

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.270 OF 2020

Siddhavinayak s/o. Kashinathappa Bondre,
Age: 78 years, Occ : Agriculture,
R/o. Chikhali, Tq. Chikhali,
Dist. Buldhana.

Swamy Vivekanand Marg Near Anuradha
Engineering College, Paramkuti.

.. APPELLANT

[Orig. R.No.3]

VERSUS

1] Janardhan s/o. Dattuappa Bondre,
Age: 78 years, Occ : Agriculture,
R/o. Chikhali, Tq. Chikhali,
Dist. Buldhana.

2] Baburao Asaram Bhutekar,
Age: 68 years, Occ : Agriculture,
R/o. Nava, Tq. and Dist. Jalna.

3] Subhash Ramrao Kuhire,
Age: 64 years, Occ : Agriculture,
R/o. Nava, Tq. and Dist. Jalna.

4] Prakashand Maharaj Guru Vivekanand
Maharaj, Age : 56 years, Occ : Agriculture,
R/o. Nava, Tq. and Dist. Jalna.

5] Shripad Gangadhar Minase,
Age: 54 years, Occ : Agriculture,
R/o. Deolgaon Raja, Tq. Deolgaon Raja,
Dist. Buldhana, Near Balaji Mandir.

6] The Assistant Charity Commissioner,
Jalna.

.. RESPONDENTS

[Ori Applicant and
R.Nos.1, 2, 4, 5, 6]

...

Ms.Pradnya Talekar, Advocate for the appellant.

Mr.S.S.Thombre, Advocate for respondent nos.2 and 3.

...

CORAM : S.G.DIGE, J.

Reserved on : 14.09.2022.

Pronounced on : 06.10.2022

JUDGMENT :

1] The issue involved in this appeal is remand order passed by the District Judge-3, Jalna [for short 'the learned District Judge'] in Civil Misc. Application No. 82 of 2015, directing the Assistant Charity Commissioner, Jalna [for short 'the ACC'] to appoint first body of trustees by obtaining biodatas and consent letter of the suitable persons within a period of three months.

Brief facts of the case are as under:

2] Shri Anandi Atmanand Saraswati @ Rangnath Maharaj Vishranti Math is a public charitable trust [for short 'said trust']. An application seeking formulation of new

scheme was filed in the year 1997 under Section 50-A (1) of the Bombay Public Trusts Act [for short 'BPT Act'], which came to be decided by the ACC, Jalna on 20.06.2000. The said scheme was challenged before the District Court, Jalna, the learned District Court was pleased to remand the matter for fresh disposal. Thereafter, the ACC decided the said enquiry application vide judgment and order dated 11th March, 2015, by holding that it was necessary to frame scheme for the said trust and appointed the first body of trustees along with framing of the scheme. The said judgment of the ACC was challenged by filing two separate Civil Misc. Applications under Section 72 of the BPT Act before the learned District Judge, Jalna. The learned District Judge has decided both Civil Misc. Applications by common judgment and order. He rejected the Civil Misc. Application No. 78 of 2015, the same has not been challenged by any party. In Civil Misc. Application No.82 of 2015, the District Judge has held that framing of new scheme for the said trust was necessary and the ACC has rightly framed the scheme, however, held that consents and bio-datas of the

proposed trustees were not sought prior to their appointments, hence, remanded the matter to the ACC for appointment of first body of trustees. The said order is under challenge.

3] It is the contention of the learned counsel for the appellant that the said trust in question is a very old religious and charitable trust, having more than 500 acres of land, however, had fallen prey to mismanagement and inefficiency owing to absence of a proper scheme to meet present day requirements as also the maladministration by the then trustees. The trust was administered based on a *vahivatpatra* registered sometime in 1914. The application was filed under Section 50-A (1) of the BPT Act for framing the scheme and for appointment of trustees. Accordingly, the ACC has considered all the facts and appointed the appellant as trustee. The ACC has rightly framed the scheme. The biodatas and consent letters were obtained prior to their appointments as trustees. The Vice Chancellor and Naib Tahsildar were made part of the first body of

trustees as Ex-officio members and they were made members by virtue of the post so as to bring in neutrality and transparency in the management of the affairs of the trust, thus there was no question of taking consent of individual persons holding the office. But this fact was not considered by the District Judge. The Naib Tahsildar attends every meeting of the trust. The interviews of other members of the trustees were taken by the ACC and thereafter they have been selected to be part of the first body of the said trust. The ACC has framed the scheme and appointed the trustees of the said trust by taking extensive efforts. Mere on letter of Vice Chancellor, the matter is remanded back for appointment of fresh trustees without any reasonable ground, which is not proper, hence, requested to allow appeal. The learned counsel relied on the judgment in the case of **Vasantrao Vishwanathrao Mane and others Vs. Apparao Baibanna Sidore and others** reported in 2008 [3] Mh.L.J. 242.

4] It is the contention of the learned counsel for respondent nos. 2 and 3 that while framing the scheme and appointing the first body of the said trust, no proper enquiry was made by the ACC. No paper publication was made in news paper. Credentials of the first body of the trustees were not examined before appointing them as trustees. The consent letters and biodatas of the proposed trustees had not taken. It shows there was illegality done by the ACC, while appointing first body of the trustees, hence, the order passed by the learned District Judge is legal and valid.

5] I have heard both learned counsel. Perused the judgment and order passed by the learned District Judge, Jalna.

6] The issue involved in this appeal is whether the remand order in respect of appointment of first board of trustees of said trust passed by the learned District Judge, Jalna is proper or not. The learned District Judge has observed that no consent was obtained while appointing the

Vice Chancellor and Naib Tahsildar as trustees. Similarly, there is no record of biodatas of the proposed trustees were called by the ACC. The order passed by the ACC to the extent of framing of scheme is proper and legal and to that extent, no interference is required. The ACC has not followed proper procedure for appointing the first body of trustees and to that extent, the judgment and order is not correct and proper. Hence, he remanded the matter to the ACC and directed him to obtain biodatas and consent letters of the suitable persons and appoint first body of trustees.

7] The learned District Judge has remanded the matter only on limited point that consent letters of Naib Tahsildar and Vice Chancellor were not obtained and biodatas of proposed trustees were not called. The number of trustees of the said trust are minimum seven and maximum eleven. The ACC has appointed 9 trustees in the first body of the trustees, including Vice Chancellor of Vasantao Naik Marathwada Krushi Vidyapeeth, Parbhani and Naib Tahsildar, Taluka Jalna, District Jalna as Ex-officio

members. The ACC, in his impugned order in para 24, has observed thus;

24) *Considering the original number of 'Panchas' and thereafter at the time of registration of this trust, I am of the view that minimum seven and maximum eleven trustees are enough to look after the management and administration of this trust. They shall take all the decision in view of the provisions of Scheme only. I have tried my level best to insert the persons from the different walks of life and also the ex-officio like Vice Chancellor and Tahsildar. I have also visited Hon'ble Chief Judicial Magistrate Jalna, Hon'ble Principle Civil Judge, Sr.Div., Jalna and another Hon'ble Civil Judge, Sr.Div., Jalna. I have also invited by application and orally to advocate Shri. P.W.Kulkarni and Shri. S.B.Kulkarni to joint the trust. Due to their pre occupations and busy schedule inspite of their desire to work for the trust they could not consent. Therefore, I have appointed nine persons in the first board of trustees including Hon'ble Vice Chancellor of Vasantrya Naik Marathwada Krushi Vidyapeeth, Parbhani and Nayab Tahsildar, Tq. Jalna Dist. Jalna.*

8] From this para, it appears that for better administration and smooth functioning of the said trust the ACC has taken efforts and thereafter he appointed first body of trustees from different walks of life including Ex-Officio members, viz., Vice Chancellor and Naib Tahsildar. It appears from record that the then Vice Chancellor communicated to the Charity Commissioner that his consent was not obtained before appointing him as trustee and on that basis, the learned District Judge has remanded the matter. In my view, the ACC has appointed Vice Chancellor for bringing transparency in the management and affairs of the said trust as neutral person. The trust is having more than 500 acres land, there should be Government Officer for transparency in work of the affairs of the said trust that's why Vice Chancellor was appointed as Ex-officio member. Ex-officio membership is not given to a person but it is given to a post. It is true that the ACC should have informed the Vice Chancellor before appointing him as trustee but not informing him cannot be a ground to

consider that all other appointments of trustees are illegal. It is seen from above referred paragraph 24 of the impugned order that the ACC had met various authorities before appointment of first body of trustee to ensure that first body of trustees must be body of suitable and capable persons. Accordingly, he appointed first body of trustees. Moreover, there are nine trustees appointed. Minimum number of trustees are seven and maximum are eleven. It is contention of learned counsel for the appellant that a representative of the Tahsildar attends the meeting as Ex-officio member. It is so then mere communication of one ex-officio member i.e. Vice Chancellor, cannot be a ground to wipe out the efforts taken by the ACC and cancel appointments of other trustees. It appears from record that consent letters and biodatas of other trustees as well as their interviews were taken by the ACC prior to their appointments. It shows that proper procedure was followed by the ACC while appointing first body of the trustees. I do not find any merit in the contention of the learned counsel for respondent nos. 2 and 3 that no paper publication was

made or credentials of the proposed trustees were not examined prior to their appointments. The issue of paper publication was not observed by the learned District Judge, Jalna, in his judgment and order and this issue was never raised before the ACC or the learned District Judge, Jalna. Moreover, from the impugned judgment of the ACC it appears that he had taken good efforts before appointing first body of trustees. In respect issue of the credentials of trustees, the ACC has observed that by considering all factors, he has appointed first body of trustees.

9] This Court [Coram : K.K.Sonawane, J.], by order dated 11th February, 2020 had stayed the impugned order of learned District Judge, hence, first body of trustees are administering the trust. It is seen from the record that first board of trustees administering the trust smoothly and effectively. They are filing yearly audit reports of said trust in ACC office, Jalna regularly. The income of trust has gone up from Rs.10 lakhs to nearly Rs. 2 crore in the tenure of first body of trustees, hence, I do not find any reason to

cancel their appointments and again appoint fresh body of trustees.

10] In view of above, I pass the following order:-

ORDER

i] Appeal is allowed.

ii] The order dated 05.12.2019 passed by the District Judge-3, Jalna, is quashed and set aside. The Assistant Charity Commissioner, Jalna shall write a letter to the Vice Chancellor of Agriculture College, Parbhani, requesting him that where he/she is ready to work as Ex-Officio Member on the said trust; if he/she gives consent then include him/her in the body of trustees and if not, exclude his/her name from the body of trustees.

iii] Appeal is disposed of accordingly.

iv] In view of disposal of appeal, all pending Civil Applications do not survive and the same stand disposed of accordingly.

**[S.G.DIGE]
JUDGE**