

A TRAMBAKESHWAR DEVASTHAN TRUST AND ANR.
v.
PRESIDENT, PUROHIT SANGH AND ORS.
(Civil Appeal No. 6639 of 2003).

B OCTOBER 13, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Bombay Public Trusts Act, 1950:

C ss.2(10)(a), 47(3) – *Religious public trust – Temple –*
Appointment of Board of Trustees – *Relevant considerations*
for – *Held: Charity Commissioner must have regard to the*
question whether the appointment of a particular person would
D promote or impede the execution of the trust and would be in
the interest of the public or section of the public who have
interest in the trust – *In the instant case, while deciding the*
composition of trust, High Court considered the provisions of
E ss.2(10) and 47(3) and held that the Tungars, Purohits and
Pujaris need to be represented in the Board of Trustees of
the Temple – High Court not only kept in mind the interest of
the public but also interest of the temple and took a view that
the appointment of representatives of the Tungars, Purohits
F or Pujaris in the trust would not be in conflict with the interest
of the trust just because they have interest in the cash
offerings or the consideration for the pujas or performance of
the official puja in the temple – The impugned order of the
High Court insofar as it held that Tungars, Purohits and
G Pujaris need to be represented in the Board of Trustees by
one member from each of these classes is upheld – However,
to ensure that the interest of the public is protected and
safeguarded in all the decisions of the Board of Trustees, it
is directed that, instead of two persons, four persons would be
appointed by the Charity Commissioner from amongst male/
H female, adult Hindu devotees preferably residents of
Trimbakeshwar, who would be representing the public in the

Board of Trustees – This would ensure that in a composition of maximum of nine members, four members at least would represent the public or the devotees of the temple and the decisions of the Board of Trustees would be in the larger interest of temple and the public or the devotees – The impugned judgment of the High Court is modified accordingly – Trust.

Appellant, a public trust under the Bombay Public Trusts Act, 1950 was registered in respect of the temple in 1952. The Charity Commissioner modified the existing scheme for management of the said trust and appointed 5 trustees, one from the Tungars, one from the Purohits and appointment of remaining 3 was to be done by the Charity Commissioner himself. The order of the Charity Commissioner was challenged before the Additional District Judge who set aside the appointment of the Tungars and the Purohits as trustees and directed that instead a Civil Judge would be nominated by the District Judge and the Chief Officer of the Trambakeshwar Municipality would be appointed as Ex-officio trustee and the Civil Judge so appointed by the District Judge would be the Chairman of the Board of Trustees. On appeals, the High Court modified the composition of the trust. It held that the trust would have a maximum of 7 members namely, one nominee of the District Judge who would be the *Ex-officio* Trustee and Chairman of the Board, the Chief Executive Officer of the Trimbakeshwar Municipal Council who would be the *Ex-officio* Trustee and in his absence, his immediate subordinate nominated by the Municipal Council, one representative to be nominated by the Tungar Public Trust, one representative to be nominated by the Purohit Sangh (registered society), one person to be nominated from amongst the three Pujari families; and two persons to be appointed by the Charity Commissioner from amongst male/female, adult Hindu devotees preferably residents of Trimbakeshwar.

A In the instant appeals, it was contended for the appellants that the High Court was not justified in giving representation in the Board of Trustees to the Tungars, Purohits and Pujaris, particularly since Tungars and Purohits had direct pecuniary interest in the temple.

B Disposing of the appeals, the Court

HELD: 1.1. It will be clear from a reading of Section 2(10)(a) of the Bombay Public Trusts Act, 1950 that in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the distribution of gifts of the temple is a person having interest. Section 47(3) of the Act provides that the Charity Commissioner shall have regard to the factors mentioned in clauses (a), (b), (c), (d) and (e) while appointing a trustee. The Charity Commissioner, therefore, must have regard to the question whether the appointment will promote or impede the execution of the trust as mentioned in clause (c) and to the interest of the public or section of the public who have interest in the trust as mentioned in clause (d). The High Court had considered the provisions of Sections 2(10) and 47(3) of the Act in the impugned judgment and had held that the Tungars, Purohits and Pujaris need to be represented in the Board of Trustees. A reading of the impugned judgment of the High Court would show that the High Court has not only kept in mind the interest of the public but also interest of the temple and had taken a view that the appointment of representatives of the Tungars, Purohits or Pujaris in the trust would not be in conflict with the interest of the trust only because they have interest in the cash offerings, the consideration for the pujas or performance of the official puja in the temple. The High Court rightly held that Tungars, Purohits and Pujaris have interest in the trust

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but not necessarily an interest which is in conflict with the interest of the trust. In most of the decisions of the Board of Trustees, there would not be a conflict of interest between that of the trust and that of the Tungars, Purohits and Pujaris. Rather, representation of Tungars, Purohits and Pujaris in the Board of Trustees may be necessary to ensure the smooth functioning of the temple. The impugned order of the High Court in so far as it held that Tungars, Purohits and Pujaris need to be represented in the Board of Trustees by one member from each of these classes is upheld. [Para 8, 9] [1001-C-E-F; 1003-F-H; 1004-A-B]

Fakir Mohamed Abdul Razak v. The Charity Commissioner, Bombay and Ors. AIR 1976 Bom.304 – approved.

1.2. It is well settled law that the interest of the public is paramount in any religious public trust. To ensure that the interest of the public is protected and safeguarded in all the decisions of the Board of Trustees, it is directed that, instead of two persons, four persons would be appointed by the Charity Commissioner from amongst male/female, adult Hindu devotees preferably residents of Trimbakeshwar, who would be representing the public in the Board of Trustees. This would ensure that in a composition of maximum of nine members, four members at least would represent the public or the devotees of the temple and the decisions of the Board of Trustees will be in the larger interest of temple and the public or the devotees. The impugned judgment of the High Court is modified accordingly. [Para 10, 11] [1004-C-E-H]

Case Law Reference:

AIR 1976 Bom.304 approved Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6639 of 2003.

A From the Judgment and Order dated 05.08.2002 of the High Court of Judicature at Bombay in First Appeal No. 1252 of 1996.

WITH

B Civil Appeal Nos. 6640, 6641 and 6642 of 2003.

Jayant Bhushan, Shivaji M. Jadhav and S.K. Jain for the Appellants.

C Shekhar Naphade, R.P. Bhatt, Ravindra Keshavrao Adsure, Shridhar Y. Chitale, Abhijat P. Medh, Aniruddha P. Mayee, Charudatta Mohindrakar, Rucha Mayee, Asha G. Nair and J.P. Dhanda for the Respondents.

The Judgment of the Court was delivered by

D **A. K. PATNAIK, J.** 1. These are four appeals against the common judgment dated 5th of August, 2002 of the Bombay High Court in First Appeal Nos. 1252 of 1996, 1325 of 1996, 142 of 1997 and 1322 of 1996 and relate to the ancient Shiva temple situated at Trambakeshwar near Nashik (for short 'the temple').
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2. The facts very briefly are that a public trust under the Bombay Public Trusts Act, 1950 (for short 'the Act') was registered in respect of the temple in 1952 and one Jogalekar was appointed as its sole trustee with hereditary succession.
F In 1965, some of the devotees of the temple filed an application under Section 50A(1) of the Act for settlement of a scheme for management of the trust. In 1967, a scheme for management of the trust was framed but the same was challenged by the sole trustee Jogalekar under Section 72 of the Act before the
G District Judge, Nashik. The District Judge, Nashik amended the scheme but the amendment was not to the liking of the sole trustee Jogalekar and Jogalekar resigned and none of his legal heirs were willing to be the trustee of the trust. In 1977, the Charity Commissioner modified the scheme and appointed one
H Gokhale as interim sole trustee and directed an inspection.

After inspection, the Deputy Charity Commissioner submitted the inspection report narrating the entire history and activities of the temple. The inspection report gave the details of the traditional role played by Tungars, Purohits and Pujaris in the temple for hundreds of years. The Charity Commissioner considered the report and by order dated 30.11.1981 modified the scheme and appointed 5 trustees, one from the Tungars, one from the Purohits and remaining 3 to be appointed by the Charity Commissioner.

3. The sole trustee Gokhale, however, challenged the order dated 30.11.1981 of the Charity Commissioner under Section 72 of the Act before the District Judge, Nashik. After hearing the parties the 5th Additional District Judge, Nashik in his order dated 28.12.1993, held that Tungars get offerings made by the devotees in the plate situated before the idol and Purohits earn income from the devotees who visit the temple and therefore they have financial interest in the offerings and the devotees and their respective participation in the management of the trust is likely to be in conflict with the interest of the trust. The Additional District Judge held that the apprehension of the appellant before him that Tungars and Purohits, if appointed as trustees, are bound to look after their well being first and divert the attention of the devotees was well-founded and accordingly allowed the appeal and set aside the appointment of one of the Tungars and one of the Purohits as trustees. The Additional District Judge directed that instead a Civil Judge, Senior Division, be nominated by the District Judge, Nashik and the Chief Officer of Trambakeshwar Municipality or in his absence the next subordinate be appointed as Ex-officio trustee and that the Civil Judge, Senior Division, so appointed by the District Judge, Nashik shall be the Chairman of the Board of Trustees.

4. Aggrieved by the judgment of the Additional District Judge, Nashik, the President, Purohit Sangh filed First Appeal No.1252 of 1996, the Tungars filed First Appeal No.1322 of 1996 and the Pujaris represented by Krushnaji Ramchandra

- A Ruikar and three others filed First Appeal No.1325 of 1996. After hearing the parties, the High Court in the impugned judgment dated 05.08.2002 has held that the Tungars, Purohits as well as Pujaris should get representation in the trust and allowed the appeal in part and modified the composition of the trust. The High Court held in the impugned order that the trust will have a maximum of 7 members namely, one nominee of the District Judge who would be the *Ex-officio* Trustee and Chairman of the Board, the Chief Executive Officer of the Trimbakeshwar Municipal Council who would be the *Ex-officio* Trustee and in his absence, his immediate subordinate nominated by the Municipal Council, one representative to be nominated by the Tungar Public Trust, one representative to be nominated by the Purohit Sangh (registered society), one person to be nominated from amongst the three Pujari families; and two persons to be appointed by the Charity Commissioner from amongst male/female, adult Hindu devotees preferably residents of Trimbakeshwar.

5. Learned counsel for the appellant in the three appeals submitted that the High Court was not right and justified in giving representation in the Board of Trustees to the Tungars, Purohits and Pujaris, particularly when Tungars and Purohits have direct pecuniary interest in the temple. He explained that Tungars collected the offerings made by the devotees to the idol and Purohits perform pujas for the devotees and earn money from the devotees. He submitted that the interest of Tungars and Purohits were in direct conflict with the interest of the trust and they should not have been given the representation in the Board of Trustees. By way of illustration, learned counsel for the appellant submitted that if the Board of Trustees was to decide to place a cash-box in which the devotees would contribute money for the benefit of the temple, the Tungars and Purohits or their representatives would not like this decision to come through because such a decision would affect their earnings. He submitted that in fact in 1997, the Tungars had opposed the installation of cash-box before the idol. He submitted that

the Additional District Judge, Nashik was therefore right in coming to the conclusion that Tungars and Purohits have financial interest in the offerings and the devotees and their appointment as trustees will not be in the interest of the trust. He referred to the provisions of Section 47(3) of the Act to show that the Charity Commissioner shall have regard to the question whether the appointment of a trustee will promote or impede the execution of the trust and to the interest of the public or the section of the public who have interest in the trust. He submitted that it is the devotees of the temple who have got maximum interest in the temple whereas Tungars and Purohits have their own interest as against the interest of the temple and should not have been appointed as trustees.

6. Learned counsel appearing for the respondents referred to the inspection report to show the important functions performed by the Tungars, Purohits and Pujaris at the temple for the last hundred of years. They also referred to the reasons given by the Joint-Charity Commissioner in his order dated 30.11.1981 for giving representations to the Tungars, Purohits and Pujaris in the Board of Trustees. They submitted that the High Court has given good reasons in the impugned judgment to show that there is no conflict between the interest of the Tungars, Purohits and Pujaris and the interest of the trust. Learned counsel for the respondents submitted that in the *Fakir Mohamed Abdul Razak vs. The Charity Commissioner, Bombay and Ors.* (AIR 1976 Bom.304) a Division Bench of the High Court while deciding a matter under the Act has held in paragraph 37 that the court has to consider while settling the Scheme the past history of the institution and the way in which the management of the trust has been carried on till the settlement of the scheme and the appointment of the trustees. They submitted that the Joint-Charity Commissioner and the High Court have taken into consideration the past history of the trust and in particular the role played by the Tungars, Purohits and Pujaris and held that they should be given representations in the Board of Trustees. They submitted that the appointment

A of representatives of the Tungars, Purohits and Pujaris does not in any way impede the execution of the trust. They argued that Tungars, Purohits and Pujaris, all are persons who have interest in the trust within the meaning of Section 2(10) of the Act and they are entitled to be represented in the trust.

B 7. Section 2(10) of the Act and Section 47(3) of the Act which are relevant for deciding the issues raised before us are quoted hereinbelow:

“Section 2(10) “Person having interest” includes –

C (a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the distribution of gifts thereof,

D (b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs,

E (c) in the case of wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf,

F (d) in the case of a society registered under the Societies Registration Act, 1860, any member of such society, and

(e) in the case of any other public trust, any trustee or beneficiary;

47. Power of Charity Commissioner to appoint, suspend, remove or discharge trustees and invest property to new trustees : (3) In appointing a trustee under sub-section (2), the Charity Commissioner shall have regard

H (a) to the wishes of the author of that trust;

(b) to the wishes of the persons, if any, empowered to appoint a new trustee; A

(c) to the question whether the appointment will promote or impede the execution of the trust;

(d) to the interest of the public or the section of the public who have interest in the trust; and B

(e) to the custom and usage of the trust.

It will be clear from a reading of Section 2(10)(a) of the Act that in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the distribution of gifts of the temple is a person having interest. Section 47(3) of the Act quoted above provides that the Charity Commissioner shall have regard to the factors mentioned in clauses (a), (b), (c), (d) and (e) while appointing a trustee. The Charity Commissioner, therefore, must have regard to the question whether the appointment will promote or impede the execution of the trust as mentioned in clause (c) and to the interest of the public or section of the public who have interest in the trust as mentioned in clause (d). C D E

8. We find that the High Court has considered the provisions of Sections 2(10) and 47(3) of the Act in the impugned judgment and has held that the Tungars, Purohits and Pujaris need to be represented in the Board of Trustees. Paragraphs 15 and 16 of the impugned judgment of the High Court are quoted hereinbelow: F

"15. In a case of a religious public trust, undoubtedly, the Authority or the Court will have to keep in mind the requirements of Section 47(3) of the Act and the interest of or the proper management and administration of such trust. The persons to be appointed, by law, are required to be persons who have interest in the affairs of the trust which is real, substantive and an existing one, though not direct one. It is well settled that merely being resident of H

A the area is not enough for being labeled as a suitable and
fit person. At the same time the legislative scheme would
suggest that the management and administration of a
public religious trust such as the Trimbakeshwar
Devasthan should be entrusted to such person so as to
B preserve the interest of the public or the section of the
public who have interest in the trust. Obviously, regard
being had to the fact that the appointment will promote and
not impede the execution of the trust or its policies. By the
very nature of the activities in a place used as a place of
C public religious worship and dedicated to or for the benefit
of or used as of right by the Hindu community or any
Section thereof, it is antithesis to a private and closed door
management of its affairs. On the other hand there has to
be complete openness and transparency in its
D administration and above all by observing democratic
values or principles. To put it differently, it is public trust “for
the community, by the community and of the community”
or any section thereof. If such is the purport of the Trust then
diversified representation and involvement of all concerned
or the section of the public who have interest in the Trust
E and in particular associated with the day to day activities
of the temple of the devasthan is inevitable – and the most
appropriate step to further and promote the objectives of
such a Trust.

F 16. Once we reach at this position, the next question that
needs to be examined is; whether persons belonging to a
particular Section can be generally disqualified on the
ground of “conflict of interest” with the affairs of the trust of
fact attached to an individual? I have no hesitation to hold
G that disqualification is essentially of an individual and
cannot be because of the fact that the person belongs to
the family of “Tungar”, “Pujari” or “Purohit” as such, as the
case may be. A person can be said to be disqualified or
would render himself unfit for being appointed as the
H trustees only when he has direct interest in the trust or the

devasthan and is hostile to the affairs of the Trust and his A
object is to see that the Trust is destroyed. To put it
differently, there is a perceptible difference between
"person having interest in the trust" and "person having
conflict of interest". The former is the quintessence for
being eligible to be considered or for being appointed as B
the trustee. This mandate flows from the provisions of
Section 47 read with Section 2(1) of the Act. Therefore,
merely because the "Tungars" have the right to take away
the entire cash offerings in the form of notes or coins near
the idol or the threshold of the Garbhagriha in a plate or C
that the "Purohits" entertain the Yajmans or offer their
services for consideration or the "Pujaris" are engaged in
the performance of the official puja in the temple, cannot
be said to be hostile to the affairs of the Trust or having
direct interest so as to conflict with the administration and D
management of the Trust. As observed earlier Section
2(10) of the Act would envelope even the beneficiary of the
Trust. Understood thus, it is incomprehensible that the
"Tungars", "Purohits" or the "Pujaris" in the devasthan can
be singled out as a class from the administration and
management of the Trust. This view would answer point E
number (iii) and (iv) above."

9. A reading of paragraphs 15 and 16 of the impugned
judgment of the High Court quoted above shows that the High
Court has not only kept in mind the interest of the public but F
also interest of the temple and has taken a view that the
appointment of representatives of the Tungars, Purohits or
Pujaris in the trust would not be in conflict with the interest of
the trust only because they have interest in the cash offerings,
the consideration for the pujas or performance of the official
puja in the temple. The High Court has rightly held that Tungars, G
Purohits and Pujaris have interest in the trust and not
necessarily an interest which is in conflict with the interest of
the trust. We are also of the view that in most of the decisions
of the Board of Trustees, there would not be a conflict of interest
between that of the trust and that of the Tungars, Purohits and H

- A. Pujaris. Rather, representation of Tungars, Purohits and Pujaris in the Board of Trustees may be necessary to ensure the smooth functioning of the temple. We are, therefore, not inclined to set aside the impugned order of the High Court in so far as it has held that Tungars, Purohits and Pujaris need to be represented in the Board of Trustees by one member from each of these classes.

10. Law is however well settled that the interest of the public is paramount in any religious public trust. The Division Bench of the High Court in *Fakir Mohamed Abdul Razak vs. The Charity Commissioner, Bombay and Ors.* (supra) has held in para 35:

“It is well settled that in suits like the suits for settling the Scheme, the Court has a duty once it is found that it is a Trust for public purposes, to consider what is best in the interests of public. Settling a scheme is one of the most important relieves relating to the administration of public trust. The primary duty of the Court is to consider the interest of the public for whose benefit the trust has been created.....”

To ensure that the interest of the public is protected and safeguarded in all the decisions of the Board of Trustees, we hold that, instead of two persons, four persons will be appointed by the Charity Commissioner from amongst male/female, adult Hindu devotees preferably residents of Trimbakeshwar, who will represent the public in the Board of Trustees. This will ensure that in a composition of maximum of nine members, four members at least will represent the public or the devotees of the temple and the decisions of the Board of Trustees will be in the larger interest of temple and the public or the devotees.

11. The impugned judgment of the High Court is modified accordingly and the appeals stand disposed of. There shall be no order as to costs.

D.G. Appeals disposed of.