

(1999) 08 GUJ CK 0030

In the Gujarat High Court

Case No : First Appeal No's. 297 and 298 to 300 of 1977

Abdulrahim Afazalbhai Kadiawala

APPELLANT

Vs

Charity Commissioner

RESPONDENT

Date of Decision : 31-08-1999

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 50, 55
Waqf Act, 1954 — Section 19

Citation : (2001) GLR 285

Hon'ble Judges : M.S. Shah, J

Bench : Single Bench

Advocate : K.H. Kaji, for First Appeal Nos. 297 and 298 of 1977, for the Appellant; V.M. Pancholi, AGP for Charity Commissioner for Respondent No. 1, A.T. Thakore, for Respondent No. 1, Manisha Lavkumar, for Respondent Nos. 3 and 5 and M.C. Shah, for the Respondent

Judgement

M.S. Shah, J.—These four appeals raise common questions of law and facts regarding sanction of the Scheme dated 17-9-1973 framed by the learned Joint Charity Commissioner, Ahmedabad, in respect of the public trust known as Hazrat Pir Mohmad Shah Darga Sharif Trust, Ahmedabad (hereinafter referred to as the Trust) as modified by the City Civil Court, Ahmedabad by its judgement and order dated 17-1-1977 in Misc. Application Nos. 660, 679, 699 and 478 of 1973.

2. Hazarat Pir Mohammad Shah Darga Sharif popularly known as "Piramshah Roza" is a famous and ancient dargah situate at Pankornaka in the city of Ahmedabad. The Trust, designated and known by the name of Hazarat Pir Mohmad Shah, is registered under the Bombay Public Trusts Act, 1950. The trust has properties both movable and immovable. Hazarat Pir Mahmad Shah was a renowned Muslim saint who lived in Ahmedabad in the first half of the 18th century. He died in 1750 A.D. After his death his disciples constructed a Roza at the place where Pir Mohmad Shaheb was burried . The Dargah had modest income and with passage of time it acquired prestige and at present has a very

large number of devotees and also immovable properties which are managed by a committee called the General Committee consisting of 22 persons at present. The composition of the trustees was decided by Written Constitution framed in 1888 A.D. by a body of persons known as Murids. Pir Shaheb had a large following during his life time and out of his followers he initiated about 100 persons as his disciples and those initiated by him during his life time came to be known as the Murids. After his death children of original Murids also became Murids by a simple ceremony resorted to by the Murids by taking their children after 40 days and within a year of their birth, to Pir Shaheb Dargah and placing them at the feet of the Dargah. The doors of the Dargah are then closed for 2 to 3 minutes. The last available list of Murids was prepared in 1960 showing that there were about 560 families of Murids and most of them have settled in Ahmedabad, Kadi and Viramgam.

3. The General Committee of 23 members, under the Constitution of 1888, consisted of the President, 10 members out of Ahmedabad Murids, 10 members out of Kadi Murids and 2 members from Viramgam Murids. It is stated that the aforesaid practice is being followed since 1888. The trustees are appointed for their life time and in case of vacancies arising, new members are appointed by the General Committee from amongst the murids of the concerned constituency i.e. from Ahmedabad, Kadi or Viramgam, as the case may be. One of the Murids would be elected as a President. Earlier the practice was that upon election of the President, one more Murid would be appointed on the Committee making it a total of 23 members including the President. It is stated at the Bar that the said practice is discontinued and only 22 members remain in the Committee including the President.

4. On the Wakf Act, 1923 coming into force, the Deputy Charity Commissioner, initiated suo motu inquiry u/s 19 of the Act. In the said inquiry the President of the Committee showed his willingness to be registered as a public trust and therefore, it came to be registered as a public trust. In the prescribed form the objects of the Trust were shown as under:

"In accordance with the prevalent convention to run the Dargah, Masjid, Kutubkhana and Madressas and to manage properties of the Dargah and to perform all ceremonies and to do corelated work and to celebrate festivals and to spend for religious and secular education."

In the application form it was stated that the mode of succession to trusteeship is that whenever a vacancy occurs the General Committee appoints from amongst the Murids a fit and suitable person. In the said proceedings some Muslim-institutions appeared and contended that the Trust could not be said to be for the benefit of the Murids alone and could not be managed by the Murids alone. The learned Charity Commissioner, however, observed that he was only registering public trust and if the parties were aggrieved about the mode of succession to the trusteeship and various other practices followed by the Committee or as regards the question of beneficiaries, they should take

appropriate legal steps. The Committee which had prior to 1954 taken up a stand that it was a trust for the benefit of Murids only took the stand at the aforesaid inquiry that the public trust was for the benefit of all Muslims but still stuck to their stand that this was a public trust in which only the Murids had the right to manage and administer the trust and the trust properties. There were certain disputes amongst Murids also and ultimately in the year 1961 the Committee moved the Charity Commissioner to frame Scheme u/s 50 of the Bombay Public Trusts Act for the aforesaid Trust.

5. The learned Charity Commissioner after issuing public notice and after hearing a large number of individual Muslims, framed the Scheme on 17-9-1973. The main features of the Scheme, so far as they are relevant for the present appeals, are as under:

Clause 6 of the Scheme provides for the objects of the trust as under:-

- "(i) To maintain and run the Dargah and the Masjid of the Trust.
- (ii) To perform religious ceremonies in the Roza and to celebrate "Uras" and other festival according to prevalent religious practice.
- (iii) To maintain and run the Kutubkhana of the trust.
- (iv) To establish, maintain and run Madressas for imparting knowledge of Arabic and teaching of Kuran and other religious scriptures.
- (v) to spend for (a) religious education and (b) secular education, that is to maintain and run the primary school at Kadi and to give scholarships and books to the poor and deserving students."

Clause 7 provides for vesting of trust properties. Clause 8 provides for number of Trustees, qualifications for trusteeship and the Board of Trustees as under:

8. Number of trustees, qualifications for trusteeship and Board of Trustees:

- (a) The number of trustees shall be not less than 16 and not more than 32.
- (b). Any Muslim who is otherwise a fit and suitable person for being appointed as trustee of a public trust and is not less than 26 years of age shall be qualified for appointment as a trustee of this trust.
- (c). There shall be a Board of Trustees consisting of not less than 16 and not more than 32 trustees for the management and administration of this trust. If fit and suitable persons from amongst the Murids are available, not less than 3/4th of the total number of trustees on the Board of Trustees shall be from the Murids and as far as possible the trustees from the Murids of Ahmedabad, Kadi and Viramgam shall be in the ratio of 3:3:1.

Clause 9 provides for the First Board of Trustees comprising of 22 persons - 10 out of Ahmedabad Murids, 10 out of Kadi Murids and 2 out of Viramgam Murids. Clause 9(b) provides that the Charity Commissioner may at any time appoint

additional trustees on the first Board of Trustees (but the total number of trustees should not exceed 32) if he considers it necessary and expedient to do so.

Clause 10 provides for the term of the Board of Trustees and reads as under:

10. Term of the Board of Trustees:

The term of the first Board of Trustees under this Scheme shall be upto 31-12-1976 . The term of every subsequent Board of Trustees constituted hereafter shall be for six years.

Since the term of the Board of Trustees is fixed as 6 years, clause (11) empowers the Charity Commissioner to appoint a new Board of Trustees prior to the expiry of the term of the outgoing Board of Trustees. While the outgoing trustees were eligible for re-appointment, all the persons offering themselves for trusteeship had to give their application in writing . The Charity Commissioner shall, on receipt of such applications or on his own motion, after hearing the trustees and after making such inquiry as he thinks fit, appoint a new Board of Trustees subject to the provisions contained in clause (8) of the Scheme.

Clause (12) provides for appointment of new trustees when casual vacancies arise. The said clause provides that any vacancy could be filled in by the existing trustees by a unanimous vote subject to the provisions contained in clause (8) and if such an unanimous resolution was not passed within three months from the date of occurrence of the vacancy, it would be lawful for the Charity Commissioner to make appointment subject to the other provisions of the Scheme.

Clause (19) provides for quorum of at least 1/3rd of the total strength of trustees at any meeting of the trustees.

Clause (20) provides that every resolution submitted to the meeting of the Board of Trustees (other than the appointment of a new trustee) shall be decided by a majority of votes of the members present at such meeting and voting on such resolution or question. Every member shall have one vote but in the event of an equality of votes, the President of such meeting shall have a second or casting vote.

Clauses 24 and 25 provide for appointment of the Managing Committee and its powers to look after and supervise day to day management of the trust ; to give trust properties on rent and arrange to collect rents, etc. and to keep the trust properties in proper repairs; to make necessary arrangements for celebration of Uras and other festivals, to look after management of schools and other institutions run by the Trust. The managing Committee is also empowered to employ the necessary staff and to fix their pay and salaries with requirement to obtain sanction of the Board of Trustees in respect of certain employees.

Clause (32) empowers the Board of Trustees to frame rules and regulations for

the administration and management of the trust and trust properties and also to amend such rules and regulations provided that such rules and regulations shall not be inconsistent with any of the provisions of the Scheme or the provisions of the Public Trust Act, 1950 or the rules framed thereunder.

Clause (33) provides for amendment of the scheme. The Board of Trustees or any two or more persons interested in the trust have right to apply to the Charity Commissioner for amending the Scheme. The Charity Commissioner may also suo motu amend the Scheme after giving notice to the Board of Trustees.

6. For challenging the aforesaid Scheme or certain clauses thereof the above-numbered four Applications came to be filed before the City Civil Court, Ahmemdabad, by (i) 4 Murids of Ahmedabad including the President of the Trust; (ii) 2 Murids of Kadi; (iii) 2 Murids of Viramgam and (iv) a few Muslim persons who are not Murids, respectively.

7. At the hearing of the aforesaid Applications the following major contentions were raised before the City Civil Court, Ahmedabad, especially on behalf of the Murids :

(1). Non-murids should not have been associated with the management of the Trust.

(2). No one except Murids have any right over the 100 rooms situated within the compound of the Roza.

(3). The object referring to imparting secular education should not have been confined to running of primary school at Kadi only. The grant of medical aid and giving of assistance to the educational institutions should also have been covered under the objects of the Trust.

(4). The power to appoint the subsequent Board of Trustees and the virtual power to fill up the vacancies occurring on the Board of Trustees should not have been given to the Charity Commissioner.

8. The City Civil Court, Ahmedabad rejected the first, second and fourth contentions and partly accepted the third contention by observing that imparting of secular education need not be confined to running of primary school at Kadi and the relevant object clause was accordingly modified as under:

"To spend for (a) religious education and (b) secular education i.e. running and maintaining of schools, colleges and hostels at all levels and to give scholarships and books to the poor and deserving students."

The other provisions of the Scheme at Ex.338 were confirmed by the judgment and order dated 17-1-1977. It is against the aforesaid common judgment that the present four First Appeals have been filed.

9. At the hearing of these appeals Mr.K.H.Kazi, learned Senior Counsel has appeared for the appellants and Ms.Manisha Lavkumar, learned counsel has

appeared for the supporting respondents challenging the judgment and order of the City Civil Court, Ahmedabad, in so far as the first and fourth contentions were rejected by the City Civil Court. They have also pressed that the objects clause should also include medical aid and grant to educational institutions but have not pressed the second contention except in the modified form referred to hereinafter.

It is also brought to the notice of the Court that under the Wakf Act, 1995, Wakf Board is appointed for the State of Gujarat, but the Wakf Board is dissolved and that action is under challenge and that there is ad interim stay against the constitution of new Wakf Board. Hence, the communication from the Charity Commissioner that henceforth the trust should approach the Wakf Board cannot be acted upon.

10. Before proceeding to narrate and deal with the contentions urged on behalf of the appellants, it is necessary to state that during pendency of the Misc.Civil Applications, operation of the scheme was stayed by the City Civil Court and while admitting these appeals, this Court had also passed order dated 7-7-1977 in Civil Application No.1669 of 1977 granting interim stay of operation of the scheme framed by the learned Joint Charity Commissioner and modified by the City Civil Court, Ahmedabad subject to the following conditions:

(1). not less than 50% of the funds earmarked for the purposes of education should be spent for non-Murids;

(2) 100 rooms constructed in the premises of the trust properties should remain open to the entire body of beneficiaries and should not remain confined to the use of the Murids alone.

While passing the aforesaid order this Court also recorded that there was no serious charge regarding misfeasance or nonfeasance against the trustees who were in management all these years. It is stated at the Bar that barring a few exceptions the same persons have continued as trustees of the Trust during this period of 22 years and no allegation of misfeasance, nonfeasance or malfeasance is made against them.

It is further submitted by Mr.Kazi and Ms. Manisha Lavkumar learned Counsel for the appellants and supporting respondents that the aforesaid two conditions may be incorporated as a part of the Scheme but there should not be any interference with the rights of the trustees to administer and manage the trust and its properties and that is the gravamen of the challenge to the Scheme framed by the learned Charity Commissioner and sanctioned by the City Civil Court, Ahmedabad.

11. It is contended by Mr.Kazi that since the learned Joint Charity Commissioner as well as the learned Judge of the City Civil Court have accepted the case of the appellants that the Murids are descendants of the 100 followers of Pir Sahab (consisting of about 500 families) and each member of these families had also

become Murids, that the place where Pir Saheb was buried and Dargah or the Roza was constructed was granted by a Murid; that since the death of Pir Saheb the Murids have been worshiping the Dargah and they by their honest and efficient management have expanded the properties of the Dargah from a small estate to a very big estate, the present income (in 1997-98) of which was Rs.14 lakhs approximately with a surplus of Rs.3.67 lakhs and also in view of the fact that all these years the management has remained with the Murids and no non-murids have ever been associated with the management of the Trust, the learned Charity Commissioner grossly erred in interfering with the rights of the Murids to manage the Trust and its properties by making inroads on two fronts - one by requiring the entry of non-murids by providing that 1/4th of the trustees shall be from amongst non-murids and secondly by assuming the power of appointment of the trustees on the Board of Trustees upon expiry of the term of the present trustees and also for appointing trustees when vacancy occurs if the existing trustees do not unanimously fill up the vacancy within a period of three months from the date of occurrence of the vacancy. Mr.Kazi has seriously challenged the premise on which the learned Joint Charity Commissioner as well as the learned City Civil Judge proceeded that once it is conceded that Muslims at large are the beneficiaries, the right of the Muslimis at large to participate in the management cannot be denied. It is submitted that the right of management of the Murids cannot be whittled down only because the beneficiaries are a larger class of Muslimis including the non-murids also.

Reliance is placed on the decisions in Ramkaran Singh and Others Vs. Sm. Parbati Kuer and Others, ; MD. ISMAIL V. AHMED MOOLLA AIR 1916 PC 132; Mahant Dharam Dass Vs. Sadho Prakash and Others, , Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, and CHARITY COMMISSIONER V. STATE OF BOMBAY (NOW GUJARAT) 1993(1) GLH 94. The aforesaid decisions are relied upon in support of the contention of the appellants that in absence of any allegation of mismanagement or misappropriation the Charity Commissioner has no power to interfere with the internal management of the Trust so as to override the practice prevalent over last 100 years. It is submitted that the Scheme providing for inclusion of the non-murids on the Board of Trustees of the trust would destroy the present Board of Trustees which is one cohesive group attached to Pir Saheb in whose memory the Dargah was constructed.

12. On the other hand Mr.M.C.Shah, learned Counsel for the Sunni Wakf Committee has contested the aforesaid cotentions and has submitted that the Charity Commissioner as well as the City Civil Court have found that on account of the exclusive management of Murids the benefit of the trust properties and the income derived therefrom have been given by and large to the Murids only. Since Muslims at large are the beneficiaries of the Trust, non-murids must also have a say in the management of the trust. It is submitted that Murids do not constitute a separate religious sect. From religious point of view there is no distinction between the Murids and non-murids. Still in matters of providing

meals, Tabuk (prasad), scholarships, right to occupy the rooms appurtenant to the Dargah on the Urs days, such benefits and facilities have so far been given to the Murids and non-Murids have been excluded only on account of non-association of the non-murids with the affairs of the Trust and trust properties.

13. In rejoinder Mr.Kazi submitted that apart from the fact that there are no allegations of mismanagement and misappropriation against the present trustees, even during the period of last 22 years i.e. during pendency of these appeals the trustees have faithfully complied with the conditions imposed by this Court in the interim order dated 7-7-1977 and no non-murids have made any grievance about any discrimination in the matter of giving benefits by the Board of Trustees.

14. Before dealing with the contentions of the learned counsel for the parties, it is necessary to refer to the legal principles applicable in such cases.

As held by the Privy Council in its decision in MD. ISMAIL V. AHMED MOOLLA AIR 1916 PC 132 and as further enunciated by the Apex Court in the decision in Swami Paramatmanand Saraswati and Another Vs. Ramji Tripathi and Another, and also by this Court in CHARITY COMMISSIONER V. STATE OF BOMBAY (NOW STATE OF GUJARAT) 1993(1) GLH 99 where no mismanagement or embezzlement is shown the Court should so frame the scheme as to meet the exigencies of the case without unduly interfering with the powers of the committee, caste or the public or impairing the authority of a person carrying on the management. In settling a scheme, the Court or the Charity Commissioner, is entitled to take into consideration -

- (1) the wishes of the founder of the trust,
- (2) the past history of the institution,
- (3) the way in which the management has been carried out heretobefore, and
- (4) the other existing conventions that may have grown up since its foundation.

In drawing up a scheme the Court must not encroach upon the rights and prerogatives of the existing management and the institutional trust must be respected subject to the safeguard that the sect and the body of the worshippers for whose benefit it was set up have the protection of the Court against their property being the subject of abuse, speculation and waste.

15. Having heard the learned Counsel for the parties it appears to the Court that in view of the fact that non-murid Muslims are also beneficiaries of the trust activities, some participation of the non-murids in the management of the trust affairs and its properties would not only be permissible but also be justified. At the same time applying the principles laid down in the aforesaid authorities, it appears that , the Scheme as framed by the Joint Charity Commissioner and sanctioned by the City Civil Court goes too far in not only providing 1/4th number of the trustees on the Board of trustees being appointed out of non-

murids but also in conferring on the Charity Commissioner the power of appointment on the new Board of Trustees upon expiry of the term every six years.

In view of the fact that no allegation of mismanagement or misappropriation has been made against the existing trustees or any one of them and that the only ground on which the non-murids are sought to be inducted into the Board of Trustees is that in the past most of the benefits were given to the Murids only and in view of the concession being made by the learned Counsel for the appellants that the conditions imposed by this Court in the interim order dated 7-7-1977 may be made a part of the Scheme, it appears to the Court that the power to make appointment of all the Trustees upon expiry of the term every six years need not be conferred upon the Charity Commissioner or any outside agency.

16. After the matter was heard for sometime it was indicated to the learned counsel for the appellants that in order to take care of the apprehensions voiced by the learned Charity Commissioner in his order and also to take care of the observations made by the learned Judge in the judgement under appeal that if the present arrangement continues all the benefits may go to murids and non-murids may be excluded from the benefits even in future, some arrangement should be made so that the Charity Commissioner or the appropriate statutory agency under the Wakf Act can be informed about compliance with the conditions which may be imposed by this Court, and therefore, the appellant should suggest an alternative. In response to the said suggestion, Mr Kazi has submitted the following:-

"1. The ratio of the members in the Board of Trustees may be 10:10 : 2:2 = 24. Thus, the strength of the total members in the board be restricted to 24 members i.e. 10 from Ahmedabad, 10 from Kadi, 2 from Viramgam Murids and 2 Observers appointed by the learned Charity Commissioner.

2. The existing Board of 22 members to continue under the Scheme.

3. The learned Charity Commissioner to nominate two persons from non-murids. The person should be of good repute, educated and preferably non-political.

4. Non-murids should have status, not as trustees but as observers/invitees only, with no right to vote at trust meetings.

5. The term of Trustees and observers shall be six years and they shall be eligible for reappointment.

6. Half the number of trustees from Ahmedabad, Kadi, Viramgam as well as the one observer appointed by the Charity Commissioner to retire every three years. Within 4 months it shall be decided amongst Murid Trustees who amongst them shall retire after 3 years.

7. New Murid Trustees to be appointed by the continuing Murid Trustees. New

observer to be appointed by the learned Charity Commissioner."

17. Mr M.C. Shah, learned counsel for the Wakf Committee submits that the two persons to be appointed by the learned Charity Commissioner or the Wakf Board, as the case may be, should not be appointed as observers but, they must also be permitted to participate in the management of the Trust otherwise the very purpose of appointing non-murids will be defeated.

18. Having heard the learned counsel for the parties it appears to the Court that since out of the proposed Board of Trustees comprising of 24 persons in all, as many as 22 trustees will be Murids and only 2 non-murids are going to be appointed by the learned Charity Commissioner/Wakf Board, no prejudice will be caused to the right of the existing management to manage the affairs of the Trust and the purpose of introducing two non-murids (i.e. to ensure that non-murids who are also admittedly beneficiaries of the trust get the benefits) will be served. Accordingly, the number of trustees in the Board of Trustees shall be as under:-

10 Murids from Ahmedabad 10 Murids from Kadi 2 Murids from Viramgam 2 Non-murids to be appointed by the Charity Commissioner or the Wakf Board ---- 24

As provided by the learned Charity Commissioner himself the existing Board of 22 members shall continue. The term of the trustees shall be 6 years and they shall be eligible for reappointment. Half the number of trustees from Ahmedabad, Kadi and Viramgam as well as half the trustees to be appointed by the Charity Commissioner/Wakf Board shall retire every three years and be eligible for reappointment. In order to decide as to which half of the existing trustees shall retire within three years, the existing trustees shall decide within about four months from today as to who out of them shall retire. The said decision may be taken either by consensus or by draw of lots. The remaining trustees shall continue for a period of six years and upon expiry of their term, their vacancies shall be filled in subject to their being eligible for reappointment. There shall also be women's representation in the categories of Murid trustees from Ahmedabad and Kadi, which aspect will be adverted to a little later.

19. As regards the question as to who should appoint the Murid trustees, the learned Charity Commissioner provided for the mode of election by Murids from amongst themselves. The submission of the learned counsel for the appellants is that in respect of the mode of election, the existing trustees may themselves be permitted to make appointment of murid trustees, otherwise, the murids who at present constitute a cohesive united group will be unnecessarily divided into factions which will hamper the smooth functioning of the Trust. In view of the fact that there are no complaints made by the learned Charity Commissioner against the existing trustees and also in view of the fact that at present the trustees have been able to show surplus income and in view of the aforesaid decisions of the Privy Council in MD ISMAIL V. AHMED MOOLLA AIR 1916 PC 132

and the decisions in Ramkaran Singh and Others Vs. Sm. Parbati Kuer and Others, , Mahant Dharam Dass Vs. Sadho Prakash and Others, and also the decision of this Court in CHARITY COMMISSIONER V. STATE OF BOMBAY (NOW STATE OF GUJARAT) 1993 (1) GLH 94 the Court considers it to be more prudent and pragmatic to introduce changes in the system of management of the Trust gradually rather than by one stroke of pen. Hence, continuing Murid trustees, by a special majority, shall be permitted to make appointments of the incoming trustees. It is necessary to provide for a special majority as only 11 continuing trustees will be appointing another 11 incoming trustees, and since elections are sought to be avoided with a view to avoiding factionalism, the trustees must show a fair measure of consensus rather than make appointments by a simple majority. The Competent Authority under the relevant law looking after the public trusts of Muslims shall observe the performance of the Trust under the scheme being modified by this Court as per this judgement for at least six years from now before considering whether any changes should be proposed in the Scheme. It is only if the mode of appointment as being provided in the Scheme being sanctioned by this judgement does not work satisfactorily that the question may be considered whether the mode of succession should be changed or not.

20. As far as the appointment of trustees by the Competent Authority from amongst non-murids is concerned, the Competent Authority shall consider that the appointees must be persons of good repute, educated and believers in Sir Pir Mohammed Saheb and the appointees should not belong to a political party. The Competent Authority shall also consider that out of the two non-murid trustees one person should be a person preferably residing in the vicinity of the Dargah/ Madressa/Rooms so that non-murids may be in a position to approach such a nominated trustee with ease, and another non-murid trustee should be a woman having experience in the field of education so that the cause of women's education gets the impetus it deserves. This Court has partly taken that care in the matter of appointment of Murid trustees by providing for at least two women murid trustees. The justification for these provisions is not far to seek-women constitute at least fifty per cent of the beneficiaries and most of them have been lagging behind for lack of secular education. The case for increasing their participation in the management of the Trust can be considered in future.

21. Coming finally to the question of objects of the Scheme, the learned Charity Commissioner as well as the learned Judge of the City Civil Court have held that the object of medical relief would not be covered by the objects of the Trust as originally contemplated by the settlors. In this connection, the learned counsel for the appellants has submitted that the Trust has surplus income which can be spent on medical relief for the beneficiaries of the Trust. In the year 1997-98 income from the rented property was Rs.9.27 lakhs and the total income was Rs.14 lakhs. After deducting the expenditure the surplus income was Rs.3.67 lakhs. It is submitted that looking to the economic condition of the beneficiaries in general, a large number of beneficiaries require medical aid. The learned counsel for the appellants has relied upon the Doctrine of Cypres and the

decisions of Privy Council in AIR 1948 25 (Privy Council) and also of the Supreme Court *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, .

Mr M.C.Shah and the learned Assistant Government Pleader have no objection if this object of medical relief is also added to the objects of the Trust as it is not inconsistent with any of the existing objects of the Trust.

22. Having considered the submissions made by the learned counsel for the parties and also by the learned Asst. Government Pleader and in view of the provisions of Section 55 of the Bombay Public Trusts Act, 1950 and the aforesaid decisions, it appears to the Court that since health and education are considered to be two major parameters of Human Development Index, if the object of medical relief is also added to the existing objects of the Trust, there would be no illegality or impropriety. The trustees shall consider whether there should be a separate sub-committee for taking decisions in the matters of grant of medical relief to beneficiaries in individual cases.

23. Looking to the fact that medical aid was not one of the objects of the Trust originally provided for and that the same is being added as per this judgement and also that the cause of women's education is required to be given some impetus as pointed out earlier, this Court considers it to be just and proper to provide for certain maximum/minimum limits on the expenditure for different activities of the Trust. That will also necessitate redrafting of the existing objects nos.(iv) and (v) of the trust in the Scheme under challenge.

O R D E R

24. In view of the above discussion, the following order is passed:-

I. The following shall be added after sub-clause (a) in Clause 4 of the Scheme giving definitions :-

(aa) Unless repugnant to the context, in this Scheme the expression "the Competent Authority" shall mean the authority empowered by or under any law for the time being in force to look after the public trusts of Muslims, which may be the Gujarat State Wakf Board or its delegate or the Officer vested with the powers of the Board.

II. The objects clause of the Scheme shall stand modified as under:-

(a) Sub-Clauses (iv) and (v) of clause 6 shall be substituted by the following sub-clauses :-

"(iv) To spend for religious education:-

To establish, maintain and run Madressas for imparting knowledge of Arabic and teaching of Quran and other religious scriptures and to spend for religious education."

"(v) To spend for Secular education:-

to maintain and run the primary schools at Kadi and also to establish, maintain and run and/or to assist institution/s running, - schools, colleges and Hostels at all levels and to give scholarships and books to the poor and deserving students including girls and women and to encourage secular education amongst girls/women by establishing, and/or entering into arrangements with institution/s running, schools/colleges for girls/women and/or by any other appropriate means."

(b) The following object shall be added as object no.(vi) in Clause 6:-

"(vi) to spend for medical aid and assistance to the beneficiaries of the Trust."

(c) The following shall be added after Clause 6 as clause 6A:

6A For the various objects the Trust shall observe the following limits on expenditure:-

(i) NOT MORE THAN 60% (NOT MORE THAN sixty percent) of the income of the Trust shall be spent on the first four objects taken together and on maintenance of the properties of the Trust (other than the properties exclusively used for secular education or for medical aid and assistance);

(ii) NOT LESS THAN 25% (NOT LESS THAN twenty five percent) of the income of the Trust shall be spent on object no.(v) i.e. for secular education including education for girls and women. 50% of such expenditure i.e. not less than 15% of the total income of the Trust shall be spent for education of non-murids.

(iii) NOT MORE THAN 15% (NOT MORE THAN fifteen percent) income of the trust shall be spent for medical aid and assistance to the beneficiaries of the Trust.

Provided that the 100 rooms constructed in the premises of the Trust properties shall remain open to the entire body of beneficiaries and shall not remain confined to the use of the Murids alone.

Provided further that no variation in the aforesaid limits of expenditure for any particular object shall be made unless a Resolution, specifying the extraordinary situation warranting the need for variation and the specific activity required to be undertaken and the particular amount required to be expended, is passed by three-fourth majority of the total number of existing trustees (not merely of the trustees present at the meeting and voting) of which at least one is a non-murid appointed by the Competent Authority (as defined by clause 4(aa) of this Scheme and except with the prior approval of the Competent Authority for such variation.

III. Clauses 8, 9 (b), 10, 11 and 12 of the Scheme regarding number and appointment of trustees shall be substituted as under:-

Clause 8 shall read as under:-

"Clause 8 Number of trustees, qualifications for trusteeship and Board of Trustees:

(a) The number of trustees shall be not less than 12 and not more than 36. To start with, the number of trustees shall be 24. It shall, however, be open to the Board of Trustees to increase the number to 36 with the previous sanction of the Competent Authority.

(b) Any Muslim who is otherwise a fit and suitable person for being appointed as trustee of a public trust and who possesses the educational qualification of at least S.S.C. Pass and is not less than 25 years of age and is not a member of any political party shall be qualified for appointment as a trustee of this Trust.

(c) There shall be a Board of Trustees consisting of 24 trustees for the management and administration of the Trust (subject to the number of the trustees being increased to 36 as stated above). If fit and suitable persons from amongst Murids are available, out of every 12 trustees the ratio of the trustees shall be 5:5:1:1 as under:-

5 Trustees from Ahmedabad Murids 5 Trustees from Kadi Murids 1 Trustee from Viramgam Murids 1 Trustee from Non-Murids -- 12 --

Provided further that from out of the murid trustees, there shall be at least one woman trustee from Ahmedabad and at least one woman trustee from Kadi. If any murid woman possessing the eligibility criteria in sub-clause (b) hereinabove and willing to be a trustee is not available, a non-murid woman from the concerned city/town shall be appointed as a trustee by the Competent Authority.

Clause 9

Sub-Clause (a) of Clause 9 appointing 22 trustees on the First Board of Trustees shall be renumbered as sub-clause (b) of 9 with the names mentioned hereafter.

The following shall be inserted as sub-clause (a) of Clause 9 :-

"9 (a) Notwithstanding anything contained in Clause 8 or in Clause 10 of this Scheme, the First Board of Trustees is constituted with effect from 1-1-2000 and shall have -

(i) 22 trustees as named in sub-clause (b) of this Clause. (as renumbered)

(ii) 2 non-murid trustees to be appointed by the Competent Authority as per sub-clause (c) of this Clause (as renumbered) and

(iii) 2 additional murid trustees to be appointed as per sub-clause (d) of this Clause.

9(b) Names of Trustees:-

I. Ahmedabad

1. Dr Mohmed Habib Md. Sadiq Kakiwala, President

2. Mohmed Shafee Abdul Rahim Maniar, Chairman

3. Abdul Rahim Rehman Kamkoriwala
4. Anver Ahmed Mohamed Miya Valiulla
5. Abdul Kadar Abdul Rahim Marfatia
6. Muzzmmil Abdul Latif Valiulla
7. Mohmed Habib Abdul Nabi Narmawala
8. Amaluddin Mohmed Habib Valiulla
9. Abdul Razak Abdul Kadar Kakiwala
10. Rasulmiya Husenmiya Shaikh

II. KADI

1. Abdul Rehman Rasulmiya Bhoira
2. Rasulmiya Husenbhai Bedawala
3. Mohmed Iqbal Abdul Kadar Manasawala
4. Rasul Miya Mohmed Umer Azazi
5. Mohmed Yahya Husenbhai Azazi
6. Mohmed Ilyas Mohmed Siddiq Mithawala
7. Abdul Rehman Mohmed Husen Makhiawala

III. VIRAMGAM

1. Mohmed Usman Abdul Kadar Vhora
2. Gulam Mohiuddin Abdul Majid Mulla

Vacancies in the office of 3 Murid Trustees of Kadi shall be filled by the existing 19 Trustees as per the provisions of Clause 11 of the Scheme, by 31st December 1999.

Sub-clause (b) of Clause 9 shall be renumbered as sub-clause (c) of Clause 9 and stand substituted by the following :-

9(c) The Competent Authority shall appoint two non-Murid trustees on the First Board of Trustees by 31-12-1999, in the manner provided in Clause 11 of this Scheme.

The following shall be added as sub-clauses (d) and (e) :-

9(d) 2 murid women trustees (one from Ahmedabad and one from Kadi) shall be appointed by a simple majority of the existing trustees by 31-12-1999 for the period upto 31-12-2002. Such murid women trustees shall be eligible for reappointment with effect from 1-1-2003 and thereafter.

9(e) All the trustees on the First Board of Trustees shall be eligible for reappointment upon expiry of their respective terms.

Provided that on and from 1-1-2003, there shall be only 24 trustees on the Board of Trustees, subject to the provisions of sub-clause (a) of Clause 8.

Clause 10 shall read as under:-

10 Mode of Appointment and Term of the Board of Trustees:

(a) Subject to the provisions of the other Clauses of this Scheme the term of the trustees appointed hereafter shall be for a period of six years and one-half of the trustees in each category shall retire by rotation every three years;

Provided that it will be open to the Competent Authority to appoint a non-murid trustee for a term shorter than six years.

(b) On retirement by rotation the trustees shall be eligible for reappointment.

(c) Every three years in the month of December, the continuing Murid trustees shall, by a two-third majority of the total number of the continuing Murid trustees (not merely of the trustees present at the meeting and voting), appoint one half number of trustees in accordance with the other clauses of this Scheme to fill in the vacancies which are to arise on the 31st December of that year.

Provided that the person/s to be so appointed have expressed their willingness in writing before the meeting at which such appointment is made or shall express their willingness at least within one week from the date of such meeting.

Explanation:- Continuing Murid trustees shall mean the Murid trustees other than the trustees expiry of whose term occasions the need for making appointments.

(d) In case the continuing trustees fail to make appointment of incoming trustees in accordance with the preceding sub-clause by 31st December of the relevant year, the vacancies remaining unfilled till that date shall be filled in by the Competent Authority in accordance with Clause 12 of this Scheme unless the Competent Authority thinks it fit and proper to extend the time limit for appointment by the continuing trustees, provided that such time limit shall not be extended beyond 31st March of the succeeding year.

(e) Subject to the provisions of sub-clause (d) of clause 9, the term of the first Board of Trustees shall be for a period of six years with effect from 1.1.2003,

Provided that from out of the existing trustees one half from each category shall retire, either by consensus or by draw of lots, with effect from 1.1.2003. For the purpose of this proviso, consensus shall be arrived at before 31-12-1999 or draw of lots shall be held under the supervision of President of the Board of Trustees before 31-12-1999.

Provided further that the Competent Authority may, while appointing two non-murids as trustees for the first time, appoint one of them for the full term of six

years and the other for a term of three years.

Clause 11 of the Scheme shall be substituted by the following clause:-

11. Appointment of non-murid Trustees.

(a) The Competent Authority shall appoint two trustees of Sir Pir Mohammed Saheb Trust from Muslims who are not Murids. The persons to be appointed shall be Muslims of good repute and educated (at least S.S.C. pass and preferably graduates) and shall have faith in Hazarat Pir Mohammed Saheb and shall be not less than 25 years of age and shall not be members of any political party;

Provided that in the appointment of one non-murid trustee, preference shall be given to persons residing in the vicinity of the Durgah and in the appointment of the other non-murid trustee, preference shall be given to women having experience in the field of education.

(b) While making the appointment of such trustees for the first time, which shall be done by 31.12.1999, the Competent Authority shall appoint one of them for the period up to 1.1.2006 or for a shorter period and the other trustee for a period up to 1.1.2003 or for a shorter period. Thereafter whenever a vacancy arises in the category of non-murid trustees, the Competent Authority shall appoint a non-murid as a Trustee as aforesaid for a period of six years or for a shorter period.

(c) Any two or more persons having interest in the Trust may also move the Competent Authority within a period of six months prior to the expiry of the term of office of a non-murid trustee to appoint a non-murid trustee for the next term.

(d) On receipt of an application as stated above or on its own motion, the Competent Authority shall, after hearing the existing trustees and after making such inquiry as it deems fit, appoint non murid(s) as trustee(s), subject to the other provisions of the Scheme.

(e) The outgoing trustee shall be eligible for reappointment as a trustee. Till the new non-murid trustee is appointed, the outgoing trustee shall continue to function unless removed by the Competent Authority earlier.

Clause 12 of the Scheme shall be substituted by the following clause :

"12. Appointment of new trustees when casual vacancies arise:

Whenever any trustee dies, resigns, is removed, or remains absent without leave of the President of the Board of Trustees from three ordinary meetings of the Board of Trustees or goes out of India for more than six months without leave of absence from the Competent Authority or leaves India for the purpose of residing abroad or is declared as insolvent or is convicted of an offence involving moral turpitude or desires to be discharged from or refuses or becomes unfit or becomes incapable to act as a trustee or to execute the powers reposed in him under this scheme, the surviving or continuing trustees may appoint any other

person by a two-third majority of the total number of the surviving or continuing trustees (and not merely of the trustees present and voting). If the surviving or continuing trustees fail to make such appointment within four months from the occurrence of the vacancy, it shall be lawful for the Competent Authority at any time after the expiration of such period, by writing to appoint, subject to the other provisions of the Scheme, a new trustee as it may think fit and proper and as circumstances may require for the remainder of the term of the trustee in whose place the appointment is to be made"

IIIA The following modifications shall be made in Clauses 24 and 25 of the Scheme providing for constitution and power of the Managing Committee.

The following shall be added at the end of sub-clause (a) of Clause 24.

"24(a) There shall be a Managing Committee of not less than 5 and not more than 8 members including the President, Vice President and Secretary of the Board of Trustees who shall be ex officio members. Remaining members of the Managing Committee shall be elected by the Board of Trustees from amongst themselves. The Managing Committee shall then elect its Chairman and Vice Chairman. The Secretary of the Board of Trustees shall be the Secretary of the Managing Committee. The Managing Committee shall have at least one woman trustee and one trustee having experience in the field of education."

In sub-clause (i) of Clause 25 after the words

"The Managing Committee shall also keep supervision on the management of Katubkhana, Madressas schools and other institutions run by the Trust" and before the words "subject to the general control of the Board of Trustees, the following shall be added :-

"shall keep supervision on the distribution of scholarships and books to the poor and deserving students including girls and women, shall exercise all such powers as may be necessary to advance the cause of secular education including such education for girls and women and shall also exercise all such powers as may be necessary to give medical aid and assistance to the beneficiaries of the Trust;"

IV CONSEQUENTIAL MODIFICATIONS :-

(a) In Clause 20 (Resolution by Majority), before the words "Every resolution or question submitted to the meeting of the Board of Trustees", the following shall be added :-

"Subject to the provisions of Clauses 6A, 10(c) and 12 of the Scheme;"

In the last sentence of the said Clause 20, after the words "Any resolution of the Board of Trustees", the following words shall be added :-

"other than a Resolution passed under Clause 6A of the Scheme;"

(b) The following shall be added after sub-clause (ii) of Clause 25 :-

"(iia) The approved budget as well as the statement of accounts for each accounting year shall show how the provisions of Clause 6A of the Scheme are complied with."

(c) Wherever the scheme contains a reference to the "Charity Commissioner", it shall be read as "Competent Authority".

(d) In Clause 32, after the words "the Bombay Public Trusts Act, 1950 and the Rules framed thereunder" the following words shall be added :-

"Wakf Act, 1995 or any other law for the time being in force in relation to public trusts of Muslims."

(e) In clause 25(iii) the amount of "Rs.200" shall be substituted by "Rs.2000" (Rupees two thousand).

(f) In Clause 27 the amount "Rs.1000" shall be substituted by the amount "Rs.10,000" (Rupees ten thousand).

(g) In clause 29, the words "31 December" shall be substituted by "31st March".

26. The appeals are accordingly partly allowed and the Scheme framed by the learned Joint Charity Commissioner as modified by the learned City Civil Judge shall stand modified in the aforesaid terms. After getting all the modifications made by this judgment incorporated in the Scheme framed by the learned Joint Charity Commissioner, the existing trustees shall get the copies of the Scheme finally sanctioned by this Court and its translation (in language/s understood by the Murid families) printed and circulated amongst all the Murid families registered with the Trust so as to reach them by 15-12-1999.

There shall be no order as to costs.