

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**PUBLIC INTEREST LITIGATION NO.98 OF 2021  
ALONG WITH  
CIVIL APPLICATION NO.11973 OF 2021**

Uttamrao Rambhaji Shelke )  
Age 69 years, Occu. Agri. )  
R/o "Sai Shraddha Niwas" )  
Opposite Mothe Baba temple )  
Nagar-Manmad Road, Shirdi, )  
Tq. Rahata, Dist. Ahmednagar ) .. Petitioner

Versus

1. The State of Maharashtra )  
Through the Principal Secretary )  
Law & Judiciary Department, )  
Mantralaya, Mumbai -32. )

2. Shree Sai Baba Sansthan Trust (Shirdi) )  
Through its Chief Executive Officer, )  
Shree Sai Baba Sansthan Campus, Shirdi )  
Tq. Rahata, Dist. Ahmednagar )

3. Ashutosh Ashokrao Kale )  
Age 37 years, Occu. Politics, )  
R/o. A/P Mahegaon Deshmukh, )  
Tq. Kopargaon, Dist. Ahmednagar )

4. Shri Jagdish Hairshchandra Sawant )

Age 51 years, Occ. Advocate )  
R/o. 203, Surana Regency, Sasmira Marg, )  
behind Worli Bus Depot, Worli, )  
Mumbai – 400 030. )

5. Smt.Anuradha Govindrao Adik )  
Age 47 years, Occu. Politics, )  
R/o Flat No.2, Western Apartments )  
Shrirampur, (Ward No.7.) )  
At Post – Haregaon, Tq.Shrirampur, )  
Dist. Ahmednagar, )

6. Shri Suhas Janardhan Aher )  
Age 50 years, Occ. Advocate, )  
R/o. A/p Dhargaon, Tq. Sangamner )  
Dist. Ahmednagar. )

7. Avinash Appasaheb Dandawate )  
Age 50 years, Occ. Business, )  
R/o. A/p Sakuri, Tq. Rahata )  
Dist. Ahmednagar. )

8. Shri Sachin Rangrao Gujar )  
Age 52 years, Occ. Business, )  
R/o. At Gujarwadi, Post-Khirdi, )  
Near Mula Pravara Society, )  
Tq. Shrirampur, Dist. Ahmednagar. )

9. Shri Rahul Narain Kanal )  
Age 37 years, Occ. Politics, )  
R/o. 7/A, Amar Jeevan, St. Martins Road )  
Next to Bandra Police Station, Bandra (West)  
Mumbai 400 050. )

10. Shri Suresh Gorkshanath Wable )  
Age 60 years, Occu. Business, )  
R/o. A/p Guha, Tq. Rahuri, )  
Dist.Ahmednagar. )

11. Shri Jayavantrao Pundlikrao Jadhav )  
Age – 55 years, Occu. Politics, )  
R/o 8, Yevlekar Mala, )  
College Road, Nashik )  
Dist. Nashik-5 )

12. Shri Mahendra Ganpatrao Shelke )  
Age 54 years, Occu. Business, )  
R/o. Shelke Vasti, At Post-Shirdi, )  
Ta.Rahata, Dist. Ahmednagar, )

13. Shri Eknath Bhagchand Gondkar )  
Age 65 years, Occu. Business )  
R/o Bhagchand Apartments, )  
Pimpalwadi Road, Shirdi, )  
Tq.Rahata, Dist.Ahmednagar )

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14. The President )  
Nagar Panchayat Shirdi, )  
Tq. Rahata, Dist. Ahmednagar. ) .. Respondents

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Ms.Pradnya Talekar i/by Talekar and Associates for the petitioners.  
Mr.R.N. Dhorde, Special Counsel a/w Mr.D.R. Kale, Government  
Pleader for the respondent no.1.  
Mr.A.S. Bajaj for the respondent no.2.  
Mr.P.R. Katneshwarkar h/f Mr.S.N. Gaikwad for the respondent no.3.  
Mr.R.A. Tambe for the respondent nos.4, 6 to 9 & 13.  
Mr.Mazhar A. Jahagirdar for the respondent no.5.  
Mr.R. R. Karpe for the respondent no.10.  
Mr.N.L. Jadhav for the respondent no.11.  
Mr.A.C. Darandale for the respondent no.12.  
Mr.A.V. Hon for the respondent no.14.

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**ALONG WITH  
PUBLIC INTEREST LITIGATION NO.100 OF 2021**

Nikhil Manohar Dorle )  
Age 30 years, Occu.Social Service )  
R/o Near Kanji House, )  
Koradi, Nagpur – 44111. ) .. Petitioner

Versus

1. The State of Maharashtra )  
Through the Principal Secretary )  
Law & Judiciary Department, )  
Mantralaya, Mumbai -32. )

2. The State of Maharashtra )  
Through the Secretary )

Law & Judiciary Department, )  
Mantralaya, Mumbai -32. )

3. Shree Sai Baba Sansthan Trust (Shirdi) )  
Through its Executive Officer, )  
Shree Sai Baba Sansthan Campus, Shirdi )  
Tq. Rahata, Dist. Ahmednagar )

4. Ashutosh Ashokrao Kale )  
Age Major, Occu. Business & Political )  
(MLA) Resident of Post Mahegaon-Deshmukh )  
R/o. A/P Mahegaon Deshmukh, )  
Tq. Kopargaon, Dist. Ahmednagar )

5. Shri Jayavantrao Pundlikrao Jadhav )  
Age – Major, )  
R/o 8, Yevlekar Mala, )  
College Road, Nashik )  
Dist. Nashik-5 )

6. Shri Mahendra Ganpatrao Shelke )  
Age Major, )  
R/o. Shelke Vasti, At Post-Shirdi, )  
Ta.Rahata, Dist. Ahmednagar, )

7. Shri Suresh Gorkshanath Wable )  
Age major, Occu. Business, )

R/o. A/p Guha, Tq. Rahuri, )  
Dist.Ahmednagar. )

8. Smt.Anuradha Govindrao Adik )  
Age major, )  
R/o Plot No.S.02, Western Apartments )  
Shrirampur, (Ward No.7.) )  
At Post – Haregaon, Tq.Shrirampur, )  
Dist. Ahmednagar, )  
Presently at Post Haregaon, )  
Tq.Shrirampur, Dist.Ahmednagar )

9. Shri Eknath Bhagchand Gondkar )  
R/o Bhagchand Apartments, )  
Pimpalwadi Road, Shirdi, )  
Tq.Rahata, Dist.Ahmednagar )

10. Shri Jagdish Hairshchandra Sawant )  
Age major )  
R/o. 203, New Sea Link View Co-op. )  
Sasmira Marg, Worli, )  
Mumbai – 400 030. )

11. Shri Sachin Rangrao Gujar )  
Age major, )  
R/o. At Gujarwadi, Post-Khirdi, )  
Tq. Shrirampur, Dist. Ahmednagar. )

Presently at Ward No.7, )  
Behind Mula Pravara Society )  
Shrirampur, Dist.Ahmednagar. )

12. Shri Rahul Narain Kanal )  
Age major, )  
R/o. 7/A, Amar Jeevan, St. Martins Road )  
Next to Bandra Police Station, Bandra (West)  
Mumbai 400 050. )

13. Shri Suhas Janardhan Aher )  
Age major, )  
R/o. A/p Ghargaon, Tq. Sangamner )  
Dist. Ahmednagar. )  
presently at Devacha Mala, Samarth Colony, )  
Sangamner, Dist. Ahmednagar. )

14. Avinash Appasaheb Dandawate )  
Age major )  
R/o. A/p Sakuri, Tq. Rahata )  
Dist. Ahmednagar. )

15. Shri Shivaji Amrutrao Godkar )  
President of Shirdi Nagar Panchayat, )  
Ex-officio member, Age Major, )  
Resident of Post Shirdi, Tq. Rahata, )  
Dist. Ahmednagar. )

.. Respondents

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Mr.R.S. Deshmukh, Senior Counsel i/by D.R. Deshmukh for the petitioner.

Mr.R.N. Dhorde, Special Counsel a/w Mr.D.R. Kale, Government Pleader for the respondent no.1.

Mr.A.S. Bajaj for the respondent no.3.

Mr.P.R. Katneshwarkar h/f Mr.S.N. Gaikwad for the respondent no.4.

Mr.N.L. Jadhav for the respondent no.5.

Mr.A.C. Darandale for the respondent no.6.

Mr.Mazhar A. Jahagirdar for the respondent no.8.

Mr.R.A. Tambe for the respondent no.9.

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**CORAM : R.D. DHANUKA &  
S.G. MEHARE, JJ.**

**RESERVED ON : 21<sup>st</sup> APRIL 2022**

**PRONOUNCED ON : 13<sup>th</sup> SEPTEMBER 2022**

***Judgment :- (per R.D.Dhanuka, J.)***

1. The petitioner Uttamrao Rambhaji Shelke in PIL No.98 of 2021 has prayed for quashing and setting aside the impugned order dated 16<sup>th</sup> September 2021 passed by the Principal Secretary, Law and Judiciary Department, Mantralaya, Mumbai appointing the respondent nos.3 to 14 as Members of Managing Committee of Shree Sai Baba Sansthan Trust, Shirdi (hereinafter referred to as “the said sansthan trust”) Taluka Rahata, District Ahmednagar. The petitioner has also prayed for an order and direction against the State of Maharashtra to constitute a scrutiny committee headed by a retired Judge of this Court as per Section 21(2)(ii) of the Shree Saibaba Sansthan Trust (Shirdi) Act, 2004 (for short “the said Act”) by issuing writ of mandamus.

2. The petitioner Nikil Manohar Dorle has filed PIL No.100 of 2021 which is transferred from Nagpur Bench to this Bench inter



alia praying for writ of certiorari for quashing and setting aside the impugned notification/order dated 16<sup>th</sup> September 2021 and for other reliefs. The reliefs sought in both the petitions and the submissions advanced by both the parties being identical, with the consent of the parties, the petitions were heard together and are being disposed off by this common order. Some of the relevant facts for deciding both the PILs are as under :-

3. The petitioner in PIL No.98 of 2021 claims to be a permanent resident of Pimpalwadi, Shirdi, Tal. Rahata, Dist. Ahmednagar and an ardent devotee of the said sansthan trust. The petitioner also claims to be a life member as well as patron member of Bhakta Mandal of the said sansthan trust and claims to have filed several PILs including PIL No.120 of 2019 which was filed for seeking directions to appoint a new Managing Committee of the said sansthan trust.

4. The petitioner in PIL No.100 of 2021 claims to be a social worker and is a resident of Koradi, Nagpur. The said petitioner claims to be an ardent devotee and devout follower of Shri Sai Baba, Shirdi. The petitioner in PIL No.98 of 2021 has given a chequered history of the management of the said sansthan trust.

5. According to the petitioner, Shree Sai Baba passed away in the year 1918. On 13<sup>th</sup> February 1922, the District Court granted approval to the scheme of the Sai Baba Sansthan, Shirdi. The Management committee was to include 5 life-trustees to be appointed by the District Court who would be ex-officio members in their lifetime

whereas 10 other trustees were to be elected from amongst the Bhakta Mandal for a term of three years.

6. It is the case of the petitioner that a body of the five members was constituted and the immovable property of the trust was handed over to them, for their lifetime. These life trustees were highly qualified and accomplished persons from different walks of life and devotees of Shree Sai Baba. According to the petitioner, in case of vacancy created in these five life-trustees, a person from amongst the Bhakta Mandal could have been appointed with prior approval of the District Court. The first elected body of ten persons from amongst the Bhakta Mandal was headed by Sant. Ganesh Dattatray Sahastrabuddhe alias Dasganu Maharaj who was an ardent devotee of Shree Sai Baba.

7. Shree Sai Baba Sansthan Trust was registered under the provisions of Bombay Trust Act, 1950 under the name of “Shirdi Sansthan of Shri Saibaba” at Shirdi, District Ahmednagar, popularly known as “Shree Shirdi Sai Baba Sansthan Trust of Shirdi” vests in the Board of Management, under a scheme framed by the City Civil Court, Bombay in Charity Suit No.3457 of 1960 under its order dated 18<sup>th</sup> October 1982 confirmed by this Court in First Appeal No.320 of 1983 decided on 23<sup>rd</sup> July 1984. On expiration of the term of five years of the previous Board of Management of Shirdi Sansthan of Shri Sai Baba Trust, the Charity Commissioner by an order dated 31<sup>st</sup> August 1999, reconstituted the Board of Management of the said Trust. Two writ petitions were filed in this Court impugning the order of re-constitution of the Board of Management dated 31<sup>st</sup> August 1999. By an order passed

by this Court, appointment of one of the trustees had been quashed and set aside.

8. In the year 2004, State of Maharashtra considered it expedient that the development and management of this important and popular Trust should not be hampered or in any way suffer by avoidable litigation, and that there should be a separate law to re-constitute the said Sansthan Trust and to provide for the efficient management of the same by a Committee directly under the supervision and control of the State Government to enable the Trust to carry out its charitable activities more effectively and efficiently and to be able to give more facilities for its devotees and to undertake wider welfare activities from its surplus funds for the general public and thus the State Government enacted Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004. Section 2 (c) defines "Bhakta Mandal" means the Shree Sai Baba Bhakta Mandal referred and recognised under section 19.

9. Section 5 of the said Act reads thus :-

5. (1) *For the purpose of management of the Sansthan Trust, on or after the appointed day, a Committee to be called "the Shree Sai Baba Sansthan Management Committee" shall be constituted by the State Government as provided in sub-section (2).*

(2) *The State Government shall, by notification in the Official Gazette, appoint, a Chairman, Vice-Chairman and not more than [fifteen] other members to constitute the Committee as envisaged under sub-section (1) Provided that, out of the total number of members not less than one member shall be a woman and one*

*member shall be from the socially and economically weaker sections.*

*[Provided further that, out of the total number of members, not less than eight members including the Vice-Chairman, shall be persons having educational background with professional or specialized knowledge, qualifications and practical experience in one or more of the fields such as law, Business Management, Public Administration, Engineering, Architecture, Public Health, Medicine or Rural Development.]*

*(3) The President of the Shirdi Nagar Panchayat shall be the ex-officio member of the Committee.*

*(4) Subject to the other provisions of this Act, the Committee shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by the said name sue and be sued.*

10. Section 7 of the said Act provides that a member shall be appointed for a period of three years. Section 8 provides the other conditions for becoming a member which reads thus :-

*8. A person to be appointed as a member of the Committee shall be*  
*(a) the permanent resident of the State of Maharashtra ; and*  
*(b) a devotee of Shree Sai Baba and shall, prior to his appointment as a member make such declaration in the prescribed form.*

*Section 9 provides as to when member shall be disqualified for appointment as a deemed member.*

11. Section 10 provides for powers of the State Government to appoint a new member when an existing member :

- (a) *resigns or dies;*
- (b) *is for a continuous period of six months absent from India, without obtaining leave from the Committee;*
- (c) *leaves India for the purpose of residing abroad;*
- (d) *desires to be relieved;*
- (e) *refuses to act or neglects to perform his duties as such member ;*
- (f) *is removed or his membership is terminated by the State Government ;*
- (g) *ceases or is disqualified to be or to continue to be, a member under any of the provisions of the said Act.*

12. Section 12 of the said Act provides that no act or proceeding of the Committee shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in its constitution or in appointment of any member. Section 17 of the said Act provides duties and powers of committee. Section 18 of the said Act provides for constitution of Advisory Council. Section 19 of the said Act provides for Constitution of Bhakta Mandal.

13. Section 20 of the said Act provides for the Trust having its own fund to be called “the Shree Sai Baba Sansthan Trust Fund” (hereinafter referred to as “The trust Fund”) along with provisions to its constituents and management. Section 21 of the said Act provides that (1) The Trust Fund shall, subject to the provisions of the Income Tax Act, 1961, be utilised or expended by the Committee for all or any of the

purposes specifically mentioned therein. The said Sansthan Trust is also empowered to give grant-in-aid to the Government Departments, Government Corporations, Government Companies or Government undertakings for providing or augmenting infrastructural facilities such as bus terminals, railway station, airport and similar infrastructural facilities, for the convenience of the devotees. The above is the subject to provision of Sub-section 21(1) wherein the trust may exercise the above mentioned powers only with previous sanction of the State Government and subject to such maximum limit and such terms and conditions, as may be specified by the State Government.

14. Section 25 of the said Act provides that the State Government is empowered to frame the said Rules under the said Act. Section 26 of the said Act provides that the State Government is empowered to give general directions as to the matters of policy to be followed by the committee in respect of their powers and duties or in the matter of administration of the sansthan trust or any matter ancillary or incidental thereto, and in particular, for any action to be taken for the purpose of maintaining discipline and order during the festivals in, or connected with the Temple.

15. Section 27 of the said Act provides that the State Government is empowered to take inspection of any movable or immovable property, records, correspondence, plans, accounts and other documents relating to the said Sansthan Trust. Section 28 provides that the State Government, may, if it is of the opinion that it is necessary or expedient so to do, call for and examine the record of any proceedings

or decision or order of the Executive Officer or of the Committee with a view to satisfy itself as to the legality of such proceedings or the correctness, legality or propriety of any decision or order made thereunder, and if, in any case, it appears to the State Government, that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, it may pass orders accordingly. Under Section 29 of the said Act, the committee has to prepare the annual report including the Auditor's report for each financial year ending on the 31<sup>st</sup> March showing therein the financial status and the details of income and expenditure of the Trust and the report of the Scrutiny Committee together with a detailed list of donee institutions (with full address), to whom financial assistance was granted by the Trust with information relating to the object and the amount of such financial assistance, and submit a copy of the report to the State Government and the Charity Commissioner not later than the 30<sup>th</sup> June of that year.

16. Under Section 30 of the said Act, the State Government is empowered to suspend or rescind any resolution or order etc. of committee in certain cases. Under Section 31 of the said Act, the members and all officers and employees of the Trust shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code and section 2(c) of the Prevention of Corruption Act, 1988.

17. Under Section 34 of the said Act, the State Government has powers after conducting due enquiry to dissolve the Committee and constitute another Committee within a period of six months from the date of dissolution or supersede the Committee for such period not exceeding

six months, as the State Government may deem fit if the State Government is of the opinion that the Committee is not competent to perform, or makes default in performing the duties imposed on it under the said Act, or exceeds or abuses its powers.

18. On 23<sup>rd</sup> August 2004, the State Government appointed a committee comprising of 16 members of the Managing Committee for a period of three years as the said Sansthan Trust. It is the case of the petitioner that the said committee however, was illegally continued by the State Government for a period of 7 years.

19. On 13<sup>th</sup> March 2012, this Court in the said PIL No.18 of 2011 passed an order for constitution of an *ad hoc* committee to take charge of the said Sansthan Trust if the State Government failed to appoint managing committee as per the statute. This Court directed the State Government to constitute a new “the Shree Sai Baba Sansthan Management Committee” within a period of 15 days from the date of the said order. It was provided that on failure of the State Government to constitute the said Committee within the stipulated time frame of 15 days in accordance with the provisions of Section 5 of the Act of 2004, this Court directed that until the State Government constitutes a new Committee, the affairs of the “Shree Sai Baba Sansthan Trust, Shirdi” shall be supervised, monitored and looked after by a committee consisting of :- (A) The Principal District Judge, Ahmednagar.  
(B) The Collector, Ahmednagar.  
(C) The Chief Executive Officer of Shree Sai Baba Sansthan Trust Shirdi.



20. This Court made it clear that the Principal District judge, Ahmednagar shall be the Chairman of the said Committee and rest of the two officers shall be the Members of the said Committee. This Court directed that in case the State Government fails to constitute a new Committee within the stipulated period of 15 days from the date of the said order, “the Shree Sai Baba Sansthan Management Committee” constituted on 23<sup>rd</sup> August 2004 is injuncted from functioning as such and discharging its duties. This Court directed the existing Committee and the new Committee constituted by this Court not to take any major financial decision in respect of management of the affairs of the Sansthan without intimating this Court.

21. On 28<sup>th</sup> July, 2016, the State Government issued notification appointing the trustees of the said Sansthan trust. The said notification dated 28<sup>th</sup> July, 2019 was challenged before this Court in Public Interest Litigation No. 150 of 2016. On 29<sup>th</sup> November, 2017, this Court passed a detailed judgment in Public Interest Litigation No. 102 of 2016 and disposed off the said Public Interest Litigation and issued various directions. On 9<sup>th</sup> October, 2018, Supreme Court did not interfere with the said judgment delivered by this Court except the directions contained in paragraphs (V) and (VI) of the said judgment.

22. The Supreme Court made it clear that the position would continue for a period of six weeks within which the order of this Court as affirmed by the Supreme Court will be implemented. The Supreme Court directed the State Government to implement the directions of this Court as and when the board is reconstituted after expiry of the terms of the said committee in July 2019. Contempt Petition bearing (C) no. 418-22 of

2019 against the then Principal Secretary, Law and Judiciary Department and also the Chief Minister of the Maharashtra came to be filed before the Supreme Court. The Supreme Court has issued notice in the said contempt petition. The said proceedings are pending.

23. On 2<sup>nd</sup> February, 2019, the then Principal Secretary, Law and Judiciary Department issued a notification terminating three members of the Committee (a) Shri Ravindra Gajanan Mirlekar, (b) Shri Amol Gajanan Kirtikar, and (c) Dr. Manisha Shyamsundar Kayande on the basis of the report of the Four Member Committee on their failure to attend three consecutive meetings.

24. Sometime in the year 2019, the petitioner filed a Public Interest Litigation bearing no.120 of 2019 seeking direction to appoint a new managing committee of the Sansthan in accordance with the provisions of law and a further direction to appoint an ad-hoc committee in the meanwhile.

25. On 9<sup>th</sup> October, 2019, this Court in Public Interest Litigation No. 120 of 2019 appointed an ad-hoc committee consisting of (a) the Principal District Judge, Ahmednagar, (b) The Chief Executive Officer of the Sansthan, (c) One Delegatee not below the rank of Assistant Charity Commissioner to be appointed by the Charity Commissioner of the State and (d) the Additional Commissioner, Nashik Division, Nashik. It is the case of the petitioner that on 12<sup>th</sup> March, 2021, the learned Government Pleader made a statement before this Court that he would come with the written instructions with regard to the steps undertaken for the formation

of regular committee and the period within which the regular committee would be constituted.

26. On 19<sup>th</sup> March, 2021, the learned Government Pleader placed on record the communication stating that the formation of the Committee of the Sansthan was at the final stage and sought two weeks time. On 23<sup>rd</sup> June, 2021 and 7<sup>th</sup> July, 2021, this Court recorded the statements made by the learned Government Pleader that the entire process of finalizing the names of the trustees would be completed within a period of two weeks.

27. On 5<sup>th</sup> July, 2021, the Law and Judiciary Department of the Government issued a notification amending the Rules framed in 2013 and published the same in the Government Gazette. The said Rules are already subject matter of the Writ Petition No. 4143 of 2013.

28. On 14<sup>th</sup> January, 2021, this Court passed an order in Public Interest Litigation No. 22 of 2020 recording a statement made by the State Government that the formation of the new committee was constituted. This Court directed that the State Government shall consider the provisions of sections 5, 8 and 9 of the Shree Saibaba Sansthan Trust Act, 2004 and the Rules framed thereunder and also the directions of this Court dated 29<sup>th</sup> November, 2017 in Public Interest Litigation No. 102 of 2016. This Court directed that the Government shall scrupulously adhere to the directions referred to in the said order and the expectations of this Court under order dated 29<sup>th</sup> November, 2017 in Public Interest Litigation No. 102 of 2016. This Court disposed off the said Public Interest Litigation by the said order.

29. On 16<sup>th</sup> September, 2021, the State Government issued a notification notifying that the said Sansthan Trust appointed 12 persons as the members of the said Sansthan Trust for the purpose of three years excluding (*ex-officio* members) from various categories. The petitioners filed civil application bearing no. 9738 of 2021 in Public Interest Litigation No. 120 of 2021 for amendment challenging notification dated 16<sup>th</sup> September, 2021 in view of the new committee having taken charge from the old committee.

30. This Court by order dated 21<sup>st</sup> September, 2021 *prima facie* observed that when this Court had brought an *ad-hoc* committee into existence and had empowered it to function and administer the Sansthan, *prima facie*, no other managing committee could have dislodged the committee that was constituted by this Court on the plea of the Government having declared the formation of the new committee. This Court adjourned the said civil application on 23<sup>rd</sup> September, 2021 and refrained the new committee which had alleged to have taken charge by dislodging the ad-hoc committee constituted by this Court and from taking any policy decisions sanctioning expenditure and also refraining from making any appointments or inducting any new members, if any, until further orders.

31. On 23<sup>rd</sup> September, 2021, this Court passed another order in Civil Application No. 9738 of 2021. This Court recorded the statement made by the learned Government Pleader and also the learned counsel for the Sansthan Trust and continued the restrictions imposed by this Court in order dated 21<sup>st</sup> September, 2021 until further orders.

32. On 4<sup>th</sup> October, 2021, this Court passed an order in Civil Application No. 9738 of 2021 and in batch of proceedings. This Court recorded the statement made by the learned counsel for the petitioner that the petitioner would prefer the new petition for impugning the appointment of the committee members. This Court granted liberty to the petitioner to prefer the proceedings as may be advised and continued the directions issued in paragraph (8) of the order dated 21<sup>st</sup> September, 2021 till 19<sup>th</sup> October, 2021.

33. On 19<sup>th</sup> October, 2021, this Court continued the interim orders passed on 21<sup>st</sup> September, 2021 and also the charge of the ad-hoc committee constituted by this Court to look after the affairs of the Sansthan Trust and disposed off the Public Interest Litigation No. 120 of 2019 considering the main prayer as infructuous. This Court granted liberty to the petitioner to challenge the notification dated 16<sup>th</sup> September, 2021 in a separate proceeding.

34. On 30<sup>th</sup> November, 2021, the Supreme Court in ***Petition(s) for Special Leave to Appeal (C) No(s). 17200-17203 of 2021*** filed by ***Ashutosh Ashkorao Kale & Ors. vs. the State of Maharashtra & Ors.*** arising out of the final judgment and orders dated 14<sup>th</sup> October, 2021 and 20<sup>th</sup> October, 2021 in Public Interest Litigation No. 98 of 2021 and Public Interest Litigation No. 100 of 2021 issued notice and stayed operation of those orders passed by this Court until further orders. The Supreme Court however made it clear that in the meantime, the said Shree Sai Baba Sansthan Management Committee shall not take any major policy decisions or financial decisions except for routine expenses for managing day to day affairs of the committee. The Supreme Court also clarified

that the pendency of the case would not come in the way of the High Court in disposal of the main matter. Pursuant to the said order passed by the Supreme Court, these proceedings were heard finally at the admission stage by consent of parties.

**The submissions made on behalf of the petitioner :-**

35. Ms. Talekar, learned counsel for the petitioner invited our attention to section 2(d) and section 5 of the Shree Sai Baba Sansthan Act, 2004 read with Rule 3 of the Shree Sai Baba Sansthan Trust (Shirdi) (Appointment of Members of Management Committee and Forms of Declaration) Rules, 2013. She submits that it was mandatory on the part of the State Government to appoint one member from the women category, one member from the socially and economically weaker section category and 8 members from four categories of persons possessing professional or specialized knowledge within the meaning of section 5(2).

36. It is submitted that since the appointment of the trustees appointed by the State Government are not in compliance with the said mandatory requirement, the Committee appointed by the State Government is not a valid committee and is *void-ab-initio*. The defect in appointment of the committee members is not curable. Learned counsel placed reliance on section 7 of the said Act and submitted that the term of the office of member of the said committee is for three years and would commence from the date of appointment. Section 9 provides for disqualification of a person to be appointed or for being a member for various reasons set out therein.

37. It is submitted that under section 9(f), if a person is guilty of misconduct or who has been charge-sheeted for the offence involving moral turpitude or is otherwise found to be unfit is disqualified from appointment for being a member of the Sansthan Trust. She submits that if any of the member has incurred any of the disqualifications as provided in sub-section 9(l) of the said Act, it is the duty of the State Government to remove such person from membership. The decision of the State Government for removal of such person from membership is final.

38. Learned counsel for the petitioner invited our attention to Rule (3) and would submit that even under the said Rule, the number of such members of the committee is prescribed as not exceeding 17 including chairman and vice-chairman. She submits that the State Government has not appointed any member from the 'socially and economically weaker section' category. Some of the members appointed are not appointed from the categories specifically prescribed under the said Rule (3). She submits that Rule (4) provides for qualification for being a member.

39. It is submitted that there is a gross violation of Rule (4) also. Rule (5) provides for the circumstances in which the member can be disqualified. Rule (6) provides for appointment of members by the State Government by nomination. A person who is to be appointed as a member has to make a declaration in Form A to these Rules. Under Rule (9) of the Rules, a person to be appointed as a member of committee has to make a declaration under section 8 of the Act in Form B. She relied upon the Schedule appended to the said Rules providing for minimum qualification and experience under those category. She submits that the

members appointed by the State Government do not satisfy the minimum qualification and experience prescribed under the said schedule.

40. Learned counsel for the petitioner invited our attention to notification dated 5<sup>th</sup> July, 2021 thereby amending the said rules 2013. Clause (h) prescribed under the Rule (5) is deleted by the said amendment. The qualification and the number of years of experience earlier prescribed came to be reduced deliberately. It is submitted by the learned counsel that the number of persons appointed by the State Government as members of committee are not to the extent of the numbers required to be appointed under the said Rules and thus the committee appointed by the State Government is incomplete.

41. It is submitted that the proviso to Rule (3) (2) of the Rules is not just empty formality. She submits that the impugned notification thus deserves to be revoked and set aside being violative of sections 5 and 9 of the Act and Rules, 3, 5 and 6 of the said Rules. The petitioner is permanent resident of Nagpur and is a Shri Saibaba devotee. The petitioner has no personal interest. The public interest litigation filed by the petitioner is for better management of the trust.

42. Learned counsel for the petitioner submits that the members who are nominated by the State Government belong to three political parties i.e. Shivsena, Congress and NCP. Some of the candidates who have lost elections are appointed as committee members due to political considerations. There are criminal cases pending against members of the committee. The appointments should not be of persons having political documents or affiliation. The directions issued by this Court from time to



time in earlier round of litigations have not been considered while nominating these members of the committee.

43. Learned counsel for the petitioner placed reliance on the observations made by this Court in paragraph (151) regarding appointment of the politicians. She submits that till 1918 Shri Sai Baba was alive. In 1954 the idol of Shri Sai Baba was set up at Shirdi. In 1984, this Court framed a scheme Sai Baba Sansthan, Shirdi. The State Government enacted the said Act in the year 2004. It is submitted that there is no procedure or mode or manner prescribed or adhered by the State Government while hand-picking the persons to be appointed as trustees in the Shirdi Sai Baba Trust having crores of rupees of trust fund and being a place of faith and worship of millions. She strongly placed reliance on the observations made by this Court in the judgment dated 29<sup>th</sup> November, 2017 by the Division Bench of this Court in Public Interest Litigation No. 102 of 2016.

44. It is submitted that this Court has clearly held in the said judgment that the appointments of the members of the committee of the Sansthan Trust is not an appointment of those members in an employment. The appointments made by the State Government under section 5 of the said Act are liable to be tested on the touchstone of Articles 14 and 16 of the Constitution of India. These appointments are made to a public office and therefore it amounts to public appointment, though it may not be a public employment.

45. Learned counsel strongly placed reliance on the order passed by this Court on 30<sup>th</sup> March, 2012 in Public Interest Litigation No.27 of

2012 directing the State Government to frame rules. This Court recorded that the State Government had issued notification dated 27<sup>th</sup> March, 2012 during the pendency of the said petition appointing 15 members as members of the said managing committee. This Court observed that the State Government has not complied with the order of this Court on 30<sup>th</sup> April, 2010. This Court recorded the statement made by the petitioner that many of the persons who have lost either assembly elections, or Zilla Parishad elections, have been rehabilitated as members of the Managing Committee of the said Trust. The petitioner had also averred in that petition that two coalition partners, i.e. INC and NCP who are ruling the State, while making appointments to the Managing Committee, have shared the membership of the committee amongst themselves.

46. This Court in paragraph (19) of the said judgment observed that the very purpose for which the said Act appears to have been enacted, namely, to avoid the litigation, is frustrated. When power is vested with the authority, it must exercise the same for the public good. This Court expected that the State Government at least to keep the God away while distributing public largesses. It is submitted that this Court clearly held that this Act is not meant for rehabilitation of the members of the ruling political parties who are defeated in elections. This court also observed that this Court did not find any propriety in appointing the persons as trustees, against whom criminal cases are pending. This Court accordingly granted interim relief and continued the ad-hoc committee appointed by this Court by order dated 13<sup>th</sup> March, 2012 in Public Interest Litigation No. 18 of 2011.

47. Learned counsel for the petitioner submits that Shri Ashutosh Kale who is appointed as a chairman from Category C (iii) of Rule 3 (Engineering) is a sitting MLA from Kopergaon Constituency and belongs to NCP and never practiced in Engineering. He is a full time dedicated politician. The experience certificate of engineering produced by him is doubtful since it is issued by a company almost at a distance of 800 km from his college in Boston. He is Vice President of Distillers Association, Maharashtra State. He is not qualified as per guidelines in Public Interest Litigation No. 102 of 2016.

48. It is submitted that Shri Jagdish Sawant belongs to Shivsena and appointed under Category C (i) of Rule 3 (Law). He is an ex-corporator from Mumbai and has been charge-sheeted for offences in the past. The said nomination form is not disputed by him in his affidavit in reply at page 562-A. She relied upon news item dated 10<sup>th</sup> January, 2010 and would submit that the said news item would clearly show that in his presence the officials of Mumbai Municipal Corporation were beaten. The said Shri Jagdish Sawant is also not qualified as per guidelines of this Court in Public Interest Litigation No. 102 of 2016.

49. It is submitted by the learned counsel that the appointment of the Smt.Anuradha G. Adik is from Category A of Rule 3 (woman). She belongs to NCP and is the daughter of an Ex-Minister and a political figure of NCP. She is the president of Municipal Council, Shrirampur. She relied upon the news item and would submit that disqualification proceedings are initiated against Smt.Anuradha Adik for violation of Rules. The said Smt.Anuradha Adik is also not qualified as per guidelines of Public Interest Litigation No. 102 of 2016.

50. Learned counsel for the petitioner submits that Shri Suhas Aher belongs to INC and has been appointed from Category C (i) of Rule 3 (Law). He has paid membership fees on 6<sup>th</sup> September, 2021 i.e. a month prior to the impugned notification when the temple was closed. His close relatives viz. Shri Sudhir Tambe and Shri Balasaheb Thorat are leaders in INC. The said Shri Suhash Aher is also thus disqualified.

51. It is submitted by the learned counsel for the petitioner that Shri Avinash Dandawante belongs to INC and is appointed from Category C (iii) of Rule 3 (Engineering). He has no experience of engineering. The first page of the service-book produced does not show the date of resignation and it is difficult to infer the actual number of years of experience. The said Shri Avinash Dandawante during the work experience, has also submitted documents showing that he was running a petrol pump since the year 2006 and is an active party worker of INC. She submits that Shri Avinash Dandawante is thus not eligible for being a member of the committee of Sansthan Trust.

52. Learned counsel for the petitioner submits that Shri Sachin Gujar also belongs to INC and has been appointed from Category C (iii) of Rule 3 (Engineering category). He has been charge-sheeted for offences in the past. She relied upon such information at page 298 of the petition. The said Shri Sachin Gujar has gained experience before completion of his Degree/Diploma. Diploma in Engineering was availed by the said Shri Sachin Gujar on the basis of the notification dated 5<sup>th</sup> July, 2021. She submits that the said Shri Sachin Gujar is also thus disqualified. He is also not eligible.

53. It is submitted by the learned counsel that Shri Rahul Kanal belongs to Shivsena and has been appointed from D category and sub-Rule 3 of Rule 3. The said Shri Rahul Kanal is a close associate of Shri Aditya Thackeray. She relied upon a paper cutting to show that the Income Tax Department has conducted raid against the said Shri Rahul Kanal. The said Shri Rahul Kanal is also thus not eligible for being appointed as member of the committee of the said Sansthan Trust. She submits that the said Shri Rahul Kanal has not mentioned anything in his reply that he was member of the of Bhakta Mandal and thus he could not have been appointed under 'D' Category and under Rule 3(3).

54. It is submitted by the learned counsel that Shri Suresh Wable belongs to NCP and was appointed from D category and Rule 3(3). He was an ex-trustee of the Sansthan Trust and is thus not eligible for appointment as a member of the Committee of the said trust.

55. Learned counsel for the petitioner submits that Shri Jayvantrao Jadhav belongs to NCP and was appointed from D category and Rule 3(3). He has been charge-sheeted for offences in past. It is submitted that though he has been acquitted, the offence charge-sheeted is of moral turpitude. He was a member of the Legislative Council, Nashik. Shri Jayvantrao Jadhav is also not eligible for the membership of the committee of the said Sansthan Trust.

56. Learned counsel for the petitioner submits that Shri Mahendra Shelke belongs to NCP and was appointed from D Category and under Rule 3(3). He is director of Shrirampur Sahakari Sangh as

well as Doodh Sangh. He is also not eligible according to the petitioner for appointment as a member of the committee of the said Sansthan Trust.

57. It is submitted that Shri Eknath Gondkar belongs to INC and is appointed from D Category and under Rule 3(3). He is an ex-trustee of the Sansthan and is appointed for the third time as the member of the Sansthan. He is disqualified under section 9(1)(e) of the said Act for the reason that when he was member of the committee of the Sansthan which has appointed his son as a panel advocate of the Sansthan.

58. It is submitted by the learned counsel that the alternate remedy under sections 9(2), 30 and 34 of the Act which empowers the State Government to disqualify the trustees, suspend a resolution passed by the committee or supersede a committee is not an alternate remedy, much less, an efficacious alternate remedy. The entire foundation of the present Public Interest Litigation is that the ruling coalition, whichever political colour it may be, has since the introduction of the Act of 2004, appointed political allies for extraneous consideration without exercising any fair mode and manner of appointment and without verifying their eligibility to hold a post of such value and stature. There cannot be any fairplay that can be expected from the ruling party to take an independent decision under sections 9(2), 30 and 34 of the Act for disqualifying any member of the managing committee. No man can be a judge in his own case applies in this case.

59. It is submitted by the learned counsel that when the District Court had granted approval to the scheme of the Sai Baba Sansthan Shirdi on 13<sup>th</sup> February, 1922, the management committee was to include

5 life trustees to be appointed by the District Court who would be ex-officio members in their lifetime, whereas 10 other trustees were to be elected from amongst the Bhakta Mandal for a term of three years. These life trustees were highly qualified and accomplished persons from different walks of life and devotees of Shri Sai Baba.

60. One of such person elected was a B.A., LL.B. and was a Bombay Legislative Member. Another person appointed as a member was an industrialist. Third person appointed was a professor in Chemistry and Geology in Science College, Pune. Forth member appointed was a managing director and secretary of a well known mill at Mumbai. Fifth member was a resident of Shirdi. The other nine members were either (1) retired Mamlatdar and First Class Magistrate, (2) from Law Department, Secretariat Mumbai, (3) retired Solicitor and High Court Lawyer, (4) Zamindar, Shirdi, (5) Honorary Magistrate Harda, (6) Retired Government servant, Pune, (7) British Photo Enlarging Company Kalbadevi, Mumbai, (8) Zamindar Shirdi and (9) Clerk, loco Department, GIP Railway, Mumbai.

61. It is submitted that all members appointed as members of the said Sansthan Trust were highly qualified and from different fields whereas the members now nominated by the State Government are nothing but politicians without fulfilling any qualification and only those persons who are close to the politicians in power in the State of Maharashtra. It is submitted that this Court has ample power to issue directions to fill the statutory gaps and lacuna and to interfere with the Government resolution passed by the State Government by removing these politicians as members of the committee of the said Sansthan Trust.

62. Learned counsel placed reliance on the following judgments :-

(1) Judgment of Supreme Court in case of ***Securities and Exchange Board of India vs. Libra Plantation Ltd., 1998 SCC OnLine Bom 911*** (paragraphs 8 and 9)

(2) Judgment of Supreme Court in case of ***Union of India vs. Association for Democratic Reforms and another, (2002) 5 SCC 294*** (paragraphs 15, 19, 20, 45, 47 and 48)

(3) Judgment of Supreme Court in case of ***Destruction of Public and Private Properties in Re vs. State of Andhra Pradesh & Ors., (2009) 5 SCC 212*** (paragraphs 19 and 21)

(4) Judgment of Supreme Court in case of ***Chairman, Rajasthan State Road Transport Corporation and Others vs. Santosh and Others (2013) 7 SCC 94*** (paragraphs 15 to 16)

(5) Judgment of Supreme Court in case of ***Dayaram vs. Sudhir Batham & Ors. (2012) 1 SCC 333*** (paragraphs 10 to 18)

(6) Judgment of Supreme Court in case of ***Amarnath Shrine in Re vs. Union of India and Others, (2013) 3 SCC 247*** (paragraphs 30 to 35)

(7) Judgment of Supreme Court in case of ***Zuari Cement Limited vs. Regional Director, Employees State Insurance Corporation, Hyderabad and Others, (2015) 7 SCC 690*** (paragraphs 14 and 15)

63. Learned counsel placed reliance on section 18 of the said Act and would submit that the State Government has not yet constituted an Advisory Council as contemplated under the said Act till date. The State Government has not issued any regulations under section 18 and 4 of the



said Act. She submits that appointment of Bhakta Mandal under section 19 is not an empty formality. Such Bhakta Mandal was in existence even prior to 2004. Though regulations under section 19 are formulated, the same are only on paper. She submits that the term of scrutiny committee is co-terminus with the term of the managing committee. The prayer for appointment of scrutiny committee is to have some check on the members of the committee of the Sansthan Trust.

64. Learned counsel for the petitioner invited our attention to the details of the annual income of Sansthan Trust during the accounting year 2011-12 to 2019-20 and would submit that during the work of the Ad-hoc committee, the income of the Sansthan Trust had increased and the decisions in the interest of devotees had been taken.

65. It is submitted by the learned counsel for the petitioner that the petitioner is a member of the Bhakta Mandal and is an agriculturist and has filed this Public Interest Litigation in public interest. He invited our attention to the letter dated 25<sup>th</sup> December, 2017 from the Chief Executive Officer calling upon the petitioner to participate in centenary function as an active member. The petitioner was also issued letters of appreciation by the Sansthan Trust on 14<sup>th</sup> October, 1997 and 14<sup>th</sup> February, 2000. The petitioner has already been acquitted in the criminal cases initiated against him.

66. Mr. Dhorde, learned special counsel for the State invited our attention to section 5 of the said Act which provides for constitution of committee for management of the Sansthan Trust and would submit that the said provision provides for maximum members of the committee as

15 excluding chairman and vice-chairman and further provided the number of committee members who shall be appointed. He relied upon the first and second proviso to section 5. Learned Special counsel invited our attention to various findings recorded and the judgment delivered on 29<sup>th</sup> November, 2017 in Public Interest Litigation No. 102 of 2016 and submits that the grounds raised by the petitioner in this Public Interest Litigation are already considered in great detail in the said judgment and are already rejected. This Court also construed section 5(2) of the said Act in paragraph (130) of the said judgment.

67. It is vehemently urged that this Court recorded the finding that a political party member can be appointed as a member of the Sansthan Trust however subject to the fulfillment of the other criteria and qualification. In support of this submission, learned special counsel placed reliance on paragraphs 120, 121, 130 and various submissions recorded by this Court in the said judgment advanced by the petitioner therein. He submits that a police verification was already done in case of **Mr.Suresh Haware**. This Court recorded the said findings at pages 238 and 239 of the said judgment. Learned special counsel invited our attention to the operative part of the said judgment and also the order passed by the Supreme Court on 9<sup>th</sup> October, 2018 refusing to interfere with the said judgment except the directions contained in paragraphs (v) and (vi). He states that the directions issued by this Court and partly modified by the Supreme Court are duly complied with by the State Government.

68. Learned special counsel placed reliance on section 9(2) of the said Act and would submit that the State Government has ample

power to remove any person from the membership if it appears to the State Government that the member has incurred any of the disqualification provided in sub-section (l) of section (9) after adhering to the principles of natural justice. It is submitted that the petitioner has not applied to the State Government for disqualification of any of the members of the managing committee of the Sansthan Trust. This Court in the said judgment had made observations against the conduct of the petitioner mentioning that he had filed multiple PILs.

69. It is submitted by the learned special counsel that all the appointments of the members of the committee of the Sansthan Trust are made by the Government vide notification dated 16<sup>th</sup> September, 2021 by exercising such powers vested with it. He submits that by the said notification dated 16<sup>th</sup> September, 2021, the State Government has appointed the chairman, vice-chairman and nine other members (total 11) in the categories mentioned in the said notification. The member at serial no.12 is the President, Shirdi Nagar Panchayat, who is an ex-officio Member.

70. It is submitted that considering the notification, the unfilled categories consist of only one number in "B" category i.e. "Socially and economically weaker" section, three from "C" category i.e. "persons possessing professional or specialized knowledge" within the meaning of second proviso to sub-section 2 of section 5 of the said Act, and 2 from category "D" i.e. General Category i.e. the persons either be patrons or life member of Bhakta Mandal. 5 members appointed in this category are either Patrons or life members of Bhakta Mandal. So also of these 5

members, 3 members are residents of either Shirdi or Ahmednagar District.

71. Learned special counsel invited our attention to the averments made in paragraph (17) of the affidavit in reply filed by the State Government, affirmed on 27<sup>th</sup> October, 2021 and would submit that in respect of each of the member of the managing committee appointed by the State Government, the State Government has demonstrated that all of them are duly qualified and are appointed as duly categorized/prescribed in section 5 read with rules.

72. Mr.Ashutosh Kale who is chairman of the Sansthan Trust has been already acquitted. When the ad-hoc committee was appointed by this Court, several complaints were filed by ad-hoc committee against the erstwhile committee members. Learned special counsel invited our attention to the report of the four member committee constituted by the Government resolution dated 20<sup>th</sup> November, 2018 to re-visit the appointment of the members of the managing committee after judgment of this Court came to be delivered in Public Interest Litigation No. 102 of 2016. The said four member committee opined that except the appointment of Shri Chandrashekhar Kadam, the appointment of none of the members appointed in the committee would be disturbed as the said appointments were rightly made. The said report was given in respect of the appointment of the members of the managing committee appointed on 26<sup>th</sup> June, 2016.

73. Learned special counsel invited our attention to the notification dated 2<sup>nd</sup> February, 2019 and would submit that three

members of the said committee Dr. Manisha Shamsundar Kayande, Shri Ravindra Gajanan Mirlekar and Shri Amol Gajanan Kirtikar ceased to be the members since they remained absent for three consecutive meeting of the committee without obtaining leave from the committee as contemplated under section 7(3) of the Act.

74. Learned special counsel invited our attention to section 11(2) of the said Act and would submit that the quorum required for a meeting of the committee provided is eight under section 11(2). This Court can issue directions to the State Government to fill up the remaining posts in the managing committee by appointing members. He submits that the minimum requirement is for appointment of eight members. He relied upon section 12 of the said Act and submitted that no Act or proceedings of the committee can be considered as invalid by reason only of the existence of any vacancy amongst its members or any defect in its constitution or in appointment of any member.

75. Learned special counsel relied upon sections 27 and 28 of the said Act and submitted that the State Government has ample power to depute any officer not below the rank of Deputy Secretary to take inspection of the moveable or immovable property and records of the Sansthan Trust and also to call for record of the said Trust. The petitioner has not made any allegations of any misappropriation of fund of property of the said Sansthan Trust.

76. Learned special counsel placed reliance on section 30 and would submit that the State Government has ample power to suspend or rescind any resolution or order of the committee of the said Sansthan

Trust in certain cases or even to dissolve the committee and constitute another committee within a period of six months from the date of dissolution or supersede committee for such period not exceeding six months after enquiry. The said Act is self-contained. The State Government can exercise powers if any genuine complaint is made in accordance with law and under the provisions of the said Act.

77. Learned special counsel placed reliance on the judgment of Supreme Court in case of ***Jain Shahar Hindu Vikas Samiti vs. State of Rajasthan & Ors. (2014) 5 SCC 530*** and in particular paragraph 40 in support of his case that since the said Act is a self contained Act providing for all mechanisms, this Court shall not interfere with the resolution passed by the State Government. He placed reliance on paragraphs 41, 47 and 48 in support of this submission.

78. Learned counsel for the respondent no.3 submits that this PIL is not maintainable. His client is a Scholar and an Engineer. His client has acquired a Bachelor of Engineering degree from the M.I.T. College, Pune and passed a Master Degree of Science (Information System) from North Eastern University, Bostan (USA). He submits that on 5<sup>th</sup> July, 2012, an American company AEEC issued a certificate of experience of his client working with the company as certifying that during the period of his tenure as Trainee Engineer with American Consultants, Mr.Kale remained dedicated and loyal to his work and responsibilities with the company”. His client has done an exemplary job while in his role as a Trainee Engineer at American Consultants and has always maintained a professional and courteous attitude while in his role at the said American company.

79. It is submitted by the learned counsel that his client does not have any CL-3 or FL-3 license in his individual name. His client does not have any share in a partnership firm or a private limited company engaged in the trade of the selling liquor. He is only the Vice President of Distilleries of Maharashtra State and the ownership is with the sugar factory and hence on account of his being the Vice President of Distilleries of Maharashtra State, he cannot be disqualified to be appointed as member of Sansthan Trust. He relied upon the said CL-1 license and the membership certificate of Maharashtra Distillery Association annexed at Ex.R-2 collectively.

80. Learned counsel for the respondent no.11 submits that his client falls in the category "D" which provides that such person should be a patron or life member of the Bhakta Mandal. His client is a life member of Bhakta Mandal. He relied upon a copy of the certificate of life membership along with receipt issued by the Competent Authority.

81. Learned counsel for the respondent no.11 submits that his client is Graduate (B.A.) Social Science and is having a diploma in Journalism & Mass Communication & Diploma in Printing Technology. It is submitted by the learned counsel that a Criminal Case No.46 of 2007 was registered under sections 143, 147, 148, 323, 504, 506, 427 against seven persons including the respondent no.11. However, on 6<sup>th</sup> July, 2011, his client came to be acquitted by the Judicial Magistrate First Class, Nashik. Summary Case no.433 of 2016 and 3439 of 2016 were registered against the respondent no.11 for social cause and those cases have been withdrawn by the State, hence respondent no.11 was acquitted

on 21<sup>st</sup> September, 2020. Hence the respondent no.11 was acquitted on 21<sup>st</sup> December 2020.

82. Learned counsel for respondent nos.4, 6, 7, 8, 9 and 13 invited our attention to the allegations made by the petitioner against these respondents in the PIL. He invited our attention to the additional affidavit filed by the respondent no.4 affirmed on 18<sup>th</sup> April, 2022 and would submit that the Case No.3768/PW/2005 has been closed under section 258 of the Code of Criminal Procedure and his client has already been discharged from the said case by an order dated 20<sup>th</sup> October, 2011.

83. It is submitted by the learned counsel that respondent no.4 after obtaining the Sanad has been practicing in City Civil Court, Sessions Court, Small Causes Court, various Tribunals and also in this Court. His client has been a life member of the Sansthan Trust for the past 25 years or more. He also annexed a certificate of experience.

84. Learned counsel submits that the respondent no.6 is a Law Graduate and has been conferred with the Law Degree in the year 1994 and has been issued a Sanad by the Bar Council of Maharashtra & Goa in the year 1994. His client is practicing, in Civil, Criminal, Co-operative Courts in Sangamner Taluka for the last more than 26 years and has conducted thousands of cases during these period. He relied upon the certificate issued by Sangamner Taluka Bar Association certifying that the respondent no.6 has been practicing there since 1994 and has been enrolled with the Bar Council of Maharashtra & Goa. He also relied upon the experience certificate issued by the District Judge, Sangamner dated



10<sup>th</sup> August, 2021. His client is the panel lawyer of Banks and Pat Sansthans within the Sangamner Taluka and said Institutions have appreciated the work of his client. His client is also involved in various social activities.

85. Learned counsel for the respondent no.7 submits that his client has been appointed in the category of expert as being an Engineer. He is holding the qualification of Diploma in Mechanical Engineering and has been issued a certificate in the year 1993. He has completed MS IT or Master of Science in Information Technology course. In the year 1993, he joined the services as a Mechanical Engineer with Shri Ganesh Sahakari Sakhar, Karkhana Ganeshnagar. He was made permanent as an Assistant Engineer in the year 1997 and from 1<sup>st</sup> July, 1997 till 27<sup>th</sup> February, 2008 he was a permanent employee of Karkhana.

86. It is submitted that his client has been granted the distributorship of HPCL as Oil Distributor for the Ahmednagar Rural Area and since then he is doing his business. His entire family has been involved in social causes.

87. Learned counsel for the respondent no.8 submits that his client was charge-sheeted in the past for offences though his client was pursuing public cause regarding discharge of water and has been already acquitted in those cases. He has also been acquitted in the case regarding breach of role of conduct of election. There are no criminal cases pending against him. The orders of acquittal are annexed at pages 387 to 406.

88. It is submitted that the respondent no.8 has been appointed in the category of expert being Engineer. He is holding a qualification of Diploma in Civil Engineering and was permanent employee of Ashok Sahakari Sakhar Karkhana from 23<sup>rd</sup> March, 1992 till 25<sup>th</sup> May, 1998. He has done the works of Zilla Parishad, Ahmednagar and is a life member of Sansthan for the past 22 years or more. He is actively involved in social activities and is the member of the Vigilance Committee established for distribution of essentials under the State scheme. He is also the Trustee of Ganesh Devasthan Trust since 2017 and is the Chairman of Gram Swachata Abhiyan Gujarwadi and has received prestigious The Sant Gadge Baba and Tukdoji Maharaj Swachaa Abhiyan Award. He is also the President of Tanta Mukti Abhiyan. He has six years experience in Engineering field and is actively involved in the construction business. He was also a supervisor to a construction firm and now is an advisor to a construction firm.

89. Learned counsel for the respondent no.8 invited our attention to the averments made in additional affidavit filed by his client on 20<sup>th</sup> April, 2022 and would submit that his client had appeared for final year in May, 1991 and out of seven subjects had passed in six subjects and as he was ill, he could not pass in one subject. Since he was in need of a job, he had applied for a job at the Karkhana and was given a letter of appointment. He submitted that there was a typing mistake regarding probation of work as 23<sup>rd</sup> March, 1992 to 25<sup>th</sup> May, 1998”, which should have been 23<sup>rd</sup> March, 1992 to 15<sup>th</sup> May, 1998.

90. Learned counsel for the respondent no.9 submits that his client is an ardent devotee of Lord Saibaba and is a life member of the

Sansthan. His client has completed his Bachelor of Commerce from the Mumbai University and accordingly a Degree has been conferred upon him in the year 2006. Since 2006, he has been working as a Consultant in the Hospitality Industry in Mumbai and is actively involved in various social activities since the past 12 years or more. He has established a foundation namely "I Love Mumbai" of which he is a President and has done several other social works. He has been actively involved in organizing Plasma donation camps at Nair Hospital and Mahatma Gandhi Seva Mandir Charitable Trust and he has helped 5000 migrant workers to reach their respective villages during the pandemic. He has been issued various certificates of appreciation for social work.

91. Learned counsel for the respondent no.13 submits that the trustees appointed by the State Government have taken over several decisions under Rajiv Gandhi Jeevandai Yojana Major work has been done by the Sansthan and its 70% beneficiaries were the patients of the Hospital of the Sansthan. Large number of heart surgeries have been conducted by the Sansthan Hospital through expert doctors in 24 hours. The said aspect has been recorded in the Gunnies Book of World Record. He submits that the petitioner has made various false and incorrect statements in the petition and is liable to be punishable under section 195 r/w 340 of Code of Criminal Procedure.

92. It is submitted by the learned counsel that vide resolution dated 11<sup>th</sup> December, 2005, several advocates were appointed on the panel of Sansthan at different places. The son of his client viz. Advocate Mr.Sandeep E. Gondkar had applied for appointment as a panel advisor

on 31<sup>st</sup> October, 2005 and was appointed along with other advocates as panel advisor vide resolution dated 11<sup>th</sup> December, 2005. During the tenure of his client as a Trustee of the said Sansthan, no matters were allotted to his son. The said advocate Mr.Sandeep E. Gondkar was allotted matters in High Court in the year 2016 when the respondent no.13 was not even a trustee of the Sansthan Trust. He submits that the said advocate Mr.Sandeep E. Gondkar had conducted the cases allotted to him without charging any fees.

93. Learned counsel for the respondent no.13 relied upon section 9(1)(e) of the said Act and would submit that even if son of his client would have been an advocate for the Sansthan that would not be a disqualification for his appointed as member of Sansthan Trust. Learned counsel for the respondent no.13 relied upon the judgment delivered by the Division Bench in PIL No.18 of 2011 and 102 of 2016 filed by **Sachin Gopal Bahage** against the **State of Maharashtra and others**, delivered on 29<sup>th</sup> November, 2017 and also on the judgment delivered by the Supreme Court in case of **Kishore Samrite vs. State of Uttar Pradesh & Ors. (2013) 2 SCC 398** and in case of **Bhaskar Laxman Jadhav & Ors. vs. Karmaveer Kakasaheb Wagh Education Society & Ors. 2013 (11) SCC 531**.

94. Learned counsel for the respondent nos.4, 6, 7, 8, 9 and 13 placed reliance on the judgment of the Supreme Court in case of **Kishore Samrite vs. State of Uttar Pradesh & Ors. (2013) 2 SCC 398** and in particular paragraphs 32 to 34, the judgment of this Court delivered on 12<sup>th</sup> October, 2021 in Writ Petition No.5881 of 2020 in case of **Samata N.**

***Bijagari Sahakari Patsantha Limited and Anr. vs. Bharti Sanjay More & Ors.*** Learned counsel for the respondent no.13 placed reliance on the judgment of the Supreme Court in case of ***Jaipur Shahar Hindu Vikas Samiti vs. State of Rajasthan & Ors., 2014(5) SCC 530.***

95. Learned counsel for the respondent no.12 submits that his client was appointed in general category under Rule 3 (3). In PIL No.100 of 2021, there were no allegations against his client made by the petitioner. There are no specific allegations in the pleading against the respondent no.12 in PIL No.98 of 2021. Merely because the petitioner was a member of Doodh Sangh, the same would not disqualify his client to be a member of the committee of Sansthan Trust. The respondent no.12 is a resident of Shirdi and is patron member of Bhakta Mandal as is apparent from the cause title of the petition itself. He is holding a Bachelor of Science degree i.e. B.Sc. in Agriculture.

96. It is submitted that his client has satisfied all the criteria for becoming a member of the Managing Committee under category "D". He is not the Director of the so called Shirdi VKSS. He relied upon various documents annexed to his affidavit in reply filed by his client. He relied upon the judgment of the Supreme Court in case of ***Dr.B. Singh vs. Union of India & Ors. (2004) 3 SCC 363*** and would submit that the PIL filed by the petitioner is not maintainable. He submits that this Court cannot permit the petitioner to make wild and reckless allegations. He submits that the newspaper cutting relied upon by the petitioner cannot be accepted as legally acceptable evidence. Several petitions are filed by the petitioner against rest of the Sansthan Trustee. Lakhs of rupees are spent by Sansthan Trust on defending such litigation. He relied upon the

judgment of this Court in case of ***Kiran Anandrao Pawar & Ors. vs. Chief General Manager, IRB Kolhapur Integrated Road Development Company Private Limited & Ors. decided on 14<sup>th</sup> October 2014 in Writ Petition Nos.6646 of 2013 and 10407 of 2013*** on the issue of constructive *res-judicata* and would submit that similar PIL having been filed earlier having been already dismissed, similar issues could not have been raised by the petitioner in a fresh PIL.

97. Learned counsel for the respondent no.5 in PIL No.98 of 2021 and learned counsel for the respondent no.8 in PIL No.100 of 2021 submits that his client has been appointed under “women category”. The father of the respondent no.5 was not the President of NCP. The respondent no.5 was directly appointed as President of Municipal Council of Shrirampur Municipal Council. He submits that the case filed by the applicant against her client has already been closed. It is submitted that his client has completed her graduation from Sydenham College of Commerce and Economics, Bombay and has further studies in Sydenham Institute of Management Studies & Research & Entrepreneurship Education, Bombay. She has completed the said post graduate diploma on 28<sup>th</sup> October, 1994 and had appeared for PHD online entrance examination on 7<sup>th</sup> July, 2019 in the subject of commerce and management which she had qualified.

98. Learned counsel for the respondent no.10 submits that there are no allegations made by the petitioner against his client.

99. Ms.Talekar, learned counsel for the petitioner in her rejoinder argument submits that Mr.Sanjay Kale had made a

representation on 17<sup>th</sup> September, 2021 annexed at page 434 to the State Government regarding illegal appointments made by the State Government in respect of the members of the committee of Sansthan Trust. The said representation has not been considered. She tendered a chart and submitted that the State Government has not appointed number of members of Sansthan Trust as required under section 5 of the said Act. No appointment has been made under the category “Public Health”. The quorum of eight mentioned in section 11(2) will not indicate number of members of the committee required to be appointed by the State Government. She relied upon the operative part of the order passed by the Division Bench of this Court in PIL No.102 of 2016 and submitted that the Supreme Court had granted a time line for complying with the directions issued by this Court. The State Government was directed to implement the directions issued by this Court. She submits that there was income tax raid on the respondent no.9, who is a close associate to Aditya Thakare. A copy of newspaper cutting is tendered across the bar in support of the submission.

100. Insofar as the respondent no.13 is concerned, it is submitted that the respondent no.13 appearing for Sansthan is disqualified under section 9(1)(e) of the said Act. The question as to whether his son was paid any fees or not by Sansthan Trust is not very relevant. She submits that since there was gross illegality committed by the State Government while decision making process, this Court has ample power to interfere with the Government Resolution. She submits that there has to be some guidelines as to how the State Government has to select the managing committee of the Sansthan Trust in a transparent manner. She relied upon

the judgment annexed at page 216 of the writ petition and would submit that discrete enquiry has to be made by the State Government before appointing any person as member of the committee of Sansthan Trust.

101. It is submitted that the rules have been framed by the State Government in 2013, and are diluted in the year 2021. The said 2013 Rules are already challenged in a separate petition and the said petition is still pending. She submits that there is no question of applicability of principles of constructive *res-judicata* in the facts of this case. Since the directions issued by this Court in the earlier PIL have not been complied with by the State Government while appointing the members of the managing committee of Sansthan Trust, the petitioner has rightly filed this PIL. The respondents have not produced the records of the police verification of any of the members appointed by the State Government as the committee member.

102. Insofar as the issue of alternate remedy raised by the respondents is concerned, it is submitted that the State Government is very adamant in this matter and has acted in illegal manner and is not likely to take steps even if the State Government is approached by the petitioner for redressal of his grievances.

103. The matter was closed for orders on 21<sup>st</sup> April, 2022 after hearing the parties at great length. However, on 9<sup>th</sup> June, 2022, learned AGP filed a praecipe for placing the matter on board for certain directions. The matter was accordingly placed on board on 10<sup>th</sup> June, 2022 before the same Division Bench. Learned AGP tendered a copy of the notification dated 1<sup>st</sup> June, 2022 issued by the State Government



thereby appointing / nominating six members which were remained to be appointed as trustees of Sansthan Trust. The said praecipe was vehemently opposed by the petitioner in PIL on the ground that the matter was already closed for pronouncement of judgment and thus at this stage the said notification cannot be taken on record.

104. This Court accordingly passed an order on 10<sup>th</sup> June, 2022 that since this Court has already closed the matter for pronouncement of judgment, this Court did not propose to allow the parties to make additional submissions or to implead newly appointed trustees on record at this stage. This Court however, made it clear that if the petitioner in the PIL proposes to challenge the notification dated 1<sup>st</sup> June, 2022, he would be at liberty to do so. We cannot postpone the pronouncement of judgment at this stage. This Court accordingly made clear that this Court would not permit to bring these additional facts on record and to re-hear the matters at this stage. Roster of this Bench has already been changed and thus it would also cause inconvenience to the parties and this Bench, if the matter is required to be reheard on additional factual aspect. This Court accordingly granted liberty to to the petitioner to file appropriate proceedings insofar as the notification dated 1<sup>st</sup> June, 2022 is concerned.

**REASONS AND CONCLUSION :-**

105. This Court in the judgment dated 29<sup>th</sup> November, 2017 in case of ***Sachin Gopal Bhanage vs. State of Maharashtra and others*** in PIL No.102 of 2016 has dealt with several issues which will have bearing upon the subject matter of this petition. The said PIL was filed challenging the order dated 28<sup>th</sup> July, 2016 issued by the Principal Secretary, Law & Judicial Department, Government of Maharashtra

appointing 12 members of Shri Saibaba Sansthan Trust, Shirdi on various grounds. The respondents in the said writ petition had opposed the said PIL on various grounds including the ground of locus of the petitioners therein to file the same PIL No.102 of 2016. This Court in the said judgment did not accept the submission of the respondents challenging the locus of the petitioners therein to file the said PIL.

106. The locus of the petitioner in this PIL is also challenged by the respondents on similar ground. The petitioner in this case claims to be an ardent devotee of the said Shri Saibaba Sansthan, Shirdi and has filed several petitions for smooth functioning and managing of the temple Trust. He was the President from 1984 to 1988 much prior to introduction of the politicians on the board of the said Sansthan Trust. The petitioner has given an undertaking that none of his family members nor he himself would ever accept the post of a trustee of the Sansthan to avoid any allegations of *malafides*. The petitioner has filed this petition *inter-alia* impugning the Government Resolution thereby appointing the respondents as the trustees of the Sansthan Trust in public interest and has filed this petition in public interest. In our view, there is no substance the objection raised by the respondents challenging the locus of the petitioner to file this PIL.

107. In the said judgment in PIL No.102 of 2016, this Court noticed that the said Sansthan Trust is enacted by the Legislature to re-constitute a public Trust of Shri Saibaba Sansthan registered under the provisions of the Maharashtra Public Trusts Act, 1950. The said Trust is constituted to provide for better management, administration, governance

and control of the Trust and to enable it to undertake wider welfare activities for the public. This Court considered preamble of the said Act of 2004 and held that the said preamble itself says that the Trust has large properties and is very popular and is highly revered and has very large number of devotees all over India. The State Government thus considered it expedient that the development and management of this important and popular Trust should not be hampered of in any way suffered by avoidable litigation and that there should be a separate law to re-constitute the said Trust and to provide for the efficient management of the same by a Committee directly under the supervision and control of the State Government to enable the Trust to carry out its charitable activities more effectively and efficiently.

108. After construing various provisions of the said Act, this Court was of the opinion that considering the status of Saibaba Sansthan Trust Committee with wide reputation to diverse sections and fields is expected to be set up by the law. The said Committee manages the affairs of the said Trust. The affairs have to be managed so as to fulfil the object and purpose of the Act. The management has to be better than earlier and the administration, governance and control ought to be carried out in such manner as would enable the Trust to undertake wider welfare activities for the public. The development and management of a important and popular Trust should be hampered or suffered by avoidable litigation, that there was a necessity to make a special law.

109. It is held that the persons to be appointed have to be knowledgeable, qualified and experienced in varied fields are required to

be appointed. The Committee has to perform diverse duties and functions. It shall be the duty of the Committee to manage the properties and affairs of the Sansthan Trust efficiently, to make proper arrangement for the conduct and performance of rituals, worship ceremonies and festivals in the temple according to the custom and usage, to provide necessary facilities and amenities to the devotees and to apply the income of the Trust to the objects and purposes of which the Trust is set up.

110. It is held that the Committee must be broadbased and truly representative. It is common ground that devotees visiting the temple are from India and abroad. All, namely rich or poor, residing in the city or village, slum or villa throng the temple. It is open to all. In such circumstances, the State has been conferred with enormous power coupled with duty. Equally, the Committee exercises the powers vesting in it to fulfil a corresponding duty. None can seek appointment as a member of the Committee and much less as of right. The State has to make the appointment, but consistent with the object and purpose sought to be achieved by the Act. The power to appoint the member has to be exercised in such manner that the law is not breached or contravened. The political affiliations and financial or other association of a similar nature are out of place.

111. It is held that the State Government cannot appoint a political party worker, particularly the ruling one or any follower or group or alliance member. Equally, none can be appointed because he has lot of financial power or strength, or is a business associate of a influential political leader. That cannot be the criteria in selecting the members. It

is held by this Court that the membership of the Committee cannot be viewed as an appointment to a political office or equated with the appointment on the Board of Directors of a public sector corporation or body corporates. It is a social obligation which must be discharged with due respect and reverence to Shri Saibaba and regard to the principles and values derived from his life and his teachings. He enunciated the spirit of fraternity, brotherhood, unity and secularism amongst all. He did not differentiate or discriminate between his followers or devotees and treated all of them equally.

112. This Court accordingly held that affiliation or association with the ruling party as the sole consideration for appointment is expressly ruled out. This Court however, held that though all politicians cannot be said to be underserving and unfit it does not mean that only politicians can be appointed as members. It also does not mean that only those close to politicians or their relatives can be appointed. This Court held that the appointments are not political nor can the appointees be politicians alone. The appointment is apolitical. This Court held that this is a public office and for holding such an office or post, the best have to be selected. The power to appoint, therefore, has to be exercised fairly and reasonably. The power to appoint cannot be exercised arbitrarily or at the whims and fancies of the Government. The power to appoint has to be exercised in accordance with the Act. The Act itself obliges the State to appoint only those eligible for appointment.

113. This Court clarified that it is an appointment so as to perform and discharge a public duty. It is not to be confused with an

appointment to a civil post under the State Government. It is an appointment made only after the person is found to be deserving and worthy of the Trust and confidence reposed in him by the State on behalf of all the devotees and followers of Shri Saibaba. In making such appointment, the State Government itself acts as a trustee. The appointment shall be made in a non-arbitrary, transparent and fair manner. If the appointments made are de hors the statute and for extraneous consideration or by applying the tests and factors which are wholly irrational, then, depending upon the facts and circumstances of each case, they can be interfered with in writ jurisdiction.

114. It is the case of the petitioner that the State Government constituted a Committee in absence of any Rules vide Notification dated 27<sup>th</sup> March 2012. The said Notification was challenged before this Court in PIL No.27 of 2012 as well as PIL No.133 of 2012. On 30<sup>th</sup> March 2012, this Court granted interim stay to the said Notification dated 27<sup>th</sup> March 2012 and made various observations about the persons appointed by the State Government. This Court in the order dated 30<sup>th</sup> March 2012 noted an order dated 30<sup>th</sup> April 2010 passed by the Division Bench of this Court in Civil Application No.2196 of 2009 in WP No.4640 of 2007 directing that the State Government shall frame the Rules in light of the provisions of Section 25 of the said Act which would facilitate effective governance and functioning of the Sansthan.

115. This Court accordingly directed the State Government to frame Rules at the earliest. This Court clarified in the said order that the said order shall not be construed to mean that this Court had approved that the Managing Committee constituted under Section 5 of the Act of

2004 is strictly in accordance with law. This Court granted liberty to the State Government to consider the issue in respect of the constitution of the Managing Committee. By the said order, this Court directed the State Government to constitute a new "the Shree Sai Baba Sansthan Management Committee" within a period of 15 days from the date of the said order. Even after a period almost of 1 year and 11 months being lapsed from the passing of the said order, the State Government had not framed or prescribed rules, laying down mode or criteria of qualification, eligibility, manner etc. for appointment of members of the Committee.

116. In paragraph 16 of the said order, this Court observed that Section 5 of the said Act would reveal that it gives unbridled, unguided and unchanalised powers to the Government to appoint the committee consisting of not less than 15 members. It was observed that out of total members, 8 members including the vice chairman, shall be the persons having educational background of professional and specialized qualification etc. It was observed that insofar as 8 members, including the vice chairman, the proviso to sub-section (2) of Section 5 of the Act, makes it mandatory that they should be the persons possessing professional or specialized knowledge, qualifications and practical experience in one or more of the fields such as law, Business Management, Public Administration, Engineering, Architecture, Public Health, Medicine, or Rural Development.

117. It was observed that insofar as remaining members, including the chairman, the State Government is empowered to appoint any person without any qualification. This Court noticed that the State Government had not complied with the order dated 30<sup>th</sup> April 2010

directing the State Government to appoint members of the Managing Committee. This Court referred to the submission made by the learned counsel for the petitioner that the two coalition partners, i.e. INC and NCP who are ruling the State, while making appointments to the Managing Committee, have shared the membership of the committee amongst themselves.

118. This Court held that looking at the number of petitions filed before this Court, it is apparent that the very purpose for which the said Act appears to have been enacted, namely to avoid litigation, is frustrated. When power is vested with the authority, it must exercise the same for the public good. This Court expects the State Government to at least keep the God away while distributing public largesses. God is not a fiefdom of ruling coalition. It cannot be disputed that the devotees of Sai Baba are from all sections of the society and also belong to various political parties. The State Government thus ought to have framed the Rules prescribing procedure regarding qualification, mode or manner of appointment in terms of Section 5 of the said Act. The State is expected to appoint devotees of shrine as members of the trust, rather than making the appointments on political considerations and of kiths and kins and associates of its leaders. The Act is not meant for rehabilitation of the members of the ruling political parties who are defeated in elections.

119. This Court noticed that though an attempt had been made to show that the order passed by this Court on 13<sup>th</sup> March 2012 had been complied with, it was nothing more than an eye-wash in as much as, the reconstituted committee would reveal that the chairman was the same and many of the members were either the same or where-ever they were



replaced, such replacement was by close kiths and kins of the members. This Court expressed that this Court expects the State Government to at least spare the religious trusts in the matter of distributing public largesse. This Court accordingly continued the ad hoc committee appointed by this Court to continue to manage the affairs of the trust until further orders. It is held that it cannot be disputed that the committee of such highly placed officers such as Principal District Judge, District Collector and the Executive Officer would act in the interest of the trust.

120. It is held that in the State of Maharashtra, wherever the chairman of religious trust is either the District Collector or Judicial Officer, the said Trust is functioning in a very efficient manner. The developmental activities carried out by such Trust headed by such officers in short period are commendable. Apart from that, when such highly placed officers head the Trust, there is a least possibility of mal-practices being indulged into. This Court referred to Tuljapur Devasthan Trust, District Osmanabad, Saptashrangi Devi Trust, Nashik, Mohata Devi.Trust in Ahmednagar District in the said order. Pursuant to the order passed by this Court in Public Interest Litigation No. 18 of 2011 *ad-hoc* committee came to be constituted which continued during the period 2011 to 2016 and 2019.

121. This Court in the said judgment adverted to a judgment of the Supreme Court in case of ***State of Punjab and another vs. Brijeshwar Singh Chahal & Anr. 2016 (6) SCC 1***, in which it was held by the Supreme Court that no appointment of Public Prosecutors or District Counsel should be made either for pursuing a political purpose or for giving some undue advantage to a section of the people. The

Supreme Court held that the Government and so also all public bodies are trustees of the power vested in them. Discharge of the Trust reposed in them in the best possible manner is their primary duty.

122. This Court in the said judgment held that merely because of the opinion of the police machinery that the person has no criminal background does not mean that he is necessarily fit for being appointed as a member. The State is obliged to determine the issue of unfitness with reference not merely to pendency of criminal cases or charge-sheets or findings of misconduct, but must take into consideration the physical fitness and other matters as well. Merely because a person is physically fit does not mean that he is not otherwise unfit.

123. This Court emphasised that a person may not be found guilty of misconduct and equally there may not be any charge-sheet filed against him for an offence involving moral turpitude, still, there could be facets and aspects about his personality, conduct and behaviour in the society, which would make him otherwise unfit. When one speaks of candidates possessing merit, that merit does not mean achievements in terms of obtaining marks at the exam, high rank and academic qualifications. Merit denotes excellence in the field. In order to be qualified for being appointed as a member of the Committee of management, a person should not only be academically qualified, but must possess such qualities as would render him able and fit for being appointed. The Government may make enquiries and investigations for themselves. They may derive inputs from varied sources. Those in-charge in making appointments, implementing and enforcing the law are

expected to take decisions which may not be to the liking of their political masters necessarily. They will have to overrule these masters and make recommendations and record opinion fearlessly. That is expected from them.

124. This Court held that the State Government should not appoint unqualified and morally unfit persons on the Committee or recommend their names for appointment or endorse their candidature merely to please their political masters. If their opinion is then tested before a Court of law, it is for the Court to decide whether they are wrong or erroneous or vitiated by extraneous considerations. This Court held that so long as there is a power conferred in the executive machinery to decide whether a person is otherwise unfit, then, they are expected to exercise that power and not surrender their discretion to their political masters or bosses. This Court accordingly held that the person's fitness must be decided independent of his exoneration or non-involvement in disciplinary or criminal proceedings or the like. The police machinery cannot control the exercise of their independent power and discretion. This discretionary power must be exercised judiciously, fairly and not arbitrarily. Their view and opinion cannot be restricted to the matters contained in the police verification report. They must go and travel beyond the same.

125. This Court in the said judgment held that the appointments of the trustees which were the subject matter of the PIL were challenged on various grounds including on the ground that those trustees had managed to secure the appointment by their political masters alone and

that the very proximity was to political leaders or political parties in power. This Court held that these allegations may have been denied by private parties. However, their denials cannot be conclusive. The denials are restricted to political affiliations or connections, but there are other aspects raised and which, according to the petitioners, make these appointees unfit for the post.

126. This Court held that in such a Trust, where the general atmosphere is spiritual and people from all walks of life visit the place to seek the blessings of Saibaga, pray for everybody's wellbeing, there ought to be no place particularly in the administration and management for persons with dubious and doubtful record. Public interest and people's trust is paramount. The administrators have to be faithful and loyal to the devotees. They must enjoy their trust and confidence. Hence the State Government must place the statute in the forefront while deciding the issue of a person's fitness for appointment on the Committee.

127. This Court in the said judgment held that if the State, which is in a position of a patriarch, is expected to complete the task assigned to it by the statute, then, this Court has no hesitation in directing it to so complete it. The allegations cannot be proved because the criminal cases are not pursued further, but that does not absolve the State of its duty and obligation under the present law from considering the materials in an overall manner. It is stated that the State Government must bear in mind that it is exercising a discretionary power under a statute which is made specifically for improving the administration of the Shree Saibaba Shirdi Sansthan.

128. This Court did not accept the arguments of the State Government that it is only the police verification which is decisive and based on that if the opinion is recorded and that would suffice for the purpose of later part of clause (f) of sub-section (1) of section 9, then, it would be proper to expect from the State whether it has at all verified these matters and independent of the earlier part of clause (f) of sub-section (1) of section 9. This Court accordingly held that a person with a criminal background is definitely unfit but even those against whom there is no reported incident may be morally unfit. This Court expects the State and its officials to verify and scrutinise the allegations made against the proposed trustee by obtaining necessary inputs from social, cultural and business circles.

129. This Court held that the State must bear in mind that self certification by the appointee about his character is wholly irrelevant when the office is public and equally the duties of the same. It is expected of such persons to disclose that they have not and are not indulging in activities which would be detrimental to the interest of the Shirdi Sansthan on which they seek appointment as a member of the Committee of Management and that they are not otherwise unfit. This Court held that it would be entirely for the State to take a decision in the light of this judgment and equally the observations and findings therein. The State should also consider the findings and observations in the judgments rendered by this court in the earlier PILs that no political appointments should be made or appointments to this Sansthan should not be made purely for political reasons.

130. This Court in paragraph 163 of the said judgment also adverted to the order passed by this Court in Public Interest Litigation No. 27 of 2012 along with Civil Application No. 3546 of 2012 passed an order on 30<sup>th</sup> March, 2012 while making various observations that many of the persons who have lost either assembly elections, or Zilla Parishad elections, have been rehabilitated as members of the Managing Committee of the said Trust. The very purpose of enacting the said Act namely, to avoid the litigation, is frustrated. When power is vested with the authority, it must exercise the same for the public good.

131. This Court held that prima facie it appears that in a non-transparent manner, ruling alliance has appointed members of the Committee so as to favour its members who have lost in political election and for accommodating kiths and kins of its leaders.

132. This Court in paragraph 164 of the said judgment held that every single appointment, if running contrary to these observations and findings so also the conclusions of this Court would have to be reconsidered. This Court in the said judgment also rejected the arguments of the State Government merely because the petitioners have not challenged appointment of particular trustees does not mean that the State is denuded of its powers under the Act and the Rules and provisions of which have been interpreted in the said judgment. State Government in that event is not prevented from taking a decision in accordance with law.

133. This Court accordingly directed the State Government to revisit and reconsider all such cases or appointments, which do not meet

the criteria laid down in the Act and the Rules as also are not in accordance with section 9(1)(f) of the Act would squarely apply. This Court directed the State Government to take a proper decision in accordance with law within a period stipulated in the said judgment. This Court made various observations in respect of appointment of each of the trustees by the State Government individually and did not quash and set aside the impugned notification dated 28<sup>th</sup> July, 2016 because the Committee has been set up under that notification and found to be working for nearly one and half year. This Court however clarified that the appointments made under the impugned notification would have to be revisited and reconsidered in the light of this judgment and particularly our interpretation and construction of section 9(1)(f) of the Act.

134. Supreme Court by an order dated 9<sup>th</sup> October 2018 in Special Leave to Appeal (C) Nos.2432-2436 of 2018 filed by the State of Maharashtra has only set aside part of the order i.e. directions contained in paragraph (v) and (vi) which read thus :-

*“(v) The State Government, while reconsidering the appointments as directed above and within the time stipulated of two months, shall not be influenced by the police verification or police report only, but must take into consideration the allegations in the criminal cases together with other materials and take an independent and informed decision.*

*(vi) The State Government shall reconsider these appointments and revisit them by preferably setting up an independent and impartial committee which shall not include those officials*

*and authorities who had been involved in making the subject appointments (appointments of respondent nos. 4 to 15).”*

135. This Court has to now consider whether the principles of law laid down by this Court in the said judgment dated 29<sup>th</sup> November 2017 in Public Interest Litigation No.102 of 2016 in case of **Sachin Gopal Bhanage (supra)** and the directions issued by this Court modified by the directions issued by the Supreme Court on 9<sup>th</sup> October 2018 in Special Leave to Appeal (C) Nos.2432-2436 of 2018 in the proceedings filed by the State of Maharashtra against the said judgment and orders passed by this Court in earlier PIL relating to the Sansthan Trust are complied with by the State Government or not while appointing the respondent nos.3 to 14 as Members of Managing Committee of the said Sansthan Trust, Shirdi or not. This Court also has to consider whether these appointments are made in conformity with the powers prescribed under the said Act.

136. A perusal of the record indicates that in 1954 the idol of Shri Sai Baba was set up at Shirdi. In 1984, this Court framed a scheme Sai Baba Sansthan, Shirdi. The State Government enacted the said Act in the year 2004.

137. The Principal Secretary and Senior Legal Advisor to the Government, appointed 16 members for a period of three years, vide notification dated 23<sup>rd</sup> August, 2004. Committee comprises of various professionals, various devotees of Shree Sai Baba and various other uncontroversial persons. A perusal of the record however, indicates that



since last 3 terms, the State Government started appointing politicians to most of these posts without considering the scheme of the Trust and contrary to the provisions of the said Act which was the subject matter of the Public Interest Litigations filed by the members of the public.

138. We are of the view that none of these appointments which are the subject matter of these Public Interest Litigations are made in compliance with the directions issued and the conclusions drawn in paragraphs (i), (ii), (iii) and (iv) and the principles laid down in various judgments referred aforesaid directed to be complied with by the State Government.

139. We shall now deal with the case of the respondent nos.3 to 14 which is the subject matter of these Public Interest Litigations. We have perused the affidavit-in-reply filed by these respondents. The petitioners in Public Interest Litigations have made specific allegations against each of these trustees and more particularly that they have political background, either as sitting MLA or Ex-Corporator or relatives of former Ministers and a political figure belonging to NCP or relatives of leaders of some party, close associates of Shri Aditya Thackeray, some of the trustees having criminal background having been charge-sheeted for the offence in past and Directors of some political body. None of the respondents have denied their political connection or that they are closed to the politicians in power in the State of Maharashtra. We have already highlighted various portions of the judgment delivered by this Court in Public Interest Litigation No.102 of 2016 and other connected matters clearly holding that posts of the trustees in a public trust cannot be filled

up by appointing politicians. In our view, each of the appointments made by the State Government is contrary to the principles of law laid down by this Court in the said judgment in Public Interest Litigation No.102 of 2016 which has attained finality except directions contained in paragraphs (v) and (vi).

140. A perusal of the order passed by the Supreme Court on 9<sup>th</sup> October 2018 indicates that directions were issued to the State Government to implement the directions of this Court as and when the board is reconstituted after expiry of its present term in July 2019. The State Government has not bothered to comply with the directions issued by the Hon'ble Supreme Court by implementing the directions of this Court in the said judgment dated 29<sup>th</sup> November 2017.

141. In so far as the appointment of Shri Ashutosh A. Kale (respondent no.3 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, he is a sitting MLA from Kopergaon Constituency and belongs to NCP and has never practiced Engineering. He is a full time dedicated politician. The said respondent has placed reliance on the certificate of engineering produced to him by the company having a distance of 800 km from his college in Boston. He has not denied that he is a sitting MLA and is a full time dedicated politician.

142. In so far as the appointment of Shri Jagdish Harishchandra Sawant (respondent no.4 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, he belongs to Shivsena. He is an ex-corporator from Mumbai and has been charge-sheeted for offences in the past.

143. In so far as the appointment of Ms. Anuradha Govindrao Adik (respondent no.5 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, it is not disputed by her that she belongs to NCP and is the daughter of an Ex-Minister and a political figure of NCP. She is the president of Municipal Council, Shrirampur. It appears that disqualification proceedings were initiated against her for violation of Rules when she was a President of Municipal Council, Shrirampur.

144. In so far as the appointment of Shri Suhas Janardhan Aher (respondent no.6 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, it is not disputed by him that he belongs to INC. He has paid membership fees on 6<sup>th</sup> September, 2021 i.e. a month prior to the impugned notification and more particularly when the temple was closed. His close relatives viz. Shri Sudhir Tambe and Shri Balasaheb Thorat are leaders in INC.

145. In so far as the appointment of Shri Avinash Appasaheb Dandawate (respondent no.7 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, it is not disputed by him that he belongs to INC. His appointment was also challenged on the ground that he has no experience of engineering. He was running a petrol pump since the year 2006 and is an active party worker of INC.

146. In so far as the appointment of Shri Sachin Rangrao Gujar (respondent no.8 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, it is not disputed by him that he belongs to INC and has been charge-sheeted for offences in the past. He has obtained

Diploma in Civil Engineering on the basis of the notification dated 5<sup>th</sup> July, 2021.

147. In so far as the appointment of Shri Rahul Narain Kanal (respondent no.9 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, it is not disputed by him that he belongs to Shivsena. He is a close associate of Shri Aditya Thackeray. According to the petitioners, the Income Tax Department had conducted raid against the said Shri Rahul Kanal.

148. In so far as the appointment of Shri Suresh Gorkshanath Wable (respondent no.10 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, it is not disputed by him that he belongs to NCP and was an ex-trustee of the Sansthan Trust.

149. In so far as the appointment of Shri Jayvantrao Pundlikrao Jadhav (respondent no.11 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, it is not disputed by him that he belongs to NCP. He has been charge-sheeted for offences in past. Though he has been acquitted, the offence charge-sheeted is of moral turpitude. He was a member of the Legislative Council, Nashik.

150. In so far as the appointment of Shri Mahendra Ganpatrao Shelke (respondent no.12 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, it is not disputed by him that he belongs to NCP and is director of Shrirampur Sahakari Sangh as well as Doodh Sangh.

151. In so far as the appointment of Shri Eknath Bhagchand Gondkar (respondent no.13 in PIL No.98 of 2021) who was appointed as one of the trustees is concerned, it is not disputed by him that he belongs to INC. He is an ex-trustee of the Sansthan. His son was a panel advocate of the Sansthan Trust. Though the said Eknath Gondkar has disputed in his affidavit that his son was not briefed in any matter by sansthan trust when the said Gondkar was a trustee, he did not dispute that his son was a panel advocate of the said Sansthan Trust.

152. In so far as various findings rendered by this Court in case of Sachin Gopal Bhanage (supra) in Public Interest Litigation No.102 of 2016 relied upon by Mr.Dhorde, Special Counsel for the State is concerned, in our view, the findings and conclusions drawn by this Court in the said judgment does not advance the case of the respondents but support the case of the petitioners. An observation in one of the paragraphs of the said judgment cannot be read in isolation to buttress the submission that this Court has accepted the arguments of the State Government that political members can be appointed as members of the Sansthan Trust. On the contrary, this Court in various judgments relating to the appointment of trustees of Sansthan Trust has clearly laid down that politicians shall be kept away from the Sansthan Trust. There is no substance in the submission made by the learned special counsel that the appointments are made by the State Government after following the provisions of the said Act.

153. Mr.Dhorde, learned Special Counsel for the State does not dispute that Shri Ashutosh Ashokrao Kale was charge-sheeted. He however, urged before this Court that the said Shri Ashutosh Ashokrao

Kale who was the Chairman of the Sansthan Trust has been acquitted. The fact remains that there was serious charges against him.

154. The respondents trustees have sought to canvass before this Court that each of them are educated and carrying on business and has experience in various fields. We are of the opinion that unless these respondents would have been connected with one or the other political parties in the State of Maharashtra, they would not have been appointed as trustees even if they were qualified.

155. In respect of the respondent no.11, criminal case was admittedly registered under Sections 143, 147, 148, 323, 504, 506, 427 of the Indian Penal Code. It is however the case of the respondent no.11 that he was subsequently acquitted by the Judicial Magistrate, First Class, Nashik. Summary Case no.433 of 2016 and 3439 of 2016 were also registered against the respondent no.11 for social cause. Though it is the case of the respondent no.11 that the State Government has withdrawn those cases, the fact remains that such cases were registered against him.

156. It is the case of the respondent no.4 that Case No.3768/PW/2005 has been closed under section 258 of the Code of Criminal Procedure and the respondent no.4 has already been discharged some time in the year 2011. The fact that there were serious charges against him have not been disputed.

157. In so far as the respondent no.8 is concerned, he was charge-sheeted for the offences though he was pursuing public cause regarding discharge of water and had already been acquitted in the

matters. He has also been acquitted in the case of alleging breach of role of conduct of election. There are no criminal cases pending against him. He does not however, dispute that he was involved in several cases punishable under various provisions of the Indian Penal Code. Though other respondents have tried to place on record that they are involved in various social activities, they have not disputed that they are affiliated or involved or associated with the political parties in power in Maharashtra.

158. In our view, the said Sansthan Trust which is set up with the purpose of public cause having the properties worth crores of rupees owned by the said Trust and lakhs of devotees from all over India and also from some of the other countries is not for accommodating the politicians either because they are closed to the ruling party or having lost some election in past.

159. Supreme Court in case of ***Public and Private Properties, in Re vs. State of Madhya Pradesh & Ors.*** (supra) has held that where there is power coupled with a duty, laying down of positive directions to do a particular act in a particular way is justified in cases of (i) enforcement of fundamental rights; as also (ii) enforce the statute. In our view, this judgment of the Supreme Court would apply to the facts of this case. Though the said Act has conferred various powers upon the State Government coupled with a duty, the State Government has not followed the provisions of law while passing the resolution whereby appointing the respondent nos.3 to 14 as trustees of the Sansthan Trust.

160. Supreme Court in case of ***Chairman, Rajasthan State Road Transport Corporation and Ors. vs. Santosh & Ors.*** (supra) has held that

it is permissible for Constitutional Courts to issue directions if the law does not provide a solution of a problem as an interim measure, till the proper law is enacted by the legislature. The State Government has framed rules in the year 2013 relating to said Sansthan Trust. In our view there are no appropriate provision prescribed for the appointment of the trustees of the said Sansthan Trust in a fair and transparent manner. Be that as it may, the State Government has not been following the provisions of the said Act while appointing the trustees of the said Sansthan Trust though this Court has repeatedly issued various directions to the State Government in that regard.

161. Supreme Court in case of **Amarnarth Shrine** (supra) has held that where there is inaction by the executive, for whatever reason, the judiciary must step in, in pursuance of its constitutional obligation to provide solution in any case till the time the legislature addresses the issue. The absence of law and a vacuum or lacunae in law shall be supplied by judicial dictum.

162. Supreme Court in case of **Zuari Cement Limited** (supra) has held that where a statute prescribed a procedure to do any Act in particular manner, it has to be done in that manner and not in any other manner. In this case, the State Government has not followed the prescribed procedure under the said Act.

163. Supreme Court in case of **Jaipur Shahar Hindu Vikas Samiti** (supra) relied upon by the learned counsel for the respondent no.3 has held that the scope of Public Interest Litigation while dealing with the management of religious institutions is very limited. It is always better



not to entertain a public interest litigation simply on the basis of affidavits of the parties. The public trusts and religious institutions are governed by particular legislation which provide for a proper mechanism for adjudication of disputes relating to the properties of the trust and their management thereof. It is further held that when the interest of number of public can be protected or dispute can be adjudicated by mechanism created under a particular statute, the parties should be relegated to appropriate forum, instead of entertaining the writ petition filed as public interest litigation.

164. In our view, this judgment of the Supreme Court will not apply to the facts of this case. In any event, the State Government itself has repeatedly not followed the directions issued by this Court while appointing the trustees to the management of the Sansthan Trust and not expected to decide any grievance in respect of the appointment of the trustees in fair manner. The State Government in this case being a judge in its own cause, the interference of this Court in these circumstances is warranted. There is no dispute about the law laid down by the Supreme Court in case of **Jaipur Shahar Hindu Vikas Samiti** (supra) but the same is distinguishable on facts.

165. Supreme Court in case of **Swaraj Abhiyan & Anr.** (supra) has held that there is no jurisdictional bar, if conscience of the Court is pricked in a given case. Public interest litigation is not filed by the petitioner at the instance of political rival but has been filed in public interest. Supreme Court in case of **Kishore Samrite** (supra) relied upon by the learned counsel for the respondent nos.4, 6 to 9 and 13 laid down the guidelines of the Court in case there being abuse of process of law by

a litigant. It is held that whenever public interest litigation is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants. There is no dispute about the principles of law laid down by the Supreme Court in the said judgment. In this case, the petitioner has made out a case for interference of this Court in view of the illegalities committed by the State Government in appointing the respondents as trustees of the Sansthan Trust in violation of the provisions of the said Act and in total disregard to the directions issued by this Court. This Court cannot sit as silent spectator in these circumstances.

166. ***Supreme Court in case of Bhaskar Laxman Jadhav & Ors.*** (supra) has held that it is the duty of the litigant to disclose all material facts and the litigant cannot decide which facts are material and which are not. He must come to the Court with clean hands and disclose all material facts relating to his case. There is no dispute about this proposition of law laid down by the Supreme Court. The petitioner has disclosed sufficient material on record while seeking interference of this Court with the resolution passed by the State Government while appointing the respondents trustees of the Sansthan Trust.

167. This Court in case of ***Kiran Anandrao Pawar & Ors.*** (supra) relied upon by the learned counsel for the respondent no.12 has held that the public interest litigation is not usual litigation. It ought to be exceptional. If one PIL is pending, there is no reason or justification for a second PIL and from the same place and espousing the same cause and of same residents or citizens. In this case various PIL filed by various

persons impugning the action of the State Government while appointing the trustees of Sansthan Trust are entertained by this Court having found tenable in view of the State Government not following the directions issued by this Court in several judgments relating to the appointment of the trustees of the Sansthan Trust.

168. This Court by an order dated 30<sup>th</sup> March, 2012 in Public Interest Litigation No.27 of 2012 filed by Mr.Shailesh S.Dethe had granted interim relief admitting the said PIL. This Court after considering section 5 of the said Act held that it gives unbridled, unguided and unchanalised powers to the Government to appoint the committee consisting of not less than 15 members. Such unguided, unchanalised, unbridled powers lead to arbitrariness in exercise of the same at the hands of the authorities concerned. This Court observed that the State Government had not complied with the earlier order dated 30<sup>th</sup> April, 2010 passed by this Court while appointing the new committee which was subject matter of the said PIL.

169. This Court held that when power is vested with the authority, it must exercise the same for the public good. This Court expects the State Government to at least keep the God away while distributing public largesses. This Court also observed that there is no propriety in appointing the persons as trustees, against whom criminal cases are pending. This Court observed that in a non-transparent manner, ruling alliance had appointed members of the Committee so as to favour its members who have lost in political election and for accommodating kiths and kins of its leaders. The reconstituted committee would reveal that the chairman was the same and many of the members were either the same or

wherever they were replaced, such replacement was by close kiths and kins. This Court made a very strong observation that Court expects the State Government to at least spare the religious trusts in the matter of distributing public largesse.

170. Supreme Court in case of ***Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh & Others, (2011) 5 SCC 29*** held that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publication and such policy must be implemented/executed by adopting a non- discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy.

171. The Supreme Court held that the distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State. In our view, the principles laid down by the Supreme Court in case of ***Akhil Bhartiya Upbhokta Congress*** (supra) can be extended to the appointment of the trustees of the said Sansthan Trust by the State Government.

172. This Court had noticed that in last decades, all the appointments of the trustees of the said Sansthan Trust made by the ruling parties are based basically on political consideration and not on merits which is contrary to the principles laid down by the Supreme Court and this Court and in gross violation of the provisions conferring such power upon the State Government under the said Act. The State Government cannot be allowed to appoint trustees by accommodating or rehabilitating their own party workers or politicians when other impartial and meritorious persons who are qualified according to the conditions prescribed under the said Act are available.

173. Though this Court has repeatedly laid down such principles and has warned the State Government not to toe the line of the political masters by the State Government while appointing the trustees of the public trust having constituted in the large number of devotees and members of political while appointing trustees of the said Sansthan Trust, there has been latest act of favoritism on the part of the State Government while appointing these trustees on the board of the Sansthan Trust in violation of the principles laid down by the Supreme Court and this Court on this issue time and again.

174. In our view, the appointment of the trustees to such public trust has to satisfy the test of public interest by keeping the purpose and intent of creating such trust under the said Act for the betterment of and in the interest of large members of public devotees of Shri Sai Baba and not the private interest of the ruling Government to accommodate their party workers or politicians. The entire purpose and intent of creating such trust by the State Government under the scheme sanctioned by the

Court is thus ex-facie defeated for the political gains of the party in power.

175. This Court in the said order dated 30<sup>th</sup> March, 2012 passed in Public Interest Litigation No. 27 of 2012 has observed that the Committee of Principal District Judge who is the senior-most Judicial Officer in the District and the District Collector who is the head of the administration of that district are highly placed officers and would act in the interest of the trust. It is held that, it cannot be disputed that in the State of Maharashtra, whenever the chairman of religious trust is either the District Collector or Judicial Officer, the said trust is functioning in a very efficient manner. The developmental activities carried out by such trust headed by such officers in short period are commendable. Apart from that, when such highly placed officers head the trust, there is a least possibility of mal-practices being indulged into. This Court also made a reference in this respect to Tuljapur Devasthan Trust, District Osmanabad, Saptashrangi Devi Trust, Nashik, Mohata Devi Trust in Ahmednagar District.

176. Learned counsel for the petitioners placed on record the income of the said Sansthan Trust when the *ad-hoc* committee appointed by this Court was handling the affairs of the said Sansthan Trust as against the substantial fall in the income of the trust when the trust was in the management of the trustees appointed by the State Government. In our view, when the Shirdi Sansthan Trust who has not only devotees from all over world, but has large properties for the benefits of the large number of public including devotees, the management shall be in the safe hands. The trustees shall be appointed on merits obviously after

complying with the qualification criteria prescribed in the said Act. None of these principles laid down by the Supreme Court and this Court are complied with by the State Government while appointing the trustees by the impugned resolution. We expect that there would be appropriate amendment by the State Government, in the said Act to cast an obligation to appoint independent and meritorious trustees on recommendation of a committee preferably headed by a retired High Court Judge and other reputed and renowned members of public, having requisite qualification prescribed under the said Act and not because of their close connections with the ruling party of the State.

177. In our view in the facts of this case, reliance placed by the learned special counsel on section 9(2) of the said Act that the State Government has ample power to remove any person from the membership if it appears to the State Government that the member has incurred any of the disqualification is misplaced in view of the fact that the State Government in this case has not bothered to follow the principles laid down or the directions issued in series of earlier judgments on the powers and duties of the State Government on the appointments of the trustees of the said Sansthan Trust.

178. Insofar as the submission of learned special counsel that quorum required for a meeting of the Committee provided as eight under section 11(2) is concerned, the said provision speaks for itself. Though the resolution was passed by the State Government appointing the trustees whose appointments are subject matter of this petition as far back as on 16<sup>th</sup> September, 2019, the State Government did not bother to appoint the remaining member of trustees as prescribed under the said

Act till the arguments of these two Public Interest Litigations were over and the petitions were closed for orders.

179. Similarly, reliance placed by the learned special counsel on section 30 of the said Act to canvass that the State Government has ample power to suspend or rescind any resolution or order of the Committee of the Sansthan Trust or even to dissolve the Committee and to constitute another Committee is concerned, reliance placed on the said provision is misplaced in the facts of this case. The State Government has committed vast illegalities in appointing these trustees by disregarding the principles laid down by this Court in a series of judgments. Learned counsel for the petitioners are right in their submission that in the facts of this case, the State Government was not expected to exercise its power to suspend or rescind the impugned resolution or to dissolve the Committee. In the facts of this case, the judgment of the Supreme Court in case of **Jaipur Shahar Hindu Vikas Samiti** (supra) relied upon by the learned special counsel for the State thus would not advance the case of the State Government.

180. It is an admitted position that various resolutions passed by the State Government appointing the persons as trustees on the said Sansthan Trust are not only in violation of the principles laid down by this Court but also in breach of the provisions of the said Act. These appointments are challenged by the members of public. Large number of interim applications were required to be filed by various parties including the said Sansthan Trust causing expenditure of substantial amount by the said Sansthan Trust to defend or to file such proceedings arising out of



the illegal appointments of the trustees of the said Sansthan Trust made by the State Government. If the State Government would have appointed independent trustees and not the politicians who are having close connection with the ruling party, the said Sansthan Trust which is a public Trust and is a custodian of public money and properties would have saved huge amount of public money spent on unnecessary litigations.

181. In our view, the petitioner has made out a case for interference with the impugned resolution passed by the State Government.

182. We accordingly pass the following order :-

- (a) The impugned order dated 16<sup>th</sup> September 2021 passed by the Principal Secretary, Law and Judiciary Department, Mantralaya, Mumbai appointing the respondent nos.3 to 14 as Members of Managing Committee of Shree Sai Baba Sansthan Trust, Shirdi Taluka Rahata, District Ahmednagar is quashed and set aside.
- (b) We direct the State Government to constitute a new “the Shree Sai Baba Sansthan Management Committee” within a period of eight weeks from today in accordance with the provisions of section 5 of the Act of 2004 and in line with the principles laid down by this Court in the judgments referred to aforesaid.
- (c) We direct that, until the State Government constitutes a new Committee, the affairs of the “Shree Sai Baba Sansthan Trust, Shirdi” shall be supervised, monitored and looked after by a committee consisting of :

- (A) The Principal District Judge, Ahmednagar.
- (B) The Collector, Ahmednagar.
- (C) The Chief Executive Officer of Shree Sai Baba Sansthan Trust Shirdi.
- (d) The Principal District judge, Ahmednagar shall be the Chairman of the Committee and rest of the two officers shall be the Members of the Committee. The Management Committee shall hold meetings as per the agenda prescribed and as per the requisition issued by the Principal District Judge, Ahmednagar.
- (e) The *ad-hoc* committee appointed by this Court would continue till a new management committee is constituted by the State Government in the manner prescribed aforesaid.
- (f) The *ad-hoc* committee appointed by this Court is directed not to take any major financial decision in respect of the management of the affairs of the Sansthan without permission of this Court.
- (g) Public Interest Litigation Nos. 98 of 2021 and 100 of 2021 are allowed in the aforesaid terms. No order as to costs.
- (h) The amount deposited by the petitioners, if any, in these Public Interest Litigations shall be returned to the petitioners by the Office within two weeks from today.

**S.G. MEHARE, J.**

**R.D.DHANUKA, J.**

183. At this stage, some of the respondents pray for stay of the operation of the order passed by this Court today which is vehemently opposed by Ms.Talekar, learned counsel for the petitioners.

184. Application for stay of the operation of this order is rejected.

185. Civil application pending, if any, stands disposed off in view of disposal of these Public Interest Litigations.

**S.G. MEHARE, J.**

**R.D.DHANUKA, J.**