
(2003) 12 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 3817 of 2003

Berar General Education Society

APPELLANT

Vs

Jt. Charity Commissioner and Another

RESPONDENT

Date of Decision : 01-12-2003

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 70

Citation : (2004) 3 ALLMR 476 : (2004) 2 MhLj 189

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : M.S. Deshpande, R.G. Soni, for the Appellant; T.N. Kankale, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—Heard Shri Deshpande, the learned counsel for the petitioner, Kankale, the learned A.G.P. for the State and Dr. Soni, appeared in person.

2. Rule returnable forthwith. Heard by consent.

3. This petition is directed against the order passed by the Joint Charity Commissioner, Amravati by which the learned Joint Charity Commissioner has during the pendency of appeal against the existence of Change Report given certain directions to the trustees for proper administration of Trust.

4. The facts relevant to the impugned order are that the Change Report was submitted in the year 1997 in which the present petitioner-Trust came to be elected. This Change Report was accepted on 4-6-2001. Against the acceptance of Change Report, the respondent No. 2 who appears in person filed an appeal. In this appeal having regard to the circumstances of the case, the Joint Charity Commissioner, Amravati passed an order dated 5-7-2003 which was subsequently modified by him on 25-7-2003. By earlier order, the petitioner's power to take any major policy decision to make appointment, termination, promotion of the teaching and non teaching staff working in the institutions held

by the Trust was made conditional upon permission of Joint Charity Commissioner till the final decision of the appeal. Later on the Joint Charity Commissioner by subsequent order dated 25-7-2003 clarified that in the matter of appointment, instead of permission from the authority, written intimation given to the Authority and only sanctioned posts should be filled up by following due procedure prescribed so far as permanent posts are concerned.

5. Mr. Deshpande, the learned counsel for the petitioner submitted that the Joint Charity Commissioner while entertaining an appeal has power to grant stay to the acceptance of Change Report. However, he has no power to give such directions, because they constitute an undue interference in the working of the Trust. He submitted that the power exercised by the Joint Charity Commissioner is u/s 41D of the Bombay Public Trusts Act, 1950. Section 41D(4) confers the power of dismissal of trustees. It also confers the power to suspend the trustee by way of interim order. I am of view that the power exercised by the Joint Charity Commissioner is clearly not u/s 41D, since there is no question of suspension, removal and dismissal of any trustee under the orders mentioned above. In fact, Dr. Soni, who appeared in person has pointed out that such power exists in the Charity Commissioner u/s 41A of Bombay Public Trusts Act, 1950. This power is conferred on the Charity Commissioner to give directions to any of trustees to ensure that such trust is properly administered.

6. In this case the power exercised is akin to the power u/s 41A of the Act, though the Charity Commissioner is really exercising the appellate power u/s 70 of Bombay Public Trusts Act, which confers on the Charity Commissioner the power to amend/alter or confirm the finding or the order appealed. Prima facie, on the principle that where the exercise of power can be traced to a provision in the Act, the non-mention of the power in the order does not vitiate its exercise. The Charity Commissioner undoubtedly has power u/s 41A to give directions for proper administration of the Trust, such power can also be exercised while hearing an appeal for ensuring the proper administration of trust.

7. Mr. Deshpande, the learned counsel for the petitioner further submitted that the order of the Charity Commissioner is causing great inconvenience in the administration of Trust. For example, if the Trust approaches the Charity Commissioner for any directions for appointment or termination of services, the charity Commissioner issue notice to the other side i.e. to the third respondent. If the petitioner is aggrieved by any such order, the petitioner may resort to such remedy as may be advised against such order. In the result, for the reasons stated above, and also having regard to the fact that the petition is directed against an interim order, I am not inclined to interfere with this petition. The petition is therefore, dismissed.

8. However, the Charity Commissioner shall ensure that the proposal pertaining to administration of Trust are not undoubtedly is delayed in any manner and shall further decide the appeal as expeditiously as possible and in any case not later than three months from today. Rule is disposed of accordingly.

C. C. expedited.