

(2008) 09 BOM CK 0101
In the Bombay High Court
Case No : Writ Petition No. 5815 of 2008

Chetan Mehta

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 41D, 41D(1), 50, 73A
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 6 ALLMR 189 : (2008) 6 BomCR 594

Hon'ble Judges : Khanwilkar A.M., J

Bench : Single Bench

Advocate : Janak Dwarkadas, C., Vaibhav Joglekar, Prateek Seksaria, Dharendra Sinha, Thomas T.K., Jay Kansara and Ashwin Sakolkar, instructed by Paras Kuhad and Associates, for the Appellant; S.K. Chinchalikar, AGP for respondent Nos. 1 to 3 and Akhil Sibal, instructed by Rupes Bobade, for the Respondent

Final Decision : Dismissed

Judgement

Khanwilkar A.M., J.—This writ petition filed under Articles 226 and 227 of the Constitution of India takes exception to the judgement and order passed by Joint Charity Commissioner (hereinafter referred to as "JCC") dated 29th March, 2007 in Application below Exhibit-17 in Application No. 5 of 2008.

2. The said application (Application No. 5 of 2008) is filed by the respondent No. 5 Mrs. Charuben Mehta u/s 41-D of the Bombay Public Trust Act, 1950 for suspension/removal/dismissal of another trustee, Shri Prabodh Mehta (respondent No. 6). The said Prabodh Mehta incidentally happens to be the father of the present petitioner.

3. The sole basis on which that application proceeds is that the said Prabodh Mehta has been convicted in the Tribunal Court of First Instance of Juridical District of Antwerp (Belgium) vide Judgement No. 5686 dated 6.12.2007 and was sentenced to imprisonment of six months for having committed offences of fraud, forgery etc. involving moral turpitude and is thus, disqualified from acting as

trustee of Lilavati Medical Trust (hereinafter referred to as "the said trust").

4. During the pendency of the said application, the petitioner herein filed subject application (Exhibit-17) for his impleadment as party to the pending proceeding. In this application it is stated that outcome of the proceeding filed by respondent No. 5 (applicant) would affect the Board of Trustees and virtually affect the trust as well, and therefore all the trustees of the said trust should have been made parties to the said proceeding in order to enable all the trustees to assist the JCC to decide the issue involved in the application and to provide an opportunity to all the trustees of being heard.

5. The JCC by the impugned decision has rejected the said request principally on the ground that the intervener's presence was not going to assist him in adjudicating the matter. The JCC has positively found that it is not the case of the intervener that he was in possession of relevant evidence which would help the authority in answering the point in issue one way or the other. It is further noted that no explanation is forthcoming as to how the participation of the intervener will assist the authority in adjudicating the matter.

6. The JCC further found that there is nothing in the application from which it could be gathered that presence of intervener before the authority in the pending proceeding was necessary for effective and complete adjudication of the matter. The JCC further opined that the sole allegation in the original application against the respondent No. 6 is that he was convicted by a Belgium Court and that conviction is in respect of an offence committed in personal capacity which has no casual connection with the trust or trust activities. In such a case, the question of any other person being interested in the outcome of the proceeding u/s 41-D(1)(f) does not arise. It is this view taken by the JCC which is subject matter of challenge in the present writ petition.

7. Even in the present writ petition, the issue of maintainability of the writ petition was raised by the Counsel for respondent No. 5 Mrs. Charuben Mehta. That aspect has been dealt with in the companion matter decided today being Writ Petition No. 5732 of 2008. It is not necessary to burden the present judgement with the same aspect. Suffice it to observe that the grievance of the petitioner in the present writ petition can be effectively addressed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. 8. Significantly, the learned Counsel for the petitioner fairly accepts that the grounds raised in the writ petition which are ascribable to remedy under Article 226 of the Constitution are capable of being tested even in exercise of supervisory jurisdiction under Article 227 of the Constitution. Indeed, the learned Counsel for the petitioner insisted that the petitioner has also invoked Article 226 of the Constitution.

9. The fact remains that it is a composite petition under Articles 226 and 227 of the Constitution which can be maintained only on the Appellate Side of this Court, notwithstanding the language of Rule 1 of Chapter XVII of the Rules. If it

is so, the argument regarding maintainability of the petition on the Appellate Side of the High Court against the impugned decision, is devoid of merits.

10. That takes me to the main aspect of the matter as to whether the other trustees can be said to be necessary parties to the action u/s 41-D(1)(f) of the Act pending against one of the trustees. Counsel appearing for the petitioner has relied on Section 73-A of the Act which reads thus:

73-A. Power of Inquiry Officer to join persons as party to proceedings.- In any proceedings under this Act, any person having interest in the public trust may be joined as a party to such proceedings on an application made by such person on such terms and conditions as the officer holding the enquiry may order.

On plain reading of the said provision, it is seen that any person having interest in the public trust may be joined as a party to proceedings on an application made by such person on such terms and conditions as the office holding the enquiry may order. This is obviously an enabling provision. The office holding the enquiry is however, obliged to consider the facts and circumstances of each case while examining the request for impleaded as party to the pending proceedings. The Authority is not expected to grant the request mechanically but will have to keep in mind that impleadment was because that person may be a necessary party and that such person is in a position to assist the enquiry by producing relevant evidence and not for making appearance merely because he has interest in the Trust.

11. In so far as the present proceedings are concerned, it is essentially for ordering suspension, removal and dismissal of respondent No. 6 trustee on the ground that he has been convicted of an offence involving moral turpitude. That charge is personal to respondent No. 6. Besides, the action of removal will be personal to respondent No. 6. In a given case covered by clauses other than Clause (f) of Sub-section (1) of Section 41-D, it may be possible to hold that presence of other trustees or the trust would be necessary.

12. However, in so far as enquiry in relation to ground under Clause (f) of Sub-section (1) of Section 41-D is concerned, that is personal to the trustee who has been convicted of an offence involving moral turpitude. The only fact that needs to be considered in such an enquiry is, whether the order of conviction has in fact been passed and whether the conviction is for an offence which would involve moral turpitude. No more and no less. In such proceeding, the presence of other trustees or for that matter the trust would be of no relevance.

13. Counsel for respondent No. 5 has rightly invited my attention to Clause No. 45 of the Bill which spells out the intention for introducing Section 73-A of the Act. It reads thus:

Clause 45: This clause provides for insertion of Section 73-A. At present there is no provision in the Act to bring on record as party any person having interest in a public trust. It is noticed that in many cases certain persons are in a position to

help the Inquiry Officer to arrive at a decision by producing relevant evidence. New section has, therefore, been added for taking power to the Inquiry Officer to join persons as party to any proceedings.

(emphasis supplied)

14. Keeping in mind the purpose of introducing Section 73-A and in particular having regard to the fact that the sole matter to be enquired into in the present proceeding is whether the respondent No. 6 has in fact been convicted by a Court of competent jurisdiction and whether that offence involves moral turpitude, to ascertain this limited aspect presence of other trustees is not necessary.

15. Whereas, it is the concerned trustee (respondent No. 6) who will have to defend himself in relation to the allegation or charge which is personal to him and more particularly when the Trust has no casual connection with the offence in question. Thus understood, no fault can be found with the approach of the JCC on recording the finding that the petitioner has failed to demonstrate as to in what manner he can help the Inquiry Officer to arrive at a decision or to produce relevant evidence. To get over this position, Counsel for the petitioner would argue that the impleadment of petitioner was essential as he was one of the trustee and was therefore concerned with the reputation of the trust. The fact remains that the petitioner has not been able to demonstrate as to in what manner his presence would make difference to the proceedings pending for enquiry before the JCC.

16. Merely because the petitioner claims to be trustee of the trust, that cannot be the sole basis to permit the petitioner to be impleaded as party to the pending proceedings against other trustee especially in an enquiry in relation to Section 41-D(1)(f).

17. According to the learned Counsel for the petitioner, in another application filed by respondent No. 5 u/s 41-D of the Act, against other trustees, for similar relief, all the trustees as well as trust have been made party to that proceeding. However, in the present application, only the respondent No. 6 has been made party. This argument clearly overlooks the justification given by respondent No. 5 that in the other proceeding u/s 41-D, the respondent No. 5 has made out a case against the concerned trustees as well as the trust, unlike in the present case, the allegation is confined to only one event of respondent No. 6 having been convicted for offence involving moral turpitude. It is in that context the presence of other trustees in the action against respondent No. 6 is unnecessary.

18. Counsel for the petitioner also placed reliance on decisions of our High Court in the case of Subhash Trimbakrao Inamdar and Others Vs. Pandurang Tansingh Savner and Others, ; and Shri Suresh Hiralal Shah Vs. Shree Mahavir Swami Digambar Jain Mandir Trust, .

19. Reliance is also placed on the decision of the Apex Court in the case of

(Shree Gollaleshwar Dev and Ors. v. Gangawwa Kom Shantayya Math and Ors.) reported in 1986 B.C.I. 102 : 1986 M.L.J. 809. None of these decisions are of any avail to the petitioner. In all these cases, the proceedings were one u/s 50 of the Act or in respect of Change report. In such proceedings, persons having interest in the trust would have locus standi and can insist for being impleaded as party by invoking provision u/s 73-A of the Act.

20. In present case, however, the action is one u/s 41-D of the Act; and as aforesaid, the allegation is personal to respondent No. 6 and if that allegation is to be established as a necessary corollary, consequential order will have to be passed by the JCC in exercise of powers u/s 41-D(1)(f) of the Act.

21. In my opinion, the view taken by the JCC being a possible view, no interference with the discretionary order passed by the Authority in exercise of writ jurisdiction under Article 227 is warranted. Hence dismissed.