

(2009) 03 BOM CK 0132
In the Bombay High Court
Case No : Second Appeal No. 207 of 2008

Bhanudas Deshmukh and Sanjay Deshmukh	APPELLANT
Vs	
The Joint Charity Commissioner and Others	RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 36A, 41(A), 41(B), 41(D), 50

Citation : (2009) 4 BomCR 404 : (2009) 111 BOMLR 1959

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : R.N. Dhorde, holding for, V.G. Sakolkar, for the Appellant; V.J. Dixit for A.N. Nagargoje, for Respondent Nos. 4 and 5 and S.S. Deshmukh, for the Respondent

Judgement

K.U. Chandiwal, J.—Modern Education Society, Parli Vajinath, was formed on 7.8.1971. There were 12 trustees and the Trust Scheme, by amendment dt.1.9.1984, put a cap & ceiling on number of General Body members to be 12. It is a matter of record, now only one Trustee Shri Bhanudas (appellant) is alive. One of the applicant Rajesaheb expired in Nov., 2007 and another Trustee Shamrao expired on 6.11.2005. The Scheme of Trust provides for coram of 5 trustees, if changes are to be effected in the Trust.

2. Rajesaheb Deshmukh, Shamrao Deshmukh and Nandkishore Jaju made the application to Assistant Charity Commissioner on 24.6.2005, vide enquiry number 722/2005. Bhanudas and others filed objection to the change report. On hearing, the Assistant Charity Commissioner, by order dt.9.3.2006, allowed the application Enquiry No. 722/2005 and framed new scheme and appointed new committee. These orders were tested by Bhanudas and others before Additional District Judge, Ambejogai, in Miscellaneous Civil Application No. 22 of 2006. The learned Additional District Judge, on hearing both the sides, by his order dated 15.12.2007, dismissed the application. This gave rise to file Second Appeal on 10.3/2008. On hearing the Counsel, by order dated 7th July, 2008, this Court

admitted the appeal by formulating following substantial questions of law:

(I) What are the guidelines for framing of the scheme u/s 50-A of Bombay Public Trusts Act, when already a scheme is in existence?

(II) Whether in case of breach of existing provisions of a scheme by existing Board of trustees, the proper remedy is to apply for removal of trustees or to apply for modification of the existing scheme, without proving the necessity and expediency for modification of the scheme?

3. In Civil Application No. 3138/2008, ad interim relief in terms of prayer clause "B" was granted with notice to respondents. This situation gave rise to numerous proceedings. I do not wish to advert to them, since such proceedings and orders have no decisive bearing to the appeal.

4. The respondent No. 3 Rajesaheb (since deceased) and others made application (No. 1807/2009) on 3.2.2009 to vacate the ad interim reliefs in C.A. No. 3138/2008 in S.A. No. 207/2008. During the extensive submissions of said applications, both the learned Counsel urged to hear and dispose the Second Appeal, which prompted to give audience accordingly.

5. Mr. Dhorde would contend, there was no legal requirement for new scheme, as old scheme would absorb, accept amendment to it. The mismanagement or illegalities, by any of the trustees would not invite drastic action to invite a new scheme, as law will take its own course. Section 50A cannot be invoked. But for mismanagement by Trustees, the Charity Commissioner will not be able to accept new scheme. He has relied to the judgment in the matter of Mallikarjun Basvanappa Masute and Another Vs. Dattatraya Krushnath Wadane and Others, and Vasant Rao Mane and Others Vs. Apparao Sidore and Others, .

6. Mr. Deshmukh, Counsel for respondent Nos. 3 to 6 canvassed about the inadequacy of present scheme of Trust to cope up with change of circumstances and impediments in force by virtue of old scheme. He has read the judgment in the matter of Ramkrushna-Appa and Others Vs. Krushna Ingale and Others, , Saiyad Mohammad Bakar El-Edroos (dead) by Lrs. Vs. Abdulhabib Hasan Arab and Others, .

7. The Hon"ble Lordships of the Supreme Court, in Saiyad Mohammad Bakar El-Edroos (dead) by Lrs. Vs. Abdulhabib Hasan Arab and Others, , while dealing with scope of Section 50-A of Bombay Public Trusts Act, observed:

7. Section 50-A infuses the Charity Commissioner with power in addition to Section 50 to frame, amalgamate or modify any scheme in the interest of proper management of a public trust. This is exercised either suo motu when he has reason to believe it is necessary to do so or when two or more persons having interest in a public trust make an application to him in writing in the prescribed manner. This merely enables the Charity Commissioner to initiate proceedings for settling a scheme for the proper management or administration of a public trust. In the background of the setting of various provisions, the object of the Act, the

Charity Commissioner being clothed with sufficient power to deal with all exigencies where a public trust or its trustees stray away from its legitimate path and where the materials are before him or placed before him by the said two persons, then to hold abatement of proceedings on application of any procedural laws not only would amount to the curtailment of his power but make him spineless and helpless to do anything in the matter of a public trust eroding the very object of the Act. This is a too restrictive interpretation to be accepted.

(9) If the interpretation sought by the learned Counsel for the appellant is to be accepted, it would tie the hands of a Charity Commissioner not to proceed with settling a scheme inspite of material placed before him, only because one of the applicants is dead. The concept of abatement u/s 50-A would never arise, specially in such a situation where for achieving such an objective he in addition is capped with power to initiate suo motu. It is not in dispute that the said two persons have made an application in the prescribed form. The proceeding has been initiated in terms and in accordance with Section 50-A; this cannot be said to be improper or illegal. Once the material is brought before him, he may on the materials or after inquiry or after giving opportunity to the person concerned or trustees may or may not exercise his power depending on facts and circumstances of each case, but his exercise of power cannot be ousted either on the death or withdrawal of any one of the applicants.

8. Sub-section 1 of Section 50A of the Bombay Public Trusts Act, 1950 reads as under:

50A(1): Notwithstanding anything contained in section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

9. The powers of Charity Commissioner are wide enough when he has reason to believe that, in the interest of proper management or administration of a public trust, a scheme should be settled for it or, secondly, where two or more persons, having interest in public trust, make an application to him, in writing, in prescribed manner, indicating, in the interest of proper management or administration of the public trust, a scheme should be settled for it. The non obstantate clause takes away effects of other positions as carved out in Section 50 which, more or less, are touching to Section 41(A), 41(B) and 41(D). The powers in Section 41-D come into play for suspension, removal or dismissal of a trustee of a public trust.

10 In the situation, the making of application by the applicants (respondent herein), will have to be looked into from the angle of Section 50-A. The Charity Commissioner cannot be expected to stave off and shrink the obligation cast on him by simply taking recourse to Section 41-B or 41-D, without curing the defect in entirety.

11. Now, reverting to the new scheme, Mr. Dhorde has furnished comparative chart to impress, that new scheme is identical in material particulars, except placement of clauses by different numbers. Post of Vice President & Joint Secretary is a new condition, Rule making powers are also added. There should not be a quarrel on these facts and figures.

12. As per the old scheme, tenure of 5 managing committee members is 3 years while the total general body strength is only 12. The change report of 1995 came to be rejected. Another change report 309/1999 also came to be rejected on 23.8.2002. On 21.6.2005 managing committee was elected and change report was submitted on 3.8.2005 which also came to be rejected on 9.2.2007.

13. The learned Assistant Charity Commissioner and the learned Additional District Judge have scanned the evidence and documents and were of the considered opinion that new scheme only will provide new life to the virtual deadwood of the trust. Thus, there was subjective satisfaction of the Assistant Charity Commissioner to accept new scheme.

14. The evidence and, particularly, cross examination of Bhanudas, indeed, expose the bona fides and his credentials to manage the Trust. The allegations are not one or two but numerous, followed years together, with the same pattern,

(a) The meeting of managing committee and general body was not called.

(b) Accounts are not submitted before general body, nor approved.

(c) Audit report not submitted to the office.

(d) The Bank Account of Trust is to be operated by President and Treasurer but Bhanudas, ignoring the same, operated Bank account with joint signature of Principal.

(e) Without prior sanction from Assistant Charity Commissioner, Metadoor of Trust was sold, that too, without inviting tender or soliciting the maximum prospective bidders.

(f) The details of Trust property not included in the Record.

(g) Purchase of new school Bus was obviously in violation of Rules.

(h) Bus fare collected are not accounted.

(i) The contribution to employees fund and their deduction is not accounted.

15. The Managing Committee has acted in defiance to bye-laws of Trust. The

Trust property is mortgaged as could be seen in resolution dt.19.10.2004, without permission and approval of Charity Commissioner. There is violation of Section 36A of the Act while raising loan.

16. The Trust, due to the omission of Trustees, has invited penal notice from the office of Employees Provident Fund as, the deposit/deductions of salary are not accounted and institute was sealed. The Rules framed by Trust are inconsistent with provisions of the Act. Though death of Trustees could have been taken due care to infuse new trustee, deliberately, a system of anarchy and authoritative approach is surfacing, to circumvent the Rules and the very Bombay Public Trusts Act. A legitimate impression is generated that Bhanudas has arrogated to himself all the authority and treated the Trust as his proprietary concern.

17. The old scheme required a quorum for smooth administration of Trust and it is now the one man show of appellant Bhanudas. The Court will not encourage such situation to prevail, detrimental to the object and interest of trust. The requisite quorum is not available to facilitate conducting business of Trust legitimately. The term "Quorum" means, "such a number of the members of a body as is competent to transact business in the absence of other members". The appellant Bhanudas is figuring even in the first Board of Trustees, of new scheme. Taking survey of all these events, the logical conclusion would rest in holding that the guidelines do encourage to accept a new scheme, if old scheme has failed and is crippled. Since Bhanudas is the sole surviving trustee, his removal will not provide an impetus to the existing position, as it would inhibit the Trust itself. The substantial questions are answered as under, holding that there is no bar in the Charity Commissioner for framing a new scheme when already a scheme is in existence and that, in the event of breach committed by the trustee, it is not the remedy of removal alone, the remedy of modification of existing scheme is available.

(a) The appeal is dismissed.

(b) The parties to bear the expenses of litigation, without debiting to the Trust.

(c) The learned Assistant Charity Commissioner will take action in terms of Bombay Public Trusts Act against the Trustee within a period of six months and send compliance report to this Court.

(d) Civil Application No. 3138/2008, is rejected. C.A. No. 1807/2009, disposed of. Ad interim relief vacated.