

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1028 OF 2023

1. Sahebrao Tatyrao Wagh,
Age : 65 years, Occ. : Agriculture,
2. Baburao Shahadeo Kothale,
Age : 60 years, Occ. : Agriculture,
3. Shankarrao Dadarao Bongane,
Age : 35 years, Occ. : Agriculture,
4. Jalindarnath Bhagwan Dhakane,
Age : 40 years, Occ. : Agriculture,
5. Manikrao Sakharam Khade,
Age : 45 years, Occ. Priest,
6. Ashok Umaji Wagh,
Age : 51 years, Occ. : Priest,

All R/o. : Chawka, Tq. & Dist. Aurangabad

... Appellants

VERSUS

1. Joint Charity Commissioner,
Aurangabad Region, Aurangabad
2. The Tahsildar,
Tahsil Office, Aurangabad
3. The President/Secretary
of Shri. Mhaishashwar Mandir,
Chawka, Tq. & Dist. Aurangabad
4. Ashok Uttamrao Kshirsagar,
Age : 35 years, Occ. : Agriculture,
5. Kashinath Bhaurao More,
Age : 70 years, Occ. : Agriculture,

6. Dattu Laxman Salve,
Age : 40 years, Occ. : Service,
7. Ambadas Punjaba Wagh,
Age : 65 years, Occ. : Agriculture,
8. Santosh Supdaji Wagh,
Age : 38 years, Occ. : Agriculture,
9. Dnyaneshwar Narayan Giri,
Age : 35 years, Occ. : Agriculture,
10. Gopinath Sandu Wagh,
Age : 45 years, Occ. : Agriculture,
11. Ravindar Ambadas Sapkal,
Age : 45 years, Occ. : Agriculture,
12. Shivaji Uttamrao Wagh,
Age : 40 years, Occ. : Agriculture,
13. Waman Sampat Ghuge,
Age : 65 years, Occ. : Agriculture,
14. Shantilal Hiranman Gunjale,
Age : 45 years, Occ. : Agriculture,

Resident of Respondent Nos. 4 to 14 : Chawka,
Tq. & Dist. Aurangabad

... Respondents

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Mr. S.R. Andhale – Advocate for the Appellants
Mr. S.N. Kendre – AGP for Respondent Nos.1 and 2, State
Mr. A.D. Khot – Advocate for Respondent Nos.3 to 14

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CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 31st July, 2023
PRONOUNCED ON : 19th August, 2023

JUDGMENT :

1. Being aggrieved and dissatisfied with the judgment and order dated 31st March, 2022 passed by the learned Joint Charity Commissioner, Aurangabad Region, Aurangabad (hereinafter referred to as "*the learned Joint C.C.*") in Suo-Motu Application No. 136 of 2018 under Section 47 of the Maharashtra Public Trusts Act, 1950 ("*the Act*" for short), the present appellants have preferred this appeal.

2. The brief facts leading to the appeal are as under :

The present respondent No.3 i.e. Trust is registered under the Act being religious charitable trust, which consists of temple of God Shri. Mhaishashwar Mandir. However, there were serious allegations against the respondents – trustees, involving misappropriation of money and mismanagement of trustees. The Assistant Charity Commissioner filed proposal for enquiry of the Trust. In the year 2015, the learned Joint C.C. had removed the Board of trustees of Trust Shri Mhaishashwar Mandir, Chowka, Tq. and Dist. Aurangabad and its administration and management was handed over to concerned Tahsildar. In the year 2018, the Assistant Charity Commissioner sent a proposal under Section 47

of the Act for enquiry. Thereafter, the Superintendent of Joint Charity Commissioner, Aurangabad issued a public notice and called applications from public at large for appointing the trustees on the Trust. Accordingly the appellants, present respondent Nos.4 to 14 and others in all 157 persons submitted their applications before the learned Joint C.C. Thereafter, the learned Joint C.C. completed necessary formalities and appointed present respondent Nos.4 to 14 as trustees of the respondent No. 3 – Trust. Hence, this appeal.

3. Learned Counsel for the appellants submits that, the present appellants had submitted applications for being appointed as trustees along-with the other applicants including the present respondent Nos.4 to 14. However, the learned Joint C.C. without assigning any reasons appointed respondent Nos.4 to 14 and discarded the applications of the appellants. He further submitted that, according clause 9–C of the scheme of the Trust, the learned Joint C.C. should not have appointed respondent No. 7, who suppressed his conviction in criminal prosecution under Section 147, 148 and 324 of Indian Penal Code. He vehemently argued that, in the entire impugned judgment the learned Joint C.C.,

Aurangabad has not given any reason justifying the appointments of present respondent Nos.4 to 14.

4. On the contrary, learned Counsel for respondent Nos.3 to 14 filed an affidavit-in-reply and thereby opposed the contentions of the appellants. Learned Counsel for aforesaid respondents submits that, the learned Joint C.C. has given reasons as to why the respondent Nos.4 to 14 are appointed as a trustees of the Trust, in the judgment itself. Moreover due opportunity was given to all the applicants including present appellants by calling them for an interview. Moreover, though details of the interview of each and every applicant are not there but the learned Joint C.C. has atleast given reason for appointing present respondent Nos.4 to 14 as a trustees. He pointed out that, after being appointed as trustees, the aforesaid respondents conducted elections amongst them and elected the office bearers and filed a Change Report to that effect, which is pending before the learned Assistant Charity Commissioner, Aurangabad. According to him, till filing of reply the appellants had not raised any objection to the said Change Report. So far as the allegation against respondent No. 7 being convicted in criminal prosecution is concerned, he relied upon the judgment of

Hon'ble Apex Court in the case of ***The State Bank of India and Ors. Vs. P. Soupramaniane*** in *Civil Appeal No. 7011 of 2009*. According to him, the Hon'ble Apex Court has recorded finding in the aforesaid judgment that, the offence under Section 324, 147 and 148 of Indian Penal Code cannot be considered being covered under the moral turpitude as contemplated under Section 147 of the M.P.T. Act. Further, according to him, respondent No.7 was not having main role in said offence and even though he is convicted but the appeal preferred by him against the said conviction in Regular Criminal Case No. 55 of 2009 is pending. He contended that, applicant No. 5 though appointed as a priest but that has nothing to do with his appointment of trustees under Section 47 of the Act. Further, mere working as a Pujari of the temple of Trust does not *ipso – facto* entitles him to become Trustee of the Trust. With these submissions, learned Counsel for respondent Nos.3 to 14 prayed for dismissal of the appeal.

5. Heard rival submissions and also perused the documents placed on record. The facts and incidents which took place prior to the calling of applications for appointment of trustees are not seriously disputed. It appears that, the appellants have filed this

appeal mainly on two grounds :

- i) respondent No.7 suppressed his conviction and got appointed illegally and
- ii) no reasons have been mentioned by the learned Joint C.C. for justifying the appointments of respondent Nos.4 to 14.

6. So far as the first ground is concerned admittedly, respondent No.7 has been held guilty by the learned Judicial Magistrate First Class, Phulambri, Dist. Aurangabad in Regular Criminal Case No. 55 of 2009 for the offence punishable under Section 147, 148 and 324 of Indian Penal Code and sentenced him accordingly along-with the other accused persons. Further, it is not in dispute that as per clause 9-C of the scheme of the Trust no person can be appointed who has been convicted. However, learned Counsel for the respondents strongly relied upon the judgment of **The State Bank of India** (*Supra*) passed on April, 26, 2019 and submitted that, the offence under Section 324 of Indian Penal Code cannot be said as offence involving moral turpitude and therefore discharge of respondent in that appeal from service on the basis of conviction under Section 324 of Indian Penal Code was set aside by upholding the judgment of concerned High Court. The

Hon'ble Apex Court in paragraph Nos.6 and 9 has made following observations :

6. *Though we do not agree with the reasons given by the High Court for setting aside the order of discharge of the Respondent from service, it is necessary to examine whether Section 10 (1)(b)(i) of Banking Regulation Act is applicable to the facts of the case. Conviction for an offence involving moral turpitude disqualifies a person from continuing in service in a bank. The conundrum that arises in this case is whether the conviction of the Respondent under Section 324 IPC can be said to be for an offence involving moral turpitude.*

9. *There can be no manner of doubt about certain offences which can straightaway be termed as involving moral turpitude e.g. offences under the Prevention of Corruption of Act, NDPS Act, ect. The question that arises for our consideration in this case is whether an offence involving bodily injury can be categorized as a crime involving moral turpitude. In this case, we are concerned with an assault. It is very difficult to state that every assault is not an offence involving moral turpitude. A simple assault is different from an aggravated assault. All cases of assault or simple hurt cannot be categorized as crimes involving moral turpitude. On the other hand, the use of a dangerous weapon which can cause the death of the victim may may result in an offence involving moral turpitude. In the instant case, there was no motive for the Respondent to cause the death of the victims. The criminal*

courts below found that the injuries caused to the victims were simple in nature. On an overall consideration of the facts of this case, we are of the opinion that the crime committed by the Respondent does not involve moral turpitude. As the Respondent is not guilty of an offence involving moral turpitude, he is not liable to be discharged from service.

7. Though the aforesaid judgment is in respect of discharged from service of the said respondent under Banking Regulation Act but the same analogy can be applied in the present case also. Moreover, it has also come on record against the said conviction, present respondent has already filed an appeal and therefore his conviction has not attain finality. Therefore, in view of the observations of Hon'ble Apex Court as well as pendency of appeal filed by the respondent No.7, I am of the opinion that, the aforesaid conviction would not come in the way of appointment of respondent No. 7 as a trustee of respondent No. 3 – Trust.

8. So far as the second ground of non mentioning of reasons for justifying the appointments of respondent Nos.4 to 14, is concerned, it is the contention of respondents that, each and every candidate who attended the interviews, were given opportunity to establish their claims and thereafter the present respondent Nos.4

to 14 have been appointed. From the impugned judgment itself it is evident that, there were 157 applications were received which include the present appellants as well as respondent Nos.4 to 14 along-with the others. Further, it appears that out of those 157 candidates 43 candidates/members remained absent for interview. Thus, it appears that in all 114 applicants had given interviews. Clause-6 of the impugned judgment indicates that, the learned Joint C.C. had considered the interviews of all these applicants and then found that, the present respondent Nos.4 to 14 were fit to be appointed as trustees over the Trust as per the scheme framed.

9. It further appears that, the learned Joint C.C. found these respondents having faith on the God Shri. Mhaishashwar and they were taking part in festivals of God Shri. Mhaishashwar. Moreover, from the interviews it was found that, the present respondents were interested for devoting their time for God Shri. Mhaishashwar and having certain ideas of development of temple and service to the devotees. They were also having involvement in social activities of the village and temple. Thus, the learned Joint C.C. has given certain reasons based on interviews taken by him of the entire candidates as to why these respondents are appointed as trustees.

Though in the judgment the details of interview of each and every candidate are not mentioned but had it been mentioned so then the judgment would have run into pages since in all 114 candidates had given interviews.

10. It appears that, the learned Joint C.C. atleast have justified the appointments of present respondents as trustees by quoting short reasons. Thus, it cannot be said that, learned Joint C.C. did not record any reason justifying the appointments of present respondent Nos.4 to 14 on the Trust.

11. Thus, considering all these aspects no substance is found in the challenge of appellants to the impugned judgment and order passed by the learned Joint C.C., Aurangabad. In view of the same, the appeal stands dismissed and pending civil application for stay i.e. Civil Application No. 15545 of 2022 also stands disposed of.

[SANDIPKUMAR C. MORE]
JUDGE