

(2009) 12 BOM CK 0139

In the Bombay High Court

Case No : First Appeal No. 248 of 2009 with Civil Application NOA No. 704 of 2009

Ajit Shankarrao Deshmukh and Others

APPELLANT

Vs

Joint Charity Commissioner and Others

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(18), 2(8), 41D, 41D(1), 41D(4)

Citation : (2010) 2 ALLMR 250 : (2010) 1 BomCR 706

Hon'ble Judges : Bhangale A.P., J

Bench : Single Bench

Advocate : Rohit Deo, for the Appellant; K.H. Deshpande, Sr. Cou. and V.K. Paliwal, for the Respondent

Judgement

Bhangale A.P., J.—By this appeal filed u/s 47(5) of the Bombay Public Trusts Act, 1950 (hereinafter referred to as "the Act of 1950"), the appellants challenge the order dated 19.3.2009 passed in Application No. 20 of 2008 by the learned Joint Charity Commissioner, Nagpur, whereby an application u/s 47(1) of the Act of 1950 for appointment of trustees so as to manage the administration of the Ideal Education Society, Umred Dist. Nagpur {bearing Public Trust Registration No. F-164 (N)} was allowed, with necessary directions to newly appointed nine trustees (i.e. respondent Nos. 2 to 10) for management of the said Public Trust and its property in accordance with rules and regulations and Memorandum of Association.

2. It is not in dispute that the aforesaid Public Trust was formed and registered with the aim and object to impart education from elementary stage to highest possible standards for students in the area of Umred Tahsil. The Trust is also running a Junior College, by name, Nutan Adarsha Arts, Commerce & Smt. M H Wajed Science College, New Ideal High School and New Ideal Girls" High School at Umred.

3. The facts of the case, in brief, are these:

As far back as on 13.10.1936, Ideal Education Society, was registered as society under the Societies Registration Act, 1860. It came to be registered as "Public Trust" with effect from 20.1.1963. On or about 27-11-1989, the Joint Charity Commissioner, Nagpur by suo motu Proceeding No. 12/1981 initiated u/s 41-D of the Act of 1950 removed the existing trustees and appointed S/Shri (i) R.V. Nathani (ii) Dr. Shrawan Parate (iii) T.B. Deshmukh (iv) Kanjibhai Vegad and, (v) K.B. Chandle, to look after and manage the affairs of the Public Trust. On 8.1.1999 by an order passed in Application No. 13/1998 and 25/1998 Joint Charity Commissioner suspended members of ad hoc body of fit persons appointed by an order dated 27.11.1989 and reconstituted the body of fit persons by appointing S/Shri (i) B.B. Taywade (ii) S.M. Sorte, (iii) J.R. Sadavarte (iv) R.N. Khandude and, (v) I.D. Nagdevte as members of ad hoc body of fit persons to look after and manage the affairs of the said Public Trust. By an order dated 15.6.2002 in proceedings Application No. 13 of 1998 and 25/1998 Joint Charity Commissioner dismissed (1) S/Shri T.B. Deshmukh (2) Dr. Shrawan Parate (3) Kanjibhai Wegad (4) K.B. Chandle who were members of ad hoc body of fit persons who challenged their removal before the District Court, Nagpur by an appeal which is still pending.

4. By order dated 17.1.2005 in proceedings Application No. 13 and 25 both of 2004, the Joint Charity Commissioner by initiating suo motu Inquiry Case No. 7 of 2005 reconstituted the body of fit persons. By order dated 11/12th September, 2006, the Joint Charity Commissioner appointed appellants as ad hoc body of fit persons to look after the affairs of the said Public Trust and since then appellants are looking after affairs of the Public Trust.

5. Respondent No. 2 by an application No. 20/2008 u/s 47 of the Act of 1950 before the learned Joint Charity Commissioner, Nagpur prayed for appointment of respondent Nos. 3 to 10 as trustees. Appellants opposed the application. But by order dated 19.3.2009, the learned Joint Charity Commissioner appointed respondent Nos. 2 to 10 as trustees and directed appellants to hand over charge to them.

6. The appellants have sought to impugn the aforesaid order on the ground that the same is without jurisdiction and contrary to Section 47 of the Act of 1950 as the Joint Charity Commissioner did not enter into detailed inquiry while appointing trustees and did not invite every interested person to offer his services as a trustee.

7. In support of the appeal, it is contended that no inquiry was conducted as envisaged by Section 47(2) of the Act of 1950 and names suggested by respondent No. 2 were blindly accepted as trustees and respondent Nos. 2 to 10 were appointed as Trustees of Ideal Education Society Umred. It is submitted that there was no material before learned Joint Charity Commissioner to suggest that the body of fit persons comprising appellants were not in a position to administer the trust for to exercise power u/s 47 of the Act of 1950. According to learned Advocate for appellants the learned Joint Charity Commissioner ought to

have waited till decision of framing of scheme for the public trust concerned and that there was no hurry to decide application u/s 47 of the Act of 1950. Further, according to learned Advocate for appellants, no inquiry whatsoever was conducted as per Section 47(2) of the Act of 1950. Therefore, the impugned order is liable to be quashed and set aside.

8. Learned Senior Counsel for respondent Nos. 2 to 10 opposed submissions on the ground that the appointment of fit persons to administer Public Trust u/s 41-D of the Act of 1950 is of temporary nature inasmuch as it is a stop-gap arrangement to perform functions of Trust only until new trustees are duly appointed according provisions of the instrument of Trust. The impugned judgment and order was passed upon application filed by respondent No. 2 on 27.9.2009 considering the documents filed by respondent No. 2 and after giving sufficient opportunity of hearing to appellants on 7.3.2009 and 17.3.2009. The impugned judgment and order was passed on 19.3.2009 on the basis of material available. It is further submitted that fit persons cannot continue to insist indefinitely upon managing the affairs of the Trust. Vacancies of trustees are required to be filled in by appointment of trustees as fit persons are appointed u/s 41-D(4) of the Act of 1950 purely on ad hoc basis. It is submitted that learned Joint Charity Commissioner had exercised the discretion vested in him and passed judicious order appointing trustees u/s 47 of the Act of 1950. The appellants can not dispute their status as fit persons appointed u/s 41-D(5) of the Act of 1950 and therefore, their tenure came to an end automatically once new trustees are appointed in view of order u/s 47 of the Act as appellants did not offer their services as trustees. Learned Counsel for respondent Nos. 2 to 10 submitted that even otherwise since appellants did not express their readiness and willingness to work as trustees, they can not make grievance about impugned order by which respondent Nos. 2 to 10 are appointed as trustees for a period of five years. Thus, it is contended that there was no jurisdictional error in the impugned judgment and order which is well-reasoned, just, proper and legal to protect interest and welfare of the Trust and for the purposes of proper administration of the Trust.

9. I have heard the submissions at the Bar, at length.

10. It is contention on behalf of the appellants that "fit persons" appointed u/s 41-D(4) of the Act of 1950 are trustees within the meaning of definition in Section 2(18) of the Act:

2(18): "Trustee" means a person in whom either alone or in association with other persons, the trust property is vested and includes a Manager.

While the word "Manager" is defined in Section 2(8) of the Act thus:

2(8): "Manager" means any person (other than a trustee) who for the time being either alone or in association with some other person or persons administers the trust property of any public trust and includes--

- (a) in the case of a math, the head of such math;
- (b) in the case of a wakf, a mutawatti of such wakf
- (c) in the case of a society registered under the Societies Registration Act, 1860, its governing body, (whether or not the property of the society is vested in a trustee);

The conjoint reading of the provisions indicate that in Maharashtra governing body of a society duly registered under the Societies Registration Act, 1860 (XXI of 1860) is included within the term "manager"

The definition of manager contemplate a person other than a trustee who administer the trust property. Manager is supposed to carry out aims and objects of the trust under the general supervision of Board of trustees. The legislature in its wisdom, has not regarded the trustee as the manager or the manger as the trustee although both of them may be required to perform identical functions or to discharge identical obligations in the matter of administration of the Trust. It is, therefore, wrong to say that under the scheme of the Act of 1950, the Manager is a trustee and the trustee is a Manager, because trustee is the person who accepts the confidence, hold for the time being legal ownership or possession of or dominion over the property which is subject of the trust and is bound to allow beneficiary to beneficial enjoyment or usufruct of the trust property. Thus, trustee holds the trust property for the benefit of others for whom the trust is created. Trustee have to discharge functions which have wider scope than a Manager. Trustee stand in fiduciary relationship with beneficiary/beneficiaries. Therefore, "manager" is expressly segregated from a "trustee" in Section 2(8) of the Act of 1950; as he has limited role to administer a trust property. In this limited sense of the term manager has been included within scope of the definition of "trustee", Section 41-D(4) of the Act is enabling provision for the Charity Commissioner who has made an order of suspension, removal or dismissal of any trustee/trustees to appoint suitable competent person/persons to discharge duties and perform functions of the Trust. The tenure of such person/sexist only until a trustee is duly appointed in accordance with instrument of Trust. It is purely a provisional interim arrangement lasting until new trustee/trustees is/are appointed. Any person interested in a public Trust can apply to the Charity Commissioner for to appoint new trustee/trustees. The Charity Commissioner may upon hearing the parties and making inquiry such as he may deem fit, appoint any person as a trustee to fill up vacancy/ies or may also remove or discharge any trustee for any reason as mentioned in Section 47-(1)(a) to (i). The Charity Commissioner can order that any property which is subject of the trust shall vest in the trustee appointed. Unless ordered otherwise to wait for a final decision in any pending case before the Appellate Authority, there is no prohibition for the Charity Commissioner to appoint new trustee on the ground that scheme of the trust is yet to be finalized due to pendency of other proceeding. New trustees were appointed by impugned judgment and order after the learned Joint Charity Commissioner issued notice

to persons interested and after giving opportunity to oppose application u/s 47 of the Act. A useful reference can be made to the ruling in *State of Andhra Pradesh Vs. S.M.K. Parasurama Gurukul*, . The test to determine whether a decision is administrative or quasi judicial is ; (a) there must be a lis (b) the opinion of the Tribunal should be formed on the objective and not on the subjective satisfaction of the Tribunal; and, (c) there must be duty on the part of the Tribunal to act judicially. Legislature has left the matter to the discretion of the appointing authority subject to guidelines. Normally the appointing authority would exercise the discretion as to who are best fitted to discharge duties and functions of the trustees. But that is not to say that appointing authority must set out reasons or record speaking order as to why he has appointed a particular person as a trustee and not somebody else.

11. In the case of *Zitru Lahanuji Lonare Vs. Rajesh Trimbakrao Deshmukh and Others*, , this Court in paragraph 8 has observed thus:

8. It is clear from the provisions of Sub-section (4) of Section 41-D that the Joint Charity Commissioner is empowered to appoint a "Fit Person" to perform the functions of the trust until a trustee is duly appointed according to the provisions of the instrument of trust. Sub-section (1) of Section 41-D of the Act speaks of the removal, dismissal or suspension of a Trustee", whereas Sub-section (4) of Section 41-D of the Act speaks of appointment of a "Fit Person" and not a "trustee", who is aggrieved by the order of suspension, removal or dismissal under Sub-section (1) of Section 41-D of the Act. It is not necessary to refer to the provisions of Sections 2(8) or 2(18) of the Act for considering whether the appellants, appointed on the body of Fit Persons are "trustees" within the meaning of Sub-section (1) of Section 41-D of the Act as the provisions of Section 41-D of the Act themselves make a clear distinction between a "trustee" and a "fit person". A combined reading of all the Sub-sections of Section 41-D makes it clear that the provisions make a clear distinction between a "trustee" and a "fit person". A person appointed under Sub-section (4) of Section 41-D of the Act is neither a "trustee" nor a "manager". The provisions of Section 41-D elaborately deal with the procedure for removal, dismissal and suspension of the trustee and also provide for a stop gap arrangement between the point of removal, suspension and dismissal of the trustees and the appointment of trustees in accordance with the provisions of the instrument of trust. Thus, a "fit Person" is appointed temporarily and in a stop gap arrangement, to perform functions of the trust only until a "trustee" is duly appointed according to the provisions of the instrument of trust.

12. Considering the observations made earlier by this Court it must be concluded that appellants were acting provisionally as "fit persons" and cannot have legal right to stall or stultify the course adopted by learned Joint Charity Commissioner for the appointment of new trustee in exercise of power u/s 47 of the Act of 1950. The Charity Commissioner can exercise power under the Act of 1950 to make better provision for the administration of the public Charitable Trust and

had exercised discretion as permissible according to law.

13. Considering the reasons explained above, the appellants as "fit persons" were appointed provisionally for the time being and cannot be said to have a legal grievance nor have suffered any serious prejudice by the impugned judgment and order. The learned Joint Charity Commissioner had power to appoint in new trustees in view of Section 47 with implied discretion to take effective decision in the interest of the public trust concerned. The impugned order is well-reasoned. It can not be said that learned Charity Commissioner acted beyond his jurisdiction.

14. The appeal therefore, lacks merits and deserved to be dismissed. Appeal is accordingly dismissed with costs.

15. Needless to state that interim stay shall stand vacated. Civil Application No. 704/2009 is also disposed of.

After pronouncement of the judgment, learned Advocate for the appellants prays for continuance of interim relief, which is stoutly objected on behalf of respondent Nos. 2 to 10. Since the appeal has been dismissed after considering all the pros and cons in the matter, it would be in the fitness of things not to continue interim stay. In the interest of welfare of the public trust, new trustees appointed according to law, are expected to take charge and administer the trust property. Hence prayer for continuance of interim relief stands rejected.