

A PRINCIPAL SECRETARY, GOVERNMENT
OF KARNATAKA AND ANOTHER

v.

RAGINI NARAYAN AND ANOTHER

B (Civil Appeal No. 8895 of 2012)

SEPTEMBER 20, 2016

[**RANJAN GOGOI AND PRAFULLA C. PANT, JJ.**]

C *Trust: Appointment of Donor Trustee – Respondent-Plaintiff's husband was the original Donor Trustee – Original Trust Deed amended in 1994, registered on 30.01.1995, provided that after the life time of respondent's husband, either his senior most lineal descendant or a member of his family nominated by him or his wife, shall be the Donor Trustee – Suit by Respondent, relying on this amendment, for a declaration that she is the Donor Trustee of the*

D *Trust after the death of her husband – Appellant-State government and respondent No.2 (State's appointee as Donor Trustee) contended that the said amendment being without the approval of the State Government is inoperative – Trial Court decreed suit in favour of respondent – High Court upheld the decree passed by*

E *Trial Court – On appeal, held: There was approval of the State Government to the 1994 Amendment in terms of documents relied on by the appellant-State govt. and respondent No.2 itself – Further, the 1994 amendment mentioned that after the lifetime of respondent's husband, either his senior most lineal descendant or a member of his family or his wife was to succeed, and if this mode of succession*

F *fails, then the State Government were to exercise the powers of Donor Trustee – The mode of succession did not fail as at the time of death of original Donor Trustee, respondent was his wife and thus was validly nominated as Donor Trustee.*

Dismissing the appeal, the Court

G **HELD:** 1.1 **Though on behalf of the appellants and the Respondent no.2, it is contended that the State Government had not given any approval to the 1994 amendment relied upon on behalf of the plaintiff, but certain documents on record clearly show that there was approval of the State Government to the disputed amendment of 1994. One of such documents is filed by**

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the Respondent No.2 with the additional documents, which is A
copy of the 'Deed of Appointment' of the Government of
Karnataka as successor Donor Trustee of executant BSN
(Respondent-Plaintiff's husband). The appellants cannot
approve and reprobate at the same time. On one hand they
rely on this document to nominate Respondent No.2, and appoint B
him as Donor Trustee, and on the other hand, they are not ready
to accept the approval of State Government to the Amendment
Deed registered on 30.01.1995 on the basis of which the
executant (Respondent-Plaintiff's husband) has exercised the
powers in nominating the Donor Trustee. [Para 16][799-C-F]

1.2 Another important document throwing light on this C
point is copy of the letter issued by the Government of Karnataka
to the Member Secretary of B.M.S. Trust, Bangalore appointing
Respondent No.2 as Donor Trustee. From this letter, it is clear
that Deed of Appointment dated 13.08.1995 was referred by the
State Government, and it cannot be said that the State Government D
had not approved the Resolution dated 10.12.1994 on the basis
of which Deed of Amendment was registered on 30.01.1995.
[Paras 17 and 18][800-B-C; 801-C]

2.1 By amendment of 1994, it was mentioned that after the
life time of respondent-plaintiff's husband, his senior most lineal E
descendant or a member of his family or his wife was to succeed,
and if mode of succession fails, then powers of Donor Trustee
were to be exercised by the State Government. [Para 18][801-F-
G]

2.2 There is concurrent finding of fact of the courts below F
that respondent-plaintiff was the wife of BSN Donor Trustee, at
the time of his death, as such the mode of succession mentioned
in para (IV)(i) did not fail. Whether it is amendment of 1978 or
1995 the expression "or his wife" is there. The words-'or his
wife' in the amendment of 1978 to which the appellants admittedly
approved refer to wife of the Donor Trustee. Same expression is G
retained in the 30.01.1995 amendment. The amendment of 1978
was, admittedly, approved by the State of Karnataka. Insofar as
the amendment of 1994 is concerned, it has already been held
that in view of the letter of the State Government dated 7.11.1995
the consent of the State Government to the amendment of 1994 H

A can be readily inferred. Therefore, no error is found in the impugned order passed by the High Court.[Para 19][801-G-H; 802-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8895 of 2012.

B From the Judgment and Order dated 24.03.2010 of the High Court of Karnataka, in RFA No. 788 of 2009.

K. K. Venugopal, Sr. Adv, Gopal Sankarnarayanan, V. N. Raghupathy, Parikshit P. Angadi, Advs. for the Appellants.

C C. A. Sundaram, K. V. Viswanathan, S. Ganesh, P. Vishwanatha Shetty, Sr. Advs., Srinivas Rao, Badri Vishal, Ms. Pritha Srikumar, Sharad Bansal, Ms. Rohini Musa, Abhishek Gupta, Zafar Innayat, Abhishek Kaushik, Manu Nair, Ishan Gaur, S. S. Shroff, Jagadeesh C. K, Sharan Thakur, Vijay Kumar Paradeshi, Mahesh Thakur, Ramesh Babu M. R., Advs. for the Respondents.

D The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. This appeal is directed against judgment and order dated 24.03.2010, passed by the High Court of Karnataka at Bangalore in R.F.A. No. 788 of 2009 (DEC-INJ), whereby said Court has dismissed the appeal. The appeal before the High Court had arisen out of the decree passed by the XXVII Additional City Civil Judge, Bangalore, in O.S. No. 2680 of 2000, whereby the suit seeking declaration that the plaintiff is Donor Trustee, was decreed by the trial court in her favour.

F 2. Brief facts of the case are that the plaintiff (Respondent No. 1 herein) Ragini Narayan filed a suit for declaration that after death of her husband, she is the Donor Trustee of B.M. Sreenivasaiah Educational Trust, Bangalore (for short "BMS Trust"). It is not disputed that late Shri B.M. Sreenivasaiah, a philanthropist, started BMS College of Engineering in the year 1946. After his death it was his son B.S. Narayan, who was running the institution. In 1957, the institution was transferred to BMS Trust by B.S. Narayan (since died). The then Government of Mysore (now Government of Karnataka) extended financial assistance to the Trust to clear its encumbrances, and agreed to establish the BMS College for Women by the Trust. It is stated that the appellant/
G Government of Karnataka gave grant-in-aid for the three colleges run by the Trust.
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3. The plaintiff's case is that she is legally wedded wife of B.S. Narayan (the original Donor Trustee) as she got married to him on 21.05.1984, after he divorced his first wife, namely, Smt. Minnie Narayan. It is pleaded that the plaintiff continued to live as his wife till his death on 23.08.1995. It is further pleaded that vide Trust Deed dated 02.12.1957, Dharmaprakasha Rajakaryasakta B.M. Sreenivasaiah Educational Trust was created by B.S. Narayan, his mother and step mother by transferring properties worth Rs.5000 crores. The Council of Trustees consisted of five members (trustees) with B.S. Narayan as a Donor Trustee. In terms of the Trust Deed B.S. Narayan and all his successors had the right to appoint three of the trustees while the remaining one trustee was to be appointed/nominated by the Government of Karnataka (defendant No 2/appellant herein).

4. The Council of Trustees in the presence of the then Chief Minister, in its meeting dated 12.10.1978 resolved to amend the Trust Deed allowing B.S. Narayan to nominate any person as Donor Trustee for life time and also provided for succession to the Donor Trustee. The State Government (appellant) approved said amendment vide communication dated 25.09.1979 and supplementary Trust Deed was executed on 25.06.1981, but the amendment regarding succession to the Donor Trusteeship was not carried out.

5. Dispute starts from the year 1994. On 10.12.1994 in another meeting of Council of Trustees, a resolution was passed to amend the Trust Deed to give effect to the succession to Donor Trusteeship, with certain changes from the earlier resolution mentioned in preceding para. In the light of the amendment made in 1994, a Deed dated 30.01.1995 was registered providing that after the life time of B.S. Narayan, his senior most lineal descendant or a member of his family, nominated by him or his wife, shall be the Donor Trustee. It is pleaded by the plaintiff that B.S. Narayan, exercising powers under clause IV(iv) of the Trust Deed, vide document dated 16.01.1995, nominated the plaintiff to be the Donor Trustee in his place with effect from 16.01.1995. The plaintiff has further pleaded that B.S. Narayan never revoked said delegation till his death. The document dated 30.01.1995 further provided that after death of B. S. Narayan his wife shall be the Donor Trustee under the Trust Deed.

6. Admittedly, B.S. Narayan died on 23.08.1995 in Workhardt

- A Hospital where he was undergoing treatment for cancer of colon. B.S. Narayan died issueless leaving behind his mother Smt. Laxamma and the plaintiff. Claiming herself to be the Donor Trustee after the death of her husband, the plaintiff wrote letter dated 28.08.1995 to Shri Y. Ramachandra, Chairman of the Trust. Prof. P.V. Bhandari, who was the Government nominee/trustee, forwarded the letter of the plaintiff to the Government. Vide letter dated 30.09.1995, the plaintiff sought cooperation of the State Government in discharging functions by her as a Donor Trustee. However, there was no response from the Government and in the meanwhile Y. Ramachandra, Chairman of the Trust appears to have written a letter dated 15.09.1995 requesting the State Government to take over the Trust. It appears that the appellants appointed M.R. Sreenivasa Murthy (respondent No. 2 herein) as Donor Trustee vide communication dated 07.11.1995.

- D 7. Communication dated 07.11.1995, issued on behalf of the appellants appointing Respondent No. 2 as Donor Trustee, was challenged by the plaintiff Ragini Narayan in Writ Petition No. 40933 of 1995 which was disposed of by the High Court leaving the plaintiff to avail the remedy available before the Civil Court, and a Committee of Chairman and Trustees appointed by the court was directed to manage the affairs of the Trust, in the meantime. Consequently the suit was filed.

- E 8. Apart from the appellants, Respondent No. 2 (defendant No. 3 before the civil court) contested the suit. He filed his separate written statement. The pleas taken by him are in substance the same as raised by the appellants (defendant Nos. 1 and 2). It is pleaded by the defendants that under proviso to clause VI (xii) of the Trust Deed approval of the State Government was necessary for any amendment in the Trust Deed. F It is further pleaded that as per original clause (IV)(1) B.S. Narayan, the designated original Donor Trustee was to hold the office during his life time, whereafter his senior most lineal descendants were to succeed as Donor Trustee. And in absence of any lineal descendant trustee, the nominee of State Government was to act as Donor Trustee. The case G of the defendants is that the State Government had given its approval to the amendment dated 12.10.1978 in respect of para IV(iv) of the Trust Deed which was incorporated in the supplementary Trust Deed dated 25.06.1981. It is further stated that insofar as proposed amendment to clause (IV)(1) is concerned, since B.S. Narayan himself withheld H nomination of his first wife Minnie Narayan as Donor Trustee after his

death, as such, said amendment did not form part of the supplementary Trust Deed dated 25.06.1981. It is stated on behalf of the appellants and Respondent No. 2 that the Council of Trustees had no authority to amend the original Trust Deed without the consent of the Government of Karnataka. As such, the amendment dated 10.12.1994 registered on 30.01.1995 relied on behalf of the plaintiff, being without the approval of the State Government, is inoperative. Even otherwise as per the amendment of 1995, the power to delegate the powers of Donor Trustee was to be exercised for a limited period i.e. during life time of B.S. Narayan, and the plaintiff as the wife of B.S. Narayan has no right to continue as Donor Trustee after the death of her husband.

9. The trial court, as well as the High Court, has decided the issue as to the validity of marriage of the plaintiff with B.S. Narayan in her favour. Both the courts have also found that B.S. Narayan had an authority to nominate his wife, and that the delegation of powers of Donor Trustee in favour of the plaintiff suffers from no illegality. The High Court has upheld the decree passed by the trial court in favour of the plaintiff. Hence this appeal through special leave.

10. Before further discussion, we think it necessary to reproduce relevant paras from the original Trust Deed 02.12.1957: -

“IV(i) The management of “THE TRUST” shall vest in “THE COUNCIL OF TRUSTEES” consisting of five members. Sri B.S. Narayan “DONOR” hereto during his life time shall be a member of the council of trustees; and after him the successive senior most lineal descendant of the said donor (1) shall be one such trustee and shall have the powers and rights of donor “1” under these paras. If this mode of succession fails all the powers exercisable by the Donor (1) under terms of this deed, including powers of appointment of trustees under this deed, shall vest with the Government of Mysore.”

....

“IV(iv) For the purposes of sub para (i) of clause IV supra Donor (1) shall have the power of nominating in his place or any person for such period or periods as may be specified or for the life time of such member, to exercise

A all or any of the powers vested in Donor (1) under this deed as may be delegated and such nominee shall subject to the foregoing be deemed to be donor (1) within the meaning of the Deed.”

.....

B “VI(xii) Notwithstanding anything contained in these presents
 C “The Trustees” shall have power to alter, amend or to
 D add to any of the clauses of this document consistent
 E with the objects and purposes of “The Trust”. “The
 Trustees” shall have power to negotiate, conclude and
 effectuate such agreements with Government State or
 Union, local bodies or other authorities or bodies for
 purposes of obtaining financial and/or technical aid in
 any form as they deem fit on such conditions as may
 appear fit to them, for furtherance of the purposes of
 the institutions created under “The Trust” and for that
 purpose shall have power to include or to co-opt further
 trustee or trustees; to cede or curtail or transfer all or
 any such power to any government of body, as may be
 found fit and proper and to effect such alterations in the
 clauses of this deed, not inconsistent with the objects
 and purposes of “The Trust” as in their opinion may
 appear necessary and desirable.

F Provided that any resolution of “The Trustees” touching
 the alteration of this deed or amending of any of its clauses
 shall not be operative unless concurred to by donor “1” and
 approved by the Government of Mysore.”

(emphasis supplied)

G 11. Now, we come to the relevant amendments in the Trust Deed,
 including the one dated 10.12.1994 relied by the plaintiff but disputed by
 the appellants and Respondent No. 2. The table showing clause (IV) (i)
 as it existed in original deed, the one after 1978 amendment, and disputed
 amendment of 1994 (registered on 30.01.1995) are shown below:

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PRINCIPAL SECRETARY, GOVERNMENT OF KARNATAKA v. 797
 RAGINI NARAYAN [PRAFULLA C. PANT, J.]

ORIGINAL DEED DATED 2/12/57	AMENDMENTS APPROVED IN 1978	AMENDMENT REGISTERED ON 30/01/1995
<p>The management of "THE TRUST" shall vest in the "COUNCIL OF TRUSTEES" consisting of five members. Sri B.S. Narayan "DONOR" hereto during his life time shall be a member of the Council of Trustees; and after him the successive senior-most lineal descendant of the said donor (1) shall be one such trustee and shall have the powers and rights of donor (1) under these presents. If this mode of succession fails all the powers exercisable by the Donor (1) under terms of this deed, including powers of appointment of trustees under this deed, shall vest with the Government of Mysore.</p>	<p>The management of "THE TRUST" shall vest in the "COUNCIL of TRUSTEES" consisting of five members. Sri B.S. Narayan "DONOR" hereto during his life time shall be a member of the Council of Trustees and after him, his wife Minnie Narayan and there-after the successive senior-most lineal descendant of the said donor (1) or a member of the family nominated by donor (1) or his wife shall be one such trustee and shall have the powers and rights of donor (1) under these presents. If this mode of succession fails all the powers exercisable by the Donor (1) under terms of this deed, including powers of appointment of trustees under this deed, shall vest with the Government of Mysore.</p>	<p>The management of "THE TRUST" shall vest in the "COUNCIL of TRUSTEES" consisting of five members. Sri B.S. Narayan "DONOR" hereto during his life time shall be a member and thereafter the successive senior-most lineal descendant of the said donor (1) or a member of the family nominated by donor (1) or his wife shall be one such trustee and shall have the powers and rights of donor (1) under these presents. If this mode of succession fails all the powers exercisable by the Donor (1) under terms of deed, including powers of appointment of trustees under this deed, shall vest with the Government of Karnataka.</p>

(emphasis supplied)

A 12. It is clear from the record that in the year 1957 B.S. Narayan was a bachelor. Later he got married to Minnie Narayan before 1978 amendment, and divorced her in 1982. There is concurrent finding of fact that B.S. Narayan got remarried in 1984 to plaintiff Ragini Narayan. It is also relevant to mention here, that there is no dispute that amendments mooted by B.S. Narayan in 1978 were approved by the State Government (appellant No.2) vide communication dated 25.09.1979. It is argued by B
 B Shri K. K. Venugopal, Senior Advocate appearing on behalf of the appellants and Shri S. Ganesh, Senior Advocate for respondent no.2 that since there was no approval of the State Government to the amendment of 1994, as such it cannot be said that such an amendment was operative, or that B.S. Narayan could have acted under the amended para (IV)(i) of the Deed to nominate the plaintiff (Ragini Narayan) as a Donor Trustee. It is further submitted that without the aid of Resolution dated C
 10.12.1994 read with delegation of power made by B.S. Narayan in favour of the plaintiff, she has no entitlement to discharge functions of the Donor Trustee. It is contended that the Deed of Nomination dated D
 16.01.1995 in favour of Ragini Narayan, allegedly executed by B.S. Narayan is not a valid document. It is pointed out that the amended deed based on Resolution dated 10.12.1994 was not registered, by the date 16.01.1995 as the registration is said to have been done only on E
 30.01.1995. As such, delegation of power in favour of plaintiff on 16.01.1995 is not valid. It is vehemently argued that since the amendment registered on 30.01.1995 was a non-starter as such the same was non-effective. Ragini Narayan, after the death of B.S. Narayan could not have nominated herself as a Donor Trustee.

F 13. In reply to above, Shri C.A. Sundaram, learned senior counsel appearing for the plaintiff – Respondent no.1, pointed out that under Section 47 of the Registration Act, 1908, the document registered on a subsequent date relates to the date of execution. It is further submitted that since the date of Resolution was 10.12.1994, as such there was no impediment on the part of B.S. Narayan to exercise his powers under the amended Para IV(i).

G 14. Section 47 of Registration Act, 1908 reads as under:
 “47. **Time from which registered document operates.**
 –A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration”
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PRINCIPAL SECRETARY, GOVERNMENT OF KARNATAKA v. 799
RAGINI NARAYAN [PRAFULLA C. PANT, J.]

In view of the above provision of law, we are in agreement with the submission of learned counsel for the Respondent no.1 that the document registered on a subsequent date, operates from the date of execution, not from the date of registration. A

15. However, what is more required to be examined in the present case is as to whether Resolution for amendment dated 10.12.1994 had its approval from the State Government or not. We have already quoted proviso to Para VI (xii) of the original Trust Deed which requires that any alteration of the deed or amendment therein would require concurrence of Donor Trustee and that of the State Government. B

16. Though on behalf of the appellants and the Respondent no.2, it is contended that the State Government had not given any approval to the amendment relied upon on behalf of the plaintiff, but certain documents on record clearly show that there was approval of the State Government to the disputed amendment of 1994. One of such documents (dated 13.8.1995) is Annexure A-7 filed by the Respondent No.2 with the additional documents, which is copy of the 'Deed of Appointment' of the Government of Karnataka as successor Donor Trustee of executant B.S. Narayan. In our opinion, the appellants cannot approbate and reprobate at the same time. On one hand they rely on this document to nominate M.R. Srinivasa Murthy, and appoint him as Donor Trustee, and on the other hand, they are not ready to accept the approval of State Government to the Amendment Deed registered on 30.01.1995 on the basis of which the executant has exercised the powers in nominating the Donor Trustee. Para 2 of Annexure A-7 i.e. 'Deed of Appointment' dated 13.08.1995 executed by B.S. Narayan reads as under: C
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“.....WHEREAS the above executant is the Donor Trustee of a Registered Educational Trust, created under document dated 02.12.1957 and registered as Document No.2944/57-58 in Book I, Volume 48, pages 10 to 35, registered in the Office of the Sub-Registrar, Bangalore City South, and WHEREAS the above document created the B.M.S. Educational Trust, which document was subsequently amended once by registered document No. 498/81-82 dated 25.06.1981 and further amended by a second document dated 30.01.1995 and registered as F
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A document No.531/94-95, after following the formalities required in regard to amendment, which included the approval of the Government of the State of Karnataka and”

(emphasis supplied)

B 17. Another important document which throws light on this point is Annexure.P-7 dated 7.11.1995 which is copy of the letter issued by the Government of Karnataka to the Member Secretary of B.M.S. Trust, Bangalore appointing M.R. Srinivasa Murthy, IAS, as Donor Trustee. Said document is reproduced below:

C “GOVERNMENT OF KARNATAKA
No.ED108TEC95 Karnataka Government Secretariat,
Sachivalaya-II,
Bangalore, Dated: November 07, 1995

From:

D The Principal Secretary to Govt. of Karnataka,
Education Department, Bangalore.

To

E The Member Secretary,
B.M. Srinivasaiah Educational Trust,
Bangalore.

Sir

Sub: Acceptance of appointment as a Donor Trustee by the Government of Karnataka for B.M. Srinivasaiah Educational Trust.

F Ref: 1. Letter from Sri Y. Ramachandra, Chairman of the Trust, dtd.15.09.1995
2. Deed of Appointment dtd. 13.08.95 executed by the late Donor Trustee Sri B.S. Narayan.

....

G With reference to the above mentioned Communication/ documents, the Government of Karnataka has accepted the nomination as the Donor-Trustee of B.M. Srinivasaiah Educational Trust and is assuming the role of Donor-Trustee with immediate effect. Sri M.R. Sreenivasa Murthy, IAS, is hereby appointed to function as Donor-Trustee on behalf of the Government of Karnataka with immediate effect.

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Please extend all co-operation to him and assist him in the discharge
of his functions. A

Yours faithfully,
Sd/-

(U.P. SHARMA)
PRINCIPAL SECRETARY TO GOVERNMENT B
EDUCATION DEPARTMENT.”

18. From the above mentioned letter, it is clear that Deed of
Appointment dated 13.08.1995 was referred by the State Government,
and it cannot be said that the State Government had not approved the
Resolution dated 10.12.1994 on the basis of which Deed of Amendment C
was registered on 30.01.1995. That being so, now we have to examine
whether it is the plaintiff who was validly nominated Donor Trustee or
the State Government? From the para (IV)(i) of the original Trust Deed
dated 02.12.1957, it is clear that B.S. Narayan was to continue as Donor
Trustee during his life time whereafter he was to be succeeded by his D
lineal descendant, and if the mode of succession fails then, power of the
appointment of the Trust Deed was to vest with the State Government.
Amendment of 1978 as shown in the chart quoted earlier, makes it clear
that name of Minnie Narayan was added in para (IV)(i) as nominee to
succeed from B.S. Narayan, and thereafter senior most of the lineal E
descendant, and if the mode of succession fail, the powers were to be
exercised by the State Government. It appears that after Minnie Narayan
was divorced by B.S. Narayan, and he (B.S. Narayan) got married to
Ragini Narayan (plaintiff) whereafter further amendment was proposed
and passed through Resolution dated 10.12.1994 (as mentioned in
amended deed registered on 30.01.1995) and by this amendment i.e. of F
1994 name of Minnie Narayan was deleted, and it was mentioned that
after the life time of B.S. Narayan, his senior most lineal descendant or
a member of his family or his wife was to succeed, and if mode of
succession fails, then powers of Donor Trustee were to be exercised by
the State Government. G

19. There is concurrent finding of fact of the courts below that
Ragini Narayan was the wife of B.S. Narayan Donor Trustee, at the
time of his death, as such it cannot be said that mode of succession
mentioned in para (IV)(i) failed. Whether it is amendment of 1978 or
1995 the expression “or his wife” is there. In our opinion the words-‘or H

- A his wife' in the amendment of 1978 to which the appellants admittedly approved refer to wife of the Donor Trustee. Same expression is retained in the 30.01.1995 amendment. The amendment of 1978 was, admittedly, approved by the State of Karnataka. Insofar as the amendment of 1994 is concerned, we have already held that by virtue of Ex.A-7 dated
- B 13.8.1995, the recital contained therein and in view of the letter of the State Government dated 7.11.1995 the consent of the State Government to the amendment of 1994 can be readily inferred. Therefore, we do not find any error in the impugned order passed by the High Court. However, we clarify that any nominee appointed by the State Government as Trustee will be entitled to function as ordinary trustee in the Council of
- C Trustees as provided in the Trust Deed but not as the Donor Trustee till the succession as mentioned in the Trust Deed (as amended) fails.

20. For the reasons as discussed above, the appeal is dismissed.

D Divya Pandey

Appeal dismissed.