Lines,
Nagpur-440001.
- 9) Mrs. Sangeeta Narendra Siramwar,
Age : Major, Occu.- Housewife,
Sahakar Nagar, Gajanan Nagar,
Wardha Road, Nagpur-440025.
- 10) Narendra Rajeshwar Siramwar,
Age : Major, Occu.- Businessman,
Sahakar Nagar, Gajanan Nagar,
Wardha Road, Nagpur-440025.
- 11) Yeshwant Nathuji Shende,
Age : Major, Occu.- Businessman,
46, Nehru Nagar, Khamla Road,
Nagpur-440015.
- 12) Mrs. Sushma Yeshwant Shende,
Age : Major, Occu.- Housewife,
46, Nehru Nagar, Khamla Road,
Nagpur-440015.

- 13) Satish Sheshrao Warhade,
Age : Major, Occu.- Businessman,
73, Kanfade Nagar, Wardha Road,
Nagpur-440015.
- 14) Mrs. Jayshree Satish Warhade,
Age : Major, Occu.- Housewife,
73, Kanfade Nagar, Wardha Road,
Nagpur-440015.
- 15) Vilas Mahadeorao Harde,
Age : Major, Occu.- Businessman,
House No.10, Nagomali Layout,
Rashimbagh, Nagpur-440024.
- 16) Sanjay Marotrao Badwaik,
Age : Major, Occu.- Businessman,
Sai 486, Professor Colony,
Hanuman Nagar, Nagpur-440009.
- 17) Deodatta Dinanath Dasture,
Age : Major, Occu.- Businessman,
142, Yogeshwari, Hanuman Nagar,
Nagpur-440009.
- 18) Avinash Narendra Jaiswal,
Age : Major, Occu.- Businessman,
Plot No.112, Shri Colony, Behind
Shahu lawn, Hudkeshwar,
Main Road, Nagpur-440034.
- 19) Mrs. Bharati Avinash Jaiswal,
Age : Major, Occu.- Housewife,
Plot No.112, Shri Colony, Behind
Shahu lawn, Hudkeshwar,
Main Road, Nagpur-440034.

- 20) Mohan Jairamsing Chavan,
Age : Major, Occu.- Businessman,
Plot No.72, Purvarambh Apt. Govt.
Press Society, Jaitala Road,
Nagpur-440036.
- 21) Amol Bharatsing Bais,
Age : Major, Occu.- Businessman,
Plot No.101, Near Shiv Mandir,
Hawrapeth, Shukla Nagar,
Ring Road, Nagpur-440026.
- 22) Ashish Ramrao Chirkute,
Age : Major, Occu.- Businessman,
House No.3, Near Hanuman Mandir,
Babulkheda, Parvati Nagar,
Rameshwari Road, Nagpur-440027.
- 23) Mrs. Sonali Nilesh Nashikkar,
Age : Major, Occu.- Housewife,
106, Pushpak Apt. Hindustan
colony, Wardha Road,
Nagpur-440015.

.... RESPONDENTS

Shri Anand Jaiswal, Senior Advocate a/b Shri S. D. Abhyankar,
Advocate for the petitioner.

Ms N.P. Mehta, AGP for the respondent No.1.

Shri D.V. Chauhan, Advocate a/w Mr. S. P. Bodalkar, Advocate for
respondent Nos.4 and 5.

Shri A.P. Thakare, for the respondent Nos.9 to 14.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : 14.07.2021

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Hearing is conducted through Video Conferencing and all the learned Advocates agreed that the audio and video quality was proper.

2. Heard finally by consent of the learned counsel appearing for the parties.

3. This petition questions the legality and correctness of three orders passed on the same day, the date of 23rd November 2015. These three orders have been passed in Misc. Application Nos. 247 of 2015, 248 of 2015 and 249 of 2015 .

4. The Misc. Application No.247 of 2015 was in respect of the objections taken by the petitioner as regards acceptance of applications made by different persons including employees of the Trust for membership and by the order passed on 23.11.2015, these objections were rejected.

5. The objections so taken were, *inter alia*, on the points that employees of the Trust who had applied for grant of membership, could not be admitted to the membership they being the employees of the Trust and that their similar applications made earlier have been rejected.

6. In Misc. Application No.248 of 2015 the issue involved was as regards the difference in number of applications actually made and number of applications shown in the public notice in respect of which objections were invited and clarification sought regarding the exact membership applications received. These applications were rejected on the same day of 23.11.2015 on the ground that the objector had not raised any objection to any of the membership applications.

7. Third application being Mis. Application No. 249 of 2015 was about grant of further time for raising an objection in pursuance of the public notice dated 29.10.2015 inviting such objections, which was also rejected on the same day of 23.11.2015 on the ground that the objector had not paid the copying fees for

obtaining of the copies of the applications, dis- entitling him to get any further extension of time for raising of the objection.

8. Insofar as, the challenge made to the order dated 23rd November, 2015 passed in Misc. Civil Application No.249 of 2015 is concerned, we are of the view that the writ petition can be disposed of by issuing necessary directions which would facilitate re-hearing of the objections in a proper manner, which we propose to order for the reasons ensuing herein after. Accordingly, we direct that the petitioner, on his making an application, be permitted to take the inspection of the entire record of the proceedings relating to the membership applications which are being granted by the learned Assistant Charity Commissioner. We further direct that in case any application is made for grant of copy of any document of the proceedings, same shall be allowed on payment of such charges as may be permissible under the Rules and if there are no Rules in that regard, the leviable charges shall be as per the Civil Manual applicable to the District Courts. The Writ Petition to the extent it raises challenge in this regard is thus disposed of.

9. As regards the challenge made to the orders dated 23.11.2015 passed in each of the Misc. Civil Applications No.247 of 2015 and 248 of 2015, we find that these orders, as rightly submitted by the learned Senior Advocate, are the result of non-application of mind on the part of the learned Joint Charity Commissioner to the various provisions made in the scheme framed for the better and efficient management of the Trust, which is known as “Shri Saibaba Seva Mandal, Nagpur Trust” vide order 30th July 1996 passed in Application No.6 of 1992 under Section 50(A)(i) of the Maharashtra Public Trusts Act, 1950. The reason being that if there were objections taken to the effect that the employees of the Trust could not be admitted to membership and that no single person could be given membership of the Trust simultaneously in different categories as Patron, Life Member and Ordinary Member and yet, some of the employees and some of the persons were sought to be admitted to the membership and in some cases even under different categories, at one and the same time, the learned Joint Charity Commissioner was required to consider the consequences which may have followed had such applications been granted. Such decisions, in our view, had the

potential of adversely affecting discharge of confidence reposed in the trustees, the confidence that they would administer the trust for achieving the purposes for which it is created, namely facilitation of offering of obeisance and worship by the devotees to the presiding deity, venerable Shri Sai Baba, and transparent management of financial, administrative and religious affairs of the trust, all done with a view to enable the devotees to be in communion with reverent Shri Sai Baba, unless the decisions are the result of reason enlightening the mind of the decision maker, which is not the case here.

10. It was, therefore, necessary for the learned Joint Charity Commissioner to examine the possible consequences of the decisions, for efficient working of Trust, if taken, before they were actually taken, in the light of various provisions made in the scheme, which it appears on bare perusal of the impugned orders, has not been done by him. These possible consequences, in our view, ought to have been considered by the learned Joint Charity Commissioner, who is an officer entrusted with the task of ensuring proper and efficient management of the Trust by

exercising his supervisory powers. If the trustees of the registered Trust have to hold the office in trust on behalf of the beneficiary and are required to discharge their functions and duties only in the interest of the beneficiary, the position of the Joint Charity Commissioner, if we consider the objects of the Maharashtra Public Trusts Act, 1950, as contained in its preamble, which are to regulate and make better provisions of administration of public religious and charitable trust (See *Administrator of Shringeri Math Vs. Charity Commissioner, Bombay, 1962 Bom. L.R. 457*) and provisions contained in Sections 68 and 69 of the very Act, is even superior to that of a trustee. This is in the sense that he could be considered to be a *pater de trust*, some sort of Super Trustee having extraordinary prescience and superlative powers vis-a-vis trust affairs in general, casting a duty in him to see that the purpose for which the obligation of the trust is to be discharged is not defeated and the confidence reposed in the trustees is not betrayed. Such being the nature of the office of Joint Charity Commissioner and also of the duties and functions of the Joint Charity Commissioner, it was essential on his part to have examined and decided the objections in the light of various

provisions contained in the scheme, in particular to those relating to the constitution of the Board of Management or Trustees, requisite quorum, the disciplinary power given to the trustees over the paid servants or employees of the Trust, the possibility of arising of conflict of interest, if a paid servant or employee is admitted as a member and so on.

11. All these material aspects, in the present case have been over looked by the learned Joint Charity Commissioner. Even if it were true that these issues in their necessary details may not have been raised before the learned Joint Charity Commissioner, still the learned authority could not have adopted a blinkered approach in reaching his decisions given his role as a *pater de trust*, as elaborated by us earlier. Therefore, we are of the view that this is a fit case for remand of the whole matter to the learned Joint Charity Commissioner after quashing and setting aside of the impugned orders. We may add here that on remand of this case, the learned Joint Charity Commissioner shall apply his mind to all the objections, which have been earlier raised and which may be raised additionally by the concerned parties, in the light of various

provisions made in the scheme and in particular on the aspects, which we have noticed at least for the present, in this case as follows :-

(1) Whether grant of membership to any of the paid employees of the Trust would result in conflict of interest in the light of the powers and duties of the office bearers of the Board of Management with reference to the provisions contained in Clause Nos.16(a), 4, 5, 16(b) and 9 of the Scheme ?

(2) Whether admitting a single person as member of the Trust in different categories such as Patron, Life Member and Ordinary Member would adversely impact such aspects as (i) proper formation of Board of Management as contemplated under Clause-7 of the Scheme, (ii) maintenance of quorum in terms of clause 21 of the Scheme and (iii) ability of the Board of Management to take action against any of the members of the Board of Management in accordance with Clause-12 of the Scheme ?

12. Accordingly, the Writ Petition is partly allowed and the impugned orders dated 23.11.2015 passed in each of the proceedings being Misc. Civil Application Nos. 247 of 2015 and 248 of 2015 are hereby quashed and set aside, and with this all

consequential acts, if any, are also set aside. The matter is remanded back to the learned Joint Charity Commissioner for a fresh hearing and decision, in accordance with law, after giving due opportunity of hearing to all the concerned parties, including all the respondents present here and unserved respondents.

13. We further direct that fresh decision shall be taken, in accordance with law by the learned Joint Charity Commissioner, as expeditiously as possible and preferably within three months from the date of appearance of the petitioner and the parties, present before this Court, which shall be 26th July 2021.

14. The petitioner shall take effective steps for ensuring service of notice upon unserved members/respondents. Liberty is granted to the petitioner to move an application for seeking interim relief, if any, before the Subordinate Forum.

Rule accordingly. No costs.

(ANIL S. KILOR, J.)

(SUNIL B. SHUKRE J.)