

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 4124 OF 2022
IN
SUIT NO. 2175 OF 1946**

**SANTOSH
SUBHASH
KULKARNI**

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Nitin Gordhanbhai Thakker & ors. ...Applicants

Versus

The Charity Commissioner ...Respondent

In the matter between

Purshottamdas V. Mehta & anr. ...Plaintiffs

Versus

Manordas Tribhovandas & ors. ...Defendants

Mr. Piyush Raheja, a/w Ms. Supriya Lopes, i/b M/s.
Rashmikant and Partners, for the Applicants.
Ms. Uma Palsuledesai, AGP for the Charity Commissioner.

CORAM: N. J. JAMADAR, J.

DATED : 22nd DECEMBER, 2022

Oral Order:-

1. The learned Counsel for the applicant seeks leave to file a further compliance affidavit.

Leave granted.

Further compliance affidavit be filed during the Course of the day.

2. This interim application is preferred seeking amendment in the Scheme of Shri Laxmi Narayan Mandir and Madhavbag

Charities, (“the Trust”) a public Charitable Trust registered under the Maharashtra Public Trusts Act, 1950.

3. The Trust was established under a Deed of Trust dated 18th November, 1876 executed by Varjivandas Madhavdas and Narrottamdas Madhavdas. In Suit No.1264 of 1939, by an order dated 7th November, 1939, this Court permitted the appointment of two additional Trustees. The instant suit came to be filed seeking directions regarding the management of the Trust. By an order dated 11th September, 1950 this Court framed the Scheme for the Management and Administration of the Trust (“the Scheme”).

4. The applicants, who are the Trustees of the Trust, have preferred this application seeking amendment in the said Scheme in view of the change in circumstances and the difficulties encountered in the day to day management of the affairs of the Trust.

5. The amendments in the Scheme sought by the applicants can be classified in three parts:

(a) First, the number of trustees and the mode of succession. Under Clause 4 of the Scheme the number of Trustees shall not be less than seven. By the proposed

amendment, the applicants propose to provide for minimum seven and maximum nine trustees. As regards the mode of succession, under Clause 4 of the Scheme, two trustees are to be appointed from amongst the members of Kapole Bania Community of Bombay selected and appointment by the said community in accordance with its constitution and the remaining three trustees shall always be appointed from the General Hindu public, inclusive of members of the Kapole Bania Community by the Advocate General, Bombay with the sanction of the High Court of Bombay. The applicants propose that two trustees to be appointed from amongst the members of the Kapol Bania Community of Bombay shall be appointed by the Board of Trustees instead of the said community, and the remaining five trustees shall also be appointed by the Board of Trustees from the general Hindu public inclusive of members of the Kapole Bania Community preferably from Gujarati Vaishnav family.

Under Clause 9 of the sanctioned Scheme in the event of vacancy in the office of trustees appointed from Kapole Bania Community, such vacancy is to be filled by the members of the said community to be nominated by the President of the said community. The applicants propose that the said method of

filling in the vacancies be substituted by appointing the persons from amongst the Kapole Bania Community by the continuing trustees of the Trust. As regards the filling up of vacancies from General Hindu public, the applicants propose instead of Advocate General nominating the persons with the sanction of the High Court, the Board of Trustees be given power to fill in the said vacancies from general Hindu public preferably from Gujarati Vaishnav family.

(b) Second, in substitution of Clause 27(b), the applicants propose that the Trust shall be empowered to create a long term lease with the permission of the Charity Commissioner in accordance with the provisions of Maharashtra Public Trust Act, 1950.

(c) Third, the applicants propose to make changes in the application of the residue of the income in furtherance of general charitable object, in line with the provisions contained in Income Tax Act, 1961.

6. The applicants aver that the mode of succession particularly nomination of the members from Kapole Bania Community, by the said community, and filling in the vacancies by nomination by the said Community and Advocate General, in

the changed scenario, is causing hindrances in the proper administration of the affairs of the trust. At times, the nomination from Kapole Bania Community had not been made for years together. Hence, this application, availing the liberty under Clause 42 of the Scheme; which empowers the trustees to apply to the Judge in Chamber for amendment in the Scheme.

7. By an order dated 19th September, 2022, notice was ordered to be issued to the respondent – Charity Commissioner, State of Maharashtra.

8. In the context of the nature of the proposed amendment in the Scheme, this Court considered it appropriate to give publicity to the proposed amendment so that the persons interested in the affairs of the Trust and the beneficiaries get an opportunity to appear before the Court and contest the application, should they choose to do so. Thus, by an order dated 17th November, 2022, the applicants were directed to publish a notice alongwith the schedule of the proposed amendment in two newspapers and also display the application and schedule of proposed amendment at vantage points in the temple premises for the period of 15 days.

9. The applicants filed an affidavit dated 12th December, 2022 reporting compliance of the aforesaid directions. Copies of the notices published in the newspapers and displayed in the temple premises have been annexed to the affidavit.

10. I have heard Mr. Raheja, the learned Counsel for the applicants and Ms. Palsuledesai, the learned AGP for the State.

11. Mr. Raheja submitted that in view of the pronouncements in the cases of *Raje Anandrao vs. Shamrao and others*¹, *Minu Rustomji Shroff and others vs. Charity Commissioner*² and *Khojeste Mistree and others vs. Minoo Rustomji Shroff*³ the High Court has jurisdiction to modify the Scheme which is framed by the High Court. In the case of *Khojeste Mistree* (supra), it was, *inter alia*, observed that any Scheme framed by this Court in a suit will be outside the purview of the powers of the Charity Commissioner under Section 50-A(3) of the Act, 1950 and this Court has jurisdiction to frame and sanction the scheme.

12. I have carefully considered the averments in the instant application and the schedule of the proposed amendment to the sanctioned Scheme.

1AIR 1961 SC 1206.

22005 SCC Online Bom 400.

32008(5) Mh.L.J. 783.

13. So far as the second and third components (mentioned in Clauses (b) and (c) of paragraph 5 above) of the amendment sought by the applicants, there does not seem to be any impediment in permitting the applicants to amend the Scheme as the proposed change in Clause 27(b) of the Scheme incorporating the power to let out the premises is sought to be brought in conformity with the provisions contained in the Maharashtra Public Trust Act, 1950, and the objects for which the funds of the trust are to be applied are sought to be made broad based so as to advance general public charitable interest.

14. As regards the first component (Clause (a) of paragraph 5 above), the increase in the number of trustees from 7 to 9 appears to be necessary in the context of the changed circumstances and increase in the activities of the trust. On the aspect of mode of the succession, in paragraph 6.2 of the application, the applicants have spelled out the difficulties faced in getting the members from the Kapole Bania Community nominated from the said community. Pertinently, the applicants do not propose to change the source of appointment. However the mode of appointment of two trustees representing Kapole Bania Community is proposed to be changed so as to empower the Board of Trustees to appoint the members from the said

community. It seems that the term 'Kapole Bania Community' represents a large body and the informal process of getting nomination from the said community is fraught with delay and difficulties.

15. In addition to change in the mode of appointment of trustees from the Kapole Bania Community, the applicants propose that the remaining five members shall be appointed from the General Hindus inclusive of the Kapole Bania Community, *preferably from Gujarati Vaishnav family*.

16. The aforesaid rider (italicized) has the propensity to restrict the appointment of trustees from the General Hindu public to the members of Gujarat Vaishnav family. During the course of the submissions Mr. Raheja, the learned Counsel for the applicants, made a statement that the applicants do not insist for inclusion of the aforesaid rider, which professes to give preference to the members from Gujarati Vaishnav family.

17. Since the applicants propose to increase the number of trustees, to maintain a proper equilibrium, the Court is of the view that out of the remaining five trustees, at least two shall be the members of Kapole Bania Community.

18. Proposed Clause 4 of the Schedule thus stands modified as under:

Sr. No.	Clause No.	Proposed (Amended) Clause	Modified (Amended) Clause
1.	4 – Number of Trustees	The Number of Trustees shall be Maximum nine (9) and not less than seven (7). Out of the said Trustees, two trustees shall always be the descendants of Varjivandas Madhavdas and Narottamdas Madhavdas and/or Madhavdas Ranchhoddas and appointed in the manner hereinafter provided. Two trustees shall always be from amongst the members of the Kapole Bania Community of Bombay, appointed by the Board of Trustees and the remaining five (5) Trustees shall always be appointed by the Board of Trustees from the General Hindu Public inclusive of Member of the Kapole Bania Community preferably from Gujarati Vaishnav Family.	The Number of Trustees shall be Maximum nine (9) and not less than seven (7). Out of the said Trustees, two trustees shall always be the descendants of Varjivandas Madhavdas and Narottamdas Madhavdas and/or Madhavdas Ranchhoddas and appointed in the manner hereinafter provided. Two trustees shall always be from amongst the members of the Kapole Bania Community of Bombay, appointed by the Board of Trustees and the remaining five (5) Trustees shall always be appointed by the Board of Trustees from the General Hindu Public inclusive of Member of the Kapole Bania Community. Provided that at least two out of the five trustees from General Hindu Public shall be the members of Kapole Bania Community.

18A. Proposed clause 10 of the Schedule of Amendment is also required to be suitably modified to make the power to fill in the vacancies subject to the condition stipulated in modified clause 4 above. Proposed clause 10 of the Schedule thus stands modified as under:

Sr. No.	Clause No.	Proposed (Amended) Clause	Modified (Amended) Clause
	10 – Appointment of Trustees from General	In the event of any vacancy arising from the Trustees Appointed from the General Hindu Public, the Trustee	In the event of any vacancy arising from the Trustees appointment from the General Hindu Public, the Trustee

	Hindu Public	shall be appointed by the Continuing Trustees to fill in the Vacancy from time to time from amongst the General Hindu Public preferably Gujarati Vaishnav Family.	shall be appointed by the Continuing Trustees to fill in the vacancy from time to time from amongst the General Hindu Public in accordance with Clause 4 above.
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19. The application thus stands allowed with the aforesaid modification in Clauses 4 and 10 of the Schedule of the proposed amendment.

20. The applicants shall file the amended Scheme, as modified by this Court, before the Charity Commissioner, State of Maharashtra and necessary entries thereof be made in Schedule-I of the Trust.

[N. J. JAMADAR, J.]