

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: Hon'ble Shri Justice Subodh Abhyankar

Writ Petition No.26947 of 2021

Saurabh & another

Versus

State of M.P. & Ors

(Case was heard on 17/12/2021)

Counsel for the Parties : Shri Vibhor Khandelwal, Counsel for the petitioner.
Shri Vishal Baheti, Counsel for the respondent No.4.
Shri Nitin Phadke, Counsel for the Intervenor.

Whether approved for reporting : Yes

Law laid down : **M.P.Public Trusts Act, 1951.**

1. The question which is posed in the present petition is that whether the Registrar Public Trust can pass an order of such a nature removing two trustees and directing the trust to conduct the election by appointing two new trustees. (Para-9)

2. A perusal of the provisions i.e. S.22,25 & 26 of the Act, it clearly reveal that if the vacancies have occurred in the Board, it can be filled through the procedure as provided under Section 25 of the Act, but in the present case admittedly the trustees were appointed by the Trust itself and it appears that no such intimation was given by the Board of trustees to the Registrar Public Trust which has led to removal of the two trustees by the Registrar himself. In the considered opinion of this court, no such discretion is available to the Registrar to remove the Trustees and to direct the trust to conduct the election by appointing two new trustees. (Para-12)

Judgement relied upon-

Dalludas V. Registrar of Public Trusts, Hoshangabad

(Supra)

3. The dispute between the parties in the aforesaid public trust is in respect of its administration only, and for which the directions ought to have been sought from the District Judge as provided under Section 26 of the Act. Thus, the Registrar Public Trust, Barwani has clearly acted in excess of his jurisdiction to pass the impugned order which cannot be countenanced in the eyes of law. (Para-13).

4. In the case of **Shri Shri 1008 Kunwar Raj Rajeshwai Hindayla Darbar (supra)**, wherein it is held that a public trust is not a juristic person and that the petition filed by the Public Trust is not maintainable. The said case is also distinguishable as admittedly the case on hand has also been filed by Sourabh Patodi, who is also one of the trustees as

also by the Trust through its authorized trustee Sourabh Patodi. And since the Trust is a Public Trust, discharging public function, in the considered opinion of this court, a writ would be maintainable regarding its functioning by any person who can show that he has any interest in the affairs of the Trust and the infringement of his legal rights under the Act of 1951. Thus, in such circumstances, non joinder of all the Trustees would not render the petition untenable. (Para 15)

4. **Distinguished:-**

Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others reported in **AIR 2001 SC 3982; Mohanrao Wakode Vs. State of M.P. & Ors.** passed in **W.P. No.20000 of 2020 (Indore)** decided on **24.12.2020** and **Shri Shri 1008 Kunwar Raj Rajeshwai Hindayla Darbar by Pn. Hariom Parakash Maharaj (Baba) Vs. State of M.P.** passed in **W.P. No.12194 of 2020 (Gwalior)** decided on **27.08.2020.**

**Judgements
relied upon**

**Significant
paragraph
numbers**

Dalludas V. Registrar of Public Trusts, Hoshangabad
reported in **JLJ, 1971 Short Notes (135).**

: 9, 12, 13 and 15

ORDER

(Case was heard on 17/12/2021)

Post for

12/01/2022

**(SUBODH ABHYANKAR)
JUDGE**

Pankaj

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
(SINGLE BENCH: HON'BLE Mr. JUSTICE SUBODH ABHYANKAR)
W. P. No. No. 26947/2021

Petitioners 1. Saurabh S/O Narendra Patodi,
Trustee, Shri Dagamber Jain Siddh Kshetra
Bawangajaji (CHULAGIRI) Rus, Barwani
Aged-48 Years, Occupation-Business,
Address 84 Gumasha Nagar, Indore.

2. Shri Digamber Jain Siddh Kshera Bawangagaji
(CHULAGIRI) Trust, Barwani
Through Its Authorized Trustee
Saurabh S/O Narendra Patodi
Age 48 Years, Occupation-Business
Address : Bawangaja Tahsil And District Barwani
(Madhya Pradesh)

Versus

Respondents:- 1. State of M.P. through
Principal Secretary,
Department of Religious Trusts and Endowments,
Government of Madhya Pradesh,
Vallabh Bhawan, Bhopal

2. Registrar of Public Trust,
District Barwani

3. Padam Kumar Jain,
Chief Election Officer,
Balaji Enclave, Near APJ Abdul Kalam
University, Arandiya (Talawali Chanda), Indore

4. Rakesh Kumar S/o Pannalal Jain
Age: Major, occupation business
R/o Singhana Road, Manawar,
Distict Dhar.

5. Rajkumar @ Rajprakash Pahadia, S/o
Heerachand Pahadia,
Age : 62 years, occupation- Profession,
Address: In front of City Civil Court,
Kukshi, District Dhar

For petitioner	:	Mr. Vibhor Khandelwal, Adv.,
For Respondent No.4	:	Mr. Vishal Baheti, P.L.
For intervenor	:	Mr. Nitin Phadke, Adv.

ORDER
(12/01/2022)

This writ petition under Article 226 of the Constitution of India has been filed against the order dated 17.11.2021 passed by respondent No.2, Registrar of Public Trust, District Barwani whereby the Registrar has issued certain directions for election of office bearers of the petitioner-Trust.

2. Brief facts of the case are that petitioner No.1 happens to be the Trustee of Shri Digamber Jain Siddh Kshetra Bawangajaji (Chulagiri) Trust, Barwani whereas the petitioner No.2 is the said Trust through its authorities trustee-petitioner No.1. The said Trust has been registered as religious and charitable public trust under the provisions of M.P. Public Trust Act, 1951 (hereinafter referred to as 'the Act').

3. Case of the petitioner-Trust is that the management, appointment, election of the Trust is governed by the Constitution of Trust and no deviation therefrom is permissible, a copy of which is also placed on record. Before the Registrar, Public Trust, respondent No.4 preferred an application without reference to the provisions of the Act under which the same was being filed, claiming himself to be a lifetime trustee of the Trust and alleging that one of the trustees namely, respondent No.5-Rajkumar has been illegally appointed. It was prayed for staying the election process initiated by the petitioner-trust.

4. A Reply to the application was also filed by respondent No.5 on 18.10.2021, denying the allegations levelled against him. On the

aforesaid reply, a rejoinder was also filed by the respondent No.4.

5. Shri Vibhor Khandelwal, Counsel for the petitioner has submitted that the impugned order has been passed by the respondent No.2 the Registrar Public Trust without giving any opportunity of hearing to the petitioner trust or to the trustees, who have been removed vide the impugned order in violation of the principles of natural justice and apart from that the Registrar himself had no such power to pass the impugned order under the provisions of Public Trust Act, 1951. It is further submitted that even the application filed by the respondent No.4 before the Registrar Public Trust did not have any provision under which the same was being filed and on said application the Registrar Public Trust has passed the impugned order. Counsel has submitted that the duties of the Registrar Public Trust are specifically provided under Section 22 of the Act, whereas any other order which can be made by the Registrar is under Section 26 of the Act, which provides for application to the Court for direction and thus, it is submitted that at the most the Registrar could have referred the matter to the Court for its directions. In support of his contention, Shri Khandelwal has also relied upon decisions rendered by the Division Bench of this Court in the case of **Dalludas V. Registrar of Public Trusts, Hoshangabad** reported in **JLJ, 1971 Short Notes (135)** and another decision of Division Bench in the case of **Sheoprasad Dubey V. Registrar, Public Trusts, Sagar & others** reported in **JLJ, 1972 Short Notes (6)**. Thus, it is submitted that the Registrar Public Trust,

Barwani has exceeded its jurisdiction while passing the impugned order wherein not only certain directions have been issued by the Registrar, two trustees, which were made by the petitioner trust were also removed. Counsel has submitted that for removal of trustees there is a separate provision under Sections 9/25 of the Act and for which the remedy lies under Section 8 of the Act.

6. On the other hand, Shri Vishal Baheti, Counsel appearing for the respondent No.4 has opposed the prayer and it is submitted that no illegality has been committed by the Registrar Public Trust as no such order has been passed on any application purporting to be under Section 26 of the Act. As a bare perusal of the application would reveal that none of the ingredients of Section 26 were available in the aforesaid application which could have called for reference of the case to the District Judge for his directions. In support of his contentions, Shri Baheti, has relied upon decisions of Hon'ble Supreme Court as well as of this Court in the case of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others** reported in **AIR 2001 SC 3982; Mohanrao Wakode Vs. State of M.P. & Ors.** passed in **W.P. No.20000 of 2020 (Indore) decided on 24.12.2020** and **Shri Shri 1008 Kunwar Raj Rajeshwai Hindayla Darbar by Pn. Hariom Parakash Maharaj (Baba) Vs. State of M.P.** passed in **W.P. No.12194 of 2020 (Gwalior) decided on 27.08.2020.**

7. Heard Counsel for the parties and perused the record.

8. The impugned order has been passed on an application dated 04.10.2021, which does not bear any provision of law under which it is made. In the aforesaid application, it was alleged that Raj Prakash Pahadia, the erstwhile *Mahamantri* of the trust has issued a list of trustees on 29.09.2021 in which Shri Shikharchand Jain and Shri Santosh Sundarlal Ji Jain have been made the members of the Board illegally despite the fact that these two persons were never elected nor any resolution was passed for their election and as such they cannot be treated as the members of the trust Board and in such circumstances the election of the Board cannot be held on the said list issued by Raj Prakash Pahadia. It is also mentioned in the aforesaid application that it is the duty of the Registrar Public Trust to see that the trust runs in accordance with law and the elections of the trust should also take place in a democratic manner.

9. In the considered opinion of this Court, the question which is posed in the present petition is that whether the Registrar Public Trust can pass an order of such a nature removing two trustees and directing the trust to conduct the election by appointing two new trustees from *Bharatvarshiya Digambar Jain Tirthkshetra Committee*. In the considered opinion of this Court so far as the powers of the Registrar are concerned, the same have been provided under Section 22 of the Act, which reads as under:-

“22. Power of the Registrar. - The Registrar shall have powers,-

(a) to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust;

(b) to call for or inspect any extract from any proceedings of the trustees of any public trust or any book or account in the possession of or under the control of the trustees;

(c) to call for any return, statement, account or report which he may think fit from the trustees or any person connected with a public trust :

Provided that in entering upon any property belonging to the public trust the officer making the entry shall give reasonable notice to the trustee and shall have due regard to the religious practices or usages of the trust.”

10. So far as the filling of vacancies is concerned, it is provided under Section 25 of the Act, which reads as under:-

“**25. Filling of vacancies.**- (1) Where a public trust is under the management of a Board of Trustees, the working trustee shall, as soon as a vacancy occurs in the Board, inform the Registrar of such vacancy and the time within and the manner in which he proposes to fill the same.

(2) On receipt of such information the Registrar may, if he considers it necessary, issue any directions to the working trustee regarding the filling of such vacancy not inconsistent with any instrument of trust or the mode of succession specified in the register and the working trustee shall comply with any such direction.

(3) If the working trustee fails to give any such information or to fill the vacancy within the time specified by him or to comply with any direction issued by the Registrar, the Registrar may, by order passed in writing, fill the vacancy and any person having interest in the public trust who may be aggrieved by the order of the Registrar, may apply to the Court for setting aside the order of the Registrar within thirty days from the date of such order.”

(emphasis supplied)

11. The Registrar Public Trust can also seek directions from the District Judge under Section 26 of the Act, which reads as under:-

“**26. Application to Court for directions.**- (1) If the Registrar on the application of any person interested in the public trust or otherwise is satisfied that,-

(a) the original object of the public trust has failed;

(b) the trust property is not being properly managed or administered; or

(c) the direction of the Court is necessary for the administration of the public trust;

he may, after giving the working trustee an opportunity to be heard direct such trustee to apply to Court for directions within the time specified by the Registrar.

(2) If the trustee so directed fails to make an application as required, or if there is no trustee of the public trust or if for any

other reason, the Registrar considers it expedient to do so, he shall himself make an application to the Court.”

(emphasis supplied)

12. A perusal of the aforesaid provisions clearly reveal that if the vacancies have occurred in the Board, it can be filled through the procedure as provided under Section 25 of the Act, but in the present case admittedly the trustees were appointed by the Trust itself and it appears that no such intimation was given by the Board of trustees to the Registrar Public Trust which has led to removal of the two trustees by the Registrar himself. In the considered opinion of this court, no such discretion is available to the Registrar to remove the Trustees and to direct the trust to conduct the election by appointing two new trustees from *Bharatvarshiya Digambar Jain Tirthkshetra Committee*. In this regard, reference may be had to a decision rendered by the Division Bench of this court in the case of *Dalludas (supra)*, wherein it is held thus, :-

“There is no power in the Act under which the Registrar can remove an existing trustee and appoint another by his own order. The only provision in such a matter where the Registrar is not satisfied about the capacity of the working trustee in section 26 of the Act. Under that provision a reference has to be made to the Civil Court and directions of the Civil Court have to be sought for removal of the trustee and for appointment of another trustee. That procedure having not been followed, the order passed by the Registrar is without jurisdiction, and is accordingly quashed. Petition allowed.”

13. In the considered opinion of this Court the dispute between the parties in the aforesaid public trust is in respect of its administration only, and for which the directions ought to have been sought from the District Judge as provided under Section 26 of the Act. Thus, the

Registrar Public Trust, Barwani has clearly acted in excess of his jurisdiction to pass the impugned order which cannot be countenanced in the eyes of law.

14. So far as the decision relied upon by the Counsel for the respondent in the case of **Mohanrao Wakode (surpa)** is concerned, the same relates to the action on the part of the Registrar and Assistant Registrar of the Firm and Societies Act under the provisions of M.P. Society Registrickaran Adhinyam, 1973 and the case was not related to the public trust and in such circumstances the case is distinguishable on facts. Similarly, the decision rendered by the Hon'ble Supreme Court in the case of **Shri Sant Sadguru Janardan Swami (supra)** is concerned, the said case also related to the Cooperative Society where election of office bearer is provided under the Act.

15. Shri Baheti has also relied upon the decision rendered by the Co-ordinate Bench of this Court in the case of **Shri Shri 1008 Kunwar Raj Rajeshwai Hindayla Darbar (supra)**, wherein it is held that a public trust is not a juristic person and that the petition filed by the Public Trust is not maintainable. The said case is also distinguishable as admittedly the case on hand has also been filed by Sourabh Patodi, who is also one of the trustees as also by the Trust through its authorized trustee Sourabh Patodi. And since the Trust is a Public Trust, discharging public function, in the considered opinion of this court, a writ would be maintainable regarding its functioning by any person who can show that he has any interest in the affairs of the

Trust and the infringement of his legal rights under the Act of 1951. Thus, in such circumstances, non joiner of all the Trustees would not render the petition untenable.

16. On the aforementioned discussion, the impugned order dated 17.11.2021 is hereby quashed and the Registrar, Public Trust, Barwani is hereby directed to take appropriate action in accordance with law for proper administration of the Public Trust.

Petition stands *allowed*.

**(Subodh Abhyankar)
Judge**

mk/pankaj

