

(2017) 11 BOM CK 0075
In the Bombay High Court
Case No : 102 of 2016

Sachin s/o. Gopal Bhanage

APPELLANT

Vs

The State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 29-11-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 226](#) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Power of High Courts

Citation : (2017) 11 BOM CK 0075

Hon'ble Judges : S.C. Dharmadhikari, Mangesh S. Patil

Bench : DIVISON BENCH

Advocate : Nitin V. Gaware, A.B. Girase, S.B. Yawalkar, N.R. Bhavar, Komal Kandharkar, S.R. Choukidar, M.S. Patil, R.N. Dhorde, P.S. Dighe, H.D. Deshmukh, V.D. Hon, A.V. Hon

Judgement

1. By these Public Interest Litigations, the petitioners are praying that the order dated 28th July, 2016, issued by the Principal Secretary, Law and Judiciary Department, Government of Maharashtra, appointing respondent Nos.4 to 15 in PIL No.102 of 2016 as Members of the Shri Saibaba Sansthan Trust, Shirdi, Taluka Rahata, District Ahmednagar, be quashed and set aside.
2. The prayer is that this Court should call for the records in relation to these appointments and after a perusal and scrutiny thereof by an appropriate writ, order or direction under Article 226 of the Constitution of India, the order be set aside and the appointments be quashed.
3. At the outset, we must express our strong displeasure at multiple Public Interest Litigations being filed and registered as such on the same subject matter and issue. It may be that there are several public spirited citizens and interested allegedly in efficient, proper and smooth administration of the affairs of Shri Saibaba Sansthan Trust (Shirdi) but that does not justify the Registry allowing

filing and lodging, so also registration of these number of PILs. More so, when the issue raised is identical, the subject matter is the same and even the reliefs prayed are similar. Each one of them claims to be aggrieved and dissatisfied with such appointment as are made under the above order of the State Government. Once there is a PIL and earlier in point of time, duly registered as such, then, it is the bounden duty of the Registry to verify and scrutinize the record and with the aid of modern technology it is not too much to expect from the Registry, if it informs an interested litigant allegedly moving in public interest that a PIL is already registered on the same subject and is pending. If the subsequent applicant still insists on his application being treated as a PIL, the Registry can, in such circumstances, place the matter before the competent Court and seek its directions. It is then for the Court to adopt an appropriate course so that multiplicity of PILs on the same subject matter is avoided and equally repetitive arguments. When one Public Interest Litigation is registered any public spirited citizen can pray to the Court orally or by an appropriate application that he may be also allowed to participate and be heard when the earlier PIL is taken up. It is then for the Court to adopt an appropriate course consistent with the Rules framed in relation to filing, lodging and consideration of PILs by the Bombay High Court, Appellate Side.

4. In one of the judgment and order delivered recently by us in the case of Sunil s/o. Supadu Mahajan and Anr. vs. Hon"ble Minister of State for Urban Development Department and Ors. 1, decided on 14th July, 2017, the tendency of lodging and filing successive PILs on the same subject matter has been commented upon and even the Registry"s practice is deprecated. Even the tendency to register them indiscriminately has been deprecated. We quote the following observations from that judgment and order :- 17] Before proceeding further we find a practice and prevailing in this Court to be little peculiar. PIL No. 102 of 2015 was filed in this Court on 11/10/2015. PIL No.119/2015 is filed in this Court on 24/26/10/2015. It is strange that the Registry was unaware of the pendency of one PIL on the same subject and yet proceeded to register the second PIL.

18] We see no reason to register such multiple PILs. PIL is an exceptional litigation. It is not an handle or a tool to settle private disputes or matters of purely private nature in the garb of public interest. There are directions issued by the Hon"ble Supreme Court to all the High Courts that they must ensure that only genuine PILs are filed and taken up. One of the directions is that multiple PILs would defeat the very object and purpose of PIL. It is strange therefore that though the rules have been notified the registry of this bench has not taken any steps. We do not see why when one PIL is filed by a resident, person, individual that another and from the same city or town is able to approach this Court by independent proceedings. None is preventing this tendency and practice. We find that this practice continues by allowing people to intervene in PILs. We do not think if one resident or citizen and claiming to be public spirited citizen brings to the notice of this Court inaction of the Statutory Authorities or the State or some

deliberate and intentional act, on their part, then, the Court will proceed to register it as PIL and treat it as a truly representative litigation. That one individual or one PIL petitioner in the earlier PIL would represent the cause of all the residents is the presumption on which this Court would proceed. There is therefore, no warrant to register subsequent PIL or allow repeated interventions for that would introduce an unhealthy practice of other litigants introducing purely private causes or settling political or private disputes. Nothing should be done which would defeat the salutary and laudable object sought to be achieved by a PIL. A adversary of the PIL petitioner would enter the fray or jump into the arena and the purpose of the litigation, namely, in public interest, would be frustrated. We have found a intervenor being introduced to malign the PIL petitioner by attacking his character. This could be a deliberate ploy by those whose actions are under scrutiny of this Court. We hope this much is enough and hereafter Registries of this Court will ensure that multiple PILs are not registered.

19] Be that as it may. PIL No. 119/2015 is presented by a person claiming to be agriculturist but resident of Jalgaon city. He has impleaded as party respondents a Minister of State, the Deputy Secretary in the Urban Development Department Jalgaon Municipal Corporation and Mr.Eknathrao Khasde the then Minister for revenue/Guardian Minister.

20] The petitioner in P.I.L. No. 119/2015 narrates the very same facts. The petitioner also reiterates the very same history of the litigation by the shop keepers against whom eviction orders have been passed but unsuccessfully resisted and challenged by them. The very Resolution No.135 dated 20/10/2014 is referred by this petitioner. The very act of sealing the premises and the subsequent steps are set out in this PIL, and then it is stated that the fourth and fifth respondent have tried to influence the Government in passing favourable orders but which would be detrimental to the interest of the Municipal Corporation.

5. We hope and trust that hereafter the Registry will take steps and in accordance with the aforesaid suggestions and, if necessary and required, make changes and amendments to the existing Rules. FACTS IN PIL NO. 102 of 2016:

6. In the present petition, the petitioner claims that he is a citizen of India and a permanent resident of Sakori, District Ahmednagar. He claims that he is an ardent devotee, devout follower having unflinching faith in Shri Saibaba, Shirdi. He does not have any criminal antecedents. He has, in the petition, claimed that the petition is filed for better management of the Sansthan / Trust and by that sub-serve larger public interest. The petitioner states that he made necessary enquiries through research and by obtaining information and documents under Right to Information Act, 2005. The petitioner claims that he has incurred all the costs in relation to filing of this PIL.

7. In paragraph 4(i) to (iv) of the petition, the petitioner states thus : "(i) The Shri Saibaba Sansthan Trust Shirdi is a statutory body and therefore amenable to

the writ jurisdiction under Article 226 of the Constitution of India. (ii) Shri Saibaba Sansthan Trust was a trust duly registered under the Bombay Public Trust Act, 1950. However, the Government of Maharashtra initially promulgated an Ordinance and thereafter enacted a law so as to provide for better management, administration, governance and control of the trust and to enable it to undertake wider welfare activities for the public.

(iii) Shri Saibaba Sansthan Trust (Shirdi) Act, 2004 (Maharashtra Act XIV of 2004) received assent of the Governor of Maharashtra on 23rd August 2004.

(iv) The Managing Committee of "The Shri Saibaba Trust (Shirdi)" (hereinafter referred to as "the Committee") came to be constituted on 23rd August 2004. The Principal Secretary and Senior Legal Advisor to the Government, appointed 16 members for a period of three years, vide notification dated 23rd August, 2004, a copy of which is annexed herewith and marked as EXHIBIT-B."

8. After alleging that in the past, most of the members were appointed on political considerations; they were politicians belonging to the ruling party in Ahmednagar District, it is further alleged that they misused the power. They were releasing funds of the Sansthan for development of their constituencies or Zilla Parishad Circles or Panchayat Blocks. They were using the vehicles and other facilities for their personal benefit and to influence and attract the voters in the constituency. The petitioner submits that many projects are either implemented or initiated with the funds of the Shirdi Sansthan, but such members serve their own interest. The result was these projects caused colossal losses to the Sansthan. The allegations are summarized by alleging that the acts of omission and commission of such members resulted in the interest of the Sansthan /Trust being adversely affected. There were representations made pointing out these illegalities, but no action was taken.

9. Thereafter, in the PIL petition it is alleged that one Suresh Galande Patil and Raju Uttam Shelke filed a Writ Petition being Writ Petition No.4640 of 2007, seeking direction to the State to frame Rules under section 25 of the Act, to prescribe guidelines for the purpose of selection / appointment of the members of the committee. These petitioners sought removal of the members of the Managing Committee for misconduct, misbehaviour and negligence in discharging duties. They sought further directions to register offences against the concerned persons of criminal misappropriation, forgery and criminal breach of trust. The petitioners also sought disciplinary action against the Chief Executive Officer.

10. This petition was placed before the court and on one occasion this Court observed that it would be appropriate for the State to form or formulate Rules which would facilitate effective governance and functioning of the Sansthan. On 30th April, 2010, an order was passed in Civil Application No. 2196 of 2009 in the above Writ Petition and after reproducing that order, the petition proceeds to allege that one more petition being PIL No.18 of 2011 was filed by one Rajendra

Bhausahab Gondkar and others seeking a writ of quo warranto against the members of the committee and at the same time challenging a resolution dated 23rd August, 2004, appointing some persons as members of the committee.

11. However, this Court, on 31st March, 2012, passed an order constituting a Management Committee of the Trust by the State Government, failing which, a committee consisting of the Principal District Judge, Ahmednagar, the Collector, District Ahmednagar and the Chief Executive Officer of the Trust shall take over and supervise, monitor and look after the affairs of the Trust. This direction was issued because the term of the earlier committee had expired and the Rules, as mandated under section 25 of the Act of 2004, were not framed.

12. This Court also in that order in the above PIL made certain observations and with regard to the framing of the Rules.

13. It is thereafter on 27th March, 2012, the then Government, by way of a Notification, constituted a committee in the absence of any Rules. This Notification issued on 27th March, 2012, was challenged in PIL No. 27 of 2012 and Civil Application No. 3546 of 2012 as well as by way of PIL 33 of 2012 and an interim stay was granted by this Court. The petitioner, relying on all these orders and directions, urges that the impugned Notification is nothing, but a reproduction of the prior Notification dated 27th March, 2012, with regard to which this Court made detailed observations. It is alleged that barring the change in the name of political parties, even the present Government has made appointments on political considerations and those close to the Bharatiya Janata Party " Shiv Sena have obtained appointments.

14. It is alleged that the present Government is following the footsteps of the earlier political party in power in distributing largesse to its loyalists. It is alleged that the Centenary celebrations of the death anniversary of Shri Saibaba are to commence shortly and for which Rs.3,100 crores are to be provided and earmarked. This huge sum, therefore, attracts all those seeking appointments and now to seize that opportunity as well, the appointments are sought and are made.

15. It is, therefore, alleged that despite the Act being enacted in 2004, the Rules were never framed and published in the official gazette and the earlier committee constituted was allowed to continue without the support of the Rules for nearly four years after the completion of its term.

16. It is in these circumstances that making serious allegations, the petition proceeds to state that the present appointments have not been made in accordance with the scheme sanctioned by the City Civil Court at Bombay in Suit No. 3457 of 1960 for Shri Saibaba Sansthan, Shirdi and which was approved by this Court in First Appeal No.320 of 1983. The petition, from paragraph xxxiii proceeds to point out as to how the scheme was framed and its salient features are referred.

17. Then, a serious allegation is made that there is no criterion to select or appoint a person as a member of the committee prescribed in the Act. That aspect will have to be taken care of by the Rules. However, in the absence of the Rules, appointment of members to the Board can be made at the sweet will, whims and fancies of those in power. As a result, political considerations, personal relations and friendship have weighed while making appointments of the members of the committee. It is alleged that not a single member enjoys good reputation and whatever little guidance is provided by section 5(2) of the Act, that as well has not been followed. In making appointments representation is not given to the religious minorities, including persons professing Islam nor is there one member of the Scheduled Caste / Scheduled Tribe or weaker sections of the society. This is apart from the Rules being flouted by not taking care of the educational qualifications, specialized knowledge, professional achievements and by not appointing experts, particularly in the field of Business Management, Public Administration, Public Health or Rural Development. It is then demonstrated as to how broad-based representation is lacking in the present appointments. The respect for Saibaba is then highlighted and it is claimed that it is only because of the intervention by this Court that the allegations of maladministration are being looked into. It is this Court which has been monitoring and supervising the administration of the Shirdi Trust for last nearly four years.

18. It is in these circumstances that there are specific allegations that the Government did not verify either the credentials or antecedents of the appointees. Some members with criminal background are appointed. The power to appoint the committee is thoroughly misused and abused. There is no justification on record for the appointments. Once there is no criteria and no defined guidelines, then, the power to appoint is exercised arbitrarily. The discrimination is writ large and the appointments are vitiated by mala fides as well. Thus, there is a gross violation of the mandate of Article 14 of the Constitution of India.

19. It is then claimed that a Notification published on the midnight on 28th July, 2016, was made available only on Friday 29th July, 2016 and which enabled the committee to immediately take charge. Unless, the ad-hoc body constituted by this Court demits office, it was not possible for the Management Committee formed by the Government to take charge and without prior permission of this Court. Moreso, when the constitution of the earlier Management Committee had been stayed by an interim order of this Court and the fate of that committee is still undecided.

20. It is claimed that initially there was a dispute and subsequently there were negotiations and thereafter a deal between the Shiv Sena and Bharatiya Janata Party and only loyalists of both were appointed as committee members. It is this power struggle which led to the hasty step of issuing the impugned Notification.

21. The petitioner has made allegations against each of the appointees and who

are respondents to this petition.

22. The petitioner has, in paragraph 1x at page 39 set out the task and magnitude of the duties to be performed by the statutory Management Committee and that would be evident by the following features of the temple :-
"i) The strength of daily visiting devotees is crossing more than 1 lac; ii) On Sundays and Thursdays, the figure of visitors goes to more than five lac devotees;

iii) The yearly turnover of Saibaba Sansthan Trust is near about Rs.700 Crores;
iv) The daily collection of donation is more than Rs.2 Crores;

v) Apart from money, silver, gold, foreign currencies, precious jewellery is dropped and donated by the devotees. vi) There are around 6,000 employees working in various departments;

vii) Regular construction activities of guest houses, hospitals and gardens;

viii) More than 2,500 rooms, 100 halls constructed by Sansthan are available to accommodate devotees.

ix) Moreover, the year 2017-18 being the centenary year celebrations of the Shri Sai Baba's death anniversary, the estimated expenses are of Rs.3000 Crores. Such being the challenge, there is every opportunity to indulge in corrupt practices and misuse the funds, which would be a great loss to the public interest, let alone the faith of the devotees."

23. Thereafter, it is claimed that the Notification if not quashed, it would cause irreparable harm and injury in the event the Committee set up under the subject Notification is permitted to manage the affairs of the Trust.

24. This petition challenging the appointments of respondent Nos. 4 to 15 as members of the committee of the Shri Saibaba Sansthan Trust also alleges that the appointments are contrary to the decision of this Court in PIL No. 18 of 2011.

25. Thereafter, the petition has been amended and we shall briefly make a reference to the amended Memo.

26. The amended Memo refers to the rules upto paragraph 1(xii) and after page 40 of the petition, page 40-A has been added and first of all in the sub-paragraphs a reference is made to the rules framed by the Government under section 25 of the Act with regard to the constitution of the Managing Committee of the Shirdi Trust. The copy is annexed at pages 128 to 135 of the paper-book (Annexure SA-1). The Rules are then criticized for being vague as they do not set out the precise procedure for selection or the criteria to be adopted nor do they incorporate provisions ensuring transparency. There is thus no check on the unbridled power of making appointments. The rules, therefore, do not take care of a situation where the power to appoint is exercised arbitrarily.

27. Then the rules are challenged on the ground that they are ultra vires section

25 in the sense the rules have not been made by a procedure which is styled as mandatory. In the sense they have to be also placed before the House of the State Legislature.

28. It is then stated that the Managing Committee has been constituted on 28th July, 2016, but even before taking over the charge, some members thereof visited the temple / trust premises and started giving directions to the employees. Even when the ad-hoc committee had not been discharged formally nor the charge is taken over by the newly constituted committee in accordance with law, still, these developments have taken place. The allegations of this type and similar in nature are then made which, according to the petitioner, would corroborate his initial plea that the appointments have been made purely on political considerations. Those with political affiliations have been rewarded and even those with criminal antecedents have found a place in the Managing Committee. That is how the 28th July, 2016, (impugned Notification) is challenged.

29. Then, we have the allegations against respondent Nos.4 to 15 set out seriatim. These allegations are made at pages 40-E to 40-H.

30. It is alleged that the material qua each appointee would reveal as to how their appointments are bad. For instance, the appointment of the seventh respondent can never be justified as a person belonging to socially and economically weaker section of the society. It is stated that he is a person belonging to higher caste, very well-off economically and has several properties.

31. The language of rule 3(1) read with sub-rule (2) is then highlighted; similarly rule 3(3); and then it is stated that the scheme relating to the temple and these rules do not go hand in hand, but conflict with each other. Further, the appointments are not made in accordance with the mandate of rule 6 of the Rules of 2013.

32. On such allegations, it is alleged that the interest of the trust / Sansthan will not be safe in the hands of respondent Nos.5 to 15.

33. Further to these allegations in the petition, there is a short affidavit of the petitioner, placing on record certain subsequent events. Some of these events and allegations with regard thereto are incorporated as amendments to the petition.

34. The petitioner also filed an affidavit seeking to place on record factual materials to substantiate the allegations made by him against the respondent No.7. This affidavit is dated 9th August, 2016. An affidavit-in-reply is filed by the respondent No.7. In that affidavit, he alleges that the petitioner is set up by a local influential politician. The petitioner makes incorrect statements in the petition. The petition itself is filed mala fide and for political reasons. It is denied that the respondent No.7 does not fulfill the criteria for appointment as a member. Rather, it is claimed that respondent No.7 is an active social worker,

connected with several trusts and mandals. He is taking active part in the improvement of the trust, namely, Shirdi Saibaba Trust and Sansthan and Shirdi town. While it is true that respondent No.7 has taken part in some agitation, but that was long time back, namely, 2001 onwards and thereafter in 2004. There are certain false cases initiated against him and purely for political reasons and at the instance of a local influential politician. It is stated that on 30th July, 2013, the seventh respondent is acquitted in the sessions case to which a reference is made. The statement in the affidavit-in-reply is that this was a case of false implication. Then, with regard to C.R. No.130 of 2009, C.R. No.20 of 2011, C.R. No.21 of 2011, C.R. No.109 of 2014 and C.R. No. 32 of 20014, the explanation is provided at pages 278 and 279 of the paper-book in paragraph 5 sub-paragraphs (a to (f) and paragraph 6.

35. It is stated that the cases registered are not of offences involving moral turpitude. The said cases are deliberately filed by the earlier Congress regime which was in power. The seventh respondent was raising the issue of corruption and social causes and purely to harass him, such cases are filed. Out of such cases, some are withdrawn. The only cases pending are C.R. No.32 of 2004, C.R. No. 21 of 2013 and C.R. No.109 of 2014. Then, in paragraph 7, a reference is made to the private complaint filed by Dr. Sham Kuver (Criminal Miscellaneous Application No.224 of 2016) then working in the Shirdi Saibaba Sansthan Hospital. It is alleged that he was misusing his position, harassing the patients and, therefore, an agitation was undertaken by various persons, including the seventh respondent. The said doctor had filed a case of defamation alleging that he has been defamed by this agitation. Thus, this cannot be said to be a genuine complaint or case for this doctor is facing various complaints from patients, fellow doctors, employees of the hospital and others. His misdeeds are then highlighted. Thus, all the cases are cooked-up by the police authorities. None of them can be said to be alleging offences involving moral turpitude.

36. Then, the educational qualifications are highlighted together with other achievements.

37. An allegation is made in paragraph 13 that the petitioner has approached this Court with dishonest and mala fide intent. It is at the behest of an influential politician and equally to protect the petitioner's own interest. The present petitioner was awarded a contract of fixing CCTV cameras in the recent Kumbh Mela and the contract which is granted by the Shri Saibaba Sansthan is in the name of Sark Enterprises, run by him. In execution of the work, the petitioner has taken Rs.2,00,000/- from one devotee under the pretext that he will fix the camera for Shri Saibaba Sansthan. There is a written complaint against the petitioner. There was an agitation even on this point and by the seventh respondent against the petitioner. Thus, the petitioner is alleged to have committed several irregularities in the contracts which were awarded to him by the Shri Saibaba Sansthan. It is claimed that the seventh respondent has taken over charge as trustee. The first meeting was held on 7th August, 2016. The

second meeting was also held on 16th August, 2016 and the business has already been transacted.

38. Then, there is an affidavit-in-reply of the other respondents, namely, respondent No.11 from pages 260 to 365, respondent No.5 from pages 366 to 389, respondent No.10 from pages 390 to 403, respondent No.9 from pages 403 to 404 and respondent No.12 from pages 415 to 424.

39. However, we would make a reference to the statements in these affidavits in addition to the denials therein at appropriate places and while highlighting the submissions of their advocates. For the present, we refer to the reply of respondent Nos.1 and 2 and that is to be found at pages 425 to 475 of the paper-book. That is an affidavit by Shripad Devidasrao Digraskar, Joint Secretary to Government, Law and Judiciary Department. This is an affidavit for and on behalf of respondent Nos.1 and 2. The maintainability of the PIL is an issue raised and in that, the allegations made by respondent No.7 about the alleged private interests of the petitioner are reiterated. It is alleged that material information is suppressed. It is then alleged that not a single representation or letter is annexed to the PIL, but a false statement is made that several representations were made from time to time to various authorities, including the Department of Law & Judiciary pointing out the irregularities of the committee members and particularly of the Managing Committee causing losses to the Sansthan.

40. From paragraphs Nos.3 to 12, this is what is stated :- "3. I say and submit that the administration of the Public Trust of Shree Sai Baba Sansthan registered under the Bombay Public Trust Act, 1950, under the name "Shree Shirdi Sansthan of Shree Sai Baba" at Shirdi, District Ahmednagar popularly known as Shree Shirdi Sai Baba Sansthan, Trust at Shirdi is vested in the board of management under the Scheme framed by the City Civil Court, Bombay, in Charity Suit No. 3457/1960 vide order dated 18/10/1982, confirmed by the High Court of Judicature of Bombay in First Appeal No. 320/1983 decided on 23/07/1984. 4. I say and submit that, the Government of Maharashtra considered it expedient that, the Development and Management of this important and popular trust should not be hampered or in way suffered by avoidable litigation and that, there should be a separate law to reconstitute the said Trust and to provide for the efficient management of the same by the 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 for the general public. Therefore, the State Government enacted Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004.

5. I say and submit that, Section 5 of the said Act specifies the constitution of committee of management of Sansthan's Trust. Sub-section (1) provides that The Shree Sai Baba Sansthan Management Committee shall be the committee constituted by the State Government as provided in Sub-section 2 which provides that the State Government shall by notification in the official gazette

appoint the Chairman, Vice Chairman and not more than 15 other members to constitute the committee out of which, not less than one member shall be a woman and one member shall be from socially and economically weaker sections. Out of total number of members, not less than 8 members including Vice Chairman shall be persons having educational background with professional or specialized knowledge, qualification and practical experience in one or more of the field, such as law, business management, public administration, engineering, architecture, public health, medicine or rural development. The president of the Shirdi Nagar Panchayat shall be the ex-officio member of the committee.

6. I say and submit that, Section 8 of the said Act prescribes conditions for being a member of the said committee. The said provision specifically states that, 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. The form as mentioned in the provision is given in the rules itself.

7. I say and submit that, Section 9 of the said Act provides the disqualification for membership. A person shall be disqualified for appointment as or for being, a member, if he " (a) is a minor;

(b) is of unsound mind, and is so declared by a Competent Court; (c) is an undischarged insolvent;

(d) has directly or indirectly any interest in a lease or any other transaction relating to the immovable property of the Sansthan Trust;

(e) save as provided in sub-section (1) of Section 6, is a paid servant of the committee or has any share or interest directly or indirectly in any contract for the supply of the goods to or for execution of any work, or the performance of any service, undertaken by the committee in respect of the Sansthan Trust;

(f) is guilty of misconduct or who has been charge-sheeted for the offence involving moral turpitude or is otherwise found to be unfit. 8. I say and submit that, Section 11 of the Act regulates the meeting of committee and Rules of procedure and thereby specify that the quorum for the committee shall be 8.

9. I say and submit that, Section 12 of the said Act provides that, no act or proceedings 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. Therefore, the said provision of the Act makes it clear that, only on the ground of existence of any vacancy or any defect in its constitution or in appointment of any member, the act or proceedings of the committee shall not be declared as invalid. The copy of the Shree Saibaba Sansthan Trust (Shirdi) Act, 2004, is annexed herewith and marked as EXHIBIT-"R1". 10. I say and submit that, Section 25 of the Act empowers the State Government to make rules under this Act for carrying out the purpose of

this Act. The State Government has framed the rules named as Shree Saibaba Sansthan Trust (Shirdi) (Appointment of Members of Management Committee and Forms of Declarations) Rules, 2013 by exercising the powers conferred by clause (b) of section 8, sub-section (2) of section 14 and sub-section (1) and (2) of the proviso to sub-section (3) of section 25 of the Shree Saibaba Sansthan Trust (Shirdi) Act, 2004. The said Rules were published in the official gazette on 24/01/2013. The copy of the said Rules published on 24/01/2013 is annexed herewith and marked as EXHIBIT-"R2".

11. I say and submit that, bare perusal of the Shree Saibaba Sansthan Trust (Shirdi) Act, 2004 and Shree Saibaba Sansthan Trust (Shirdi) (Appointment of Members of Management Committee and Forms of Declarations) Rules, 2013, envisage the complete procedure for appointment of members, qualifications and disqualification etc.. The appointments of the members of the Shree Saibaba Sansthan Management Committee constituted under notification dated 28.07.2016 are strictly made as per the provisions of section 5 of the Act as well as Shree Sai Baba Sansthan Trust (Shirdi) (Appointment of Members of the Management Committee and Forms of Declaration) Rules, 2013. Hence the allegations of the petitioners that the appointments of members are contrary to the provisions of the Act and rule is baseless.

12. I say and submit that, the petitioner herein has made baseless allegations in respect of validity of Rules of 2013, I say and submit that similar allegations and objections were raised in PIL No.27/2012 and other companion matters; wherein, this Hon'ble High Court considering the fact of framing of rules and its publication in official gazette not considered the same and granted liberty to raise such challenge in independent proceeding. Till today, the said rules are neither challenged by the said petitioners nor by the present petitioner in the present petition. As such, in absence of challenge to the said rules, the petitioner cannot make baseless comments and objections on the validity of rules itself. Therefore, the constitutional validity of the said rules can not be questioned unless and until it is challenged."

41. Then from paragraph 13 it is stated that there is an allegation made that stay order was passed by this Court against constitution of the committee and as such, the act of the State is contrary to the orders passed by this court. This allegation is denied. It is stated that PIL No.27 of 2012 and other companion matters were disposed off on 2nd May, 2013, permitting the State Government to constitute a new Managing Committee for governing the affairs of Shri Saibaba Sansthan. This Court made it clear that the ad-hoc committee appointed would cease to operate from the date of coming into existence of the new committee appointed by the State Government. It is in view of this liberty from this Court that the State Government constituted the new committee. Hence no orders of this Court are violated.

42. Then, reference is made to rule 6 and it is submitted that the appointment of members shall be made only after the person to be appointed as a member

submits his declaration in form (a) to these rules and the State Government receives a police report or a police verification certifying that such person has not been convicted or charge-sheeted by a court of competent jurisdiction for an offence involving moral turpitude or is otherwise found to be unfit. Then, a reference is made to section 5, section 8 and section 9 of the Act read with the procedure for appointment as enumerated in rule 6 and it is stated that with strict adherence to these provisions the appointments have been made. Thus, the State Government has taken due care and only after receiving the police report and by examining that any of them has been convicted or charge-sheeted by a court of competent jurisdiction for an offence involving moral turpitude or not that the appointments are made. Hence, there is no substance in the challenge to the Government Notification. In paragraphs 18 and 19 at pages 438 and 439, this is what is alleged : "18. I say and submit that the allegation of petitioner that this notification has been issued in the face of huge funds is baseless and illogical as the Hon"ble High Court has directed the Assistant Government Pleader on 12.01.2016 to obtain instructions as regards the time frame within which scrutiny committee and managing committee shall be constituted. According to the directions of the Hon"ble High Court, the State Government has submitted vide letter dated 14.01.2016 that the proposal of constitution of Shree Saibaba Sansthan Management Committee is under the consideration of State Government and the same will be constituted within three months, thereafter the scrutiny committee will be appointed. The Hon"ble High Court has recorded the statement made on behalf of State Government in its order dated 15.01.2016 in Civil Application No. 16086 of 2015. I say and submit that on 10.06.2016 in one of the matter, the Hon"ble High Court has expressed that the Hon"ble High Court will issue a suomoto contempt against the State if the said committee is not constituted immediately. In the above backdrop, the State Government has constituted the Shree Saibaba Management Committee in exercise of the powers given to the State Government by the Act 2004.

19. I say and submit that that the contention of the petitioner that from information gathered by the petitioner from several politicians, Government officials and journalist that the appointment order was signed at about 11p.m. on 28th July 2016 is completely false and baseless, as the official copy of notification of the newly constituted management committee was not sent to the Government press for publication in the Official Gazette in the afternoon on 28th July 2016."

43. Finally, in paragraph 22, a reference is made to Government Resolution dated 22nd October, 2013, constituting an Action Plan Committee under the Chairmanship of the Hon"ble the Chief Minister in order to provide all infrastructural facilities to the devotees who will visit Shirdi in the centenary celebrations of the samadhi of Shri Saibaba. The decisions are taken in the meetings of this committee. Therefore, none of the allegations and particularly of seeking to pocket huge funds of the trust have any basis. The Shri Saibaba Sansthan Management Committee was constituted by the State Government

bearing in mind the future projects. There are no mal-practices because the State Government is ensuring there are high and competent officials; that precious funds are actually spent for the preparation for the centenary year. There are no mal practices and no corruption as far as the administration of the affairs and the trust funds. Hence it is stated in this affidavit of 19th September, 2016, that the petition be dismissed.

44. The petitioner has filed a rejoinder to this affidavit and while denying all the allegations of any personal interest and suppression, it is stated that the work undertaken by the petitioner of provision of closed circuit television has absolutely no nexus with the petitioner's role as a public spirited citizen and the filing of this PIL on that basis. That contract or work was awarded by the Special District Magistrate and Deputy Superintendent of Police during implementation of the project of installation of security measures. That is prior to the commencement of the Kumbh Mela at Shirdi. The entire work undertaken by the Sansthan was at the behest of the ad-hoc committee constituted as per the order of this Court headed by the Principal District Judge, Ahmednagar. This committee was supervising all the financial decisions. There is nothing illegal about the contract nor are there any allegations of corruption or irregularity in the process. The complaint, copy of which is annexed to the affidavit, is made not against the petitioner, but against the working of the committee. There is nothing in the complaint, much less an allegation, and on the basis of which any inquiries could be made.

45. Hence it is denied that there is any personal interest nor is it correct that there are political motives in instituting the present PIL.

46. Then, the affidavit-in-rejoinder proceeds to deal with other allegations.

47. It is stated that the rules have been challenged in Writ Petition No. 4143 of 2013 and that writ petition has been connected with the present petition for common hearing. The petitioner was duty bound to bring all the relevant facts before this court. That is why all the facts with regard to the framing of the rules in contravention of the legal requirements have been placed before this court. It is claimed that the respondents have not given any explanation or justification for not placing the rules before both houses of the legislature, despite being framed way back on 23rd January, 2013, in contravention of section 25 of the Act of 2004.

48. It is claimed that the whole attempt and to hastily frame the rules to constitute the Management Committee is to grab moneys from the centenary celebration funds granted for the year 2017-18. It is alleged that the respondents have not constituted the Scrutiny Committee, which was directed to be done by this court. It is submitted that there are several Government Resolutions issued constituting an Action Plan Committee and a sub-Committee. This is done hurriedly so that all the preparations for the centenary celebrations are made without a proper framework.

49. Then, it is alleged that the respondent has not answered the petitioner's grievances with regard to the rules. It is claimed that the rules are extremely vague. They do not set out the procedure for selection of suitable candidates for nomination. Further, the requirement of professional background and qualification is specified only for eight members, whereas, the rest 7 do not require a qualification other than membership of the Bhakta Mandal. None of the members of the newly constituted Management Committee are members of the Bhakta Mandal any time before July, 2016. Therefore, the appointments have been made without any definite criteria or qualification.

50. The constitution of the Committee, according to the rules, requires at least one member shall be appointed from the category of women and socially and economically weaker section and eight from persons possessing professional or specialised knowledge within the meaning of section 5(2) and up to seven members from general category. However, the mandatory 10 members have not been appointed from particular categories and no application of mind can be seen in appointing conveniently picked persons from specific categories. Then, it is alleged that there is no compliance with the requirement of obtaining a verification or police report prior to appointing the respondents as members of the Management Committee. In that behalf, Rule 6(ii) of the Rules of 2013 has been referred. It is claimed that verification or police report in respect of the appointments made to the Management Committee was done only in case of four members and not the other eight. On this ground alone, the order dated 28th July, 2016 constituting the Management Committee deserves to be quashed. Moreover, the reports of the police verification are not placed on record. There is nothing to show that the character verification of all the members appointed on the Management Committee of the Sansthan has been carried out. In these circumstances, it is claimed that if the rules themselves are vague, do not lay down any criteria, then, the same are also unsustainable in law. The qualifications prescribed in respect of "C" category that these eight persons shall have educational background with professional or specialised knowledge or work experience in one or more fields have nothing to do with the criteria fixed for the purpose of selection. There could be lakhs of candidates having educational background with professional or specialised knowledge or practical experience in one or more of the fields prescribed in Rule 3(2) of the Rules. Therefore, unless a Committee is constituted of experts, who will invite interested persons or have otherwise knowledge regarding the contribution of several persons in the social causes, the selection cannot be foolproof. The selection cannot be left to the sweet will, whims and fancies of the Government and particularly the Minister incharge of Law and Judiciary. The selection of the candidate must be transparent rather than shrouded in secrecy. Thus, the Rules confer unbridled power on the Government to pick and choose the candidates of its choice. The selection made in this case is without prescribing any criteria. Hence, it suffers from arbitrariness. Then, in para 21 of the rejoinder, the factors with regard to persons belonging to category "D" have been set out and it is submitted that it is

not just the membership of Bhakt Mandal which will suffice but possession of Bachelors degree, residence in Shirdi or Ahmednagar district, contribution made to social or educational causes and or social and educational development and the person being a member of the Parliament or Assembly Constituency or member of State legislature representing Shirdi. None of these factors are applied to the appointment of respondent nos. 4, 11, 13 and 14. Moreover, out of five members from the general category, three are from Mumbai. The Chairman of the managing committee Shri. Suresh Havare is builder and is financing the Bhartiya Janta party for the purpose of elections. Respondent no. 4 is not even a graduate. None of the five candidates appointed from the general category i.e. "D" category have contributed to the social or educational cause or development. Similarly, none of the five members in the general category is Member of Parliament or State Legislature from the Shirdi Constituency. Thus, the appointments of all the members suffer from arbitrariness, the same are malafide and politically motivated. None of the members possess an impeccable character or known as men of high rectitude. On the contrary, all the members possess either political or criminal background or in any case have allegation of misconduct.

51. Finally, it is urged that the expression used in section 9(1)(f) of the Act "is otherwise found unfit" is of very wide amplitude. A person, who is not found guilty of misconduct or who is not being charge-sheeted for offence of immoral turpitude can still be found unfit. None of the members of the Committee appointed under the notification dated 28th July, 2016 are fit to be appointed as members of the Managing Committee.

52. It is in these circumstances that it is prayed that the writ petition be allowed.

53. As already observed above, presently, we do not refer to the affidavits of respondent nos 4 to 15. It is on all materials that we have heard Public Interest Litigation No. 102 of 2016. The other matters are also Public Interest Litigations, but it is conceded that the challenge in the same is more or less identical.

54. Mr. Talekar-senior counsel and Ms. Pradnya Talekar appearing for the petitioner contend that these PILs have been filed so as to invite the attention of this court to the arbitrary and malafide appointments, which have been made to Shri. Saibaba Sansthan Management Committee. It is submitted that the impugned Resolution is contrary to law. It is also violative of the mandate of Article 14 of the Constitution of India in the sense that every State action has to be fair, transparent, reasonable, just and non-discriminatory. If the impugned resolution and the action preceding thereto is taken into consideration, then, this mandate is blatantly flouted. The State has failed to protect the interest of crores of Sai Bhaktas spread over not only in this country, but across the globe. This sansthan occupies a prominent place and is very dear to the heart of devotees and public. Devotees and worshipers of Saibaba cut across religions, sex, caste, creed and place of birth. They pin their hope and trust in the State Government and feel that their interests are secured and safe. The State Government has

made a law for quick, smooth and efficient administration and management of the affairs of the Shirdi Sansthan. However, that trust and faith of the general public in the State is belied and is shattered when it was noticed that hurriedly this Government Resolution was issued to displace the Committee of Management constituted under the orders and directions of this court. Now, the management and administration of the temple trust is again a political affair. As there is a coalition Government, the partners of such coalition have agreed to split the spoils. Thus, all parties in the coalition Government are eager to push the names of their workers and leaders for appointment on the Committee. Once this is the real intent, motive and purpose, then, no amount of legislation would assist and help to preserve and protect the cause of the devotees and worshipers of Saibaba. Therefore, the present actions run contrary to the Act, namely the Maharashtra Act XIV of 2004 (The Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004. The object and purpose of this Act is completely defeated and frustrated by the impugned actions.

55. Mr. Talekar would then submit that because of the fact that the Act has been utilised so as to benefit the party in power that even the Rules are vague and ambiguous. The Rules do not specify and define a criteria. Some general qualifications are laid down and which could be applied to any and every appointment. The appointment is to the sansthan's Management Committee. This sansthan has huge property, movable and immovable. Everybody has an eye on the property and the money generated in the form of donations, gifts and receipts from the devotees and worshipers across the world. It is that which is attracting the parties like respondent nos. 4 to 15. If they manage to secure appointment in this manner so also the State obliges them, then, the Rules further the sole intent and their ill motive.

56. Mr. Talekar has then submitted that appointment of trustees is a statutory power. It is an appointment under the statute. The appointment should be made in accordance with the Act and Rules. If the appointments are not made in conformity with the Act and Rules, then, they can be struck down. Mr. Talekar has submitted that even if it is assumed but not admitted that the appointments are to a Committee of management of the sansthan's Trust and that Committee has to be constituted under section 5, still, that section sets out the mode of appointment, namely, by notification in the official Gazette. It states that not more than 15 other members together with the Chairman and Vice Chairman constitute the Committee as envisaged by section 5(1). Therefore, the power to appoint may be derived from the statute, but the appointments are made by the executive. Thus, Mr. Talekar submitted that it is always argued in such cases that it is an executive domain and the appointment as also the appointees are at the pleasure of the State. Even if this principle is invoked by the State, still, the law does not permit arbitrary exercise of the power. If the appointments are made for extraneous considerations and all or some appointees are of dubious character or have questionable or doubtful antecedents, then, such appointments can be struck down by this court in exercise of its power under Article 226 of the

Constitution of India. The power cannot be exercised in a malafide and discriminatory manner. Eventually, the power to appoint cannot be abused and if it is indeed abused, this court has always struck down even administrative acts. The present action is not an exception to this principle.

57. Mr. Talekar has also presented another facet of this argument. He would submit that the object and purpose of the Act has to be placed in the forefront while making the appointments. If the Act is enacted for a laudable purpose, namely, to provide for better management, administration, governance and control of the Trust to enable it to take wider welfare activities for the public, then, those appointed are trustees of the public. The appointments and the power conferred in that behalf must therefore be exercised fairly and reasonably. The appointments made should fulfil the aim and object of the Act. That should be preserved and subserved at all times. If the appointments are made purely for political considerations, then, they have no nexus with the object and purpose sought to be achieved by the Act. The legislation does not permit appointments of individuals only to derive some political benefit. This is not a political office. The power cannot be compared with awarding a ticket by the political party to contest elections or to participate in party or political affairs. Thus, the power though vesting in a democratically elected Government, it is not a political power. The elected functionary is bound to exercise every such power in accordance with law including in terms of the relevant provisions of the Indian Constitution. Thus, the exercise of power ought to be guided by these binding principles. It is eventually an executive power vesting in the State and which power is of appointment of a member on a Management Committee and to manage the affairs of none other than the Shirdi Saibaba Sansthan Trust. The venue itself has great religious significance. The name Saibaba and after whom the temple and the Trust is named itself denotes that the appointees should not be mere disciples or Sai Bhakts, but persons of integrity, character, experience, knowledge and learning. The administration and management of the temple Trust is comparable only to the governance of a huge township. Therefore, the only consideration which should be weighing with the Government in making the appointment is the fulfillment of the mandate of the Act and nothing else. If the power is exercised leaving out that from consideration, then, the same cannot be said to be in consonance with the mandate enshrined in Article 14 of the Constitution of India. It is well settled that even in matters of such appointments, the mandate of Article 14 will have to be followed. Therefore, as demonstrated by the petitioner, the appointments are not made in accordance with the Act and to serve its purpose. The appointments are wholly vitiated by application of irrelevant, irrational factors and matters dehors the salutary purpose sought to be achieved by enacting the law. If there was no need to codify separately the administration, management, governance and control of the affairs of this Trust, then, the Maharashtra Public Trust Act, 1950 and the authorities thereunder were sufficient and that law would have ensured the smooth functioning and proper management of the affairs of the Trust. However,

when the State made a law specifically for this temple Trust and concerning its affairs, its administration, management and governance so also overall control, then, that law cannot be brushed aside or its provisions totally ignored. This is precisely what is happened in this court according to Mr. Talekar.

58. Mr. Talekar has submitted that there was no verification of antecedents and particularly the nature of the criminal cases against the appointees. The State may make a general statement on oath, but there is no indication, much less any detailed procedure set out which is adopted for verification of antecedents. It is not just restricted to disqualification for appointment as set out in section 9, but each of the sub-clauses of sub-section (1) would throw light on the nature of the verification and scrutiny to be carried out. For example, Mr. Talekar highlighted sub-clauses (d), (e) and (f) of sub-section (1) of section 9 as also the conditions for being a member as set out in section 8 to submit that the guilt of misconduct or being charge- sheeted for the offence involving immoral turpitude are separate disqualifications. The third one is that the appointee should not be found to be otherwise unfit. These words are of wide amplitude and have been employed in the law deliberately so as to leave out or exclude such persons, who are unfit for appointment as member of the Committee of Management. This unfitness is not merely physical, but involves something more. Therefore, there has to be a transparent and open scrutiny. The process of verification cannot be secret. Even if the State is unwilling to divulge any details of this process, still, it is obliged to produce materials to prove that the process if at all undertaken by it was fair, transparent and not shrouded in secrecy. The State is expected to take a conscious and clear stand regarding an issue of great public importance. It cannot appoint persons with a questionable and doubtful past or criminal antecedents merely because they are kith and kin of or close to those in political power at the Centre and the State.

59. It is clear that there are no written guidelines or directions guiding the State as to the mode of making appointments. The mode itself is not spelt out either in the rules or regulations nor are there any guiding factors otherwise. In these circumstances, it can be safely presumed that there is no application of mind by the State to above vital factors and the specific clauses of sub-section (1) of section 9 of the Act. Once no record is placed before the court proving the fulfillment and satisfaction of the above factors, then, this court must presume that the power vesting in the State has not been exercised for the purpose for which it vests in it. Then, the power has been grossly misused and therefore, this court would be justified in interfering in writ jurisdiction.

60. Mr. Talekar has elaborated his arguments by inviting our attention to the details in the sense how and why the petitioners terms the appointment of respondent nos. 4 to 15 as mala fide. He has given us a chart respondents-wise to indicate that not only they belong to or are close to the political outfit in power in the State, but also setting out the criminal cases and other allegations with regard to their conduct, which would demonstrate, according to him, that the

appointments lack in integrity and character. That they are thoroughly unfit for being appointed is the plea.

61. In that regard, our attention is invited to the synopsis and compilation of the relevant documents handed over by Mr. Talekar. He would submit that as far as Shri. Suresh Haware is concerned, his appointment is contrary to Rule 3(1), inasmuch as a Chairman has to be from one of the four categories mentioned therein. Rule 3(3) also is relevant, because the concerned respondent appointed as the Chairman became member of the Bhakta Mandal only on 6th July, 2016. There is also violation of section 9 (1)(f) and Rule 6(2) of the Act and the rules since police verification is not undertaken in Mr. Haware's case. Now, information is available under the Right to Information Act, 2005 dated 2nd September, 2016 and which would indicate that not only in the case of appointment of the Chairman, but all others, there has been a departure or deviation from the Act and the rules and no reasons have been assigned for the same. Further, none of the persons have been appointed based on their applications. In other words, none of them applied for being appointed and yet they secured appointments.

62. Our attention is also invited to the compilation/additional compilation of documents, which would indicate as to how in the case of this Chairman, there has been a specific complaint. Our attention is invited to the allegations against the fourth respondent of cheating, forgery and criminal breach of trust in sale of property. He was, at the relevant time, the Chief of Thane Unit of the Bhartiya Janata Party. There was a charge-sheet filed in the competent criminal court at CBD, Vashi against the first respondent, his brother Sanjay and sister-in-law Ujwala and two of his employees, working in his construction firm, known as Haware Engineers and Builders. The news reports are also relied upon, which would, according to Mr. Talekar, establish and prove that there has been absolutely no verification of the antecedents of the fourth respondent. There are also allegations with regard to evasion of octroi duty and in that regard, our attention has been invited to the order passed on 24th April, 2017 by this court in Public Interest Litigation No. 3 of 2014.

63. Then, our attention is invited to the allegations as far as respondent no. 5, whose appointment is made as Vice Chairman. Though, it is stated that his appointment is in category "C" as a rural development expert, still, if Rule 3(1) is perused, the second respondent does not meet the requisite qualifications and in terms of the Schedule to the rules. He ought to be a graduate, possessing 10 years work experience in rural development and ought to be rewarded for his work either at national or State level. His Bio-Data does not mention his qualifications and even in this case, no police verification has been undertaken. It is stated that in the writ petition, it has been pointed out as to how respondent no. 2 was unfit for appointment.

64. Then, respondent no. 6 has been appointed as a member of this Managing Committee from category "A" (women category). This appointment is in exercise of the power, which is unbridled. There are no guidelines so as to guide the

authorities in making appointments from this category. There is a violation of section 7(3) and Rule 5(4), inasmuch as after appointment, she has, as a part of the bitter political relations between the Bhartiya Janata Party and Shiv Sena, been abstaining herself from attending any meeting. She has, in terms of the directions of her party high command, refused to co-operate because the Chief Minister of the State did not keep his promise of awarding the Vice Chairmanship of the Trust to a Shiv Sena member.

65. Apart from this, her appointment also violates section 9(f) and Rule 6(2). No police verification has been undertaken. The sixth respondent is also charge-sheeted for offences punishable under sections 37(1), 37(3) and 135 of the Bombay Police Act. The attention of this court is invited to certain documents, which are mentioned in the Annexures as also in the compilations to support the argument that the only consideration for her appointment is the proximity to the political party in power. Similarly, it is submitted that this court, in several orders and particularly in the order dated 30th March, 2012 in Public Interest Litigation No.27 of 2012 as well as order dated 13th March, 2012 in Public Interest Litigation No. 18 of 2011 and the judgment and order dated 2nd May, 2013 in Public Interest Litigation No. 27 of 2012, criticised the State for making appointments only on this consideration.

66. As far as respondent no. 7 is concerned, his appointment is made from the socially and economically backward category. In this case as well, the law has been violated, namely, section 9(f) and Rule 6(2). Further, there is no proof of his caste and whether he possesses a certificate of belonging to non-creamy layer category. From the record, it appears that he belongs to Maratha caste and his occupation is business. He does not appear to be socially and economically backward given his financial status. He has amassed huge wealth. Lastly, FIR Nos. 130 of 2009, 20 of 2011, 21 of 2013, 109 of 2014 and 32 of 2004 have been registered against him for offences punishable under sections 324, 325, 307, 143, 145, 353, 427 and 435 of the Indian Penal Code, 1860. A Criminal Miscellaneous Application No. 224 of 2016 is pending against him in the court of Civil Judge, Junior Division and Judicial Magistrate, Rahata alleging offences punishable under sections 499, 500 and 120 of the Indian Penal Code, 1860. He also has not made any application.

67. We must note that there is no challenge to the appointment of Mr. M. M. Jaykar.

68. As far as Mr. Pratap Bhosale, it is alleged that his appointment is made on the basis that he is specialist in Business Management. However, in his case, Rule 3(1) has not been adhered to. He should be either a Bachelor in Business Administration or Commerce and must possess 10 years' work experience in the field of management or 10 years' experience in auditing. His Bio-Data indicates that he is not qualified as there is no work experience.

69. Even his antecedents have not been verified. He was deported from the

United State of America by an order of a competent court. He also did not make any application.

70. As far as Mr. Rajendra Singh is concerned, in his case as well, the qualifications are lacking. He ought to have possessed a Bachelors Degree in Business Administration and work experience of 10 years. His qualification is BAMS and he has no work experience in management. In his case as well, there are allegations of having committed offences punishable under sections 406, 409 and 427 of the Indian Penal Code, 1860. Therefore, he also was unfit for being appointed.

71. There are serious allegations made against Mr. Bhausaheb Wakchaure. His appointment is from the general category. Even in his case, it is alleged that offences punishable under sections 406, 409, 420 and 427 of the Indian Penal Code, 1860 have been registered against him. He has filed a false affidavit as well. His appointment is also contrary to the settled principle that political considerations ought to be entirely out of place. This gentleman was a member of parliament and contested the elections on the ticket allotted by Shiv Sena party. Then, in 2014, he switched his loyalty to Bhartiya Janata Party. He was a Bhartiya Janata Party candidate in MLA elections.

72. As far as Mr. Amol Kirtikar is concerned, his appointment violates Rule 3(3) of the Rules. He is not a resident of Ahmednagar district. Therefore, he was disqualified from being considered for appointment. He is belonging to Shiv Sena party.

73. Then, it is alleged that one Bipin Kolhe has been appointed in gross violation of section 9(f) and Rule 6(2) of the Rules. There is a criminal case pending against him alleging offences punishable under sections 143 and 341 of the Indian Penal Code, 1860. His wife is a MLA of Bhartiya Janata Party from Kopergaon. His father was a MLA (member of the State Legislative Assembly for 25 years). He belonged to Congress/Nationalist Congress party. He was also Vice Chairman of the Sansthan from 2004 to 2012.

74. Then, there is a challenge to the appointment of Ravindra Mirlekar respondent no. 13. Even in his case, it is alleged that he has secured appointment only on the strength of his political connection. He belongs to Shiv Sena party. Even he is not a resident of Ahmednagar district. Therefore, his appointment is also in contravention of the Act and Rule 3(3) of the Rules.

75. As far as the appointment made from the category of the Chief Executive Officer of the Nagar Panchayat, Shirdi, that appointment is not challenged by the petitioner.

76. Mr. Talekar, summarising his arguments, contended that there is a serious challenge to the legality and validity of the rules and raised in pending Writ Petition No. 4143 of 2013. There is an order passed on 14th May, 2013 in that petition. The appointments are made without there being any application from

the appointees. There were several applications, which were forwarded by interested persons. There has never been a scrutiny and verification of these applications and only such persons, who are close to the politicians and are otherwise influential, have been appointed. There has never been any scrutiny of the documents and forwarded by these appointees. In none of the cases, a verification has been made and in accordance with the Act and the Rules enabling recording of the satisfaction that the appointees are eligible, qualified and are men and women of integrity and character. There is no police verification carried out as per Rule 6(2) and section 9(f) for 7 out of 12 members of the Managing Committee.

77. Thus, these appointments are contrary to law, specific orders and directions of this court referred above and vitiated by non application of mind. The appointments also contravene the mandate of Article 14 of the Constitution of India. The public interest is compromised and sacrificed and only political considerations have weighed with the authorities in making appointments.

78. In these circumstances, Mr. Talekar would submit that this court should interfere in its writ jurisdiction and quash and set aside the impugned resolution/order.

79. We have on record several affidavits in reply filed by the private respondents. However, we would make a reference to them while setting out the contentions of their counsel.

80. Mr. Dixit learned senior counsel appearing for the State submitted that these PILs are not maintainable. Mr. Dixit has invited our attention to the Bombay High Court Public Interest Litigation Rules, 2010 and particularly Rule 3(e) containing the definition of a Public Interest Litigation. Mr. Dixit would submit that the PILs are motivated and filed by those persons, who have failed to secure appointments or by political opponents or those having vested interest in the management and administration of the Trust. In that regard, our attention has been invited to memo of Public Interest Litigation No. 102 of 2016 and particularly pages 3, 5, 7, 8, 14 and 15 and ground no. XXI. Our attention is invited to page 16 ground no. XXIV, 17, 18, 22, 25, 29, 40-M, 45 and 47 to submit that the petition contains vague and general allegations and statements. There is a definite private interest of the PIL petitioner in Public Interest Litigation No. 102 of 2016. He has, for his own motives and financial interest, made wild and baseless allegations and he is not a genuine public spirited citizen.

81. Without prejudice to the argument that the PIL is not maintainable and should be dismissed, Mr. Dixit would submit that the averments in the petition are patently false. The allegations are irresponsible in the sense the initial averment in the petition is that there are no rules, but at the same time, rules are referred. Our attention has been invited to pages 426 to 428 of the record to submit that there is no challenge to the rules. Mr. Dixit would submit that in the petition allegations are made against high level functionaries. In these

circumstances, none of the reliefs in terms of the prayers of the petition can be granted. Mr. Dixit invited our attention to page 162 of the compilation to submit that the order of the Division Bench is suppressed. There was an interim arrangement made by this court till the rules are made, duly notified and fresh appointments are made in accordance therewith. Once fresh appointments have been made and in terms of the power conferred in the State by the Act and the rules, then, such appointments would replace any ad-hoc or interim arrangement. If the Act and the rules permit making such appointments, as are made vide the extant notification, then, in the absence of any challenge to the rules and the Act, no relief can be granted. Mr. Dixit would submit that the Act and the Rules are complete by themselves. Mr. Dixit has taken us through the provisions of the Act to submit that the same contemplates series of committees. There is a Management Committee, there is a Scrutiny Committee contemplated by section 21 and there is a Advisory Council contemplated by section 18. Mr. Dixit would submit that these appointments have been made under the executive power of the State. This executive power enables the State to make appointments and though the power to appoint is derived from the statute, the actual appointments are beyond the purview of judicial review. The discretionary power exercised by the State in making appointments cannot be challenged in the absence of proven and established charge of abuse of power and malafides. There is no such challenge. Mr. Dixit has submitted before us, during the course of arguments, that Mr. Sachin Tambe-respondent no. 7 has resigned as trustee on 10th July, 2017 and his resignation is accepted. Similarly, in the case of Mr. Wakchaure, FIR No. 238 of 2013 and the prosecution in terms thereof is withdrawn. The State has exercised the powers conferred by section 321 of the Code of Criminal Procedure, 1973. Once the prosecution itself is quashed, complaint is dismissed and the accused is discharged, then, it is false to allege that any criminal case or prosecution is pending. Even against Mr. Bipin Kolhe, the allegations made against him are false. He was released on bail and during the pendency of the criminal case, an application was made under section 321 of the Code of Criminal Procedure, 1973. The prosecution has been withdrawn.

82. Mr. Dixit was at pains to point out that section 9(1) and the clauses thereof cannot be read in the manner suggested by Mr. Talekar. Mr. Dixit would submit that clause (f) would have to be read along with the preceding clauses. Further, if there is no charge-sheet pending in relation to offences involving moral turpitude, then, with the assistance of Form "A", Item No. 7, it cannot be alleged that the appointment is contrary to law. Mr. Dixit would submit that such an item in the form appended to the rules cannot travel beyond a specific provision of the Act and the rules themselves. In other words, a form cannot override the substantive section and rules. Item No. 7 of Form "A", even otherwise, need not be strictly complied with. Such compliance should not be read in the said form. Mr. Dixit then submitted that section 9(1) would have to be read bearing in mind the language of section 12 and he would submit that Form "A" is directory. True it is that there should be a declaration, but the form in which such declaration

should be submitted cannot be construed as mandatory, but directory.

83. Mr. Dixit then highlighted the words and expressions in section 9(1)(f), on which heavy reliance was placed by Mr. Talekar. Mr. Dixit would submit that it is for the State to judge the gravity and magnitude of the offences alleged and the subjective satisfaction of the State cannot be interfered with. The words "or is otherwise found to be unfit" take their colour from the words and expressions preceding it. These words cannot be read in isolation. The preceding words and expressions would definitely throw light on the construction of the above words and expressions. They would be relevant while construing the later portion. Mr. Dixit would, therefore, submit that it is not proper to read the words and expressions "or is otherwise found to be unfit" as furnishing a separate ground or cause for holding a person to be disqualified for appointment or continuing as a member of the Managing Committee. Mr. Dixit would submit that the State, in its discretion, has to form an opinion about the fitness of the member/appointee. The opinion of the State cannot be interfered with under the power of judicial review.

84. Mr. Dixit would submit that in making such appointments or in exercising such executive power, it is not necessary that there have to be written guidelines or regulations in the field. The State has, even otherwise and bearing in mind the object of the Act, the status of Shirdi Saibaba Sansthan, exercised due care and caution. It has not made appointments only on political considerations as falsely alleged. Even otherwise, there is no prohibition in appointing a political leader if that person is duly qualified and is experienced, specialises in administration and management of a trust like Shirdi Saibaba Sansthan. If the person has worked in a social or educational field, has been representing people for a long time, is concerned with rural development, then, he deserves to be appointed. He cannot be held to be disqualified or ineligible merely because he is a member of a political party. Therefore, the PIL petitioner cannot carve out any criteria for appointment and force the State to accept it. Once the Act and the rules are not challenged, the discretionary power vesting in the State is not questioned, there are no materials to prove and establish the allegations of arbitrariness and malafides, then, the petition deserves to be dismissed.

85. Mr. Dixit would submit that it is his duty to satisfy the judicial conscience of the court. Therefore, on instructions, he has stated that ordinarily a report from the police is called for. Rule 6(ii) has been referred by Mr. Dixit to submit that a police report/verification is one of the sources of obtaining information. There are other sources from which the State obtains the relevant information with regard to the conduct and character of those whom the State desires to appoint. Mr. Dixit would submit that section 5 employs the word "appoint". In these circumstances, it is not compulsory or incumbent on the State to invite applications from the members of the public. It is the prerogative of the State to make appointment and while making the appointment, the State is guided by sub-section (2) of section 5 of the Act. Eventually, the word "appointment" does

not necessarily mean and in terms of the executive powers vesting in the State, an appointment in the services of the State. In other words, the appointment under the Act cannot be equated with public employment. Mr. Dixit also invites our attention to the rules to submit that Shri. Saibaba Sansthan Trust, Shirdi (Appointment of Members of Management Committee and Forms of Declaration) Rules, 2013 envisage appointments and Rule 6 clarifies that appointment of members shall be made by the State by nomination. Therefore, there is no substance in the contention of Mr. Talekar that the State is obliged to invite applications from the general public or if members of the public make applications seeking appointment, the State must necessarily consider them or is obliged to consider them. There is nothing in the scheme of the Act and the rules to suggest this course. Mr. Talekar's first contention, therefore, should fail is the argument of Mr. Dixit.

86. Mr. Dixit then submitted that Mr. Talekar's arguments with regard to the nature of the power vesting in the State Government also deserve to be rejected. Mr. Dixit submits that he has already pointed out that the executive power vesting in the Government of making appointments has been exercised reasonably and fairly. There is a presumption that all actions or orders of the State are reasonable and fair unless proved otherwise. Therefore, once the State Government acted in terms of a report of the police or prior verification by the police or official sources and then made the appointments, then, all care has been taken. The State has acted transparently, fairly and reasonably. None of the petitioners, who claim to be public spirited citizens, possesses any vested right. While concluding his arguments, Mr. Dixit submits that it is the absolute power of the State Government and nothing can be added in or subtracted from the provision. It is only when a person commits any act specifically enumerated in the clauses of section 9(1), he is disqualified. By reading something in the provision, a disqualification not provided specifically therein cannot be inserted. Mr. Dixit submits that the police verification record is available with the State and he has handed it over in a sealed cover.

87. The advocate appearing for respondent no. 3 Mr. N. R. Bhavar has adopted the arguments of Mr. Dixit.

88. Then, the learned counsel appearing for respondent no. 4 has invited our attention to the affidavit in reply of this respondent. It is argued by the learned counsel appearing for respondent no. 4, on the basis of the affidavit in reply at page 626 of the paper book that it is false to allege that there are any criminal antecedents. There is no criminal record. There are only eight civil suits and two complaints pending in the Consumer Court. Even these proceedings are against a company. The respondent no. 4 is one of the directors of this company, namely, Haware Engineers and Builders. It is not the law that because a prosecution or a civil suit or a complaint under the Consumer Protection Act, 1986 is pending against a company that its director is also disqualified. The fourth respondent is a very reputed person. His qualifications, credentials and achievements are beyond

doubt. He is a nuclear scientist. He has been educated and trained abroad. His contribution to that field is well recognised and appreciated. When such a person is chosen by the State to head the Management Committee, that is not purely because of his political affiliation. That is incidental and wholly inconsequential. The record of this respondent no. 4 Shri Haware would enable us, according to the counsel, to conclude that his appointment does not suffer from any abuse of executive power or malafides. This is not a reward for his loyalty to the political party, namely, Bhartiya Janata Party. It is a recognition of his contribution and achievements and the allegations are made purely out of jealousy.

89. Mr. Dhorde learned senior counsel appearing for respondent nos. 5 and 7 would submit that we must bear in mind that the legislature in its wisdom has conferred complete discretion in the executive. The mode of appointment can also be chosen by the executive. There is no requirement of inserting an advertisement so as to invite applications from interested members of the public. The executive power can be exercised by the State Government and none can claim a vested right of appointment to the Management Committee of a Trust. Merely because it is Shirdi Saibaba Sansthan that is no exception. It is eventually an appointment by nomination and the State is free to choose the appointees. The State is not obliged to consider any and every member of the public. In its wisdom, if the State decides to appoint a person, then, merely because he is associated with the ruling party does not mean that he is disqualified automatically. Mr. Dhorde then submitted that persons in public and social life have to represent the public, particularly when they are elected representatives. Even if they are not such representatives, if they are part and parcel of any cultural and social organisation and association, members of a political party, it is but their duty to give a voice to the grievances and complaints of the public. Once members of public bring their causes and grievances, particularly about lack of basic amenities in a village or a city, then, for such causes of the public and in their interest, on several occasions, peaceful demonstrations have to be held. Sometimes, together with the members of the public, such socially and politically active persons have to march to the office of the Collector of the District, Revenue Commissioner, other bodies and authorities like Municipal Council and Corporations and handover written representations and demands. Sometimes, they have to take part in peaceful protest and well known means of agitations such as a Dharna, hunger strike or fast. On such occasions, there is always an attempt to silence such protestors and demonstrators and they are picked up by the police machinery on the specious ground and reason that they are disturbing public peace and disrupting even tempo of life. They are, at times, detained and charges are sought to be framed against them by taking recourse to penal laws. When the underlying cause for the prosecution is of the above nature and for illustration such persons are held and taken in custody for protesting on account of lack of basic amenities like drinking water, electricity etc., then, the offences alleged are not involving moral turpitude. Mr. Dhorde submits that affiliation with a political party is no bar for appointment and the

appointment cannot be challenged on this ground. Mr. Dhorde would submit that from the record and particularly from the affidavits filed by these respondents and the memo of Civil Application No. 16304 of 2016, it would be evident that the appointments have been made from specified categories like rural development. There is no offence alleged involving moral turpitude against these persons. Further, the record would show that either the prosecution has been withdrawn or an application for withdrawal of the prosecution is pending. Mr. Dhorde also emphasised before us that educational qualifications have a certain place in the scheme of the Act and the rules and particularly while making appointments to the Management Committee. However, when members or appointees like these respondents, who are continuously working for rural development, coming from a rural background, not having access to formal education and not possessing degrees and diplomas by itself and without anything more will not disable or disqualify them from being appointed. One cannot forget their rural background and too much obsession with educational qualifications would defeat the very purpose of making appointments from such categories.

90. Mr. Dhorde, therefore, strenuously submitted that lack of degrees and diplomas and graduate and post-graduate educational qualifications does not mean people from rural background are uneducated. They are educated, but all of them may not be literate. Therefore, basic education and thereafter the work, their knowledge in the field derived from actual ground work would justify appointments from this category. Mr. Dhorde, therefore, would submit that there is no merit in this PIL and it should be dismissed.

91. The learned counsel appearing for respondent no. 9 Mr. Patil invited our attention to the affidavit in reply and submitted that respondent no. 9 is an eligible and qualified person. He may be associated with the political party in power, but his qualifications and achievements enable the State to appoint him. There is no truth in the allegation that he was deported from the United States of America. The record indicates that he volunteered to leave that country. Therefore, the allegations are baseless.

92. Mr. Hon learned senior counsel appearing for respondent nos. 10, 12 and 13 would submit that the allegation as far as respondent no. 10 is concerned is that he is a Bhartiya Janata Party loyalist and close relative of Mr. Rajnath Singh, Minister of Home, Government of India. However, this is a false statement. The surname is common and that is all. There is absolutely no relationship. These respondents have been found to be eligible and qualified from category "C" Business Management and Medical Practitioner. Respondent no. 10 is fully qualified. It is submitted that if one peruses the affidavit in reply, particularly at page 391, in the backdrop of section 5 and the rules, it would be evident that there is no criminal background nor any antecedents. The allegations are entirely baseless and therefore, the petition should be dismissed.

93. Then, Mr. Hon, appearing for respondent no. 12 would submit that page 37 of

the petition contains the allegations. There are allegations of criminal antecedents, but if one peruses the details of the criminal case, it would be evident that there was a dam project styled as Nilwande Dam Project. As a representative of the people and highlighting their grievances, this respondent joined a protest march. The allegation is that there was a "dharna" meaning the protesters squatted on the road. They blocked the traffic and that caused inconvenience to the people at large. However, one must see the background in which the protest march or dharna was organised. That was to voice the protest of those who were deprived of drinking water, which is a basic necessity. When such is the reason and for which peaceful protest or march is organised, then, the alleged offence committed can never be said to be involving moral turpitude. There is no prosecution pending against this respondent. Our attention was invited to page 119 of the paper book to submit that the application was in general category.

94. The learned counsel appearing for respondent no. 11 invited our attention to the affidavit in reply, particularly page 360 thereof. In this affidavit in reply, it was pointed out by respondent no. 11 that his appointment is from category "D". He is a resident of Ahmednagar district. There is absolutely no substance in the allegations, because in the proceedings, namely, Writ Petition No. 5008 of 2007 filed in this court, respondent no. 11 was representing the temple Trust. The allegations concern the management of the Trust. There are no personal allegations against this respondent. He has no criminal antecedents nor has he committed any offence involving moral turpitude. The respondent no. 11 was discharged from the criminal case. Hence, his appointment is valid. This respondent was earlier the Chief Executive Officer of Zilla Parishad and the Executive officer of the Shirdi Temple Trust till he retired in January, 2008. Thereafter, he has been involved in social works and being a devotee of Saibaba, he is chosen and appointed. That is also on account of his past experience. His appointment, therefore, cannot be said to be vitiated in law.

95. At this stage, we must clarify that respondent nos. 6 and 13 to 15 have been duly served. No appearance has been entered on their behalf nor any affidavit in reply has been filed by them.

96. The above sums up the arguments of all private respondents.

97. Ms. Pradnya Talekar learned advocate appearing for the petitioner, in her rejoinder arguments, submitted that there is no scrutiny or verification made before the appointments. The appointments are thus contrary to law. The law postulates that such of those persons who are disqualified for appointment shall not be appointed. Ms. Talekar would submit that the reading of section 9 by Mr. Dixit is incorrect and improper. While a person shall be disqualified if he is a minor or is of unsound mind and is so declared by a competent court, is insolvent, he can also be disqualified if he is directly or indirectly interested in a lis or any transaction relating to the immovable property of the Sansthan Trust. Similarly, except for sub-section (1) of section 6, if any person, who is a paid

servant of the Committee or has any share or interest, directly or indirectly in any contract for the supply of the goods to or for execution of the work for the purpose of any service undertaken by the Committee in respect of the Sansthan Trust, then, he is equally disqualified. Clause (f) deals with a case where the disqualification for appointment or for being a member is if the person is guilty of misconduct or has been charge-sheeted for the offence involving moral turpitude or is otherwise found to be unfit. Ms. Talekar submits that the words preceding the expression "or is otherwise found to be unfit" would not control the interpretation of these later words and expressions. This is not a provision which can be construed by applying the principle "ejusdem generis". The first part of clause (f) is dealing with misconduct. The words appearing thereafter pertain to a person who is charge-sheeted for the offence involving moral turpitude. The third category is "or is otherwise found to be unfit". Therefore, a person may not be pronounced guilty of misconduct or may not be charge-sheeted for the offence involving moral turpitude, but if he is otherwise unfit, then, he is held to be disqualified. The word "unfit" has been interpreted and construed in several decisions and Ms. Talekar relies upon some of them.

98. Ms. Talekar would then submit that as far as respondent no. 4 is concerned, it is not clear from which category he is appointed. Even if one is appointed as a Chairman, he has to be from one of the four categories. In any event, prior to appointment of respondent no. 4, no police verification was done. In other words, there are no particulars or details sought from the police in the form of a report.

99. Similar is the case of respondent no. 5. He has no experience of any work in rural development. His only qualification is that he was a MLA. There is no request to close the prosecution on the date of the appointment of respondent no.5. He is thus a person with criminal antecedents. The request to close the criminal prosecution is made post filing of this PIL. Our attention is invited to page 61 of the compilation to submit that the prosecution against respondent no. 5 is still pending. Even in his case, there are no particulars forthcoming of any prior police verification or a report being called for from the concerned police station.

100. As far as respondent no. 9 is concerned, Ms. Talekar would submit that the appointment is made from the category of "Finance Management". The gentleman has Masters degree in Humanity/Arts in 2012. He has no work experience in Finance Management. No scrutiny has been done as far as his past conduct is concerned. His fitness is not established and in that regard, our attention is invited to page 413 of the paper book and equally the judgment in the proceedings before the court abroad. It is submitted that the proceedings for removal of this respondent no. 9 were initiated. Thus, he was to be sent out of the United States of America. He was seeking asylum. All this shows that his presence in the United States of America was not conducive to safety and security of that country. He was a completely unwanted element.

101. Then, attacking the stand of respondent no. 10, Ms. Talekar would submit that he is only a Bachelor in Management Science. This is not a qualification in Business Management. This gentleman is also not experienced and therefore, in his case as well, proper scrutiny and verification has not been done. There is no record of any police verification.

102. As far as respondent no. 11 is concerned, it is apparent that against him there is a clear indictment. A writ of quo warranto could not be issued because this gentleman never resigned from the post. However, he has suppressed a material fact that he was charge-sheeted. That charge-sheet was concerning an offence involving moral turpitude.

103. Similar is the position with regard to respondent no. 12. Against him as well, there are three offences registered. Public Interest Litigation No. 25 of 2012 is pending. There is no exoneration of this respondent no. 12 from the charge of nepotism. Ms. Talekar, in the end, would emphasise the fact that the State plays a fiduciary role. The State has to ensure efficient, transparent and smooth management of the affairs of the Trust and one of the objects sought to be achieved by the law is that the Trust should not be locked in continuous litigation. That should be reduced. However, it is clear from the record how the State is responsible for generating litigation against Shirdi Trust for it has ignored and brushed aside serious charges and allegations against the management. The State has sought to protect those involved in acts of omission and commission. The Trust, therefore, got embroiled in controversies and litigations. In these circumstances, we should place an interpretation on the provisions of the Act which accords with and subserves the object and purpose of the same. Ms. Talekar, while concluding, again reiterated her submission that there are distinct categories/things brought in section 9(1)(f) and she would submit that the attempt of Mr. Dixit to draw support from the language of section 10(f) so as to interpret section 9(1)(f) should not be countenanced. Ms. Talekar would submit that there should be a conscious application of mind by the State while making appointments. The executive power cannot be exercised only by relying on the opinion of the police machinery. That opinion is never decisive. Eventually, there has to be an analysis of the materials gathered by the State. This must be by an independent authority. Ms. Talekar would submit that the Act and the rules would indicate that there is no mode of appointment set out therein. Some guidelines would have to be laid down and they are necessary so as to provide for the manner in which the appointment is to be made. Even if the State proceeds on the footing that it cannot be called upon to issue a public notice and invite applications from interested parties, still, it is the bounden duty of the State to explain to the court how it arrived at a conclusion that a particular person is fit for being appointed. That application of mind must be apparent and how the opinion about a person's fitness and competence is recorded must be disclosed to the court in the event there is an allegation and serious charge of favouritism and discrimination in the exercise of power of appointment. Eventually, this is a public office and though not equated with public employment, some of the

guidelines guiding the State in making appointments to public posts would have to be applied so as to make appointments under this statute. She submits that the Act itself in unequivocal terms says that 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, 1860 and section 2(c) of the Prevention of Corruption Act, 1988. The word "member" is defined to mean a member of the Committee and includes Chairman and Vice Chairman of the Committee. The Committee is the very Committee, namely, the Shri. Saibaba Sansthan Management Committee constituted under section 5. Therefore, the submission that the State has absolute power in making appointments and that power can never be controlled by any provision or by application of any guidelines, particularly those sought to be applied by the PIL petitioners, must be rejected outrightly. Ms. Talekar would submit that the provisions of the Act itself contain enough guidelines and once the member of the Committee is a public servant, then, he performs a public duty. She relies upon the provisions of the Prevention of Corruption Act, 1988 in that regard. For all these reasons, she would submit that the petition be allowed.

104. It is in the light of the above submissions and arguments that we must decide the legality and validity of the appointments of respondent nos. 4 to 15, made vide the impugned notification.

105. Before we do so, we must dispose of certain preliminary objections to the maintainability of these PILs. As far as the first PIL is concerned, it is urged that the petitioner has a vested interest, inasmuch as he had obtained a contract for installation of CCTVs. The contract was obtained by the petitioner on account of his affiliation and association with the office bearers of the Trust at that time. There was an inquiry held into the alleged irregularities in awarding of that contract, according to the contesting respondents. Therefore, the petitioner has filed the PIL with ulterior motives.

106. We do not think that on some vague objections, without any particulars pointing towards the role of the petitioner, his alleged association or affiliation with those in management at the relevant time, his indictment in any manner in any proceedings, it would be proper to arrive at any conclusion of the nature desired by the respondents. Since there are series of PILs and which have been entertained earlier by this court and the argument being that the orders and directions in these PILs have been misinterpreted and misconstrued, the appointments have been made contrary to law, it would be improper to throw out these PILs. Merely because some political rival has brought before this court the issue of the legality and validity of the appointments, it will not be proper to throw out the challenge. More so, bearing in mind the nature of the Trust, the large number of devotees visiting the Saibaba temple and from all over the country so also the object and purpose of the Act, we do not think that the preliminary objections can be upheld. Therefore, in the facts and circumstances peculiar to this case and the challenge involved, we hold that the PILs are

maintainable.

107. The other objection that was raised and is by the PIL petitioners. That objection is that the new Management Committee constituted by the impugned Government Resolution could not have assumed charge unless it had sought prior permission from this court. In other words, the Government Resolution could not have been implemented immediately. For that to be brought into effect or implemented, all concerned should have obtained appropriate permissions or at least clarifications from this court. This objection overlooks the fact that by the earlier directions and orders of this court, an ad-hoc committee of the management of the Sansthan Trust was set up. That comprised of the Principal District Judge, Ahmednagar district, the Collector of the district and the Chief Executive Officer of the Trust. This ad-hoc arrangement was to continue until and unless a committee was constituted in terms of section 5 and further provisions of the Act by the State Government. Once that Committee has been set up, we do not see any impediment for it to assume charge of the affairs of the Sansthan Trust. Even if any clarification was required to be obtained but not obtained, it does not mean that the assumption of charge is illegal. We do not see anything in the orders of this court which prohibits a Committee of Management constituted by the State Government in assuming charge and taking over the affairs of the Sansthan Trust. Therefore, this argument of the petitioners' counsel has no merit.

108. Even if we reject the above objection of the petitioners' counsel, it does not mean that the court is prevented or precluded from considering the submissions of the petitioners on the legality and validity of the Government Resolution dated 28th July, 2016. The assumption of office by the Committee of Management constituted by this Government Resolution does not mean that it enjoys complete immunity from challenge to its constitution. In other words, the constitution of the Committee can be challenged if it is contrary to law and the powers of judicial review, vesting in this court, can be invoked by parties like the petitioners despite the committee assuming office. That challenge will have to be independently considered and dehors the overruling of the above objection of the petitioners' counsel.

109. The Shree Saibaba Sansthan Trust (Shirdi) Act, 2004 is enacted by the State legislature to re-constitute a public trust of Shree Shirdi Sai Baba Sansthan registered under the Bombay Public Trusts Act, 1950 under the name "Shirdi Sansthan of Shri. Sai Baba" at Shirdi, District Ahmednagar, and to provide for better management, administration, governance and control of the Trust to enable it to undertake wider welfare activities for the public. In the preamble itself, the law 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. Therefore, the Government of Maharashtra considered it expedient that the development and management of this important and popular Trust should not be hampered or 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 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.

110. The law is not divided into Chapters, but has 35 sections. Section 2 contains definitions and for better understanding of the terms employed and used in the Act, we reproduce certain definitions as under:- "2. In this Act, unless the context otherwise requires,-

(a) "Advisory Council" means the Shree Sai Baba Sansthan Advisory Council constituted under section 18; (c) "Bhakta Mandal" means the Shree Sai Baba Bhakta Mandal referred and recognised under section 19;

(d) "Committee" means the Shree Sai Baba Sansthan Management Committee constituted under section 5;

(g) "member" means a member of the committee and includes the Chairman and Vice-Chairman of the Committee;

(h) "prescribed" means prescribed by rules made by the State Government under this Act; (i) "regulations" means regulations made by the committee under this Act;

(j) "Sansthan" means Shree Shirdi Sai Baba Sansthan belonging to the Shirdi Sai Baba Temple Trust and popularly known as the Shree Shirdi Sai Baba Sansthan Trust of Shirdi; (k) "Sansthan Trust" or "Trust" means the Shri Sai Baba Sansthan Trust (Shirdi) constituted under section 3; (k1) "Scrutiny Committee" means the Scrutiny Committee constituted under the proviso to sub-section (2) of section 21

; (l) "Trust Fund" means the fund of the Sansthan Trust constituted under section 20;

(m) words or expressions used in this Act, but not defined, shall have the meanings, respectively assigned to them in the "Bombay Public Trusts Act, 1950."

111. By sub-section (1) of section 3, the Shree Sai Baba Sansthan Trust (Shirdi) is deemed to be reconstituted under this Act in place of the Public Trust registered under the Bombay Public Trusts Act, 1950 by the name of "Shirdi Sansthan of Shri Sai Baba" at Shirdi, district Ahmednagar. Thus, on 23rd August, 2004, the Trust shall be deemed to be re-constituted under this Act. On the appointed day, all the properties, whether movable or immovable of the erstwhile Trust shall, by virtue of this Act, stand transferred to and vested in the Sansthan Trust and the Executive Officer shall, on behalf of the Committee, be entitled to their possession and management from that day.

112. Section 4 provides for transfer of properties to Sansthan Trust. Then comes section 5, which reads as under:- "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."

113. The subject of allowances to members is dealt with by section 6 and the term of office is provided in section 7. Section 8 sets out the conditions for being a member and reads as under:- "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 devote of Shree Sai Baba and shall, prior to his appointment as a member make such declaration in the prescribed form."

114. Then comes an important provision section 9, which reads as under:- "9 (1) A person shall be disqualified for appointment as or for being, a member, if he-

(a) is a minor; (b) is of unsound mind, and is so declared by a Competent Court:

(c) is an undischarged insolvent; (d) has directly or indirectly any interest in a lease or any other transaction relating to the immovable property of the Sansthan Trust;

(e) save as provided in sub-section (1) of section 6, is a paid servant of the Committee or has any share or interest directly or indirectly in any contract for the supply of the goods to or for execution of any work, or the performance of any service, undertaken by the Committee in respect of the Sansthan Trust;

(f) is guilty of misconduct or who has been charge-sheeted for the offence involving moral turpitude or is otherwise found to be unfit.

(2) If it appears to the State Government that a member has incurred any of the disqualifications as provided in sub-section (1), the State Government may, after giving such member an opportunity of showing cause and after considering any such cause shown, remove such person from membership, and the decision of the State Government shall be final."

115. Section 10 confers in the State a power to appoint new member in the event the existing member ceases to hold office. Section 11 deals with meetings of the Committee and rules of procedure, whereas, section 12 says 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. The Executive Officer and other officers are appointed in terms of section 13 and by section 14, the powers and duties of the officers of the Committee are set out. That section reads as under:- "14. (1) The Executive Officer shall be the Chief Administrative Officer of the Committee. He shall, subject to the general control of the Committee, have powers to carryout the decisions of the Committee in accordance with the provisions of this Act.

(2) In particular and without prejudice to the generality of the provisions contained in sub-section (1), the Executive Officer shall be responsible for the custody of all properties and records of the Trust and shall make proper arrangements for collection and deposit of offerings made in the Temple and shall have powers, subject to the control of the Committee;- (a) to take disciplinary action against any other officer or employee of the Committee; (b) to call for tenders for works or supplies and accept such tenders when the amount or value thereof does not exceed twenty-five thousand rupees;

(c) to dispose of perishable offerings by auction or otherwise and credit the sale proceeds to the Trust Fund;

(d) to undertake urgent repairs or measures required for safety or convenience of the devotees; (e) to do all other acts and things, which he is empowered to do by the Committee or under the regulations.

(3) The other officers and employees of the Committee shall exercise such powers and perform such duties and functions as are assigned to them by the committee or the Executive Officer or under the regulations, from time to time."

116. By section 15, the terms and conditions of service of Executive Officer and other officers and employees can be determined. Then follows allocation of employees of public Trust to Sansthan Trust.

117. After these provisions appears section 17, which reads as under:- "17. (1) Subject to any general or special orders of the State Government, it shall be the duty of the Committee to manage the properties and affairs of the Sansthan Trust, efficiently, to make proper management 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 for which the Trust is to be administered under this Act. (2) In particular and without prejudice to the generally of the provisions contained in sub-section (1), the Committee shall,-

(a) prepare the annual budget estimating the income and expenditure of the Trust and send a copy of it to the State Government and the Charity Commissioner; (b) maintain proper accounts and records of the properties and the income and expenditure of the Trust;

(c) cause the accounts of the Trust to be audited annually by such person and by such date in the next succeeding year as the State Government may direct; (d) make regular payment of salaries, honorarium, fees and allowances and other sums payable to the members, Executive Officer and other officers and employees of the Committee from the Management Fund;

(e) take measures for the recovery of lost property or any sums due to the Trust; (f) institute and defend suits, prosecutions and other legal proceedings relating to the Trust in a Court or before a Tribunal or other authority;

(g) inspect or cause an inspection to be made of the properties of the Trust, from time to time, and to take prompt steps to remove any encroachments made on such properties; (h) supply such returns, statistics, accounts and other information with respect to the Trust as the State Government may, from time to time, require;

(i) generally do all such acts as may be necessary for the purposes of proper management, maintenance and administration of the properties and affairs of the Trust;

(j) if deemed necessary, form a subcommittee from amongst its members or outsiders, to advise itself on the matters pertaining to the administration and management of the Sansthan Trust, and also lay down its composition and procedure for conduct of meetings and for the matters connected therewith including provisions for payment of sitting fees, and travelling and daily allowances to the members of such sub-committee who are other than the Committee members, and may also appoint a Chartered Accountant as recommended by the Scrutiny Committee to assist it in its functions; and may also appoint a sub-committee of not less than five of its members from the field of specialized or professional knowledge to monitor and report to the Committee the proper, full and timely utilization of the financial assistance granted by the Sansthan Trust to any Trust under sub-section (2) of section 21, and report any misutilisation of financial assistance by such trust to the Charity Commissioner, for necessary disciplinary or penal action under the Bombay Public Trusts Act, 1950;

(k) acquire or purchase lands or buildings required for the purpose of development and carrying out schemes of the Trust and to carry out the

objectives or purposes of the Trust; (l) disseminate and propagate useful knowledge about the life, activities, leelas and teachings of Shri. Sai Baba, and maintain and expand the library of Shri. Sai literature;

(m) organise or undertake activities or programmes aimed at promoting the feelings of brotherhood, unity, faith and equality among the devotees of Shri Sai Baba;

(n) promote or help secular education of all types and establish educational institutions at Shirdi, or other places;

(o) promote any other noble cause aimed at achieving human well being or, to help human beings in calamities. (3) No immovable property vested in the Trust shall be leased for more than a year, or mortgaged, sold or otherwise alienated, by the Committee, except with the previous sanction in writing of the State Government.

(4) No jewellerys, ornaments and other valuable movable property vested in the Trust, the value of which is more than fifty thousand rupees, shall be sold, pledged or otherwise alienated by the Committee, except with the previous sanction in writing of the State Government.

(5) The Committee shall have no power to borrow money from any person or party, except with the previous sanction in writing of the State Government.

(6) Subject to the provisions of this Act, the Committee shall have all the power necessary for performing its duties and functions under this Act."

118. A perusal of all the provisions reproduced above would indicate that for the purpose of the management of the Sansthan Trust, a Committee to be called as Shree Sai Baba Sansthan Management Committee shall be constituted by the State Government as provided in sub-section (2) of section 5. Thus, the Committee shall have a Chairman, Vice-Chairman and not more than 15 other members. The first proviso says 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. The second proviso says 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 specialised 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. Sub-section (3) says that the president of the Shirdi Nagar Panchayat shall be the ex-officio member of the Committee.

119. We are of the opinion that considering the status of the Saibaba Sansthan Trust, a Committee with wide representation to diverse sections and fields is expected to be set up by the law. Eventually, it manages the affairs of the Shree Saibaba Sansthan Trust. The affairs have to be managed so as to fulfill 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. Similarly, as elaborated further, the development and management of a important and popular Trust should not be hampered or suffered by avoidable litigation, that there was a necessity to make a special law. Once there is a re-constitution of the Trust and the Act is enacted to provide for the efficient management of the same by a Committee directly under the supervision and control of the State Government, then, it is but natural that persons of integrity, Character and eminence are appointed. The persons to be appointed have to be knowledgeable, qualified and experienced in varied fields. The Committee has to perform diverse duties and functions. It is evident from sub-section (1) of section 17 that subject to any general or special orders of the State Government, 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 for which the Trust is set up. The Committee shall, without prejudice to section 17(1) by sub-section (2) of section 17, inter alia, organise or undertake activities or programmes aimed at promoting the feelings of brotherhood, unity, faith and equality among the devotees of Shri. Saibaba. It shall promote or help secular education of all types and establish educational institutions at Shirdi or other places. It shall promote any other noble cause aimed at achieving human well being or, to help human beings in calamities. Therefore, we emphasise that the Committee must be broadbased and truly representative. It must have a woman and a representative of the socially and economically weaker sections so also persons of the category set out in the second proviso to section 5(2) of the Act, all of whom would act so as to discharge the obligations and perform duties of the Committee and exercise the powers towards that end. Shree Saibaba is worshiped by all communities cutting across caste, creed, sex, religion, language and place of residence. 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, which is coupled with a duty. Equally, the Committee exercises the powers vesting in it to fulfill 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. Therefore, political affiliations and financial or other association of a similar nature are out of place. 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. A person may be a

member of a political party in power or in opposition, but otherwise qualified and eligible, can be appointed. There is no quota nor any reservation as such. The aim is obvious. 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 and which must be discharged with due respect and reverence to Shree 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 others. He treated all of them equally and his message of faith, trust and patience in fellow humans appeals to all. Therefore, affiliation or association with the ruling party as the sole consideration for appointment is expressly ruled out. Though all politicians cannot be said to be undeserving 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. Therefore, a person duly qualified, experienced, knowledgeable and honest so also hard working from the fields enumerated in the proviso can be appointed irrespective of whether he is close or opposed to any political party. Thus, the appointments are not political nor can the appointees be politicians alone. The appointment is apolitical. We are of the opinion that this is a public office. 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. Firstly, a person to be appointed as a member of the Committee shall be a permanent resident of the State of Maharashtra and a devotee of Shree Saibaba and shall, prior to his appointment as a member, make a declaration in the prescribed form. A person shall be disqualified for appointment or for being a member, if he is disqualified or invites a disqualification, as provided in section 9, then, the State Government has to exercise its powers of removal, conferred by sub-section (2) of section 9. Thus, the disqualifications having been laid down and the power to removal being conferred in the State Government would denote that this is a peculiar office. It is held subject to the statute. It is an office in terms of and under the statute. It is an appointment as a public servant. 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 as envisaged in and by the Act of 2004 and must, therefore, be in accordance therewith. 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 Shree Saibaba. In making such appointment, the State Government itself acts as a trustee. The holder of the office is performing, as held above, a duty and function under the Act. He must be, therefore, appointed in a non-arbitrary, transparent and fair manner. The power to appoint cannot be exercised so as to render the

relevant provisions of the statute redundant and nugatory. If the appointments made are dehors 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.

120. Pertinently, it has not been argued by Mr. Dixit learned senior counsel appearing for the State that the appointments made to the Committee of Management and challenged in this case are immune from such challenge. He does not argue as an extreme proposition that the power to appoint, exercised by the State is beyond judicial review. In the sense, the exercise is incapable of being tested or scrutinised in this court's writ jurisdiction. All that he would submit is that this power is absolute in nature and it is entirely the discretion of the State to appoint or not to appoint any person as a member of the Committee. Mr. Dixit would submit that no guidelines can be laid down by this court, save and except those enumerated in the Act so as to control or influence the discretion of the State in making appointments. The State Government, in its discretion, can form an opinion about the fitness of a person for appointment as a member of the Committee of Management unless the same is vitiated by arbitrariness, unreasonableness and malafides. This opinion of the State Government is beyond judicial review. In our opinion, no judicial review is permissible of the opinion recorded by the State Government with regard to fitness or otherwise of the person appointed as a member. The power of judicial review cannot be equated with a power of appeal. It is not permissible for this court in the garb of exercising the above power to substitute its opinion and view with that of the State Government. However, we hasten to clarify that so long as the State adheres to the mandate of the law and follows a procedure consistent therewith while making the appointments, then, this court cannot direct the State to follow a particular procedure or method in addition or substitution to what has been applied/followed by the State only because that is better. This court cannot advise the State to prescribe or follow a particular procedure.

121. To the above extent, we are in agreement with Mr. Dixit. We are not expecting the State to go public in the sense follow a procedure which it is obliged to follow in public employment. It is not expected of the State to issue a public notice, invite applications in prescribed form, appoint a selection committee, shortlist the applicants for interview and thereafter hold oral interviews. We are not expecting the State to follow such an elaborate procedure. However, when the State records an opinion about the ability, character or integrity of a particular person, in forming that opinion, the State is obliged to apply the tests and standards evolved by the statute in this case. The statute demands and in absolute terms that none, who is disqualified or has incurred a disqualification can be a member. It is the statute which demands that a committee must comprise of men and women of character, integrity, knowledge, capability and experience. It is not the court, which is prescribing any standards, but the standards and tests are laid down in the statute itself. If the Government decides not to appoint a particular expert and from the fields set

out in the second proviso to section 5(2) of the Act, it may well do so, but it cannot appoint a person who does not fulfill any of the qualifications and style him as qualified or experienced and knowledgeable. The appointee must be satisfying the tests and standards demanded of him by the statute.

122. In this regard, we must outline the importance of transparency, fairness and equality in State's action. Article 16 of the Constitution of India guarantees equality of opportunity in matters of public appointment. We are of the opinion that this is not an employment. However, as is always happening, Article 16 is understood as applicable only to public employment. It speaks of equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

123. In regard to the above, we must invite the attention of all concerned to the language of Article 16 of the Constitution of India, which, to our mind, with greatest respect to all, is missed frequently. In fact, on very few occasions, one gets an opportunity to refer to the plain words of clauses (1) and (2) of Article 16. Both these clauses read as under:- "ARTICLE 16. Equality of opportunity in matters of public employment. - (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

124. The ambit and scope of this Article [(clause (1) and (2)] has been considered by the Hon''ble Supreme Court of India in the case of Gazula Dasaratha Rama Rao vs. State of Andhra Pradesh and Ors., AIR.1961 SC 564. The Constitution Bench of the Hon''ble Supreme Court of India was considering a challenge to the validity and legality of section 6 of the Madras Hereditary Village Offices Act (3 of 1895). The argument was that section 6 is void so far as it infringes the fundamental right of the petitioner before the Hon''ble Supreme Court of India. An order was passed in favour of respondent no. 4 in that petition, who was appointed as Village Munsiff of newly constituted village Peravalipalem. The Hon''ble Supreme Court reproduced in para 2 sub-section (1) of section 6 and then referred to the factual position, namely that all hereditary village offices of the original village ceased to exist under sub-section (1) of section 6. On the division of the village into two villages, different offices were created. The office of Village Munsif was filled up by the appointment of respondent no.4. Respondent no. 4 to that petition was son of the Village Munsif of the old village. The petitioner before the Hon''ble Supreme Court was appointed by the Revenue Divisional Officer as Village Munsif. From this order, the fourth respondent preferred appeals to the Collector of Guntur. That appeal was allowed and instead of the petitioner before the Hon''ble Supreme Court, the fourth respondent was appointed as Village Munsif. A further appeal was carried by the petitioner before the Hon''ble Supreme Court from that order of the

Collector to the Board of Revenue. That appeal was dismissed. Thereafter, the State was approached, but in that endeavor as well, the petitioner was unsuccessful. Thereafter, he filed the writ petition and relied upon clauses (1) and (2) of Article 16 of the Constitution of India. In dealing with such a challenge, the Hon"ble Supreme Court held as under:- "(9) Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds" religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16 Cl. (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and Cl. (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that, Art. 14 guarantees the general right of equality; Arts. 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Art. 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Art. 15 does not mention "descent" as one of the prohibited grounds of discrimination, whereas Art. 16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Art. 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to Service or to provisions in the earlier Constitution Acts relating to the same subject. These Service provisions do not enshrine any fundamental right of citizens; they relate to recruitment, conditions and tenure of service of persons, citizens or otherwise, appointed to a Civil Service or to posts in connection with the affairs of the Union or any State. The word "State", be it noted, has a different connotation in Part III relating to Fundamental Rights: it includes the Government and Parliament of India, the Government and Legislature of each of the States and all local or other authorities within the territory of India etc. Therefore, the scope and ambit of the Service provisions are to a large extent distinct and different from the scope and ambit of the fundamental right guaranteeing to all citizens an equality of opportunity in matters of public employment. The preamble to the Constitution states that one of its objects is to secure to all citizens equality of status and opportunity; Art. 16 gives equality of opportunity in matters of public employment. We think that it would be wrong in principle to cut down the amplitude of a fundamental right by reference to provisions which have an altogether different scope and purpose. Article 13 of the Constitution lays down inter alia that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with fundamental rights, shall to the extent of the inconsistency be void. In that Article "law" includes custom or usage having the force of law.

Therefore, even if there was a custom which has been recognised by law with

regard to a hereditary village office, that custom must yield to a fundamental right. Our attention has also been drawn to Cl. (4) of Art. 16 which enables the State to make provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. The argument is that this clause refers to appointments or posts and further talks of inadequate representation in the services, and the learned Advocate-General has sought to restrict the scope of Cls. (1) and (2) of Art. 16 by reason of the provisions in Cl. (4). We are not concerned in this case with the true scope and effect of Cl. (4) and we express no opinion with regard to it. All that we say is that the expression "office under the State" in Cls. (1) and (2) of Art. 16 must be given its natural meaning. (10) We are unable, therefore, to accept the argument of the learned Advocate-General that the expression "office under the State" in Art. 16 has a restricted connotation and does not include a village office like that of Village Munsiff. In *M. Ramappa v. Sangappa*, 1959 SCR 1167: (AIR 1958 SC 937) the question arose whether certain village offices governed by the Mysore Villages Offices Act, 1908, were offices of profit under the Government of any State within the meaning of Art. 191 of the Constitution. This Court held that the offices were offices of profit under the Government and said:

"An office has to be held under someone for it is impossible to conceive of an office held under no one. The appointment being by the Government, the office to which it is made must be held under it, for there is no one else under whom it can be held. The learned Advocate said that the office was held under the village community. But such a thing is an impossibility for village communities have since a very long time, ceased to have an corporate existence."

125. Thus, the expression "office under the State" under Article 16 cannot be construed narrowly. That would have to be given its natural meaning.

126. We do not think that anything contrary to the principles laid down in this decision has been stated in later decisions of the Hon"ble Supreme Court. Thus, this decision is very much good and binding law.

127. When such is the principle laid down by the judgment of the Hon"ble Supreme Court of India, then, it goes without saying that the mandate of Article 14 of the Constitution of India has to be fulfilled for every State action has to be informed by reason and ought to be fair, transparent and non-discriminatory. In that sense, Mr. Talekar is right in relying upon the judgment of the Hon"ble Supreme Court of India in the case of *Kumari Shrilekha Vidyarthi vs. State of Uttar Pradesh*, AIR 1991 537. While considering the challenge to the order of the State of Uttar Pradesh determining the appointments of the District Counsel/ District Government Pleaders, the Hon"ble Supreme Court had an occasion to consider the ambit and scope of the powers of judicial review. This judgment has been followed by the Hon"ble Supreme Court later on and in that regard, our attention has been invited to the later judgment in the case of *State of Punjab and Anr. vs. Brijeshwar Singh Chahal and Anr.*, 2016(6) SCC 1. Following *Kumari*

Shrilekha Vidyarthi (supra), the Hon"ble Supreme Court held as under:- "10. We are not sure whether a similar study has been conducted qua the State of Punjab, but given the fact that the number of Law Officers appointed by that State is also fairly large, we will not be surprised if any such study would lead to similar or even more startling results. The upshot of the above discussion is that for a fair and objective system of appointment, there ought to be a fair and realistic assessment of the requirement, for otherwise the appointments may be made not because they are required but because they come handy for political aggrandisement, appeasement or personal benevolence of those in power towards those appointed. The dangers of such an uncanalised and unregulated system of appointment, it is evident, are multi-dimensional resulting in erosion of the rule of law, public faith in the fairness of the system and injury to public interest and administration of justice. It is high time to call a halt to this process lest even the right thinking become cynical about our capacity to correct what needs to be corrected.

".. 17. We have not been able to persuade ourselves to accept the view that even when the appointments are made to offices heavily remunerated from the public exchequer the same can or ought to remain unregulated. That is particularly so when those appointed are expected by the very nature of their appointment to discharge important public function affecting not only State interest but the quality of justice which the courts administer. There is in the case of Punjab and Haryana not even a semblance of any selection process in the matter of appointment of those chosen for the job leave alone a process that is credible in terms of its fairness and objectivity. The practice of making appointments in disregard of what is expected of a functionary sensitive to the demands of fairness and equality of opportunity even when in vogue for long, runs contrary to the true legal position settled by a long line of decisions to which we shall presently refer. The dominant purpose which ought to permeate any process of selection and appointment, namely, "protection of public interest" in courts by availing services of the most meritorious is clearly defeated by the method that the States have been following and continue to follow. What is regrettable is that even after the pronouncements of this Court have settled, the principles on which public authorities are required to act while discharging their functions, the States continue to harp on the theory that in the matter of engagement of State counsel they are not accountable and that the engagement is only professional and/or contractual, hence, unquestionable. It is, in our view, too late in the day for any public functionary or Government to advance such a contention leave along expect this Court to accept the same. If a Government Counsel discharges an important public function and if it is the primary duty of those running the affairs of the Government to act fairly, objectively and on a non-discriminatory basis, there is no option for them except to choose the best at the Bar out of those who are willing and at times keen to work as State counsel. It is also their duty to ensure that the process by which the best are selected is transparent and credible. Abdicating that important function in favour of the Advocate General of

the State who, in turn, has neither the assistance of norm or procedure to follow nor a mechanism for assessment of merit will be self-defeating. We regret to say that in the matter of appointment of State counsel, the State of Punjab and Haryana have much to do to reform the prevalent system which reform is in our opinion long overdue.

".. 21. A similar sentiment was expressed by this Court in *E.P.Royappa v. State of T. N.* (1974) 4 SCC 3 wherein this Court declared that Article 14 is the genus while Article 16 is a specie and the basic principle which informs both these Articles is equality and inhibition against discrimination. Equally, declared this Court, was antithetic to arbitrariness. The Court described equality and arbitrariness as sworn enemies, one belonging to the rule of law in a republic and the other to the whims and caprice of an absolute monarch. Resultantly if an act is found to be arbitrary, it is implicit that it is unequal both according to political logic and constitutional law, hence violative of Article 14 and if it affects any matter of public employment it is also violative of Article 16. This Court reiterated that Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and inequality of treatment.

".. 23. In *Ramana Dayaram Shetty v. International Airport Authority of India* (1979) 3 SCC 489, this Court relying upon the pronouncements of *E. P. Royappa* (supra) and *Maneka Gandhi v. Union of India* (1978) 1 SCC 248 once again declared that State action must not be guided by extraneous or irrelevant considerations because that would be denial of equality. This court recognised that principles of reasonableness and rationality are legally as well as philosophically essential elements of equality and non-arbitrariness as projected by Article 14, whether it be authority of law or exercise of executive power without the making of a law. This Court held that State cannot act arbitrarily in the matter of entering into relationship be it contractual or otherwise with a third party and its action must conform to some standard or norm, which is in itself rational and non-discriminatory.

".. 28. In *Shrilekha Vidyarthi v. State of U. P.* (1991) 1 SCC 212, which happens to be the first of these decisions, this Court had an occasion to examine whether Government Counsel in the districts are holders of an "office or post" or such appointments are no more than professional engagements like the one between a private client and his lawyer. That case arose out of a challenge mounted by Government Counsel who were engaged throughout the State of Uttar Pradesh to handle civil, revenue or criminal cases and whose services were en masse terminated by the State only to be replaced by fresh appointments on the basis of a new panel prepared for that purpose and communicated to the District Magistrates concerned. On behalf of the State, it was argued that the engagement of Government counsel was nothing but a professional engagement between a client and his lawyer with no public element attached to it.

".. 37. In *State of U. P. v. Johri Mal* (2004) 4 SCC 714, a three-Judge Bench of this Court had an occasion to deal with somewhat similar question that arose

once again in relation to appointment of the Government lawyers in the State of U. P. This Court reviewed the decisions earlier delivered and ruled that public interest would be safeguarded only when good and competent counsel are appointed by the State. No such appointments should, declared this Court, be made for pursuing a political purpose or for giving some undue advantage to any particular section. The State should replace an efficient, honest and competent lawyer only when it is in a position to appoint a more competent lawyer in his place, observed this court. The following passage is apposite in this regard: (SCC p. 736, para 44)

"44. Only when good and competent counsel are appointed by the State, the public interest would be safeguarded. The State while appointing the Public Prosecutors must bear in mind that for the purpose of upholding the rule of law, good administration of justice is imperative which in turn would have a direct impact on sustenance of democracy. No appointment of Public Prosecutors or District Counsel should, thus, be made either for pursuing a political purpose or for giving some undue advantage to a section of the people. Retention of its counsel by the State must be weighed on the scale of public interest. The State should replace an efficient, honest and competent lawyer, inter alia, when it is in a position to appoint a more competent lawyer. In such an event, even a good performance by a lawyer may not be of much importance. (emphasis supplied)

" .. 40. The question whether a fair, reasonable and nondiscriminatory method of selection should or should not be adopted can be viewed from another angle also equally if not more important than the need for preventing any infringement of Article 14. The State Counsel appears for the State Government or for public bodies who together constitute the single largest litigant in our court system. Statistics show that nearly 80% of litigation pending in the courts today has State or one of its instrumentalities as a party to it. The State Counsel/counsel appointed by public bodies thus represent the largest single litigant or group engaged in litigation. It is also undeniable that for a fair, quick and satisfactory adjudication of a cause, the assistance which the court gets from the Bar is extremely important. It is at times said that the quality of judgment or justice administered by the courts is directly proportionate to the quality of assistance that the courts get from the counsel appearing in a case. Our system of administration of justice is so modelled that the ability of the lawyers appearing in the cause to present the cases of their respective clients assumes considerable importance. Poor assistance at the Bar by counsel who are either not sufficiently equipped in scholarship, experience or commitment is bound to adversely affect the task of administration of justice by the court. Apart from adversely affecting the public interest which State Counsel are supposed to protect, poor quality of assistance rendered to the courts by State counsel can affect the higher value of justice itself. A fair, reasonable or nondiscriminatory process of appointment of State counsel is not thus demanded only by the rule of law and its intolerance towards arbitrariness but also by reason of the compelling need for doing complete justice which the courts are obliged to do in each and every cause. The

States cannot in the discharge of their public duty and power to select and appoint State counsel disregard either the guarantee contained in Article 14 against nonarbitrariness or the duty to protect public interest by picking up the best among those available and willing to work nor can the States by their action frustrate, delay or negate the judicial process of administration of justice which so heavily banks upon the assistance rendered by the members of the Bar. 41. To sum up, the following propositions are legally unexceptionable:

41.1. The Government and so also all public bodies are trustees of the power vested in them.

41.2. Discharge of the trust reposed in them in the best possible manner is their primary duty. 41.3. The power to engage, employ or recruit servants, agents, advisors and representatives must like any other power be exercised in a fair, reasonable, nondiscriminatory and objective manner.

41.4. The duty to act in a fair, reasonable, nondiscriminatory and objective manner is a facet of the Rule of Law in a constitutional democracy like ours.

41.5. An action that is arbitrary has no place in a polity governed by Rule of Law apart from being offensive to the equality clause guaranteed by Article 14 of the Constitution of India

. 41.6. Appointment of Government Counsel at the district level and equally so at the High Court level, is not just a professional engagement, but such appointments have a "public element" attached to them. 41.7. Appointment of Government Counsel must like the discharge of any other function by the Government and public bodies, be only in a public interest unaffected by any political or other extraneous considerations.

41.8. The Government and public bodies are under an obligation to engage the most competent of the lawyers to represent them in the courts for it is only when those appointed are professionally competent that public interest can be protected in the courts. 41.9. The Government and public bodies are free to choose the method for selecting the best lawyers but any such selection and appointment process must demonstrate that a search for the meritorious was undertaken and that the process was unaffected by any extraneous considerations.

41.10. No lawyer has a right to be appointed as a State/Government Counsel or as Public Prosecutor at any level, nor is there any vested right to claim an extension in the term for which he/she is initially appointed. But all such candidates can offer themselves for appointment, reappointment or extension in which even their claims can and ought to be considered on their merit, uninfluenced by any political or other extraneous considerations. 41.11. Appointments made in an arbitrary fashion, without any transparent method of selection or for political considerations will be amenable to judicial review and liable to be quashed.

41.12. Judicial review of any such appointments will, however, be limited to examining whether the process is affected by any illegality, irregularity or perversity/ irrationality. The Court exercising the power of judicial review will not sit in appeal to reassess the merit of the candidates, so long as the method of appointment adopted by the competent authority does not suffer from any infirmity."

128. We think that these observations are apposite and would apply to the exercise of powers even in this case. We cannot, therefore, accept any extreme argument that the power of judicial review cannot be exercised in cases of the appointment under the Act of 2004.

129. As we have held above, that is not even the stand of the State, but it says, the power being absolute, the manner of its exercise is beyond the pale of judicial review. This stand also was then diluted and it was argued that no judicial review is permissible of the opinion of the State about the fitness or otherwise of a particular appointee/member. We think that the said argument is addressed and answered by the Hon"ble Supreme Court on the above lines. Therefore, if the case is that there is no opinion or satisfaction recorded by the State or the discretion in recording of such opinion or satisfaction is vitiated by total non application of mind or application of principles wholly irrelevant and irrational or by irrelevant consideration or the decision is so irrational that no reasonable person in the position and vested with the power of appointment would arrive at such conclusion, then, surely, the court can interfere.

130. Before we proceed further, we must also take care of another argument of the State that there is a power conferred in the State to make appointment and no specific guidelines are necessary for exercise of that power. Alternatively and without prejudice, it is argued that the Act and the Rules lay down the broad guidelines and it is not mandatory that the State must make appointment for every category. The State may not and for bonafide reasons include any person from the category enumerated in the second proviso as also the Rules. This is not a case where the State has not chosen to appoint a person from a particular category and none is forcing the State to do so. This is a case where the complaint is that the State has made appointments of persons as members who do not fulfill the eligibility criteria nor that criteria has been applied objectively to them. It is in considering this argument that we are obliged to refer to the Rules and thereafter the Form, which is highlighted by Mr. Talekar.

131. Once we have to be mindful and apply only these principles, then, all that we must consider is whether the State in making the appointments of respondent nos. 4 to 15 has adhered to them and the statute in question.

132. We must dispose of one more contention of Mr. Dixit that clause (f) of sub-section (1) of section 9 insofar as it employs the words "or is otherwise unfit" must be construed in the light of and with reference to the words preceding the same. In other words, we must apply the rule of "ejusdem generis". He would

submit that we should not expand the language of the clause to such an extent as is urged by Mr. Talekar, because that will make the statute unworkable. In other words, Mr. Dixit would submit that the expansive interpretation of the provision must be avoided. Thus, the submission is that a meaning should not be ascribed or attributed which was never intended by the law makers.

133. After giving our careful consideration to the rival contentions on this point, we are unable to agree with Mr. Dixit. The rule of ejusdem generis has been considered in several decisions of the Hon"ble Supreme Court and in the case of Maharashtra University of Health Sciences and Ors. vs. Satchikitsa Prasarak Mandal and Ors., (2010) 3 SCC 786, the Hon"ble Supreme Court once again considered the rule of ejusdem generis. Before reproducing the relevant paragraphs, we must indicate in precise terms as to how the rule was considered and held to be inapplicable to the following definition, which fell for interpretation in the above case. The definition of the term "teachers" appearing in section 2 clause (35) of the Maharashtra University of Health Sciences Act, 1998 reads as under:- "2(35) "teachers" means full time approved demonstrators, tutors, assistant lecturers, lecturers, readers, associate professors, professors and other persons teaching or giving instructions on full-time basis in affiliated colleges or approved institutions in the University"

134. The Hon"ble Supreme Court in the above case, held as under:- "26. This Court is constrained to observe that the Hon"ble High Court has not properly appreciated the principle of ejusdem generis in understanding the scope of Section 2(35) read with Section 53 of the Act.

27. The Latin expression "ejusdem generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context". It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication [see Glanville Williams, The Origins and Logical Implications of the Ejusdem Generis Rule, 7 Conv (NS) 119].

28. This ejusdem generis principle is a facet of the principle of noscitur a sociis. The Latin maxim noscitur a sociis contemplates that a statutory term is recognised by its associated words. The Latin word "sociis" means "society". Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context. (See similar observations of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover 1957 AC 436, AC at p. 461)

29. But like all other linguistic canons of construction, the ejusdem generis principle applies only when a contrary intention does not appear. In the instant

case, a contrary intention is clearly indicated inasmuch as the definition of "teachers" under Section 2(35) of the said Act, as pointed out above, is in two parts. The first part deals with enumerated categories but the second part which begins by the expression "and other" envisages a different category of persons. Here "and" is disjunctive. So, while construing such a definition the principle of ejusdem generis cannot be applied.

30. In this context, we should do well to remember the caution sounded by Lord Scarman in *Quazi v. Quazi* 1980 AC 744. At p. 916 of the Report, the learned Law Lord made this pertinent observation: (AC p. 824 A) "If the legislative purpose of a statute is such that a statutory series should be read ejusdem generis, so be it; the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule, like many other rules of statutory interpretation, is a useful servant but a bad master." 31. This Court while construing the principle of ejusdem generis laid down similar principles in *Kavalappara Kottarathil Kochuni v. State of Madras* AIR 1960 SC 1080. A Constitution Bench of this Court in *Kochuni* (supra) speaking through Subba Rao, J. (as His Lordship then was) opined: (AIR p. 1103, para 50) "50. "... The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary. (emphasis supplied)" 32. Again this Court in another Constitution Bench decision in *Amar Chandra Chakraborty v. Collector of Excise* (1972) 2 SCC 442, speaking through Dua, J. reiterated the same principles in para 9, at p. 1868 of the Report. On the principle of ejusdem generis, the learned Judge observed as follows: (SCC p. 447, para 9) "9. "... The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words;

(ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration;

(iv) the general term follows the enumeration; and

(v) there is no indication of a different legislative intent." 33. As noted above, in the instant case, there is a statutory indication to the contrary. Therefore, where there is statutory indication to the contrary the definition of teacher under Section 2(35) cannot be read on the basis of ejusdem generis nor can the definition be confined to only approved teachers. If that is done, then a substantial part of the definition under Section 2(35) would become redundant. That is against the very essence of the doctrine of ejusdem generis. The purpose of this doctrine is to reconcile any incompatibility between specific and general words so that all words in a statute can be given effect to and no word becomes superfluous (see *Sutherland: Statutory Construction*, 5th Edn., p. 189, Vol. 2-A).

34. It is also one of the cardinal canons of construction that no statute can be interpreted in such a way as to render a part of it otiose. It is, therefore, clear where there is a different legislative intent, as in this case, the principle of *eiusdem generis* cannot be applied to make a part of the definition completely redundant."

135. In the case of *Manganese Ore India Limited vs. State of Madhya Pradesh and Ors.*⁶, the other rule *noscitur a sociis* was considered by the Hon'ble Supreme Court as a facet of the rule of *eiusdem generis*. In the later decision, the Hon'ble Supreme Court held as under: "20. We are absolutely conscious that *noscitur a sociis* rule is not applied when the language is clear and there is no ambiguity, which according to us does exist and is perceptible in the Explanation in question. A very broad and a wide definition of the term "processing" if applied, would include manufacture of a new or distinct product. Manufacture normally involves a series of processes either by hand or machine. If a restricted construction is not applied it would create and give rise to unacceptable consequences. It is not the intent to treat and regard manufacturing activities as processing. Manufacturing, as is understood, means a series of processes through different stages in which the raw material is subjected to change by different operations. (For difference between process and manufacturing see *CIT v. Tara Agencies* (2007) 6 SCC 429, *Orient Paper and Industries Ltd. v. State of M. P.* (2006) 12 SCC 486 and *Aspinwall & Co. Ltd. v. CIT* (2001) 7 SCC 525."

136. If we accept the argument of Mr. Dixit, it would be ignoring the plain language of the statute and the placement of the words after the word "or" in clause (f). Pertinently, the first part of clause (f) deals with a person who will be held to be disqualified for appointment or for being a member if he is guilty of misconduct. The later part of the clause is separated by the word "or" and deals with a person who would be disqualified if he has been charge-sheeted for the offence involving moral turpitude. Thus, the first part of the clause deals with a case of proven misconduct. In the sense, in disciplinary proceedings or otherwise for determining the misconduct, the guilt is established and proved. The second part is not dealing with a person who has been convicted or held guilty but against whom a charge sheet has been laid in the competent criminal court for the offence involving moral turpitude. Thus, even filing a charge-sheet and naming a person therein as an accused in relation to an offence involving moral turpitude would disqualify him for appointment as a member. The third disqualification is if the person is otherwise found to be unfit. The word "unfit" has a meaning beyond physical condition. Thus, a person may be physically unfit, but the unfitness contemplated by this clause goes beyond it. It concerns the person's suitability. If he is unsuitable and found to be such, then, he cannot be appointed for he is disqualified. A person may be found unsuitable even if he has not been held guilty of misconduct or there is no charge-sheet for the offence involving moral turpitude pending against him in any competent court. The unsuitability for appointment is to be determined having regard to the general demeanor, conduct and action of a person. If that does not meet the

normal and expected standards of human behaviour, then, he must be held to be unfit. None should find any reservation in dealing with him.

137. Legally, this word has been understood as unsuitable, not fit for some purpose, action or end, to do something or to be done something to, not qualified (See Advanced Law Lexicon by P. Ramnatha Aiyar, 3rd Edition Reprint 2007). In the case of Assanmal Cooverjimal vs. Somimal and Ors., AIR 1930 Sind 41, a learned Single Judge of the High Court of Sindh has held that "unfit" does not only mean physically unfit. The word has been held to mean something more than physical incapacity. The learned Judge held as under:- " We are therefore thrown back on the section itself and have to consider what the section read by itself, was intended to mean. Now it seems that, if we read the section by itself, it cannot be held that "unfit" must necessarily mean "physically unfit." If we take the words "unfit or personally incapable" they seem to refer to two alternative cases, for instance, a man may be "personally incapable" if he is obliged to live in some town other than the place where work of the trust is to be done. It does not follow from the words "personally incapable" that they necessarily refer only to the case of a person who is physically incapable. But if one takes this view then there is no reason to hold that unfit must be ejusdem generis with "incapable" and must refer only to persons who are physically incapable or physically incapable to some extent. It may well be that the intention of the use of the word "unfit" was to meet cases such as those now under consideration, namely where there is alleged to be a case of breach of trust; while "personally incapable" would cover cases such as those of a man who is blind or partially blind, or "incapable" in the sense that his work prevents him from acting as a trustee by obliging him to live away from the scene where the trust work is to be done.

It has been contended that S. 73 should not apply in a case of this character because no appeal lies from an order passed under S. 74 and that it is more suitable in the case of removal of a trustee that an appeal should lie in such a case. But there is a distinction, namely, that under S. 74 it is only a case of removal of a trustee whereas if a suit is filed a delinquent trustee can be called upon to make good the loss resulting from the breach of trust. As indicated above, this point for the purpose of the present case seems to me to be really obiter dictum because on the first ground stated above an application in this instance will lie under S. 74. But so far as any finding on the second point is necessary, I am of opinion that the word "unfit" may be interpreted not merely as physically incapable, for instance, partially blind or partially paralysed, but also as covering a case such as that now under consideration in which the applicant contends that there has been a breach of trust on the part of the trustee.

".."

138. A more clear enunciation comes in a judgment in the case of Jalil and Ors. vs. The Emperor⁸. The issue was whether the unfitness of a surety for good

behaviour referred to in section 122 of the then Cr. P. C. (Cr. P. C. 1898) is confined to pecuniary unfitness or something more. In resolving this issue of the meaning to be given to this term, the Hon^{ble} Bench held as under:- "WOODROFFE, J. - In this case the Magistrate says that in his opinion the sureties appear to be unfit. This is a case of sureties for good behaviour.

Sec. 122. Cr. P. C., says that a Magistrate may refuse to accept any surety for good behaviour offered under this Chapter on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person. The Magistrate therefore has to determine in each case whether a person offered as surety is a fit or unfit person: and as regards this matter, the Legislature has given him a discretion. The Legislature has not particularised any kind of unfitness. It has left the matter to the discretion of the lower Court though this Court will in each case consider, according to its own circumstances, whether the order 8 The Calcutta Weekly Notes, Vol. XIII p. 80 passed by the Magistrate is a reasonable order to make or not.

"..

GEIDT, J. - I agree.

I am unable to acceded to the contention of the learned pleader who has appeared for the Petitioner that the word "unfit" in sec. 122, Cr. P. C., has reference only to the pecuniary position of the person who offers himself as surety. The word "unfit" does not, in ordinary language, connote that idea. If we look at sec. 513, Cr. P. c., we find that whereas in an ordinary case a Magistrate may accept a deposit of money in place of a surety, an exception is made where a person is called on to furnish surety for good behaviour. In my opinion, the unfitness referred to in sec. 122, Cr. P. C., though it may not exclude the idea of pecuniary unfitness is more concerned with the idea of moral unfitness. I therefore agree with the order proposed by my learned brother."

139. Hence, the term has not been understood, much less interpreted as meaning only physical unfitness. The context and the backdrop in which this word is inserted in the clause indicates that it is for the State to determine as to whether a particular person who may not be guilty of misconduct or may not be charge-sheeted is otherwise unfit. The State Government would have to determine this aspect of the matter and it cannot leave it to the police authorities or any verification done by them of the person's criminal antecedents pursuant to which they forward a report to the State Government. The police may have a particular view in mind of the person's conduct and behaviour by taking into consideration pendency of any complaint or criminal cases against him. Therefore, it may forward a report giving a cleanchit to that person in the sense the report may conclude that there are no criminal antecedents. However, as is rightly urged before us, the matter cannot rest there. Merely because of the opinion of the police machinery that the person has no criminal background that does not mean he is necessarily fit for being appointed as a member. If that is

the perception of the State Government and voiced before us very strenuously, that is patently erroneous and wrong. That should be borne out by the plain and clear language of the statute. 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. We do not wish to exhaustively lay down the parameters of unfitness. All that we are emphasising is 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. He may not be morally fit to occupy the position. 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. Here, 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. There could be many situations in which a person may be found to be otherwise unfit. The administrators and decision makers can very well conceive of such situations. The administrators and the executive functionaries being experienced and well-versed with the modern world can gauge for themselves as to whether a particular person is otherwise unfit. They may make inquiries and investigations for themselves. They may derive inputs from varied sources. They can form their independent opinion about a person's unfitness and for reasons other than his not being guilty of any misconduct or there being no allegations against him of committing any offence involving moral turpitude. Those incharge of 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 may have to overrule these masters and make recommendations and record opinion fearlessly. That is what is expected from them. They 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. Eventually, the inquiries and investigations held by them ought to enable them to record such opinions as are expected of them. If their opinions are 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. 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. That would not be conducive to enforce a law as comprehensive as the instant enactment. We are, therefore, of the opinion that the issue of person's fitness must be decided independent of his exoneration or non-involvement in disciplinary or criminal proceedings or the like. A distinct consideration must guide the authorities in arriving at the conclusion whether he is otherwise unfit. Their view and opinion

cannot be restricted to the matters contained in the police verification report. They must go and travel beyond the same. They may be guided by it, but that is not decisive and conclusive, leave alone binding on them. Thus, the police machinery cannot control the exercise of their independent power and discretion. This discretionary power must be exercised judiciously, fairly and not arbitrarily.

140. If we do not place this interpretation on the words employed by the legislature, we would be treating them as surplusage. No word in a statute should be treated as waste or surplusage. Every word is inserted with a definite intent, object and purpose. If its meaning is plain, unambiguous and clear and so is the language, then, it is the bounden duty of the court to give effect to it. We, therefore, cannot, in the garb of applying the rule of *noscitur asociis* or *ejusdem generis* ignore and brush aside the plain language of the statute.

141. There is another way of looking at this matter. The expression "or otherwise" has also a definite legal connotation and meaning. In a decision of the Hon'ble Supreme Court, in the case of *Smt. Lila Vati Bai vs. State of Bombay*, AIR 1957 SC 521, a five Judge Bench of the Hon'ble Supreme Court was considering the ambit and scope of the words "or otherwise". These words were appearing in an Explanation inserted for the purpose of section 6 of the Bombay Land Requisition Act, 1948. That section read as under:- "6. (1) If any premises situate in an area specified by the State Government by notification in the Official Gazette, are vacant on the date of such notification and wherever any such premises are vacant or become vacant after such date by reason of the landlord, the tenant or the subtenant, as the case may be, ceasing to occupy the premises or by reason of the release of the premises from requisition or by reason of the premises being newly erected or reconstructed or for any other reason the landlord of such premises shall give intimation thereof in the prescribed form to an officer authorised in this behalf by the State Government.

".. (4) Whether or not an intimation under sub-section (1) is given and notwithstanding anything contained in S. 5, the State Government may by order in writing- (a) requisition the premises for the purpose of the State or any other public purpose and may use or deal with the premises for any such purpose in such manner as may appear to it to be expedient, or

".. Provided that where an order is to be made under clause (a) requisitioning the premises in respect of which no intimation is given by the landlord, the State Government shall make such inquiry as it deems fit and make a declaration in the order that the premises were vacant or had become vacant, on or after the date referred to in sub-section (1) and such declaration shall be "conclusive evidence" that the premises were or had so become vacant:

"..

Explanation - For the purposes of this section, - (a) premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in

occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest in the premises or otherwise, notwithstanding any instrument or occupation by any other person prior to the date when such landlord, tenant or sub-tenant so ceases to be in occupation;

".."

142. The argument before the Hon"ble Supreme Court was as to whether the Explanation can be applied to a case where there is no termination, eviction, assignment or transfer. Hence, there was, in law, no vacancy. The Hon"ble Supreme Court considered the challenge to the declaration by the Government that there was a vacancy. In answering this contention, the Hon"ble Supreme Court held as under:- ".....

(11) As an offshoot of the argument that we have just been examining it was contended on behalf of the petitioner that Explanation (a) to S. 6 quoted above contemplates a vacancy when a tenant (omitting other words not necessary) "ceases to be in occupation upon termination of his tenancy, eviction, or assignment or transfer in any other manner of his interest in the premises or otherwise". The argument proceeds further to the effect that in the instant case admittedly there was no termination, eviction, assignment or transfer and that the words "or otherwise" must be construed as ejusdem generis with the words immediately preceding them: and that therefore on the facts as admitted even in the affidavit filed on behalf of the Government there was in law no vacancy. In the first place, as already indicated, we cannot go behind the declaration made by the Government that there was a vacancy. In the second place, the rule of ejusdem generis sought to be pressed in aid of the petitioner can possibly have no application. The Legislature has been cautious and thorough-going enough to bar all avenues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the Legislature, when it used the words "or otherwise", apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The Legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature used those words in an all inclusive sense. No decided case of any court, holding that the words "or otherwise" have ever been used in the sense contended for on behalf of the petitioner, has been brought to our notice. (12) On the other hand, by way of illustration of decisions to the contrary may be cited the case of *Skinner & Co. v. Shew and Co.* (1983) 1 Ch 413 (K). In that case the Court of Appeal had to

consider the words of S. 32 of the Patents, Designs and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), to the following effect:-

"Where any person claiming to be the patentee of any invention, by circulars, advertisements or otherwise threatens any other person with any legal proceedings Their Lordships repelled the contention that the words "or otherwise" occurring in that section had to be read ejusdem generis with "circulars", and "advertisements". They observed that by so doing they will be cutting down the intendment of the provisions of the statute when clearly the words "or otherwise" had been used with a contrary intention. The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the Legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the Courts to give those words their plain and ordinary meaning. In our opinion, in the context of the object and the mischief of the enactment there is no room for the application of the rule of ejusdem generis. Hence it follows that the vacancy as declared by the order impugned in this case, even though it may not be covered by the specific words used, is certainly covered by the legal import of the words "or otherwise"."

143. This decision was then followed by a Division Bench of this court in a decision in the case of Vinayakrao s/o. Ganpatrao Pimpalapure vs. the State of Maharashtra¹⁰. The Hon^{ble} Division Bench held as under:- "..... Therefore, it is necessary to consider the provisions of Section 31 of the Act which we have already reproduced. Section 31 clearly lays down that no holding allotted under this Act or any part thereof shall be transferred whether by way of sale or by way of gift, exchange or lease or otherwise except in accordance with such condition as may be prescribed. It was contended that the agreement of sale which was entered into by the petitioner was neither a sale nor a gift, exchange or lease and, therefore, provisions of Section 31, are not attracted. It was also contended that the word "otherwise" should be interpreted as a transaction of like nature. On that basis it was urged that agreement of sale, even though in the instant case possession was given to the transferee, was not a transaction of a like nature like a sale or by way of gift, exchange or lease. We are unable to accept the submission urged on behalf of the petitioner. The opening part of Section 31 states "notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part thereof, shall be transferred". The instances of transfer are stated in Section 31 of the Act. However, they are not exhaustive and for showing that there may be some other transfers besides the instances of transfers stated, in our opinion, the word "otherwise" has been used.

6. Section 9, sub-clause (1) of the Act which we have reproduced shows that the transfer or partition of any land contrary to the provisions of this Act shall be void. Reading these provisions, it appears to us that once a holding is allotted to an agriculturist after following the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, then that holding cannot be transferred except in accordance with such conditions as may be prescribed in the Act. In the instant case, it is seen that the petitioner transferred possession of Unit No. 50 to the transferee on the date of the agreement of sale entered into between him and the transferee. On that day, the transferor i.e. the petitioner received the whole consideration from the transferee, namely, Rs.22,830/-. What was left to be done was only to execute a document of sale in favour of the transferee by the petitioner. This kind of transaction is covered under Section 31 of the Act, which prohibits transfer and which is of "otherwise" nature. In the instant case, the word "otherwise" in our opinion, has been given an extended meaning to include the above mentioned transaction and other transactions which are not covered by either sale, mortgage, lease, gift, exchange but in which there is a transfer of the holding."

144. We do not wish to multiply the decisions. Suffice it to say that wherever such words or expressions are used or employed, the same are not held as necessarily restrictive. The word or expression would have to be given its meaning bearing in mind the object and purpose sought to be achieved by the particular statute or enactment and its subject. The Hon"ble Supreme Court has, in a more recent decision in the case of United Bank of India vs. Pijush Kanti Nandy and Ors. , (2009) 8 SCC 605, given a restrictive meaning to this expression, but highlighted and emphasised that the particular statute or the rule demanded such interpretation and that is why it was placed. Else, the Hon"ble Supreme Court always held that this word or expression (or otherwise) is not necessarily restrictive or exhaustive of the cases referred in a particular provision (for example see para 70 of the decision of the Hon"ble Supreme Court in the case of M. V. Elisabeth and Ors. vs. Harwan Investment and Trading Pvt. Ltd. And Ors., AIR 1993 SC 1014).

145. It is, therefore, imperative for us to consider as to whether the State was mindful and paid attention to this part of the clause in arriving at its opinion that respondent nos. 4 to 15 were not otherwise unfit for appointment. In that regard, we would proceed to refer to the view or opinion of the State respondent-wise.

146. Apart from a general assertion in the affidavit in reply filed by the State in this petition, what this affidavit states and with reference to this issue is that firstly, there is no challenge raised in this petition to the rules. Secondly, the State Government has made the appointments of members only after receiving the police reports and by examining that any of the members has not been convicted or charge-sheeted by a court of competent jurisdiction for an offence involving moral turpitude. It is asserted that the entire process of nomination/

appointment is completed in strict adherence to the legal provisions. There is a denial in para 17 of the statements made in the petition. However, a perusal of this affidavit leaves us in no manner of doubt that the State has not taken into consideration anything other than the police report. Hence, we have not been shown any materials by the State which would meet the objections of the petitioners to the appointments.

147. The petitioners' specific allegations against these respondents are that they are otherwise unfit, meaning thereby unsuitable, unqualified and morally unfit for the post. Some of these respondents have managed to secure appointments by their political connection alone. These are indeed serious allegations and the proximity of these appointees/members to political leaders has been specifically set out with reference to political parties in power. 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. We do not think that there are any materials which would satisfy us that the State has considered candidates' suitability and unfitness by going beyond the police report or the aspect of his/her proven guilt or pendency of charge-sheet against him/her in competent criminal court involving offence of moral turpitude. This is clear from the State's affidavit. Mr. Dixit would like us to peruse the police reports and we have perused them with his assistance. The police report only indicates that there are no criminal cases pending or if they were pending, they are now withdrawn or in any event they are not involving offence of moral turpitude. Beyond that, the police report or the verification by the police is of no assistance.

148. The important aspect of the matter highlighted by us has clearly missed the State's attention. It is no justification for non-consideration of the unfitness or non-consideration of this aspect that all the appointees have a clear and clean police record. Hence, they cannot be termed as otherwise unfit is the argument. That fails to impress us for the reasons which we have recorded above.

149. If there are definite materials brought to the notice of the authorities during the proceedings in this court and by way of affidavits, then, we would expect the State to consider the legality and validity of the appointments of some of the respondents in the light of the clear stipulation in clause (f) of sub-section (1) of section 9 of the Act. Even now, it is open to the State to take a call. We say this because of a very important subsequent development. It was brought to our notice during the pendency of this litigation by Mr. Dixit learned senior counsel, that one of the members Mr. Sachin Tambe has tendered his resignation and his appointment on the committee has come to an end after the State accepted it. The State accepted his resignation because the record would indicate that he tendered it in the wake of some serious allegations made against him by the present petitioners. The allegations made by them may pertain to filing of a chargesheet against him for offences involving moral turpitude, but what we find

is that given their serious nature, the State was relieved of its obligation and duty to consider the legality and validity of Mr. Tambe's appointment again. Rather he relieved the State from fulfillment of this obligation and function by tendering his resignation. However, he was appointed on the committee by the Government Resolution dated 28th July, 2016. From 28th July, 2016 till he tendered his resignation and its acceptance, he continued as a member of the Committee of Management. This clearly indicates that it was not the State which brought about his resignation or forced him to tender it. It is the legal proceedings and the present petitions which resulted in tendering and accepting his resignation from the Committee. Therefore, this re-inforces our view that the matter should be verified and scrutinised by them again in the light of the above conclusions.

150. If the State, which is in a position of a patriarch, is expected to complete the task assigned to it by the statute, then, we have no hesitation in directing it to so complete it. It is not for us to decide as to whether a particular respondent-member of the Committee of Management is unfit or otherwise. It is entirely for the State to determine, but we must impress upon the State the gravity and seriousness of the allegations made against them. Their unfitness is sought to be proved and demonstrated by the petitioners by pinpointing their role and involvement in criminal cases as well. If the criminal case, its pendency or the allegations therein is the guiding factor or criteria, then as well, the State leaving it out of consideration while determining the unfitness or otherwise of the candidate means it is the failure of the State to adhere to the statutory mandate. The nature of the allegations, their gravity and seriousness are extremely relevant. 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. 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. 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 Saibaba, pray for everybody's wellbeing, there ought to be no place particularly in the administration and management for persons with dubious and doubtful record. The sanctity and purity of the place has to be maintained at all costs. There should be no conflict between interest and duty. 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.

151. The State must take a decision, not merely relying on allegations and charges, but all the attendant circumstances, as to whether a particular respondent is unfit for the post. If we may refer illustratively to the charges or allegations against some of the respondents, though not necessary, that would render completeness at least to our view. Before we proceed to do so, we once again emphasise that the appointments need not be disturbed at this stage. As

far as Shri. Suresh Haware, the Chairman is concerned, the allegations against him are already summarised by us above. These allegations against him have been made by the petitioners after obtaining inputs and information from several sources. They have referred to news reports as well.

152. As far as Shri. Haware is concerned, it is stated that he has to be from one of the categories and in that regard, our attention has been invited to Rule 3 of the Rules. In fact, the Rules have not been referred by us at any time nor reproduced. Therefore, we reproduce Rules 2, 3, 4, 5, 6 and 9. They read as under:- "2. Definitions. - (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004 (Mah. XIV of 2004);

(b) "Committee" means the Shree Sai Baba Sansthan Management Committee constituted by the State Government under Section 5 of the Act;

(c) "Form" means the form appended to these rules; (d) "Sansthan Trust" means the Shree Sai Baba Sansthan Trust;

(e) "Schedule" means the Schedule appended to these rules.

(2) Words and expressions used in these rules but not defined hereinabove shall have the same meanings as respectively assigned to them under the Act.

3. Appointment of Committee. - (1) In accordance with the provisions of sub-section (2) of Section 5 of the Act, the State Government shall appoint to the Committee, persons,-

(i) Who are permanent residents of the State of Maharashtra;

(ii) Who are devotees of Shree Sai Baba; and (iii) from the following categories, namely:-

Category Number of Members

A. Woman not less than 1

B. Socially and Economically weaker sections not less than 1

C. Persons possessing professional or specialised knowledge within the meaning of sub-section (2) of section 5 of the Act not less than 8 D. General upto 7 Provided that, the number of members to be appointed shall not exceed 17 (including the Chairman and Vice-Chairman).

(2) The person belonging to category "C" above shall consist of not less than eight persons having educational background with professional or specialized knowledge, qualifications and practical experience in one or more of the following fields, namely:- (i) Law; (ii) Business Management, Accountancy, Economic, Finance or Public Administration;

(iii) Engineering, Architecture; (iv) Public Health, Medicine;

(v) Rural Development; Provided that, the Committee shall consist of at least one person from each of the fields mentioned at Serial Nos. (i) to (iv) above and not more than one person from the field mentioned as Serial No. (v) above. Provided further that the persons to be appointed under category "C" above shall possess the minimum qualifications and experience specified in column (3) of the Schedule. (3) The person belonging to category "D" above shall consist of upto seven persons who shall be either Patrons or Life Members of the Bhakta mandal. Provided that, due regard maybe had while making appointments in category "D" to all or any of the following factors:- (i) possession of a bachelor's degree; (ii) residence in Shirdi or in the Ahmednagar District;

(iii) contribution made by the person to a social or educational cause or to social or educational development.

(iv) that the person is a Member of Parliament representing Shirdi or a Member of the State Legislature representing the Shirdi assembly constituency.

4. Qualifications for being a member:- (1) Only if a person who is in a position to attend the activities of the Sansthan Trust for at least two days in a calendar month, shall be eligible to be appointed as a member of the Committee.

(2) The person to be appointed as a member of the Committee shall on the date of nomination be at least 25 years old and not more than 70 years old. 5. Disqualifications for membership.- The following persons shall be disqualified for appointment as a member of the Committee:-

(a) a minor;

(b) a person of unsound mind who is so declared by a Competent Court;

(c) an undischarged insolvent;

(d) a person who has directly or indirectly any interest in a lease or any other transaction relating to the immovable property of the Sansthan Trust; (e) a person who has any share or interest directly or indirectly in any contract for the supply of goods to or for execution of any work, or performance of any service undertaken by the committee in respect of the Sansthan Trust;

(f) a person who is guilty of misconduct or who has been charge-sheeted for an offence involving moral turpitude or is otherwise found to be unfit;

(g) a person who is disqualified under sub-section (2) and (3) of section 8 of the Representation of People Act, 1951 (43 of 1951).

(h) a person who was a member of the Committee but had failed to attend three consecutive meetings of the Committee, without leave of absence and had vacated office as provided by Section 7(3) of the Act. 6. Appointment of members. - Appointment of members shall be made by the State Government by nomination: provided that, such appointment shall be made only after -

(i) the person to be appointed as a Member submits his declaration in Form A to these Rules; and (ii) The State Government receives a police report or a police verification certifying that, such person has not been convicted or charge-sheeted by a court of competent jurisdiction for an offence involving moral turpitude or is otherwise found to be unfit. "..

9. Declaration under Section 8 and Section 13(2) of the Act. - (1) A person to be appointed as a member of the committee, shall, prior to his appointment, make a declaration, as required under Section 8 of the Act, in Form B.

(2) The officer to be appointed as an Executive Officer shall make a declaration, as required under subsection (2) of section 13 of the Act, in Form C."

153. There is a Schedule referable to Rule 3(3), which deals with those persons who are belonging to category "D". In fact, category "A" is "woman", category "B" is "socially and economically weaker sections", category "C" is persons possessing professional or specialised knowledge within the meaning of sub-section (2) of section 5 of the Act and category "D" is "General". As far as the Schedule is concerned, it sets out the category and minimum qualifications and experience. As far as Shri Suresh Haware is concerned, it is stated that his appointment is not from any category. Secondly, in his case, he became member of the Bhakta Mandal only on 6th July, 2016 i.e. after confirming the position in the Trust. It is evident from the information, received under the Right to Information Act, 2005, dated 26th October, 2006 that Shri. Suresh Haware made an application for becoming a member of the Bhakta Mandal on 6th July, 2016. Thus, he was not a member of the Bhakta Mandal. Then, relying upon Rules 4 and 5, it is stated that Shri. Haware, who is a Builder by profession, will hardly find time to devote himself wholeheartedly to the affairs of the Trust. Secondly, in his case, there was no police verification undertaken.

154. Even in his and other cases, the argument is that by Rule 6, the appointment of members shall be made by the State Government by nomination and the proviso to Rule 6 says that such appointment shall be made only after the person to be appointed as a member submits his declaration in Form "A" to these rules and the State Government receives a police report or a police verification certifying that such person has not been convicted or charge-sheeted by a court of competent jurisdiction for an offence involving moral turpitude or is found otherwise unfit. It is stated that in the declaration, the person to be appointed as a member has to state that he has not incurred any of the disqualifications under section 9 of the Act and that he has not any time in the past been convicted or charge-sheeted by a court of competent jurisdiction for an offence, the punishment for which is imprisonment for a term exceeding two years or for an offence involving moral turpitude. We have already held that clause (7) to Form "A" would have to be read together with the substantive provision, namely, section 9 and Rule 5 setting out the disqualification for membership. This Form and clause (7) does not in any way run contrary to the Act and the Rules. The clauses in the Form "A" will have to be read together and

they refer to non incurring of disqualifications set out under section 9 of the Act or the Rules of 2013 and in addition, clause (7) mandates that the declarant must state that he has not at any time in the past been convicted or charge-sheeted by a court of competent jurisdiction for an offence the punishment for which exceeds imprisonment for a term exceeding two years or for an offence involving moral turpitude. Thus, there is nothing in the Form which would defeat the mandate of the Act and the Rules nor it can be held that the Form overrides the Act and the Rules. The Form if at all complements both, the Act and the Rules and particularly section 9 and Rule 5.

155. However, an affidavit and compilation of documents has been tendered so as to allege that there are serious allegations even against Shri. Haware. Shri. Haware has filed an affidavit in reply and there is a rejoinder to it as well. In the affidavit filed by Shri. Haware in reply to the petition (at pages 626 to 661) it is alleged that his younger brother Shri. Satish Kashinath Haware was in construction business, which was started by him in the name and style as M/s. Haware Engineers and Builders Pvt. Ltd. Satish Haware died in a road accident on 8th May, 2005. The company had acquired huge goodwill in construction industry in and around Navi Mumbai. On account of untimely death of his brother, Shri. Suresh Haware, who was a scientist working at Bhabha Atomic Research Centre (BARC) for nearly 27 years, had to resign and join the construction business. During his tenure as the Managing Director of the company, the business scaled new heights. Respondent no. 4 improved his educational and academic qualifications and completed his Ph. D. in Business Policy and Administration. There are various social activities which he has undertaken, for which, several awards and rewards were earned. He does not deny that in addition to his social, academic and professional activities, he ventured into political arena, but admits that working for a political party has not brought any disqualification for being appointed as a Chairman of the Trust all the more when he is ardent Bhakta of Shree Sai Baba.

156. However, the petitioners maintain that this is not entirely correct. The petitioners have tendered a compilation of documents and as far as respondent no. 4 is concerned, it is stated that there is a charge-sheet filed against respondent no. 4 and four others for cheating a businessman to the tune of Rs.54 lacs. The charge-sheet was filed way back in 2012 in the Court of Judicial Magistrate at Vashi against Shri. Suresh Haware, his brother Sanjay, sister-in-law Ujwala and two of his employees, namely, D. Taide and Mohandas working in the construction firm. The statement attributed to the police and reported in one of the newspapers has been referred. Our attention is also invited to an order passed in Public Interest Litigation No. 3 of 2014, wherein Octroi evasion within the Thane Municipal Corporation limits was brought to the notice of the court and it was alleged that respondent no. 4 is involved in that as well.

157. A FIR is stated to be lodged for the offences punishable under section 406, 420, 467, 468 and 471 of the Indian Penal Code, 1860. The learned advocate

appearing for respondent no. 4 has sought to make a distinction between the allegations made against a company and personal involvement of respondent no. 4. However, in the backdrop of the great achievements and high academic qualifications, it is equally admitted that there are eight civil suits and two complaints pending in the Consumer Court against the companies, in which respondent no. 4 is a Director.

158. Once we are not accepting the argument of the State 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. We have not seen, from the original record handed over by Mr. Dixit, that apart from addressing a communication to the Sanpada Police Station, Navi Mumbai and seeking a report about pendency of any criminal case, independent scrutiny and verification of the above allegations or cases is undertaken. Rather, it is strange that the affidavit-cum-declaration filed by Shri. Suresh Haware, residing at Vedant, 2nd floor, Plot No. 46, Sector " 30, near Samna Press, Vashi, Navi Mumbai 400 705, does not disclose the pendency of these cases, civil and/or criminal. The original affidavit also has been placed in the record. It is evident from the original record that Shri. Haware does not dispute that though he is B. Tech, Nuclear Scientist, Ph.D., he is equally the Chairman and Managing Director of Haware Properties (ISO 9001-2008 certified company). His detailed profile is also on record. However, we do not see any reason for him not disclosing pendency of any of the cases nor the State probing the same from the angle and approach expected of it in view of the clear language of section 9(1)(f) of the Act. As held above, the police machinery does not issue a character certificate but only reports from its record about pendency of a criminal case or complaint. A person with a criminal background is definitely unfit but even those against whom there is no reported incident may be morally unfit. His conduct and demeanour may be found to be adverse, lacking in decency and thus disliked by his peers, superiors, friends and relatives. Therefore, we would even now expect the State and its officials to verify and scrutinise the allegations made against Shri. Haware by obtaining necessary inputs from social, cultural and business circles. We have already held that merely because the criminal cases are closed or civil cases or consumer disputes being directed against companies controlled entirely or of which Shri. Haware is part of cannot be a ground to accept the plea that Shri. Haware is entirely fit. That would mean the later part of clause (f) of sub-section (1) of section 9 is superfluous and redundant. We, therefore, direct the State to reconsider the aspect of appointment of Shri. Haware in the light of this judgment and particularly whether he was otherwise unfit to be appointed. His involvement with building business being admitted, the companies' dealings being also admitted, if the allegations against the companies are serious and particularly of non-fulfillment of certain contractual obligations towards flat purchasers, then,

now that the stringent law, namely, the Real Estate (Regularisation and Development) Act, 2016 being in the field, mere exoneration from criminal cases or non-pendency of criminal cases personally against Shri. Haware does not mean he is fit to be appointed. Therefore, we expect the State to take an independent decision and without being influenced by his appointment already made as a Chairman. We expect the State to take into consideration the allegations made by the petitioners against him and act accordingly. In taking a decision as directed by us, the State shall not be influenced by the contents of its affidavit in reply or that of Shri. Haware or any police verification done in the case of Shri. Haware. The requisite decision be taken as expeditiously as possible and within a period of two months from the date of receipt of a copy of this judgment. 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.

159. As far as respondent no. 5 Shri. Chandrashekhar Kadam is concerned, the allegations against him are that he does not meet the requisite qualification as per the Schedule to the Rules. He is the Vice-Chairman and his appointment is from category "C". In that regard, it is stated that he is not a graduate nor does he possess 10 years' experience in rural development. He is not a recipient of any national/State recognised award. He has also tendered his affidavit-cum-declaration before the State and in terms of Form "A". As far as his Bio Data is concerned, it is stated that he is B. Com. and his profession is agriculturist and social work. He represented Rahuri Assembly Constituency from 1998 to 2000 and from 2004 to 2009. He was a President of the Bhartiya Janata Party unit of Ahmednagar District from 2000 to 2004. Apart from that, he is associated with Annasaheb Kadam Patil Agriculture and Rural Development Foundation from 1996. He was also a Director of the Rahuri Sahakari Sakhar Karkhana for 15 years. Apart from being associated with several educational and social trusts, he is Chairman of one Bagayat Peek Utpadak Vividh Karyakari Seva Sahakari Society Limited, Devlali Prawara for 25 years. He was also the Chairman of Devlali Prawara Nagar Parishad. Thus, we find that he has experience of the work and in the field proclaimed by him in his affidavit in reply. He has made allegations that one devotee of Shree Sai Baba gave written complaint on 1st April, 2016 mentioning that he paid a sum of Rs.2 lacs, but he was not received a receipt from the Sansthan and the receipt issued on 28th August, 2015 is under the signature of the petitioner, but not in his capacity as any office bearer of the Shirdi Sansthan. If the petitioner has signed the receipt that means he has misappropriated the funds of the trust.

160. However, we are not concerned with the allegations against the petitioner as that part of the controversy is closed by us. We are concerned with the allegations against respondent no. 5. In that, we find that respondent no. 5 does not dispute registration of two CRs. Being C. R. No. 317 of 2012 and 318 of 2012, but he claims that he is already discharged from the said criminal cases on 31st January, 2017. This is much after his appointment by the impugned

Government Resolution. The incident, according to him, is one and the same and that is a participation in an agitation in relation to a demand for water and for drinking and agricultural purpose in the drought affected areas.

161. We have already noted the arguments of the learned senior counsel Mr. Dhorde. We have also perused copies of the FIRs and the offences alleged are punishable under the Bombay/Maharashtra Police Act [sections 37(1)(3) and 135]. From that, it is apparent that the allegations under the Maharashtra Police Act and for offences punishable under sections 143 and 341 of the Indian Penal Code, 1860 pertain to the agitation and squatting on road and disturbing the traffic. We have taken an overall view of the matter. We are not influenced in any manner by the discharge of this respondent from the criminal cases. We find that the criminal cases apart, the allegations therein may or may not attract the extreme penalty of removal as a member of the Committee of Management at this stage. Even if this respondent is discharged from the criminal cases, subsequent to his appointment, the non-disclosure of these cases by him needs to be strongly deprecated. If one is an active social and political worker, then, one is expected to be truthful and honest in the dealings with others, particularly the members of the public and parties such as banks, financial institutions, religious holdings and the like. If he is part of social, agricultural, educational Trusts and particularly involved in rural development, working for the upliftment of the agriculturists and villagers, then, one should not hesitate to disclose openly about pendency of any criminal cases and equally the progress therein. It may be argued that in this case the punishment may or may not be for a term exceeding two years, but, if there is a case pending, it should be equally disclosed, whether there is any past conviction or there is any case pending where charge-sheet has been filed in a court of competent jurisdiction and further whether the offences alleged involve moral turpitude. 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. Since this respondent has not disclosed the pendency of the criminal cases, while disapproving and deprecating this conduct and behaviour of this respondent no. 5, which we find to be a general phenomenon, we issue the same direction, particularly of the nature directed against the Chairman. We leave the matter at that and say nothing more. It would be entirely for the State to take a decision in the light of this judgment and equally the observations and findings herein. 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.

162. . Further, squatting and sitting in dharna on a public road, obstructing the movement of the traffic, not co-operating with and defying the lawful orders of the police, shouting slogans abusing the public servants, showing disrespect to police, court are all but factes of the same charge or allegation, namely,

instigating the people at large to flout the law of the land. The participant in a agitation cannot decide for himself far from declaring that it is justified, it was lawful and peaceful. The even tempo of life is disturbed, it is thrown out of gear by bandh, rasta roko, rail roko, gherao, by holding meetings and gathering on a road addressing them by erecting platforms and stage without prior permission and by using loudspeakers, amplifiers etc. The behaviour is supported by pleading that public causes and grievances have to be raised as its voice is not heard by the rulers and those in authority. The silent public knows how to protest and resist. In democracy the ballot prevails over a bullet. Hence, those in opposition yesterday cannot withdraw criminal prosecutions indiscriminately because now they are voted to power. It is this approach which makes politicians and political leaders unfit for any public office. The public trust doctrine applies to all and one in social, cultural, political, religious and public post or office can have a dual personality or face. They are all public personalities and round the clock.

163. As far as respondent no. 6-Manisha Kayande is concerned, after having considered the material on record, we direct that in her case as well, the State would have to take a call as to whether the appointment is in tune with the law laid down by us in this judgment as also the orders passed by this court in Public Interest Litigation No. 27 of 2012 and Public Interest Litigation No. 18 of 2011. These orders are on record. This court had categorically cautioned the State that the new Management Committee should be constituted in accordance with law. This court, in Public Interest Litigation No. 27 of 2012 along with Civil Application No. 3546 of 2012 passed an order on 30th March, 2012, copy of which is at page 66 of the petition paper book, in which, while discussing the provisions of the Act, this court had expressed a prima facie opinion that section 5 gives unbridled and un-canalised powers to the State to appoint the members of the Committee. The proviso has been brought in after sub-section (2) of section 5, but there should not be any arbitrariness in exercise of the powers. The State cannot make appointments of persons with questionable and doubtful past. In paras 18 and 19, this court observed as under:- 18. It is the specific contention of the petitioners 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. A perusal of specific averment made by the petitioner would reveal 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. A specific instance has been given in the petition, that Respondent No. 5, who has been appointed as Vice Chairman of the Committee, had contested the election to the legislative assembly on the ticket from Bharatiya Janata Party in which he lost and thereafter he has been inducted into the Nationalist Congress Party which is one of the partners of the ruling parties. It is contended that as a reward, he has been made Vice Chairman of the Committee. Another instance quoted is of Respondent No. 14 who is also alleged to be closely related to one of senior leaders of NCP. Her husband had contested election from Nationalist Congress

Partly, but had lost the same. A specific allegation is that Respondent Nos. 12 and 13 had also contested Zilla Parishad elections from NCP and had lost the same. Not only this, further specific averment is made on affidavit that other members of the Committee are either closely related to or closely associated with the leaders of either the NCP or INC. Serious allegations are made that Respondent No. 5 and 12 are facing various criminal charges and criminal cases are pending against them. It has then been specifically alleged that Respondent No. 13 has been involved in serious malpractices in construction of Gram Sachivalaya and in an enquiry held by the Chief Executive Officer, Zilla Parishad, Ahmednagar, he has been found, prima facie, guilty and the report of enquiry is pending consideration before the Divisional Commissioner, Nashik. All these persons have been made members of the Committee.

19. Looking to 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 the litigation, is frustrated. When power is vested with the authority, it must exercise the same for the public good. We expect the State Govt. at least to keep the God away while distributing public largesses. God is not 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. In that view of the matter, in pursuance to the orders passed by this court on 30.4.2010, the State Government ought to have first framed the rules prescribing procedure regarding qualification, mode or manner of appointment in terms of Section 5 of the Act. At least, while making appointments on a committee of trust wherein religious sentiments of people at large are involved, 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. If a proper procedure would have been prescribed by making the rules for appointments as Members of the Managing Committee, various persons having requisite qualification, experience, specialized knowledge would have certainly come forward to offer to work on the committee/trust. However, 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. Though an attempt has been made to show that the order passed by this court on 13.3.2012 has been complied with, it is nothing more than an eye-wash inasmuch as, the reconstituted committee would reveal that the chairman is the same and many of the members are either the same or where-ever they are replaced, such replacement is by close kiths and kins.

164. Thus, every single appointment, if running contrary to these observations and findings so also our conclusions would have to be reconsidered.

165. Further, in the case of Manisha Kayande, the petitioners have made serious allegations that she has not attended the meetings of the Committee. It is

alleged that she has violated section 7(3) of the Act and Rule 5(h) of the Rules by her absence in three meetings. Consequently, her appointment from the women's category comes to an end. We express no opinion on such allegations, but leave it to the State to take a proper decision. All the more because there are written communications on record which would reveal that the relations between the Shiv Sena and Bhartiya Janata Party in power, as far as this aspect is concerned, are not cordial. The Shiv Sena party was of the opinion that it should get at least the post of Vice-Chairman, if not the post of Chairman of the Committee. Therefore, we are of the opinion that in this case as well, within the time stipulated and directed above, the State must take a proper decision. We direct accordingly.

166. In the case of Sachin Tambe, we find that he has already resigned and during the pendency of the petition. However, this development reinforces in a way the conclusions reached by us, namely, all is not well with the appointments made by the State and the State ought to strictly abide and adhere to the mandate of the law, namely, the Act of 2004 and the Rules.

167. Mr. Talekar has not challenged the appointment of Shri. M. M. Jaykar as a member of the Committee, but in the light of our judgment and our conclusions, it is open for the State to take in his case as well an appropriate decision and in accordance with law. Merely because the petitioners have not challenged his appointment does not mean that the State is denuded of its powers under the Act and the Rules and provisions of which have been interpreted by us in this judgment. Therefore, if the appointment is not in accordance with the provisions of the Act and the Rules and beyond any police report or police verification nothing has been looked into in the case of Shri. Jaykar or the petitioners not questioning or challenging his appointment will not prevent the State from taking a decision in accordance with law. We direct accordingly.

168. In the case of Shri. Pratap Bhosale, the allegations are that the requisite qualifications and work experience are lacking. His appointment is from category "C". His specialisation is Financial Management.

169. From the original records produced before us, all that we can see in his case as well that the educational qualifications are M.A.(Economics) from Pune University and thereafter he claims that he has been nominated as the Director of State Bank of India, Mumbai Local in 2012. He was listed on Department of Public Enterprises as qualified for position of Director from nonofficial category and his number is 134. Pertinently, he is a member of Prant Karyakarini of the Rashtriya Swayamsevak Sangh (RSS) and was doing the work of RSS even in USA. Thus, his basic experience is in agricultural and rural development. He does not appear to be, according to the petitioners, qualified in the specialisation, namely, Finance Management. He has no work experience as well. Thus, he lacks the educational qualification as also work experience. Further, the allegation is that the appointment is purely on political consideration and he being associated and connected closely with RSS.

170. Further, in the case of Shri. Pratap Bhosale, the allegation is that he was deported from the United States of America by a judgment and order dated 15th December, 2008 delivered by the United States Courts of Appeal for the Eighth Circuit in Review Petition No. 7-3505. The allegation is denied and it is stated that this judgment is wrongly interpreted. This is not a case of deportation from the United States of America. The judgment is relied upon to clarify that in view of the removal proceedings initiated by the Department of Homeland Security, Shri. Pratap Bhosale, along with his wife made an application to the immigration authorities seeking asylum fearing persecution at the hands of the authorities in India due to his being a member of the Rashtriya Swayamsevak Sangh (RSS), an organisation which was temporarily banned in India. Shri. Pratap Bhosale apprehended such persecution due to his participation in the Save Kashmir Movement in the year 1980. The immigration Judge rejected the application holding that there was no well founded fear of future persecution. However, he allowed the alternative prayer of Shri. Bhosale and his wife for voluntary departure. This decision was affirmed by the Board of Immigration Appeals. The decision of the Board of Immigration Appeals was sought to be reviewed at the behest of Pratap Bhosale in the above review proceedings. The review was filed so as to seek a review of the order of the Immigration Judge to the extent of removal. What we find from pages 406 to 408 of the paper book, which is a part of the affidavit in reply of Shri. Bhosale, that all the materials, which are brought on record by the petitioners, have been brazenly suppressed. The petitioners having highlighted the proceedings before the United States Court and the admission of Shri. Bhosale that the U. S. Authorities sought his removal, to our mind are enough and to conclude that these are serious and grave matters which ought to be considered while arriving at an opinion that the person is otherwise unfit. This person was sought to be removed from the United States of America, but instead made an alternate request, which was to resist the removal from USA. He cannot be heard to say that these proceedings are of no consequence. He has taken these proceedings to say the least lightly and casually. However, to our mind the authorities cannot ignore them and his otherwise irresponsible and disgraceful conduct of suppressing these materials from the Government. If the State Government though being aware has chosen to ignore this crucial material about Shri. Bhosale's character and fitness, then, all the more the State is expected to correct itself.

171. . Therefore, our directions 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 accord with section 9(1)(f) of the Act would squarely apply even in the case of Shri. Pratap Bhosale. In his case also, we direct the State to comply with the directions as above. Meaning thereby, the State must take an appropriate decision in accordance with this judgment and the law within the period stipulated above.

172. . As far as Dr. Rajendra Singh is concerned, he is respondent no. 10. His specialisation is claimed to be in Business Management. We have perused the

original record and what we find is that Dr. Rajendra Singh has filed his affidavit-cumdeclaration in terms of Form "A" and Form "B". He states that he is B. A. M. S., M. D. he is a Director of Yogayatan Group and trustee of Yogayatan Jankalyan Trust. He claims to be a devotee of Shree. Sai Baba and working in the field of social service. He has held several positions and particularly in the Government of India institutions. He has educational background with professional or specialized knowledge, qualification and practical experience as required by the second proviso to sub-section (2) of section 5. However, the petitioners have brought to the notice of this court that even he has not disclosed truthfully and honestly all the requisite and necessary details.

173. . As far as Dr. Rajendra Singh is concerned, he may have denied the allegations made by the petitioners and reiterated the contents of his Bio-Data, what we find is that he asserts that the members of opposition party also recommended his name for nomination. He has denied that he is close relative of Shri. Rajnath Singh, Minister of Home, Government of India. He has denied that his appointment is not in accordance with law. To our mind, considering his qualifications, which do not strictly match with the requirement, namely, Bachelors degree in Business Administration and 10 years" experience, what we find is his Bio-Data enlists certain achievements and particularly in the field of management. His appointment, therefore, need not be disturbed save and except if there is any material which would make him otherwise unfit. In the rejoinder affidavit, no such material has been pointed out.

174. . Then, we come to the case of Shri. Bhausaheb Rajaram Wakchaure. In his case, apart from the allegation that he is very close to Bhartiya Janata Party and Shiv Sena and which allegations are not denied by him, he has not been able to satisfactorily explain as to how the criminal complaints would have no bearing on his nomination or appointment for what we have is his own version on affidavit. In paras 3, 6, 7 and 9 of the affidavit at pages 361 to 364 of the paper book, he states as under:- "3) I say that, albeit, there were several previous litigations in respect of allegations of political personalities having incompetency to sit over as the managing committee members; now, however, in order to overcome all the ambiguities and the irregularities the new managing committee having the utmost profile status and competency in order to be qualified for becoming the members of the managing committee has been followed in the selection of the committee members. I say that, the present deponent has worked in the administrative public services for last 30 to 38 years and when promoted in class-I cadre of the administrative services has also served as the Executive Officer of the Shri. Sai Baba Sansthan Trust, Shirdi. "..

6) I say that the allegations in the petition as regards to the criminal complaint bearing F. I. R. No. 238/2013 registered with Kopergaon Police Station U/sec. 314, 143, 149 of I. P. C. along with offences punishable U/sec. 37(1) (3) & 135 of Bombay Police Act vindicating the present deponent were totally a omnibus allegations with political vendetta against as many as total 29 accused persons. I

say that, in view of the Govt. Resolution dated 13.01.2015 all such political offences wherein there is no damage to the Govt. or public property less than Rs.5 lacs and if no bodily injury or death is caused in such incidents, the said offences were intended and actually withdrawn by the State Govt. Hence, the said F. I.R. itself is withdrawn by the competent authority particularly the Superintendent of Police and the present deponent as on today stands discharged u/sec. 321 (a) of the Cr. P. C. Therefore, the said allegations in respect of criminal offence against the present deponent is baseless having no substantive value in order to disqualify the present deponent from being the member of the managing committee of the trust. 7) I say that, apart from the two meager and petty allegations that too having no legal impediment in the process of selection of present deponent as the member of managing committee, there is no other basis to reveal any exception to violate the rules formulated for appointment of managing committee of the Shri. Sai Baba Sansthan Trust, Shirdi. I say that, the rules of 2013 are framed by the State Govt. in view of the directions of this Hon"ble High Court by taking due care for formulating the qualifications with a view to appoint the managing committee members as most efficient, honest and integrated. Therefore, the appointment of the present deponent as the member of managing committee is not only in accordance with the rules 2013 but with total manifestations and deserving qualifications to be eligible for becoming the managing committee member to look after the affairs of the administration of the trust. "..

9) I say that, the deponent craves liberty to produce and rely on the copies of the withdrawal orders by competent court thereby discharging the present deponent in F. I. R. bearing C. R. No. I-238/2014 in view of the Government Resolutions and orders sustaining the legality in appointment of present deponent as the then, Executive Officer of Shri. Saibaba Sansthan Trust, Shirdi, as and when available and if necessary."

175. . From the original file, we do not see how Mr.Wakchaure could keep back from the authorities the pendency of the criminal cases. Secondly, his version is of no assistance. We clearly find that apart from the serious allegations in the criminal cases, there is also, in the compilation, a reference made by the petitioners to certain other/civil proceedings, namely, Writ Petition No. 5008 of 2007 decided on 17th March, 2008. A copy of this petition has also been placed on record. Shri. Wakchaure is respondent no. 4 to this petition and he was, at the relevant time, the Executive Officer of the Trust. We have summarised the allegations against him in these PILs already, but what is alleged in the memo of Writ Petition No. 5008 of 2007 in paras 13 and 14 is that Shri. Wakchaure has been appointed knowing fully well that he was not even qualified to be appointed. There are serious allegations made in the whole petiiton and what has been sought is his removal from the post. This petition may have become infructuous, but surely, Shri. Wakchaure cannot be said to be completely exonerated. There are not only serious allegations made in the criminal cases, but it is apparent from the record that even in Wakchaure's case, there has not

been any adherence to clause (f) of sub-section (1) of section 9. We are, therefore, of the opinion that what holds good for others in terms of the law laid down by us would equally apply to him. Even he has suppressed vital materials and which would have a material bearing on his fitness. Even in his case, the State Government is directed to take a decision and within the time stipulated above.

176. . As far as Shri. Ravindra Mirlekar and Shri. Amol Kirtikar are concerned, they are arrayed as respondent nos. 13 and 14. In their case, what we find is that the allegations are that both of them belong to Shiv Sena party and have been appointed from general category. Both of them are not residents of Ahmednagar district. We are of the opinion that if Shri. Mirlekar and Shri. Kirtikar though not residents of Ahmednagar district, and still appointed, our directions insofar as Smt. Manisha Kayande, who is also a Shiv Sena party member, would apply to these respondents. The appointments of Shri. Mirlekar and Shri. Kirtikar would have to be reconsidered and revisited. They have to be revisited in the light of the law laid down in this judgment.

177. . As far as the appointment of respondent no. 15 is concerned, there is no challenge.

178. . Then, what remains is the case of Shri. Bipin Kolhe. In his case, we have found that the allegations are that there are not only criminal cases pending against him, but his appointment is only because of his close political connections. During the course of arguments, we have noted that Shri. Kolhe may have highlighted his achievements in his Bio-Data, but in his affidavitcum-declaration, he has not stated that there were indeed criminal proceedings involving him. What has been brought out in the compilation placed on record by Shri. Talekar on 13th July, 2017 in this petition is that there was a Public Interest Litigation No. 196 of 2010, whereunder, directions were issued to the Commissioner of Police to take appropriate action against the Directors of a sugar factory, namely, Sanjivani Co-operative Sugar Factory, of which, Shri. Kolhe was the Chairman as its directors are involved in huge irregularities. What we have found from these documents is that this court had directed that there should be a High Power Committee and which should investigate these allegations.

179. . It is common ground that these allegations were investigated and it has been found that there were indeed some irregularities. These irregularities were pointed out, but reliance is placed on the report of Shri. P. S. Paranjpe, who was appointed as an inquiry officer. We are not concerned with the findings in the inquiry report and particularly whether there is any case made out for initiation or launching of criminal prosecution, but what we find is that if there are allegations against the Board of Directors, then, at least insofar as such allegations are concerned, the State should have called for not just a police verification or police report, but also materials from other concerned and relevant sources. That appears to have not been done at all. Further, we find that the

affidavit of Shri. Kolhe, filed in this case, makes an interesting reading. Shri. Kolhe has sought to deny the allegations against him. However, in his affidavit, he does not dispute that he is the son of Shri. Shankarrao Kolhe, who was ex-Vice-Chairman of Shirdi Sansthan. He does not dispute that Public Interest Litigation No. 25 of 2015 was filed against his father and this court had directed to conduct an inquiry. There may be a version placed by him with regard to the allegations and seriousness thereof, but what we further find is that there is an admission that there are criminal cases filed against Shri. Kolhe, namely Criminal Case Nos. 287 of 2013 and 238 of 2013 with Kopergaon Police Station, but these are regarding agitation by the agriculturists on the issue of release of irregular water to the canals. There may have been a permission granted to withdraw the criminal cases by an order passed on 7th September, 2015, but the petitioners have placed on record the details of these criminal cases and what we find is that the courts have not construed the charges of obstructing traffic, squatting and agitation by blocking of the roads to be trivial and frivolous. There are other offences alleged and punishable under sections 143, 353, 447, 427 and 430 of Indian Penal Code, 1860. It is apparent that such agitators and protestors, on most occasions, have not allowed the public servants, namely, police officials and others in-charge of security to perform their duties in accordance with law. Therefore, we are of the firm opinion that the provisions of the law cannot be misinterpreted and misread by at least the executive machinery at the instance of some political heavyweights and close to the political party in power. It is the interpretation of the court which is paramount. Once the court of law has interpreted the provisions and in unequivocal terms held that a police report is not decisive, then, even in the case of Shri. Kolhe, the State must take an appropriate decision and within the time stipulated and directed above.

180. . In the light of the above discussion, we do not think that any of the judgments relied upon by Mr. Dixit would have a bearing on the view that we have taken. We have, as argued by him, not been persuaded to dismiss the PILs at the threshold nor on the ground that the conduct of the PIL petitioners is blameworthy. Therefore, any reference to the judgments relied upon by Mr. Dixit, with regard to maintainability of the PILs are of no assistance. Secondly, our attention has been invited to the judgments of the Hon'ble Supreme Court which interpret the words and expressions "offences involving moral turpitude". We do not think that these judgments can apply for the simple reason that the provision in question, namely, section 9(1)(f) cannot be read as desired by Mr. Dixit and Mr. Dhorde for that would make the words and expressions "or otherwise found to be unfit" redundant and nugatory. We have not agreed with the learned senior counsel on their interpretation and construction of these words and expressions. Therefore, we do not make any reference to those judgments which interpret the term "moral turpitude".

181. . Finally, the judgment of the Hon'ble Supreme Court in the case of Hari Bansh Lal vs. Sahodar Prasad Mahto and Ors., AIR 2010 SC 3515 is also of no assistance for in that case the appointment of the Chairman of the Jharkhand

State Electricity Board was quashed and set aside. The argument was that it was quashed and set aside at the instance of not an aggrieved party but in a PIL. The maintainability of PIL in service matters was highlighted. Further, the High Court has proceeded to issue a writ and quashed the appointment though the suitability or otherwise of a Government servant appointed in Government service cannot be highlighted in a PIL. Such is not a case before us. In these circumstances, we do not think that even this judgment is of any assistance.

182. . We summarise our conclusions as under:- (i) We do not agree with the stand of the State Government and hold that the words and expressions "or otherwise found to be unfit" in clause (f) of subsection (1) of section 9 cannot be read ejusdem generis and restrictively. It is an independent disqualification and a person incurs it even if he is not guilty of misconduct or has not been charge-sheeted for any offence involving moral turpitude

. (ii) We cannot give an exhaustive list of the unfitness as we cannot and do not define the word "unfit". The expression "otherwise found to be unfit" means as above and is not restricted to just physical unfitness. It does not exclude moral unfitness and means not suitable. This would include such cases where a person is involved in trading or consuming liquor; drugs; tobacco and banned substances, against whom there are serious allegations of causing nuisance and annoyance, person against whom serious allegations are made of misbehaviour in public, a person against whom there are complaints of indecent and immoral conduct especially with children and women etc. These are but illustrations and by no means exhaustive.

(iii) The impugned notification dated 28th July, 2016 is not quashed and set aside because the Committee has been set up under that notification and found to be working for nearly one and half year. However, 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. (iv) While reconsidering and revisiting these appointments, the State Government shall not be influenced by the contents of its affidavit and those filed in reply by respondent nos. 4 to 15.

(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).

(vii) We clarify that we have not expressed any final opinion or conclusion on the merits of the allegations made, but we have invited the attention of the

authorities to the nature and gravity of the allegations and charges against these respondents in addition to construing and interpreting section 9(1)(f) of the Act.

183. Having considered all arguments and points, we dispose of all the Public Interest Litigations, since the issues involved and questions raised are common, with the above directions. The security deposit amounts deposited in these PILs by the petitioners shall be refunded to them with accrued interest. In the circumstances, there would be no order as to costs.