IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6703 OF 2020

Shirdi Nagar Panchayat, Shirdi,
Tq. Rahata District Ahmednagar
Through its Chief Officer
Kakasaheb S/o Doiphode,
Age : 35 Years, Occ. : Service,
R/o Shirdi, Tq. Rahata
District Ahmednagar .. Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary for
Law and Judiciary Department
Mantralaya, Mumbai

2. Shree Saibaba Sansthan Trust, Shirdi
Through its Chief Executive Officer
Having its office at
Saibaba Sansthan Complex, Shirdi
Tq. Rahata, District Ahmednagar

3. The Assistant Provident Fund
Commissioner,
Plot No. P-11, Bhavishyanidhi Bhavan
M.I.D.C., Satpur, Dist Nashik .. Respondents

WITH
CIVIL APPLICATION NO.8478 OF 2020
IN
WRIT PETITION NO.6703 OF 2020

Sanjay Bhaskarrao Kale
Age 57 years, occu.Medical Representative,
R/O Swami Vivekanand Nagar, Kopargaon,
Dist. Ahmednagar .. Applicant

Versus

1. Shirdi Nagar Panchayat, Shirdi,
Tq. Rahata District Ahmednagar
Through its Chief Officer
Kakasaheb S/o Doiphode,
Age : 35 Years, Occ. : Service,
R/o Shirdi, Tq. Rahata
District Ahmednagar

2. The State of Maharashtra,
Through the Principal Secretary for
Law and Judiciary Department
Mantralaya, Mumbai

3. Shree Saibaba Sansthan Trust, Shirdi
Through its Chief Executive Officer
Having its office at
Saibaba Sansthan Complex, Shirdi
Tq. Rahata, District Ahmednagar .. Respondents

Shri V. D. Hon, Senior Advocate i/by Shri A. V. Hon, Advocate for the Petitioner.
Shri D. R. Kale, Incharge G.P. for the Respondent No. 1.
Shri A. S. Bajaj, Advocate for the Respondent No. 2.
Shri N. K. Chaudhari, Advocate h/f Shri K. B. Chaudhari, Advocate for the Respondent No. 3.

WITH
PUBLIC INTEREST LITIGATION NO. 46 OF 2021

1. Sachin S/o Paraji Kote,
Age : 45 Years, Occu. : Business,
R/o : Pandharinath Nagar,
Nadurkhi Road, Shirdi
Tq. Rahata, District : Ahmednagar
PAN NO.AQPPK4908A
(Issued by I.T. Department of India)
Mobile No. 9623818181
Email – sachinkote171717@gmail.com

2. Sanjay S/o Bhagwat Shinde,
Age : 48 Years, Occu : Business,
R/o 110/111, Biroba Road,
Kalika Nagar, Shirdi,
Tq – Rahata, District : Ahmednagar
PAN No. BOTPS5985J
(Issued by I.T. Department of India)
Mobile No. 9922825584
Email – sanjayshinde161972@gmail.com .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai.

2. The Principal Secretary,
Urban Development Department
Mantralaya, Mumbai-32.

3. The Commissioner,
Municipal Administration,
MS Mumbai.

4. The Chief Executive Officer,
Shree Saibaba Sansthan Trust, Shirdi
Saibaba Temple Premises, Shirdi
Tq - Rahata, Dist – Ahmednagar,

5. The Chief Officer,
Nagar Panchayat, Shirdi.
Tq- Rahata, Dist - Ahmednagar.

6. Regional Provident Fund Commissioner,
EPF Sub-Regional Office,
Plot No. P-11, MIDC Satpur,
Nasik, Dist. Nasik. .. Respondents

Ms. P. S. Talekar, Advocate i/by Talekar and Associates, Advocate for Petitioners.
Shri D. R. Kale, Incharge G.P. for Respondent Nos. 1 to 3.
Shri A. S. Bajaj, Advocate for the Respondent No. 4.
Shri V. D. Hon, Senior Advocate i/by Shri A. V. Hon, Advocate for the Respondent No. 5.
Shri N. K. Chaudhari, Advocate h/f Shri K. B. Chaudhari, Advocate for the Respondent No. 6.

CORAM	***:***	***R. D. DHANUKA AND S. G. MEHARE, JJ.***
Closed for Judgment on	***:***	***08.04.2022***
Judgment pronounced on	***:***	***15.07.2022***

JUDGMENT (***Per R. D. Dhanuka, J.***) **:-**

. Rule. The learned counsel appearing for respondents waive service of rule. Rule is made returnable forthwith. By consent of parties both the aforesaid matters were heard together and are being disposed of by common order.

2. In Writ Petition No. 6703 of 2020, the petitioner has prayed for writ of certiorari for quashing and setting aside Resolution No. 323 passed by the Ad-hoc Committee of Shri Saiba Sansthan Trust Shirdi in the meeting dated 09.06.2020. The petitioner has also prayed for writ of mandamus to forthwith release the amount payable to the petitioner/Municipal Council for the purpose of cleanliness and sanitation as per the Government Resolution dated 07th April, 2018 and corrigendum dated 22nd November, 2018 in accordance with the provisions of Section 21(1)(ii) of the Shree Saibaba Sansthan Trust (Shirdi) Act 2004 from May 2020 onwards.

3. Public Interest Litigation No. 46 of 2021 is filed by Shri Sachin Paraji Kote and another inter alia praying for quashing and setting aside the impugned Government Resolution dated 07th April, 2018, 17th April, 2018 and 22nd April, 2018 issued by the Law and Judiciary Department, Mantralaya, Mumbai thereby directing the Saibaba Sansthan Shirdi Trust to pay Rs. 42.51 Lakhs for cleanliness and sanitation of Shirdi Town contrary to the resolutions of the Sansthan. The petitioners also prayed for an order and direction to the Sansthan Trust to decide afresh the quantum of amount to be paid to the petitioner, Shirdi considering the rates of previous contractors, funds received from the Government for cleaniness/sanitation and its utility for Sansthan and also to frame policy in that regard. The petitioners seek an order and direction against the petitioner, Shirdi to submit the accounts of taxes collected on account of sanitation/clealiness and its utilization, funds received from Government and its utilisation for sanitation/cleanliness, prizes in term of money received from Government and its utilization for sanitation/cleanliness and the grant in aid received from the Sansthan for sanitation/cleanliness before this Court.

4. Some of the relevant facts for the purpose of deciding this writ petition are as under :-

The petitioner is Nagar Panchayat at Shirdi town. The respondent no.2 is Shree Saibaba Sanstan Trust (hereinafter referred to “the said Sansthan Trust”) formed in accordance with the provisions of the Shree Saibaba Sansthan Trust (Shirdi) Act, 2004 (for short “the said Act”). The Government of Maharashtra enacted the Maharashtra Act No.XIV of

2004 viz. Shree Saibaba Sansthan Trust (Shirdi) Act, 2004 to reconstitute the public Trust and to provide for better management, administration, governance and the controlling the Trust to enable it to undertake to wider welfare activities for the public.

5. Section 21 of the said Act provides for the utilization of the Trust's funds for the purposes viz. maintenance, management and administration of temple and properties of the Trust. Section 21(2)(ii) provides that after making adequate provision for the purposes referred in sub-section(1) if there is surplus in the Trust fund, a portion of the surplus being not more than thirty percent of the distributable income of the Trust, it may be utilized from time to time with the previous sanction of the State Government.

6. Sub-section (ii) of Section 21 specifically incorporate utilization of the funds for Shirdi Nagar Panchayat for the improvement and augmentation of local services and amenities resulting in improvement of facilities to the Sansthan. It is the case of the petitioner that in view of the said specific provisions made under Section 21(2)(ii) of the said Act, Shirdi Trust can utilize its funds by providing the same to the Shirdi Nagar Panchayat for the improvement of civil services and amenities in the interest of the devotees.

7. On 19th January 2018 in the Scrutiny committee meeting held by the said Santhan Trust, it was resolved to release the amount of Rs.30,00,000/- per month for a period of five years for utilization of the petitioner for carrying out the work of cleanliness and sanitation at Shirdi.

State Government accordingly in exercise of powers under Section 21(2)(ii) of the said Act, on 27th April 2018 on the basis of the proposal submitted by the said Sansthan Trust resolved to release the amount of Rs.30,00,000/- per month for a period of five years for utilization of the petitioner for carrying out the work of cleanliness and sanitation at Shirdi.

8. It is the case of the petitioner that the petitioner accordingly executed an agreement in favour of agency BVG India Limited for carrying out the work of cleanliness and sanitation at Shirdi. On 22nd November 2018, Government of Maharashtra issued corrigendum to the effect that from 1st December 2017, the amount payable from Sansthan funds to the petitioner for cleanliness and sanitation purposes would be Rs.42,51,599/- per month for a term of five years. It is the case of the petitioner that under the said agreement entered into between the petitioner and the said BVG India Limited, the said agency undertook to carry out work of cleanliness and sanitation as per the terms and conditions recorded therein.

9. It is the case of the petitioner that pursuant to the said resolution dated 27th November 2018, the petitioner started receiving the funds from the said Sansthan Trust and carried out the activities of cleanliness and sanitation in the interest of public at large and the residents of Shirdi so also the devotees in large number, who visit Shirdi for taking Darshan.

10. Some time in the year 2018, Public Interest Litigation Nos.152 of 2018 and 86 of 2018 were filed against the State of

Maharashtra and the said Sansthan Trust. On 30th January 2019, this Court passed an order in the said PILs to the effect that the said Sansthan Trust shall not disburse the amount of the Trust for other purposes than the routine expenses till next date. The petitioner filed Civil Application No.2427 of 2019 in PIL No.86 of 2018 for seeking intervention. The said civil application filed by the said petitioner was allowed by an order dated 1st June 2019 by this Court keeping all points open.

11. Some time in the year 2019, PIL No.120 of 2019 came to be filed in this Court. It was contended by the petitioner in the said PIL that the committee on the Trust was constituted of 12 members. Some of the members were even held to be disqualified on the count that they had failed to attend three consecutive meetings. This Court noticed that the said committee was not functional and was consisting of only six members who were taking certain decisions. This Court accordingly appointed a committee consisting of Principal District Judge of Ahmednagar, the Chief Executive Officer of Shree Sai Baba Sansthan Trust, Shirdi, one delegate, not below the rank of the Assistant Charity Commissioner, through the Charity Commissioner of State of Maharashtra and the Additional Commissioner, Nashik Division, Nashik. This Court directed that the major policy decision or the financial decision wherein the amount involved is more than Rs.50,00,000/- be submitted to the committee for its approval except for routine expenses as referred to in the order dated 30th January 2019 in PIL Nos.152 of 2018 and 86 of 2018.

12. It is the case of the petitioner that the said Sansthan Trust as per the provisions of Section 21(2)(ii) of the said Act was regularly

releasing the amount every month for carrying out the cleanliness and sanitation activities. The said funds were being utilized for the said purpose. The employees and labours were paid through the contractor for the work done by them every month.

13. It is the case of the petitioner that the ad hoc committee appointed by this Court in pursuance of the order passed in PIL NO.120 of 2019 has abruptly stopped releasing of the funds since May 2020. On 30th June 2020, the Chief Executive Officer of the said Sansthan Trust called upon the petitioner to satisfy the details of utilization of the funds of Rs.42,51,599/- released from the funds of the Trust to the petitioner and also called upon to give details of the employees utilized for the said purpose. The petitioner supplied information within a period of 15 days along with reply dated 1st July 2020. The petitioner requested the said Sansthan Trust to release funds as per Government resolution and the provisions of Section 21 of the said Act.

14. The petitioner was informed about the resolution passed by the said Sansthan Trust in the meeting dated 9th June 2020 and 13th July 2019 vide communication dated 29th July 2020 bearing resolution no.323 by the ad hoc committee that on account of COVID-19 Darshan for devotees was closed and funds were not required by the petitioner. It was further resolved that a detail enquiry was required to be conducted by calling the report from the Chief Executive Officer and the same be placed before the ad-hoc committee for taking further decision in respect of the funds released by the Sansthan Trust to the petitioner. The petitioner thereafter made representations from time to time to the

Sansthan Trust for releasing of the amount.

15. The Chief Executive Officer of the Sansthan Trust, however, on 7th July 2020 had again issued a communication calling upon the petitioner to submit its report regarding utilization of the funds released by the said Sansthan Trust to the petitioner for the purposes of cleanliness and sanitation. The petitioner gave detail reply to the Sansthan Trust on 10th July 2020 clarifying the position and details of the utilization of the funds for the purpose of cleanliness and sanitation.

16. It was also pointed out that though the Darshan activities were standstill on account of lockdown, the Municipal Council was under obligation to provide the services of cleanliness and sanitation within the periphery of the temple and the surrounding area in the interest of the public at large, more particularly taking into consideration there pandemic situation. The petitioner repeatedly made requests to the ad-hoc committee for releasing of the amount, however, the amount was not released. It is the case of the petitioner that resultantly, the entire staff, employees whose services are being engaged for carrying out the cleanliness and sanitation activities could not be paid since May 2020. Such employees and staff have been demanding release of their salary from the said Sansthan Trust. On 22nd September 2020, the petitioner filed this writ petition for various reliefs.

17. Mr. V. D. Hon, learned senior advocate for the petitioner invited our attention to various exhibits annexed to the petition, some of the averments made in the affidavit-in-reply filed by the said Sansthan

Trust and also from the averments made by the applicant Sanjay Bhaskarrao Kale seeking intervention in the writ petition.

18. It is submitted by the learned senior advocate that the said Sansthan Trust had already passed a resolution for payment of Rs.30,00,000/- per month to the petitioner for a period of five years for utilization of the petitioner for carrying out the work of cleanliness and sanitation at Shirdi. The State Government had exercised its powers under Section 21(2)(ii) of the said Act. On 27th April 2018, it was resolved to release the amount of Rs.30,00,000/- per month for a period of five years for utilization of the petitioner for carrying out the work of cleanliness and sanitation at Shirdi.

19. It is submitted that based on the said resolution passed in the scrutiny committee meeting of the said Sansthan Trust initially and thereafter by the State Government for releasing the amount of Rs.30,00,000/- per month for a period of five years for utilization of the petitioner for carrying out the work of cleanliness and sanitation at Shirdi, the petitioner invited tenders for appointing agency to carry out the cleanliness and sanitation work. The petitioner received three tenders out of which the petitioner selected the tender of BVG India Limited, Chinchwad, Pune and accordingly executed an agreement in favour of the agency i.e. BVG India Limited. It is submitted that the said agency is reputed agency and having all experience in carrying out the cleanliness and sanitation activities. He invited our attention to the said agreement entered into between the petitioner and the said agency BVG India Limited.

20. It is submitted by the learned senior advocate that the said BVG India Limited had quoted lowest bid in the sum of Rs.42,51,599/- per month for a term of five years. The Government of Maharashtra issued a corrigendum on 22nd November 2018 to the effect that from 1st December 2017, the amount payable from Sansthan funds to the petitioner for cleanliness and sanitation purposes would be Rs.42,51,599/- per month for a term of five years. The said Sansthan Trust accordingly had acted upon as per the resolution dated 22nd November 2018 for paying the said amount to the petitioner. It is submitted that the said Sansthan Trust however, refused to pay any amount since May 2020.

21. It is submitted by the learned senior advocate that the petitioner had utilized all funds received from the Sansthan Trust for regularly carrying out the cleanliness and sanitation activities. The State of Maharashtra had appreciated the activities of cleanliness and sanitation carried out in the area of Shirdi Nagar Panchayat and its contractor and it was awarded a IInd rank in the State for carrying out the cleanliness i.e.“Swachha Bharat Abhiyan.” The said petitioner also had been awarded certificate as the cleanliest city in the survey conducted by the Central Government. Learned senior advocate invited our attention to various certificates issued by the Government of Maharashtra and the Ministry of Housing and Urban Affairs, Government of India.

22. Learned senior advocate invited our attention to copy of order dated 30th January 2019 passed by this Court in PIL No.152 of 2018 with PIL No.86 of 2018 and would submit that the said order

passed by the Division Bench of this Court would not restrict the said Sansthan Trust to release the payment due to the petitioner by the Government resolution since the said order passed by this Court had restricted the Sansthan Trust not to disburse the amount of the Sansthan Trust for purposes other than the routine expenses. He submits that the amount agreed to be paid to the petitioner for cleanliness and sanitation purposes was less than Rs.50,00,000/- per month. He submits that it was necessary in the interest of the public at large and more particularly the devotees that the area within the periphery of the temple and the sansthan's properties of the said Sansthan Trust at Shirdi were kept clean and sanitation services were required to be provided. Learned senior advocate submits that the said amount payable by the said Sansthan Trust was permitted to be utilized by the said Sansthan Trust in accordance with the provisions of Section 21(2)(ii) of the said Act and the same could not have been stopped by the said Sansthan Trust.

23. It is submitted by the learned senior advocate that even the said ad-hoc committee appointed by this Court did not approve the said payment of Rs.42,51,599/- and started making various enquiries about the expenditure incurred, if any, for cleanliness and sanitation out of the amount released by the said Sansthan Trust. He submits that the employees and labours were paid through the contractor for the work done by them every month.

24. The said Sansthan Trust however, abruptly stopped releasing of the funds since May 2020. Though several letters were addressed by the petitioner from time to time to the State Government

as well as to the said Sansthan Trust for releasing balance amount, no amount was released. Such employees and staff have been demanding release of their salary and wages from the said Sansthan Trust. The entire action on the part of the said Sansthan Trust in not releasing the amount though an appropriate, valid and legal resolution was passed by the said Sansthan Trust followed by the Government resolution passed by the State Government is illegal.

25. Learned senior advocate for the petitioner invited our attention to the interim order dated 29th October 2021 passed by this Court in this writ petition and in PIL No.46 of 2021 and other companion matters. By the said interim order, this Court directed the ad-hoc committee of Shri Saibaba Sansthan Trust, Shirdi to release an amount of Rs.30 lakhs per month for the month of June, 2021 till November 2021 to the petitioner/Shirdi Nagar Panchayat subject to the further orders to be passed in the pending proceedings. This Court however, made it clear that in the event, it is noticed that such amount is disbursed unjustifiably to the petitioner, this Court would pass appropriate orders and no equities would be created in favour of the petitioner in view of the said order passed by this Court.

26. By the said order, this Court also directed to release the amount of Rs.50 lakhs by the ad-hoc committee of the said Sansthan Trust within one week to the Shirdi Nagar Panchayat and the remainder amount could be released on or before 15th November 2021 considering the Diwali festival. This Court recorded the contentions of the learned senior advocate for the petitioner and the learned advocate for the

applicant in civil application who had filed PIL. According to the petitioner, Rs.15,000/- per month was being paid to such employees and the contractual employees deployed for Shirdi Nagar Panchayat whereas it was the contention of the applicant in the intervention application that a paltry amount of Rs.5,000/- per month was being paid.

27. This Court accordingly directed the petitioner to implead the Regional Provident Fund Commissioner/Assistant Provident Fund Commissioner, Nashik Region, Nashik as the respondent. This Court directed the Regional Provident Fund Commissioner to produce challan of the provident fund by which the petitioner had deposited the provident fund amounts of the employees/contractual employees or labour contractors or labour contractors themselves for a period of two years preceding the month of October, 2020 which would enable this Court to determine the quantum of wages being paid to the employees.

28. It is submitted by the learned senior advocate that Civil Application No.5865 of 2020 in PIL No.120 of 2019 filed by the said Sansthan Trust for seeking guidance of this Court came to be disposed of since the said PIL No.120 of 2019 is disposed of by this Court by an order dated 4th October 2021. He submits that PIL Nos.86 of 2018, 152 of 2018 and 98 of 2018 are pending. Learned senior advocate relied upon Section 21 of the said Act and would submit that in view of resolution passed by the State Government directing the said Sansthan Trust to pay a sum of Rs.42,51,599/- per month to the petitioner, the ad-hoc committee appointed by this Court could not have directed the Sansthan Trust to stop the payment of Rs.42,51,599/- to the petitioner.

29. In so far as the cleanliness done inside the temple is concerned, the same is done by the said Sansthan Trust. The services of the petitioner are hired for cleanliness of city. The said resolution passed by the State Government initially directing the said Sansthan Trust to pay Rs.30,00,000/- per month for a period of five years to the petitioner and the corrigendum issued thereafter directing the Sansthan Trust to pay a sum of Rs.42,51,599/- has not been challenged by any party including the petitioner in PILs. The said Sansthan Trust has already made payment in terms of the said resolution passed by the State Government for a period of 2 and ½ years and also under the said corrigendum. Since the said ad-hoc committee was appointed by this Court as and by way of interim arrangement and since the ad-hoc committee has refused to pay the amount in terms of the Government resolution, the petitioner has approached this Court by filing this petition.

30. It is submitted by the learned senior counsel that it was on the suggestion of the Sansthan Trust not to issue any entry pass or to recover any amount from the devotees of Saibaba temple, Government resolution was issued by the State Government directing the Sansthan Trust to pay a sum of Rs. 30,00,000/- per month for a period of five years for cleanliness and sanitation of the city. He submits that on one hand, the petitioner has not allowed the petitioner to collect the entry ticket from the devotees of the temple and on the other hand, the Sansthan Trust through ad-hoc committee has refused to pay the amount to the petitioner though directed by the Government resolution. It is submitted that proposal to pay the said amount initially was taken by the scrutiny committee appointed by the State Government. On 18th January 2019,

scrutiny committee had approved the said proposal. The said proposal was approved in true letter and spirit under Section 21(2)(ii) of the said Act. Powers were exercised by the State Government rightly under the said Section 21(2)(ii) of the said Act.

31. It is submitted that ad-hoc committee of the Sansthan Trust appointed by this Court is also bound by the Government resolution. The petitioner in PIL no. 46 of 2021 has not even moved the said PIL till date. The petitioner has not been asked to deposit any amount by this court in the said PIL. In the PIL no. 46 of 2021, the petitioner therein has only challenged the validity of the Government resolution dated 7th April 2018 which has already been implemented for more than 2 and ½ years. The said PIL has been filed by a party who is not even resident of Shirdi. The petitioner is still providing services of cleanliness and sanitation in the city. Learned senior advocate tendered a statement and would submit that according to the said statement a sum of Rs. 6,99,31,782/- is still due and payable by the said Sansthan Trust to the petitioner under the said resolution read with corrigendum issued by the State Government.

32. Mr. Bajaj, learned counsel for the Sansthan Trust, on the other hand, invited our attention to some of the averments made by his client in the affidavit-in-reply filed by the said Sansthan Trust in the month of March 2021. He submits that the contention raised by the petitioner in regard to the payment of monthly contribution of Rs.42,51,599/- per month as a contributory fund to the petitioner for the purpose of cleaning etc, in pursuance to the Government Resolution dated 17th October 2018 and the corrigendum dated 22nd November 2018

is a matter of record.

33. It is submitted that the said amount of Rs.42,51,599/- as contributory fund for the purpose of sanitation, cleaning etc. of the Shirdi town was paid upto April, 2020. However, in view of certain complaints received from local residents in regard to the activities carried out by the petitioner in respect of cleanliness and hygiene etc. the matter was placed before the ad-hoc committee for approval for payment of the further period. The ad-hoc committee however, refused to grant approval for further payment in the meeting dated 9th June 2020 and directed to solicit certain information from the petitioner. Learned counsel for the Sansthan Trust invited our attention to the Resolution No.323 passed by the majority of three members out of four of the ad-hoc committee annexed at 'Exhibit R-1' to the said affidavit-in-reply.

34. It is submitted that in the said meeting held by the ad-hoc committee, a Resolution bearing no.374 was passed resolving as to how much amount is required to be paid and as to how and who to solicit the expenditure made in the month of March, April and May of 2020 and the concession that would be given by the petitioner to the said Sansthan Trust against the cleanliness and property tax etc. Learned counsel invited our attention to some of the averments made by the Sansthan Trust in Civil Application No. 5865 of 2020 filed by the said Sansthan Trust in PIL No.120 of 2019 and would submit that the said Sansthan Trust used to provide financial assistance by way of grants to the petitioner for undertaking the work of cleaning and garbage disposal in Shirdi town.

35. It is submitted that the said grants were provided on a monthly basis @ Rs.42,51,599/- since December 2017. The said committee, upon taking overall situation prevailing, had adopted a resolution of stoppage of monthly grants of Rs.42,51,599/- in view of the prevailing pandemic COVID-19 situation and had taken decision that as and when need arises for provision of financial grant to the petitioner, appropriate decision in that regard, on need basis, would be adopted by the committee and for that purpose would solicit appropriate permission from this Court in that regard to implement the resolution. By the said civil application, the said Sansthan Trust prayed for permission to implement the Resolution No.323 dated 9th June 2020 and Resolution No.374 dated 13th July 2020 in respect of providing financial assistance to the petitioner, on need basis, and grant permission in that behalf to the ad-hoc committee. Mr. Bajaj, learned counsel for the said Sansthan Trust also produced various documents for perusal of this Court during the course of his arguments.

36. The respondent no.3 i.e. Assistant Provident Fund Commissioner also filed a separate affidavit on 7th December 2021 in this writ petition and stated that the said Assistant Provident Fund Commissioner had visited the establishment of the petitioner and had requested to inter alia furnish the copies of the monthly paid challan with ECR of the employees engaged by it in or in connection with the work of the establishment for the period of last two years preceding the month of October 2020 and the other records relevant to the issue. The Chief Officer informed that the establishment had not engaged the daily wage employees and had supplied the copies of the challans vis-a-

vis the contract employees engaged by the petitioner establishment through the contractor viz. BVG India Limited, Pune in the months January-2018, March-2018, April-2018 to June-2018, January-2020 and March-2020. The petitioner establishment forwarded the scanned copies of the challans along with the list of the employees for the months January 2018 to October 2020 (34 months) in respect of the contract employees engaged through the contractor BVG India Limited.

37. Learned counsel for the Sansthan Trust invited our attention to Government resolution dated 7th April 2018 and also to the letter dated 25th January 2018 which was addressed by the Chief Executive Officer of the Sansthan Trust to the Chief Secretary of the Law and Judiciary department for payment of Rs. 30,00,000/- per month for a period of five years. He also relied upon the letter addressed by the desk officer, Law and Judiciary department to pay a sum of Rs. 42,51,599/- per month to the petitioner. He relied upon minutes of meeting dated 1st March, 2018 annexed at page 78 in PIL no. 46 of 2021.

38. Ms. Talekar, learned counsel for the Intervenor in Civil Application No.8478 of 2020 submits that her client has filed PILNo.86 of 2018 and PIL No.152 of 2018 in which this Court had directed the said Sansthan Trust, Shirdi not to disburse any amount of the Trust for the purposes other than routine expenses. She submits that the petitioner had already filed Civil Application No.2427 of 2019 for seeking intervention in PIL No.86 of 2018 and seeking modification/ clarification of the order dated 30th January 2019 to the extent of payment of amount to the petitioner.

39. It is submitted by the learned counsel that due to outbreak of COVID-19, the temple of Lord Saibaba at Shirdi was closed and there were no devotees in Shirdi since March, 2020. As there were no devotees in Shirdi, there would be no waste or garbage as was during the regular time. The said Sansthan Trust was thus not required to pay Rs.42,51,599/- per month to the petitioner. The requirement of manpower, sanitary items would be less in number since there was no crowd in Shirdi.

40. It is submitted by the learned counsel that the said ad-hoc committee appointed by this Court had already resolved in its meeting dated 9th June 2020 not to pay the petitioner an amount of Rs.42,51,599/- from 1st May 2020 onwards on account of closure of temple. She submits that large number of complaints were received by the said Sansthan Trust from members of public alleging misappropriation of funds received from the said Sansthan Trust. It is vehemently urged that the said petitioner did not release salaries and wages to large number of employees and staff or were under paid. There was no control or mechanism of the said Sansthan Trust regarding account of utilization of the said amount.

41. It is submitted that the said ad-hoc committee appointed by this Court had already filed Civil Application No.5865 of 2020 before this Court seeking direction as to how much amount shall be paid to the petitioner after May 2020 and as to how much amount to be paid to the petitioner if normal schedule of temple is restored and whether the Sansthan Trust would be entitled to claim any exemption in taxes payable to the petitioner in lieu of payment of Rs.42,51,599/- per month.

The said ad-hoc committee also prayed for supervision over the expenditure of the amount given by the said Santhan Trust to the petitioner. The said civil application is still pending for adjudication before this Court.

42. It is submitted by the learned counsel that writ petition filed by the petitioner was also not maintainable on the ground that there is an alternate efficacious remedy available to the petitioner to challenge the impugned resolution before the State Government who has power to suspend or rescind any resolution or order etc. of the committee of the Sansthan. She submits that even otherwise the petitioner had already received a prize of Rs. 15 crores for maintaining the city from the Central Government and thus the petitioner can use the said amount to pay the monthly expenses for the sanitation and cleanliness to the contractor.

43. It is submitted by the learned counsel that it is not an obligation on the part of the said santhan Trust to give any financial aid to the petitioner for the improvement of civic services under section 21 (2) (ii) of the said Act. She submits that since the temple was closed during the pandemic period and as no facilities were provided by the petitioner to the said Sansthan Trust and its devotees, there was no question of payment of monthly amount of Rs.42,51,599/- to the petitioner. Learned counsel for the applicant/intervenor also invited our attention to civil application No.2427 of 2019 filed by the petitioner for intervention and for vacating interim relief in PIL No.86 of 2016.

44. It is submitted that the petitioner had issued a work order

dated 31st March 2016 for cleanliness in Shirdi for an amount of Rs.10,49,000/- per month. On 30th March 2016 petitioner had executed an agreement on similar terms of the work entered into with present contractor except for exponential increase in amount. In the year 2016-17, the State Government granted aid to the petitioner in the sum of Rs.1,43,00,000/- per month for cleanliness and sanitation activities. On 6th February 2017, the petitioner sent requisition to the Sansthan Trust of Rs.25,00,000/- per month permanently for cleanliness of Shirdi town and requested to transfer salary of 40 employees to petitioner instead of continuing the deployment of 40 employees by the Sansthan Trust for that purpose.

45. It is submitted that on 25th February 2017, managing committee of the Sansthan Trust discussed this requisition and decided that the amount demanded by the petitioner was exorbitant and therefore directed to constitute a joint committee of Sansthan CEO and employees and petitioner CO and employees to determine the requisite amount to be spent on cleanliness. Such joint committee of Sansthan Trust was however not appointed. On 26th September 2017, the petitioner issued a tender. On 31st January 2017, 3 tenders were received by the petitioner. BVG India Ltd. had quoted Rs.42,51,599/- which was the lowest tender. She submits that in the special meeting, it was wrongly mentioned that the Sansthan Trust had agreed for Rs.25,00,000/- and for remaining amount of Rs.17.51 lakhs and another requisition be sent to the Sansthan Trust and if the Sansthan Trust did not agree then requisition be sent to the collector for using government grants for sanitation. It is submitted by the learned counsel that on 6th November 2017, petitioner sent

communication to the Sansthan Trust and sought further amount of Rs.17.51 lacs for cleanliness purpose by referring to the direction issued by the Chief Minister of State of Maharashtra.

46. Learned counsel for the petitioner in PIL submits that in the said agreement entered into on 7th November 2017, between the petitioner and the said BVJ India Ltd., the Sansthan Trust was not made a party. On 8th November 2017, petitioner issued a work order in favour of BVG India Ltd. for payment of Rs.42,51,599 per month. It is submitted by the learned counsel that the said Sansthan Trust passed a resolution on 14th November 2017 thereby making an attempt to negotiate with BVG but could not succeed since the Sansthan Trust was not a party to the said agreement dated 7th November 2017. On 28th December 2017, the scrutiny committee of the Sansthan Trust directed the petitioner and the contractor to come with details of work and requirements so as to determine how much amount can be sanctioned. The scrutiny committed also directed the petitioner to come up with an undertaking to remove all encroachment near the temple. On 19th January 2018, scrutiny committee prepared a comparative chart between the rates of earlier tenderer and BVG India Ltd. to show more than four times rise in the rates for same work in a single year.

47. It is submitted by the learned counsel that scrutiny committee after looking to the discrepancies in the comparative chart and inability of the contractor to reduce rate has approved Rs.30,00,000/- for five years upon approval to the proposal by the State Government. It is submitted that on 1st February 2018, there was a meeting held at the residence of the Chief Minister in which it was discussed that the amount

to be sanctioned by the Sansthan Trust to the petitioner and decided to grant the amount unconditionally.

48. It is submitted that on 10th March 2018, the petitioner addressed a letter to the Sansthan Trust to send a fresh proposal to the State Government to make unconditional grants of Rs.42,00,000/- based on the decision taken by the Chief Minister. He submits that on 7th April 2018, Government resolution came to be issued by the Law and Judiciary department approving the grant by the Sansthan Trust to the petitioner of Rs.30,00,000/- per month on the condition that utility bills/certificates would be submitted to the Sansthan Trust quarterly.

49. It is submitted that on 25th April 2018, the petitioner addressed a letter to the Sansthan Trust to submit fresh proposal for approving grants of Rs.42,00,000/- per month. On 27th April 2018, CEO of the Sansthan Trust issued a letter to execute an agreement with petitioner for release of Rs.30,00,000/- per month on certain terms and conditions including issues of encroachment and exemption of tax to the Shirdi sansthan. On 3rd May 2018, an agreement came to be executed. On 2nd May 2018, a meeting of Managing committee of the Sansthan Trust was held resolving to make fresh proposal for Rs.35,00,000/- per month and to submit before the scrutiny committee. On 22nd May 2018, scrutiny committee reconsidered the proposal and maintained to sanction the payment of Rs.30,00,000/- per month. On 17th October 2018, the state Government issued a corrigendum for payment of Rs.42,00,000/- by Sansthan Trust to the petitioner with retrospective effect.

50. It is submitted by the learned counsel that on 22nd November

2018, corrigendum dated 17th Oct 2018 came to be issued by deleting the words “as approved by the scrutiny committee.” It is submitted that on 13th December 2018, Managing committee of the Sansthan Trust passed a resolution granting the difference of amount as per government corrigendum and directed to constitute a committee under sansthan’s administrative officer for monthly inspection of cleanliness work and submission of quarterly reports.

51. It is submitted that on 9th October 2019, by interim orders passed by this Court in PIL no. 120 of 2019, this court appointed an ad-hoc committee with certain powers. She submits that on 9th June 2020, ad-hoc committee appointed by this court passed a resolution to stop grant in aid since the temple was closed and there were complaints by residents of Shirdi regarding misuse and misappropriation of the funds by petitioner. She submits that the said resolution was passed by the ad-hoc committee in the interest of Sansthan and within its power conferred by this Court while appointing the said ad-hoc committee.

52. On 13th July 2020, ad-hoc committee passed a resolution to seek necessary directions from this Court by filing civil application. It is submitted by the learned counsel that there are independent sources of funds with petitioner, Shirdi under XIV Finance Commission for the purpose of sanitation for the year 2018-19 and 2019-20. The petitioner has also been granted various granting aid under Swattcha Bharat Abhiyan and has recovered substantial amount of cleanliness tax.

53. It is submitted by the learned counsel that there is no

jurisdictional error in the resolution passed by the ad-hoc committee dated 9th June 2020 thereby stopping grant in aid to the petitioner owing to (i) Temple being closed down, (ii) Complaints from residents of Shirdi regarding misuse of grant in aid and inflated salary payments shown to contractual workers and (iii) The ad-hoc committee was not restrained from undertaking decisions that were found just and necessary in the circumstances of the lockdown. It was found necessary by the ad-hoc committee to stop grant in aid to the petitioner and to enquire into the proper utilization of amounts and further payment, if any.

54. It is submitted that there is no delay in filing the said PIL filed by her client. She relied upon decision of the Hon'ble Supreme Court in the case of ***Managing Director,Orissa Industrial Development Corporation, Bhubaneswar v. Sarat Chandra Patnaik reported in (1996) 4 SCC 590*** and another judgment in the case of ***State of UP vs. Neeraj Awasthi reported in (2006) 1 SCC 667.*** She submits that section 26 is inapplicable to the present factual matrix since there is neither a general direction as to the matters of policy in relation to their powers and duties nor is it a specific direction in relation to maintaining discipline or during a festival.

55. It is submitted that none of the Government resolution relied upon by the petitioner provides that the said grant in aid is being provided as and by way of compensation for not collection of entry pass from the devotees. In support of her submission, learned counsel relied upon the judgment in case of ***Mohinder Sigh Gill v. Chief Election Commissioner reported in 1978 SCR (3) 272.***

56. It is submitted that owing to its rising population and greater number of residents involved in non agrarian commercial activities, the petitioner petitioner is converted into a nagar parishad or Muicipal Council. The Municipal Council is now entitled for greater grants from the Government and thus its revenue generation is likely to undergo a change. Section 21 of the said act permitting grant in aid by Sansthan Trust to petitioner, Shirdi on fulfillment of certain conditions thus would not apply. Unless there is amendment to that extent, Government resolution cannot be applicable to the newly constituted Shirdi Municipal Council.

57. Learned counsel for the petitioner in PIL relied upon the notification dated 25th February 2022 issued by the State Government declaring the petitioner as Municipal Council, Shirdi and would submit that since the petitioner petitioner is not in existence and has been replaced by the Municipal Council, Shirdi, benefit of section 21 of the said Act cannot be extended to the petitioner even otherwise. She submits that unless and until Shree Saibaba Sansthan Trust (Shirdi) Act, 2004 is amended, and more particularly section 21 thereby permitting grant in aid by the Sansthan Trust to the Municipal Council, no benefit can be extended by the Sansthan Trust to the Municipal Council, Shirdi. In support of this submission, she invited our attention to some of the averments made in the affidavit 7th April 2022 filed by the petitioner in PIL. Learned counsel for the petitioner in PIL invited our attention to some of the photographs tendered across the bar and would submit that petitioner has not been maintaining cleanliness and sanitisation in Shirdi town.

58. It is submitted by the learned counsel that the petitioner has not been charging any entry tax from the devotees as prescribed in clause 1 of the letter dated 27th April 2018 from the Sansthan Trust to the petitioner imposing various conditions. Other conditions prescribed in the said letter are not followed by the petitioner.

59. Learned counsel for the petitioner in the PIL tendered copy of the statement of income and expenditure for the financial year 2020-21 and 2021-22 and would submit that income of Sansthan Trust in reduced to 50 percent during the said period. The Sansthan Trust thus cannot be asked to pay any amount to the petitioner. She submits that there was no proposal for enhancement of the amount from Rs.30,00,000/- to 42,00,000/- passed by the Sansthan Trust.

60. Learned counsel for the petitioner in PIL relied upon the following Supreme Court judgments:-

(i) ***Om Sai Darshan Co-operative Housing Society Vs. State of Maharashtra, (2006) SCC OnLine Bom 480;***

(ii) ***Manoharlal Vs. Ugrasen & Ors., (2010) 11 SCC 557.***

61. It is submitted that under section 21 of the said Act, general direction can be issued by the State Government only regarding policies of the Sansthan Trust and not for payment. Such direction can be issued under the said provision only for maintaining discipline during festival. She submits that the petitioner or the Sansthan Trust cannot be allowed to supplant the reason by the affidavit that the amount of Rs.30,00,000/- per month was enhanced to Rs.42,00,000/- per month to be given to the petitioner by the Sansthan Trust for a period of five years which was

given on the understanding that no entry tax to be collected by the petitioner from devotees of the Saibaba temple in lieu of grant of the said amount. It is submitted that this Court shall appoint a committee of a retired High Court Judges to look into whether amount already paid to the petitioner should be recovered or not.

62. Learned counsel for the petitioner invited our attention to some of the averments made by the petitioner in PIL filed by her client raising an issue of delay and would submit that this PIL has been filed in the year 2021 and thus there is no delay. The petitioner had filed writ petition earlier.

63. Mr. Hon, learned senior advocate for the petitioner in his rejoinder argument submits that intervention application filed by Mr. Sanjay Bhaskarrao Kale is totally frivolous. He is in habit of filing frivolous application from time to time against various parties including the said Sansthan Trust. It is submitted that the said Sansthan Trust itself had agreed to pay sum of Rs.30,00,000/- per month to the petitioner for a period of 5 years for providing services of cleanliness and sanitation. Based on the said decision taken by the said Sansthan Trust, State Government had passed resolution under section 21(2) (ii) of the said Act directing the said Sansthan Trust to release a sum of Rs.30,00,000/- per month to the petitioner for a period of 5 years.

64. It is submitted that petitioner had invited tenders for appointing agency to carry out the cleanliness and sanitation work. Out of three bids received by the petitioner, the bid submitted by BVG India

Ltd was the lowest bid in the sum of Rs.42,51,599/-, the said bid being the lowest the petitioner entered into an agreement with the said BVG India Ltd. In view of the fact that the lowest bid was at Rs.42,51,599/-, the petitioner approached the State Government for issuing its corrigendum to the earlier resolution passed by the State of Maharashtra under section 21 (2)(ii) of the said Act. Considering these facts, State Government directed the respondent No.2 Sansthan Trust to release sum of Rs.42,51,599/- per month instead of Rs.30,00,000/- per month. The said Sansthan Trust implemented the said resolution passed by the State Government till month of April 2020 and paid the said amount at revised rate. The said Sansthan Trust had not challenged the resolution passed by the State Government till date.

65. It is submitted that the petitioner is required to pay contractual sum to the said BVG India Ltd. If the petitioner stops paying the said agreed amount to the said agency, the work of cleanliness and sanitation would be stopped by the said agency in the Shirdi Town which would cause tremendous unhygienic situation and would cause serious health hazard. The said Sansthan Trust therefore cannot refuse to pay the amount as directed by the State Government by passing an appropriate resolution under section 21 (2)(ii) of the said Act or on one or the other ground or on the false complaints received from some of the residents of Shirdi as alleged by the intervenor and also by the said Sansthan Trust. He submits that if any complaint is brought to the notice of the petitioner, the petitioner can always take an appropriate action against the said agency. He submits that there is thus no substance in the submission made by the learned counsel for the intervenor that State Government had

issued any corrigendum for release of Rs.42,51,599/- per month for a period of 5 years or for reduction of the said amount on the ground that there were no devotees visiting the Shirdi temple during the pandemic period. He submits that agreement already entered into between the petitioner and the said BVG India Ltd cannot be modified on such flimsy ground.

66. Mr.Kale, learned Government Pleader on behalf of the State of Maharashtra submits that the Managing committee of Sansthan Trust in the meeting held on 14th November 2017 had passed a resolution to provide grant of Rs.35,00,000/- per month to the petitioner for carrying out the daily cleanliness and sanitation in Shirdi Nagar Panchayat area. It was resolved that the balance amount was to be paid by the said petitioner to the contractor. It was further resolved that after seeking the prior permission of the scrutiny committee to the said proposal and after getting approval of the Government thereto, the amount be paid per month.

67. It is submitted by the learned Government Pleader that scrutiny committee in its resolution No.24 had resolved that an amount of Rs.30,00,000/- per month be provided as grant for the work of cleanliness and sanitation for five years and also resolved that the approval of the Government be sought to the said resolution by the scrutiny committee. Learned AGP submitted that the then Chief Executive Officer of the Sansthan Trust sent a letter dated 25th January 2018 containing the proposal, for approval of the Government. He also forwarded resolution No.952 dated 14th November 2017 passed by the

Managing Committee and the resolution No.24 dated 19th January 2018 passed by the Scrutiny Committee.

68. It is submitted by the Government Pleader that after grant of approval by the Government by its resolution dated 7th April 2018 for grant in aid of Rs.30,00,000/- per month by the Sansthan Trust to the petitioner, the then Leader of Opposition of Maharashtra Legislative Assembly, by his letter dated 16th April 2018 addressed to the then Hon'ble Chief Minister, Maharashtra State had requested to approve the request of the petitioner for grant of Rs.42,51,599/- per month w.e.f. 1st December 2017 for five years. The said letter of the then Leader of Opposition was forwarded to the Chief Executive Officer of the Sansthan Trust with a request to take appropriate action for approval of the Management Committee.

69. It is submitted that the said petitioner also by letter dated 10th March 2018 had also requested the Chief Executive Officer of the Sansthan Trust for grant of lump sum amount of Rs.25.50 crore @ Rs.42,51,599/- per month for five years and requested the Sansthan Trust to forward a fresh proposal in that behalf to the Government.

70. It is submitted that the Managing Committee of the Sansthan Trust passed a resolution dated 2nd May 2018 resolving that an amount of Rs.35,00,000/- per month be granted to the petitioner w.e.f. 1st December 2017 and the proposal be forwarded to the Government after obtaining the approval of the scrutiny committee. It was further resolved that the Government be intimated as regards the

demand of Rs.42.51 lakhs from the said petitioner.

71. It is submitted that the said proposal was discussed in the meeting of the Scrutiny Committee of the Sansthan Trust dated 22nd May 2018. Various suggestions were made by the members of the committee. The said proposal whether to pay an amount of Rs.35,00,000/- per month or Rs.42,51,599/- per month to the said petitioner was under consideration of the Government. The State Government after seeking the remarks of the Urban Development Department on the issue decided that the said Sansthan Trust shall grant, as an aid, an amount of Rs.42,51,599/- per month to the said petitioner and accordingly the corrigendum dated 17th October 2018 read with corrigendum dated 22nd November 2018.

72. It is submitted that the said proposal for grant in aid to the said petitioner was originated from the Sansthan Trust, for approval/ decision of the Government which has been processed and an appropriate decision in that regard was taken by the State Government by invoking the provisions of Section 21(2)(ii) of the said Act in larger public interest.

73. Learned Government Pleader placed reliance on Section 26 of the said Act and submits that even the said provision empowers the State Government to give direction, call for report, documents etc. The State Government can also issue present general direction as to the matter of policy to be followed by the Committee in respect of their powers and duties or in the matter of administration of the Sansthan Trust or any matter ancillary or incidental thereto. It is submitted by the learned Government Pleader that the Government resolution and the

corrigendum were issued considering a bonafide intention that each and every devotee visiting the temple shall get clean vicinity and proper sanitization facilities to avoid any health hazard to the devotees visiting the temple as well as local residents.

74. It is submitted that the said corrigendum was issued by the State Government in view of tender cost having been increased from Rs.35,00,000/- to Rs.42,51,599/-.

75. The decision of the State Government is taken in the interest of public and the said Sansthan Trust. The said petitioner had not been charging any amount to any devotees for pilgrim tax or entry tax. No complaints have been received from the public by the Government alleging any breaches on the part of the petitioner or the said contractor regarding cleanliness and sanitation.

76. Mr. Hon, learned senior advocate for the petitioner submits that funds are given by the Government not only for cleanliness or sanitation but for several purposes. The petitioner has to carry out work of cleanliness and sanitation and has to send the bills to the Government.

77. It is submitted by the learned senior counsel that if there would have been any complaint made to the petitioner by members of public or by the Sansthan Trust about cleanliness or sanitation, the petitioner would have taken an action against the contractor BVG India Limited. The petitioner has been giving importance to the cleanliness and sanitation. The garbage dumped by the Sansthan Trust outside is cleared

and disposed off by the petitioner by carrying it out to dumping ground. During the pandemic period, strict instructions were issued from the State Government to maintain cleanliness and sanitation in Shirdi town. Local residents continue to reside in the area even during the pandemic period. The petitioner had to continue the contract for providing its services for cleanliness and sanitation even during the pandemic period. The accounts of the petitioner are audited. The taxes collected by the petitioner are used for public services.

78. It is submitted that under Section 26 of the said Act, the Government has ample power to issue such Government resolution even if the scrutiny committee did not sanction revised amount of Rs.42,51,599/-. The tender process was already completed by the petitioner. If this Court directs the petitioner to keep a check on the contractor M/s. BVG India Ltd., the petitioner will do the needful. petitioner had imposed a fine of Rs.25,000/- and had returned the same amount to the Sansthan Trust. He submits that this Court cannot decide in PIL as to whether the contractor who has been awarded contract pursuant to the resolution passed by the State Government shall be paid at what rate and for what work. He submits that petitioner has to carry out work and send bills to the Government from time to time. The State Government has never raised any objection for the work carried out or expenses incurred by the petitioner for cleanliness, sanitation and other work. Each and every amount paid by the petitioner for such activity has been accounted for by the petitioner.

79. It is submitted by the learned senior counsel that no

complaint has been made by the petitioner in PIL alleging any malpractices by the petitioner or the said BVG. The ad-hoc committee has passed a resolution thereby stopping payment of balance amount without conducting any enquiry. Though the payments are not released to the petitioner as agreed, employees of the contractor are still working even today. State Government did not issue any further direction to stop payment based on any alleged complaint.

<u>REASONS AND CONCLUSIONS</u>

80. We shall first decide the question of validity of Government Resolution dated 07th April, 2018 and corrigendum dated 22nd November, 2018 issued by the State Government thereby directing the Sansthan Trust to release the amount payable to the petitioner petitioner in the sum of Rs. 30,00,000/- per month for a period of five years and thereafter issuing a corrigendum directing the Sansthan Trust to pay Rs. 42.51 Lakhs per month for a period of five years in place of Rs. 30.00 Lakhs for the purpose of cleanliness and sanitation in accordance with the provisions of Section 21(2)(ii) of the said Act.

81. The affidavit in reply filed by the Sansthan Trust clearly indicates that the said Sansthan Trust is to provide financial assistance by way of grant to the petitioner for undertaking work of cleanliness and garbage disposal in Shirdi town. The Sansthan Trust had passed a resolution and had agreed that the State Government shall release amount under Section 21(2)(ii) of the said Act in favour of the said petitioner. It is not disputed by the Sansthan Trust that the State Government had passed a resolution on 07th April, 2018 thereby directing

the Sansthan Trust to release the amount of Rs.30,00,000/- per month payable to the petitioner for a period of five years and had thereafter issued corrigendum directing the Sansthan Trust to pay Sansthan Trust Rs. 42,51,599/- per month for a period of five years in place of Rs. 30,00,000/-, which was directed to be released pursuant to the said Government Resolution dated 07th April, 2018.

82. It is not the case of the Sansthan Trust that the said resolution dated 07th April, 2018 passed by the State Government and the corrigendum dated 22nd November, 2018 are without authority of law or contrary to the provisions of the said Act. The Sansthan Trust has also not disputed that it has implemented the said Government Resolution dated 07th April, 2018 and the corrigendum dated 22nd November, 2018 for a period of 2 and ½ years and the Sansthan Trust stopped paying amount only since May 2020. The Sansthan Trust did not contend that the said amount released by the Sansthan Trust in favour of the petitioner petitioner for 2 and ½ years was illegally released and did not seek any refund of the said amount. It is also not case of the Sansthan Trust or the petitioner in public interest litigation that for these 2 and ½ years the petitioner petitioner did not provide any service of cleaning and garbage disposal.

83. The Sansthan Trust however, refused to pay any amount since May 2020 on the ground that Shirdi temple did not permit any devotee to have Darshan during substantial part of the pandemic period and the said Sansthan Trust was thus not required to provide the services of cleanliness and garbage disposal by the petitioner petitioner during the

said period. The Sansthan Trust also started calling upon the petitioner petitioner to give its details of the expenses incurred by the petitioner since May 2020. It is not the case of the Sansthan Trust that, the petitioner petitioner did not provide any service since May 2020 for cleaning Shirdi Town or for garbage disposal.

84. The Government Resolution dated 07th April, 2018 and corrigendum dated 22nd November, 2018 are not yet set aside by any competent Court of law on any application filed by the Sansthan Trust or anybody else. The State Government has not withdrawn or cancelled the said Government Resolutions dated 07th April, 2018 and corrigendum dated 22nd November, 2018.

85. The petitioner in PIL, however, has raised an issue that the petitioner petitioner was not releasing the salary and wages to the workers deployed by the petitioner for cleanliness, sanitization and for garbage disposal. In view of these allegations, this Court granted leave to amend and to implead the Regional Provident Fund Commissioner and issued directions to produce the record. The Provident Fund Commissioner accordingly filed an affidavit on 07th December, 2021 in the writ petition filed by the petitioner. A perusal of the said affidavit indicates that the Assistant Provident Fund Commissioner had visited the establishment of the petitioner and had requested to furnish the copies of the monthly paid challans with details of ECR of the employees engaged by it in connection with the work of the establishment for a period of two years preceding the month of October 2020 and the other relevant record.

86. The Chief Officer informed the Provident Fund Commissioner that the establishment had not engaged the daily wage employees and had supplied the copies of challans vis-a-vis the contract employees engaged by the petitioner establishment through the contractor viz BVG India Limited, Pune for the months January-2018, March-2018, April-2018 to June-2018, January-2020 and March-2020. The petitioner establishment forwarded the scanned copies of the challans along with the list of the employees for the months of January 2018 to October 2020 in respect of the contract employees engaged through the contractor BVG India Limited.

87. A perusal of the record further indicates that the Chief Executive Officer of the Sansthan Trust had addressed a letter dated 25th January, 2018 to the Chief Secretary of Law and Judiciary Department for payment of Rs. 30,00,000/- per month for a period of five years. The Desk Officer, Law and Judiciary Department also had addressed a letter to pay sum of Rs. 42,51,599/- per month to the petitioner petitioner. The minutes of the meeting dated 01st March, 2018 annexed at page 78 of the P. I. L. No. 46 of 2021 also clearly indicates that, the decision is taken by the Sansthan Trust for releasing such payment. The learned counsel for the petitioner in PIL could not produce any contra material on record to demonstrate that any of the employees engaged by the said contractor BVG India Limited were not paid the salary or wages for providing cleanliness and garbage disposal. The petitioner petitioner had not agreed to pay any salary or wages of any of the employees individually, but had entered into an agreement with the said contractor BVG India Ltd. and it was obligation of the contractor to make payment to the employees.

88. The entire allegations made by the petitioner in the PIL that the employees of contractor who were engaged for providing services of cleanliness and garbage disposal were not paid their salary or wages is without any basis. It is not case of the petitioner in PIL or the Sansthan Trust that since May 2020, the cleanliness in the town of Shirdi was maintained by the Sansthan Trust or by any other person. It is also not the case of the petitioner in PIL or the Sansthan Trust that during the pandemic period the town of Shirdi was not required to be cleaned or that garbage was not required to be disposed of. In our view, during the pandemic period, cleanliness was required to be maintained and garbage was required to be removed strictly to obviate the spread of any further disease during the pandemic period.

89. Be that as it may, the contract entered between petitioner petitioner and said BVG India Ltd. was in force and has not been terminated. Though the Sansthan Trust refused to pay the monthly payment of Rs. 42,51,599/- to the petitioner petitioner since May 2020, the petitioner continued to maintain the cleanliness and to comply with the obligation of disposal of garbage throughout. The obligation was on the petitioner to pay the contractor the amount which has not stopped. In view of the interim orders passed by this Court certain amount has been released by the Sansthan Trust in favour of the petitioner, who in turn could make payment to the contractor to keep the said contract alive and to get the work done under the said contract. Neither the Sansthan Trust, nor the State of Maharashtra challenged those interim orders passed by this Court directing the Sansthan Trust to release various amounts under those interim orders.

90. A perusal of Section 21 of the said Act indicates that the Trust fund is allowed to be released or utilized or expended by the Committee for all or any of the purposes mentioned in the said provision. Section 21(2)(ii) of the said Act indicates that, after making adequate provisions for the purposes referred to in sub-sections (1) and (1A), if there is a surplus in the Trust fund, a portion of the surplus being not more than thirty per cent of the distributable income of the Trust is allowed to be utilized and expended by the Committee for payment to Shirdi Nagar Panchayat for the improvement and augmentation of local civic services and amenities resulting in improvement of the facilities to the Sansthan. The Sansthan Trust had accordingly decided in the meeting held by the Trust that for providing cleanliness and garbage disposal, the petitioner petitioner shall be paid sum of Rs. 30,00,000/- per month for a period of five years by invoking the said provision. The State Government had accordingly exercised its powers under the said provision U/Sec. 21(2)(ii) of the said Act and directed the Sansthan Trust to pay the said amount.

91. It is common ground that the petitioner petitioner who was empowered to collect entry tax and other charges from the devotees were directed not to recover any such charges from the devotees and in lieu thereof the said amount of Rs. 30,00,000/- per month initially was granted and was revised to Rs. 42,51,599/-. The petitioner in PIL has not challenged the validity of the powers of the State Government to direct the Sansthan Trust to release such amount U/Sec. 21(2)(ii) of the said Act. It is not the case of the petitioner in PIL or the Sansthan Trust that the petitioner petitioner recovered any of the entry tax or any other

amount for the entry in the town of Shirdi from the devotees since the date of State Government passing resolution or issuing corrigendum. The State Government or the Sansthan Trust making the petitioner agree not to recover any entry tax from the devotees of the Sansthan Trust, could not have refused to release the balance amount since May 2020 on the ground that during the pandemic period no devotees were allowed to visit the Shirdi temple for darshan or any other purpose. It is not the case of the petitioner in PIL or the Sansthan Trust that since darshan in the Shirdi temple was closed during pandemic, the petitioner was instructed not to maintain cleanliness or to dispose off the garbage.

92. In so far as submission of the learned counsel for the petitioner in PIL that the State Government could not have issued corrigendum directing Sansthan Trust to release sum of Rs. 41,51,599/- per month is concerned, it is not in dispute that the Sansthan Trust had invited tenders for awarding the work of cleanliness and garbage disposal. The lowest bid was submitted by the said M/s. BVG India Ltd. in the sum of Rs. 41,51,599/- per month for a period of five years. The State Government had already passed a resolution directing the Sansthan Trust to release the sum of Rs. 30,00,000/- per month prior to the date of inviting such tender by the Sansthan Trust. But neither the petitioner in PIL, nor the Sansthan Trust disputed that said BVG India was the lowest bidder in the bids invited by the Sansthan Trust in the sum of Rs.42,51,599/- per month. The Sansthan Trust had accordingly revised the demand for permission to release sum of Rs. 42,51,599/- per month.

93. A perusal of the record indicates that, the petitioner in PIL

has not disputed that the State of Maharashtra had appreciated the activities of cleanliness, sanitation carried out in the area of Shirdi Nagar Panchayat and that its contractor was awarded a IInd rank for carrying out cleanliness i. e. 'Swachya Bharat Abhiyan'. The petitioner petitioner has been given certificate for the cleanliest city in the survey conducted by the Central Government.

94. The submission of the learned counsel for the petitioner in PIL that, the writ petition filed by the petitioner is not maintainable on the ground of there being alternate remedy available is devoid of merits, since the impugned resolution is passed by the State Government itself. The petitioner could not have challenged the said impugned resolution passed by the State Government before the State Government itself. This writ petition is thus maintainable before this Court.

95. There is no substance in the submissions made by the learned counsel for the petitioner in PIL that, it is not an obligation on the part of the said Sansthan Trust to give any financial aid to the petitioner for civic services under section 21 (2) (ii) of the said Act. U/Sec. 21(2) (ii) of the said Act, the Sansthan Trust is permitted to incur expenditure under various heads set out in the said provision including for improvement and augmentation of local civic services and amenities resulting in improvement of the facilities to sansthan.

96. The petitioner in PIL has not produced any material on record in support of the submission that the contractual employees deployed for the petitioner petitioner by the said contractor have been

paid a paltry amount of Rs. 5,000/- per month. Pursuant to the directions issued by this Court, Provident Fund authorities have already produced the relevant record.

97. The learned counsel for the Sansthan Trust did not produce any resolution passed by the Sansthan Trust withdrawing the earlier resolution resolving to pay a sum of Rs. 30,00,000/- per month, did not apply to the State Government for withdrawal of Government resolution as well as the corrigendum issued by the State Government directing the Sansthan Trust to pay initial sum of Rs. 30,00,000/- per month for a period of five years, which was revised to Rs. 42,51,599/- for a period of five years.

98. A perusal of the record further indicates that the bid submitted by said BVG India Ltd. which was lowest bid at Rs. 42,51,599/-, the petitioner petitioner had thus approached the State Government for issuing corrigendum to the earlier Government Resolution under Section 21(2)(ii) of the said Act. The petitioner petitioner had issued a work order on 31.03.2016 for cleanliness of Shirdi for a amount of Rs. 10,30,000/- per month and executed an agreement on similar terms of the work entered into with the same contractor except for exponential increase in amount. The State Government had granted aid to the petitioner petitioner in sum of Rs. 1,43,00,000/- per month in the year 2016-2017 for cleanliness and sanitation activities. On 06th February, 2017, the petitioner petitioner had sent requisition to the Sansthan Trust for Rs. 25,00,000/- per month permanently for cleanliness of Shirdi town and requested to transfer salary of 40 employees to the petitioner instead

of continuing the deployment of 40 employees by the Sansthan Trust for that purpose.

99. In so far as submission of the learned counsel for the petitioner in PIL that in the agreement dated 07th November, 2017 entered into between the petitioner petitioner and BVG India Ltd., Sansthan Trust was not made party is concerned, the Sansthan Trust was not required to be made a party to the said agreement in view of the fact that the State Government had already directed the Sansthan Trust to release the payment of Rs. 30,00,000/- per month initially, which was revised to Rs. 42,51,599/-. There is provision in the said resolution that the Sansthan Trust should also be party to the said agreement entered into between the petitioner petitioner and said BVG India Ltd.

100. It is brought on record by the petitioner in PIL that on 10th March, 2018, the petitioner had addressed a letter to the Sansthan Trust to submit proposal to the State Government to make unconditional grants of Rs.42,00,000/- based on the decision taken by the Hon’ble Chief Minister. On 7th April, 2018 the impugned Government Resolution came to be issued by the Law and Judiciary Department approving the grant by the Sansthan Trust to the petitioner petitioner.

101. On 25th April, 2018, the petitioner had addressed a letter to the Sansthan Trust to submit fresh proposal for approving grants of Rs. 42,00,000/- per month. On 03rd May, 2018 an agreement came to be executed. On 02nd May, 2018 a meeting of managing committee of the Sansthan Trust was held resolving to make fresh proposal for Rs.

35,00,000/- per month and to submit the same before the scrutiny committee. On 17th October, 2018, the State Government issued a corrigendum for payment of Rs. 42,51,599/-.

102. In our view, there is no substance in the submissions made by the learned counsel for the petitioner in PIL that there was no jurisdictional error in the resolution passed by the ad-hoc committee dated 09th June, 2020 thereby stopping grant in aid to the petitioner petitioner due to various reasons. The Sansthan Trust could not have suo moto acted contrary to the Government Resolution and the corrigendum. The Sansthan Trust never applied for withdrawal of the Government Resolution or the corrigendum issued by the State Government.

103. In so far as submissions made by the learned counsel for the petitioner in PIL that since the State Government has already declared the petitioner petitioner as Municipal Council, Shirdi by notification dated 25th February, 2022, the petitioner petitioner being not in existence, benefit of Section 21 of the said Act cannot be extended to the petitioner is concerned, there is no merit in this submission made by the learned counsel for the petitioner in PIL. The State Government had already passed a resolution much prior to said notification dated 25th February, 2022 directing the Sansthan Trust to pay the amount to the petitioner petitioner. The entitlement of the petitioner petitioner to receive certain amount pursuant to the resolution passed prior to notification dated 25th February, 2022 cannot be taken away. No such stand has been taken by the State Government. There is no substance in the submissions of the learned counsel for the petitioner in PIL that, until Shri Sai Baba

Sansthan Trust Shirdi Act 2004 is amended and more particularly Section 21, grant in aid cannot be paid by the Sansthan Trust to the Municipal Council.

104. In so far as reliance placed by the learned counsel for the petitioner in PIL on the income and expenditure statements for the financial years 2020-2021 and 2021-2022 of the Sansthan Trust in support of the submission of the income of the Sansthan Trust is reduced to 50% is concerned, in our view, the earlier Government Resolution passed by the State Government would not stand modified on the basis of the alleged income and expenditure of the Sansthan Trust for the financial year 2020-2021 and 2021-2022 as sought to be canvassed by the learned counsel for the petitioner in PIL.

105. There is no substance in the submissions of the learned counsel for the petitioner in PIL that no direction for payment can be issued by the State Government U/Sec. 21(2)(ii) of the said Act and only general directions can be issued by the State Government regarding the policy of Sansthan Trust. This argument of the learned counsel for the petitioner is ex-facie contrary to Section 21 of the said Act. There is no substance in the submissions of the learned counsel for the petitioner in PIL that there is no delay on the part of his client in filing PIL. In our view, Mr. Hon, the learned senior counsel for the petitioner petitioner is right in his submission that, funds were given by the Government not only for cleanliness or sanitation but for several purposes. Even during the period of pandemic the local residents continued to reside in the Shirdi town and thus the petitioner being Municipal Council was required

to carry out this obligation including the obligation to maintain cleanliness and sanitation in Shirdi town.

106. In our view Section 26 of the said Act empowers the State Government to pass such resolution. Tender process was already completed by the petitioner petitioner. The petitioner has not disputed the statement made by the learned senior counsel for the petitioner that petitioner has already imposed fine of Rs. 25,000/- upon the contractor and returned the said amount to the Sansthan Trust.

107. The learned counsel for the petitioner in PIL did not controvert statement made by the learned Government Pleader appearing for the State of Maharashtra that, the then Leader of Opposition of Maharashtra Legislative Assembly by his letter dated 16th April, 2018 had requested the Chief Minister of Maharashtra State to approve the request of the petitioner petitioner for grant of Rs. 42,51,599/- per month with effect from 01st December, 2017 for five years. The said letter addressed by the leader of opposition was forwarded to the Chief Executive Officer of Sansthan Trust with a request to take appropriate action for approval of the management committee.

108. The learned counsel for the petitioner in PIL has not disputed that in view of the agreement entered between petitioner petitioner and said BVG India Ltd. and in view of the Government Resolution and the corrigendum, the petitioner petitioner has not been charging any amount from the devotees towards entry tax.

109. In these circumstance the State Government was justified in issuing the said corrigendum dated 22nd November, 2018 to the said Government Resolution dated 07th April, 2018. We do not find any breach on the part of the State Government in issuing the said Government Resolution dated 07th April, 2018 and the corrigendum dated 22nd November, 2018. There is no substance in the submissions made by the learned counsel for the petitioner in PIL that the State Government exceeded its jurisdiction in issuing the said Government Resolution or that the said corrigendum in directing the Sansthan Trust to release the said amount of Rs. 30,00,000/- per month for a period of five years initially and thereafter revising the said amount from Rs. 30,00,000/- to Rs. 42,51,599/- per month. It is a matter of record that, said Government Resolution as well as corrigendum have been implemented without any objection by the Sansthan Trust at least for a period of 2 and ½ years out of five years.

110. Though various public interest litigations were filed in this Court regarding management of the Sansthan Trust and interim orders were passed by this Court in those public interest litigations while appointing the ad-hoc committee, the routine expenses required to be incurred pursuant to the contract entered into or the Government Resolution already passed and the implementation have not been stayed. Be that as it may, the amount required to be released by the Sansthan Trust in favour of the petitioner petitioner was in the nature of routine expenses and the contribution was less than Rs. 50.00 Lacs per month. In our view, Mr. Hon, the learned senior advocate for the petitioner petitioner is right in the submission that those interim orders passed by

this Court did not restrain the ad hoc committee of the Sansthan Trust or the Committee to release the said amount of Rs. 42,51,599/- per month. The interim orders passed by this Court did not stop the enforcement of Government Resolution or pending contracts to be implemented on the part of the Sansthan Trust. Be that as it may, the said decision to release Rs. 42,51,599/- per month was a decision taken by the State Government and not by the Sansthan Trust individually.

111. In so far as submissions made by the learned counsel for the petitioner in PIL that there were certain complaints received from some of the residents of Shirdi regarding cleanliness and garbage disposal in the Shirdi Town is concerned, the photographs produced for perusal of this Court does not indicate conclusively whether those photographs were in respect of any garbage accumulated in the Shirdi Town and as to when those photographs were captured. Statement made by Mr.Hon, the learned senior advocate for the petitioner that, if any such complaint is made to the petitioner petitioner by any resident of Shirdi alleging that the Shirdi Town was not cleaned or that garbage is not disposed off, the petitioner would take an appropriate action against the contractors is accepted. Under Section 26 of the said Act, the State Government is empowered to issue general directions to the Sansthan Trust as to the matter of policy to be followed by the Committee in respect of its powers and duties or in the matter of administration of the Sansthan Trust or any matter ancillary or incidental thereto and in particular any action to be taken for the purpose of maintaining discipline and order during the festivals in or connected with the temple.

112. Under Section 28 of the said Act the State Government is

empowered to call for and examine the record of any proceedings or decision or order of the Executive Officer or of the Committee with a view to satisfy itself as to the legality of such proceedings or the correctness, legality or propriety of any decision or order made thereunder. The State Government is empowered to modify, annul or reverse or remit such decision to the Sansthan Trust for reconsideration. The State Government is also empowered to stay the execution of any such decision or order of the Executive Officer or the Committee pending the exercise of its power under sub-section (1) in respect thereof.

113. The judgments relied upon by the learned counsel for the petitioner in PIL are clearly distinguishable on facts and would not assist the case of the petitioner.

114. The petitioner petitioner has filed this petition for enforcement of said resolution dated 7th April 2018 and corrigendum dated 22nd November 2018. The petitioner petitioner has thus made out a case for granting relief as prayed. The public interest litigation is totally devoid of merits.

115. We accordingly pass following order:-

O R D E R

(i) The Writ Petition No. 6703 of 2020 is allowed in terms of prayer clauses (B) and (C).

(ii) The resolution dated 09th March, 2020 passed by the ad-hoc committee of Shri Sai Baba Sansthan Trust Shirdi is quashed and set aside.

(iii) The respondent No. 2/Sansthan Trust is directed to pay the balance amount payable under the Government Resolution dated 07th April, 2018 and corrigendum dated 27th November, 2018 within four weeks from today.

(iv) Rule is made absolute in above terms.

(v) The Public Interest Litigation No. 46 of 2021 is dismissed. Rule is discharged. No order as to costs. Civil Application No.8478 of 2020 does not survive and is accordingly disposed off.

(vi) Amount, if any, deposited by the petitioner in Public Interest Litigation No.46 of 2021 stands forfeited.

(vii) Parties to act on authenticated copy of this judgment.

(S. G. MEHARE, J.) ***(R. D. DHANUKA, J.)***

116. Ms.Talekar, learned counsel for the petitioners in Public Interest Litigation No.46 of 2021 seeks stay of the operation of this order to enable her client to challenge the same before the Apex Court. Application for stay is vehemently opposed by the learned counsel for the petitioner in Writ Petition No.6703 of 2020.

117. Application for stay of the operation of the order passed by this Court today is rejected.

(S. G. MEHARE, J.) ***(R. D. DHANUKA, J.)***

bsb/June 22