

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3193 OF 2016

Dr. Narayanrao s/o. Govindrao Tawde .. Appellant
Age. 75 years, Occ. Agri.,
R/o. Talni, Tq. Hadgaon,
Dist. Nanded
At present Awadhut Wadi, Tawde Hospital,
Yeotmal, Dist. Yeotmal.

Versus

- 1) Keshavrao s/o. Sombarao Tawde .. Respondents
Age.80 years, Occ. Agri.,
- 2) Vithal s/o. Marotrao Tawde,
Age. 69 years, Occ. Nil,
- 3) Baburao s/o. Jalbarao Tawde,
Age. 22 years, Occ. Agri.,

All R/o. Talni, Tq. Hadgaon,
Dist. Nanded.
- 4) Joint Charity Commissioner,
Aurangabad.

Mr.R.N. Dhorde, Sr. Counsel i/b. Mr. V.R. Dhorde,
Advocate for the appellant.
Mr.M.V. Thorat, Advocate for respondent No.3.
Mr.S.B. Pulkundwar, Advocate for respondent No.4.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 26.09.2023
PRONOUNCED ON : 10.11.2023

J U D G M E N T :-

01. This appeal arises out of judgment and order dated 28.03.2016 passed by learned District Judge-4, Nanded in Misc. RJE No.173 of 2011. The learned Judge by way of the impugned order was pleased to dismiss the application filed under section 72-1 of the Bombay Public Trusts Act [for short "the BPT Act"].

02. The facts in short are that this appellant/original applicant filed an application under section 22 of the BPT Act, before the learned Assistant Charity Commissioner, Nanded, Division - Nanded, for effecting change occurred in general body meeting dated 04.08.2009. It is case of the appellant that the appellant and the respondents are the members of the trust, namely, Shri Datta Education Society, Talni, Tq. Hadgaon. The same is registered under the Societies Registration Act as well as under the BPT Act bearing registration No. F-92 (Nanded). The elections to the

managing committee were not held since incorporation of the trust. In Inquiry No.691 of 1981 and 692 of 1981, the Asstt. Charity Commissioner had given directions to conduct election, however, inspite of that the then President and Secretary did not hold election and instead filed an appeal to the Joint Charity Commissioner, Aurangabad. In an appeal one Mr.Gimekar came to be appointed as an Election Officer by the Jt. Charity Commissioner. However, since the President and Secretary did not pay expenses, the election could not be conducted. The President and Secretary filed Appeals RJE Nos.43 of 1991 and 47 of 1991. Those appeals also came to be rejected, directing to conduct election. It is only thereafter election was held. After that election Inquiry No.730 of 2005 was filed to report the change. The same, however, came to be rejected.

03. After rejection of the report in Inquiry No.730 of 2005, present appellant along with one more member, namely, Achyut Tawade requested the President and

Secretary to conduct election of the Managing Committee. However, same was not done. Ganesh Tawade and four other persons applied for primary membership of the trust. However, those were not accepted by the President and Secretary. Even no meeting was called to decide those applications. Those persons, therefore, gave application to the appellant. The appellant requested the President and the Secretary to call for the meeting to consider the application. Since no meetings were held, on 05.06.2009 the appellant gave requisition notice to the President and Secretary. Same was received by them on 27.06.2009. Applicant – Achyut Tawade also issued notices to the committee members. The committee members refused to accept those notices. The notices were, therefore, served by post.

04. Since inspite of requisition, no meeting was called, so on 04.07.2009 the meeting of the Managing Committee was conducted and new members were enrolled by accepting membership fees to the society on 06.07.2009.

Thereafter, again notice of general body meeting was issued on 04.08.2009. In that meeting a new managing committee came to be elected and thus the change report was filed by the present appellants.

05. The non-applicants resisted the said inquiry, submitting that other member Achyut Tawade had not paid subscription of life membership. Other members at Sr. Nos.7 to 11 were not legal and valid members. The notices dated 27.06.2009 and 28.07.2009 were not received by them. The applicants had no right to issue those notices requisitioning a meeting. The requisition was not made to the President and the Secretary. It is submitted that the meetings dated 04.07.2009 and 04.08.2009 were not in accordance with the constitution of the trust. The meetings were illegal for want of quorum. The meeting dated 04.08.2009 was not held by prior notice of 14 days, served upon the members. The meetings were not held under the chairmanship of the president in the office of the trust and prayed for

rejection of the change report.

06. The parties led evidence. The appellant got himself examined along with one Madhukar Dalave. The non-applicants examined the then president Keshav Tawade.

07. The Asstt. Charity Commissioner held that the General Body Meeting held by the applicant was against rules. There was no quorum for the meeting. As per rule 16 of the Constitution, it is mandatory on the part of the Secretary to conduct meeting of the General Body or of the managing committee on requisition. If the meeting is not conducted, the requisitionists themselves shall conduct meeting within seven days after expiry of period of seven days after requisitioning the meeting. The requisition shall be by two members and the same shall be conducted within 21 days after receipt of the requisition.

08. The learned Asstt. Charity Commissioner,

however, in view of Rule 11 held the meeting to be illegal observing that the quorum for every meeting of managing committee shall be of 2/3rd members. It is held that this rule is applicable even to the meeting held on requisition as provided under Rule 16. It is held that in the meeting dated 04.07.2009, only two members were present out of six members. It was necessary to adjourn the meeting to next seven days to comply with Rule 11 and rejected the application by order dated 14.10.2010.

09. Said order was carried in appeal to the Jt. Charity Commissioner under section 70 of the BPT Act. The said appeal came to be dismissed by holding that Rule 11 is applicable even to the meetings held under Rule 16 by order dated 30.11.2011 in Appeal No.48 of 2010.

10. The appellant, therefore, approached the District Judge by filing Misc. Application. Said application also came to be rejected by confirming the order passed by the Charity Commissioner. Thus, this

appeal before this Court.

11. The learned Advocate for the respondent Mr. Thorat opposes the appeal. He submits that all the authorities have rightly held that the meeting was not held as per Rule 11. There is no sufficient quorum. He submits that Rule 19 provides for adjournment of meeting where there is no quorum available in a meeting. Rule 17 provides that for general body meeting minimum quorum is of 1/3rd of the total members or 21 members. He thus submits that in any case requirement of quorum is there. As per Rule 17, it is only in case there is no quorum, the meeting shall be held within half an hour and in that case only, quorum is not required. He submits that when quorum itself was not there in the present case, the resolution passed in such meeting of the business transacted in such meeting is not legal. It is for this reason the authorities have held against the appellants. No fault can be found with the reasoning of the authorities. He ultimately prays for rejection of the

First Appeal.

12. Rules 11 and 16 of the Constitution of the trust are reproduced below for the purpose of understanding exact nature of the controversy.

"11. QUORUM FOR MANAGING COMMITTEE MEETINGS: The quorum for every meeting the Managing Committee shall be 2/3rd members. If the necessary quorum is not present within 30 minutes (Thirty minutes) from the time appointed; the meeting shall be deemed to have been adjourned and such adjourned meeting shall be held within seven days thereof and the intimation of the adjourned meeting shall be given to the members. No quorum shall be necessary for such adjourned meeting.

16. REQUISITIONING OF MEETINGS: The Secretary shall conduct a meeting of the General Body of the Members or that of the Managing Committee on requisition as under :-

a) In the case of a meeting of the General Body of the members upon the written requisition of not less than 1/3rd of the total number of the members of all classes.

b) In the case of the meeting of the Managing Committee meeting upon the written requisition of atleast two members of the total number of members of the Managing Committee.

c) Such requisitioned meeting shall be held within 21 days after the receipt of the requisition by him.

d) In case such meeting is not conducted within such period as aforesaid, the requisitionist themselves shall conduct a meeting within seven days after the expiry of the said 21 days and the business transacted and the resolutions passed thereat shall be binding on the Society.

e) Any reasonable expenditure incurred by the requisitionist in calling of the meeting shall be paid to them by the society."

13. About the facts, there is no dispute by any of the parties. This Court, therefore, has to only consider as to whether rule 11 is applicable to the meetings held pursuant to requisition under rule 16 of the rules. The learned Sr.Counsel Mr.Dhorde submits that considering the language of Rule 16(a)(b) and (d) it is clear that a meeting held on requisition does not require quorum as required for regular meeting and the meetings held for other purpose like general body etc. There is no requirement of minimum quorum given in Rule 16 that in a meeting held on requisition. Rule 16(b) prescribes that written requisition may be moved at least by two members of the managing committee. This Rule 16(b) is complied with as the requisition was moved by two members. If no meeting is convened on the requisition within a period of 21 days, it is for the requisitionists themselves to conduct a meeting within seven days after expiry of the said 21 days. The business transacted and the

resolutions passed in such meeting are binding on the society. It thus provides for further course to be adopted in case a meeting is not so convened. There is no requirement provided of a quorum for such meeting, resolutions passed in such meeting is given binding effect. This Court finds that Rule 16 is complete code in itself. As regards applicability of Rule 11, it is seen that Rule 16 itself is by way of exception and makes a provision in-case there are no meetings held by the management. The general rule 11 will not be applicable as the said rule is general rule.

14. Learned Sr. Counsel Mr. Dhorde for the appellants relied upon judgment in the case of Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla reported in 2016)3 SCC 619.

. The learned Advocate for the respondent relied upon judgment passed by the Hon'ble Apex Court in the case of X Vs. The Principal Secretary, Health and Family Welfare Department (Civil application No. 5802 of 2022),

wherein the Hon'ble Apex Court has analysed the rule of purposive interpretation. He further relied upon judgment in the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. & Ors., reported in 1987 AIR (SC) 1023.

15. The Hon'ble Apex Court in the case of Shailesh Dhairyawan (Supra) was considering provisions of Sections 15, 11(5) of the Arbitration and Conciliation Act read with section 89 of the Code of Civil Procedure. The Hon'ble Apex Court has laid down that while interpreting the provisions, the Court has to give purposive construction. The Court has to look into the purpose of Rule or the Section.

16. In the judgment in the case of X Vs. Principal Secretary (Supra), the Hon'ble Apex court has also considered the rule of purposive interpretation. Para 31 of the said judgment reads as under :-

"31. The cardinal principle of the construction of

statutes is to identify the intention of the legislature and the true legal meaning of the enactment. The intention of the legislature is derived by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief, and its corresponding remedy that the enactment is designed to actualise. Ordinarily, the language used by the legislature is indicative of legislative intent. In **Kanailal Sur v. Paramnidhi Sadhu Khan**, Gajendragadkar, J. (as the learned Chief Justice then was) opined that "the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself." But when the words are capable of bearing two or more constructions, they should be construed in light of the object and purpose of the enactment. The purposive construction of the provision must be "illumined by the goal, though guided by the word." Aharon Barak opines that in certain circumstances this may indicate giving "an unusual and exceptional meaning" to the language and words used. Before we engage in the exercise of purposive construction, we must caution that a court's power to purposively interpret a statutory text does not imply that a judge can substitute legislative intent with their own individual notions. The alternative construction propounded by the judge must be within the ambit of the statute and should help carry out the purpose and object of the Act in question."

. It is held that while giving purposive interpretation, the intention of the legislature needs to be seen with a view to understanding the purpose or object of the enactment, the mischief and its corresponding remedy that the enactment is designed to

actualise. It further reproduces lines from the judgment in the case of Kanailal Sur Vs. Paramnidhi Sadhu Khan reported in 1957 SC 907 as *"the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself."*

17. In the case of Reserve Bank of India Vs. Peerless General Finance and Investment (Supra) the Hon'ble Apex Court has held that the interpretation must depend on the text and the context. They are the base of the interpretation. Para 33 of the said judgment is as under :-

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statutemaker, provided by such context, its scheme, the sections, clauses, phrases and words may

take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the Court's construction."

18. By reading Rule 16, this Court finds that there is merit in the submissions of learned Sr. Counsel. The very purpose of Rule 16 is to provide remedy when no meetings are held of general body by the Management. In this case, it is clearly seen that the President or the Secretary were not convening meetings of general body and it is for this reason the applicant and one Mr. Tawade were required to move requisition for holding meeting. Rule 16(d) clearly provides that the requisition is to be moved by two members. Rule 16(c) provides that on receipt of requisition, the meeting shall be held within 21 days and after expiry of 21 days in-case no meeting is

held within that stipulated period, then the requisitionists are given power to conduct meeting within seven days after expiry of 21 days. It further provides that the business transacted and resolution passed therein are binding on the society. When the special provision is made, there is no need to go to Rule 11, which is general in nature. Reliance placed on Rule 19 by the respondent is misplaced. Rule 16 is a complete code in itself and there is no need to go to Rules 17 or 18 providing for quorum and the manner in which the meeting to be held when no quorum is available.

. Applying principle *Generalia Specialibus non-derogant*, it is clear that when special provision is made that will prevail upon general rule. In this case as already held Rule 11 is a general rule whereas rule 16 is a special rule. Therefore, rule 11 has no application to the meetings convened under Rule 16.

19. There is no dispute about binding nature of this

rule. This Court has gone through the judgments of the authorities. It is seen that change report is not accepted only for the reason that the alleged meeting was not held as per Rule 11 and as there was no quorum. It is clearly seen that the authorities have not properly interpreted Rule 16 and had arrived at a conclusion that the business transacted in the said meeting and resolution passed therein are not binding.

20. This Court has considered that the appellant issued requisition on 27.06.2009. Thus, after sending the requisition, the appellant waited for 21 days. Since no meeting was held within 21 days, the appellant issued another notice to call for meeting on 04.07.2009. The meeting was thus perfectly as per Rule 16.

21. In view of the discussion above it is clear that the business that was transacted in the meeting and the resolution passed are binding on the society. In view of the same, it was necessary to accept the change report

submitted by the appellant. The impugned judgment confirming the judgment of the lower authorities needs to be quashed and set aside. It needs to be held that the change report needs to be accepted. Hence, following order :-

O R D E R

- (i) The change report as submitted is accepted.
- (ii) Inquiry No.1386 of 2009 filed before the Asstt. Charity Commissioner, Nanded, Division Nanded, is allowed.
- (iii) Impugned judgment and order passed by the District Judge-4, Nanded dated 28.03.2016 passed in Misc.RJE No.173 of 2011 is quashed and set aside.
- (iv) The First Appeal is accordingly allowed and disposed off.

[KISHORE C. SANT, J.]