

(1957) 01 BOM CK 0011
In the Bombay High Court
Case No : First Appeal No. 620 of 1956

Chhotalal Lallubhai Shah

APPELLANT

Vs

The Charity Commissioner

RESPONDENT

Date of Decision : 25-01-1957

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 55, 56

Citation : (1957) 59 BOMLR 349

Hon'ble Judges : Shah, J;Gokhale, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shah, J.—This is an appeal filed against the order passed by the District Judge, Broach, u/s 56 of the Bombay Public Trusts Act, 1950; in Miscellaneous Application No. 8 of 1955 of his file. One Jhaverchand Dahyabhai Shah, who will hereafter be referred to as the testator died in 1916 having made and executed on August 6, 1915, a will disposing of his considerable property. The testator belonged to the Ladva Shrimali Shravak Bania community and professed the Jain religion. By his will the testator appointed his brother's daughter Bai Jekore and one Ratanchand Savaichand as trustees to administer the estate. By Clause 6 of his will he directed that his business in grocery should be wound up after his death and the trustees should conduct a money-lending business. He then directed that the shop should be continued till the death of his niece Bai Jekore. By Clause 7 the testator provided certain specific bequests. Those bequests were as follows :-

- (1) Rs. 100/-to Broach Panjrapole.
- (2) Rs. 100/-to kindness to all forms of life.
- (3) Rs. 25/-for providing flowers in the temple of Rikhab Dev at Vejalpore in Broach.

- (4) Rs. 200/-for providing food to Shravak pilgrims at Palitana.
- (5) Rs. 50/-for providing food to pilgrims on Mangirna.
- (6) Rs. 50/-for providing food to pilgrims on Mount Abu.
- (7) Rs. 250/-for providing food and clothes to Shravaks and Shravikas.
- (8) Rs. 100/-for providing clothes to the Sadhus and Sadhvis of Jains.
- (9) Rs. 200/-for providing food and education to orphan children of Hindu community.
- (10) Rs. 200/-for spreading education among Jains.
- (11) Rs. 100/-for providing food to those Shravaks and Shravikas who have observed fast.
- (12) Rs. 300/-for providing food and clothes amongst the blind and lame of HinduCommunity.

After providing these twelve specific bequests the testator directed:-

Every year during "Pachusans" a caste dinner in the following seven villages by way of Swami Vatsal should be given and the dinner should be of sweet balls made of sugar and Methi dal: Broach, Ankleshwar, Surat, Rander, Amod, Lervada, Buva, Kola-vana, Achod, Bahaj, Sachan, Rani Kankadia, Ochan, Dahej and Gandhar.

By Clause 15 of his will he directed that on the death of Bai Jekore the money-lending business should be wound up and the trustees should set apart Rs. 75,000 out of the assets of the business and hand over the balance to Bai Cbanchal. He then directed that out of the amount of Rs. 75,000 certain specified amounts should be given to institutions named therein for "dharmik" purposes mentioned in Clause 7.

2. After the death of the testator the trustees entered upon management of his estate. Bai Jekore died on May 30, 1928. It appears that Ratanchand, the other trustee, had predeceased Bai Jekore. The estate of the testator then went into the management of Bai Chanchal, daughter of Bai Jekore, and she set apart Rs. 67,000 presumably in pursuance of Clause 15 of the will. It appears that Es. 8,000 were invested in Government loans and handed over to various institutions to carry out the purposes mentioned in (2), (4), (5) and (6) of Clause 7, and Bai Chanchal made a trust-deed of the balance of Rs. 67,000 and appointed trustees to administer the trust. The trust was registered under the Bombay Public Trusts Act, 1950. One of the important items for which expenditure was required to be incurred annually under the directions contained in the will of the testator, was a "caste dinner" to be given to the members of the community of the testator. But, in the year 1944, when the rules framed under the Defence of India Act which imposed severe restrictions as to the number of persons to be fed on a single occasion came into operation, the "caste dinner" could not be given. It is

undisputed that till 1954 those rules remained in operation and the income which could have been utilised annually for giving "caste dinner" remained unexpended in the hands of the trustees. After the trust was registered the Charity Commissioner called upon the trustees to seek directions of the District Court for utilising the unexpended balance, but the trustees declined to carry out the requisition. The Charity Commissioner then filed an application u/s 55(2) of the Bombay Public Trusts Act, in the Court of the District Judge, Broach, praying that directions be issued to the trustees to expend the accumulated income for some public charitable purposes. It may be noted that the application filed by the Charity Commissioner related only to the unexpended balance and the Charity Commissioner did not ask for any directions relating to the income to be received in future from the trust estate.

3. On the application filed by the Charity Commissioner the District Court issued notice to persons who had beneficial interest in the trust. In answer to the notice certain members of the Ladva Shrimali Shravak Bania community in Broach and Surat districts appeared before the Court and made their submissions. On behalf of the trustees and the members of the Ladva Shrimali Shravak Bania community it was contended that the Court was incompetent to direct application of the unexpended income of the fund cy pres. It was submitted that the amount which remained unexpended may be permitted to be utilised by the trustees for making good the deficit year after year which was likely to occur in serving "caste dinners" as directed under the will of the testator. The learned District Judge held that the trust under the will of the testator may be regarded as a public religious trust, but the accumulated and unexpended income must be regarded as property of a public charitable trust and the Court had jurisdiction acting under Sections 55 and 56 to give direction for application cy pres of that amount and that the amount be applied "for general educational and medical purposes". The learned District Judge then adjourned the hearing of the case for framing a scheme for application of the amount for educational and medical purposes. By his order dated November 6, 1956, he directed that half the accumulated income be utilised for providing freeships to certain students and for that purpose the amount should be handed over to an institution known as the Sadvidya Mandal. The learned Judge directed that "freeships" be given preferably to Jains of Broach District, and failing such students to other Hindu students. The learned Judge directed that the balance be paid to the Sevasram Hospital at Broach on condition that an account be opened in the name of "Jhaverchand Dahyabhai Trust" and that the trustees of the hospital invested the amount in any approved trust security and utilised the income in providing maintenance, food and medicine to those poor and deserving patients who came for treatment at the Sevasram Hospital and were unable to provide these things for themselves. The Sadvidya Mandal and the managing trustees of the Sevasram filed in Court statements acknowledging their respective acceptance of the terms imposed by order of the Court. Accordingly, an order was passed by the learned Judge directing disbursement of the amount in the manner ordered by him.

4. Against these orders an appeal has been filed by six of the members of the community of the testator and it is urged on behalf of the appellants that the District Court was incompetent to entertain the application, that in any event the object of the trust had not failed and the Court was in error in directing that the accumulated and unexpended income be utilised for "general educational and medical purposes".

5. Section 55 of the Bombay Public Trusts Act, 1950, provides in so far as it is material:-

(1) If upon an application made to him or otherwise the Charity Commissioner is of the opinion that-(a) the original object for which the public trust was created has failed, (b) the income of any surplus balance of any public trust has not been utilised or is not likely to be utilised, (c) in the case of a public trust other than a trust for a religious purpose, it is not in public interest expedient, practicable, desirable, necessary or proper to carry out wholly or partially the original intention of the author of the public trust or the object for which the public trust was created and that the property or the income of the public trust or any portion thereof should be applied to any other charitable or religious object, (d)...the Charity Commissioner shall require the trustees to apply within the prescribed time for directions to the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate.

Under Section 56 the Court is entitled to make an inquiry and to give directions; and in giving the directions the Court shall, so far as may be expedient, practicable, desirable, necessary or proper in public interest give effect to the original intention of the author of the public trust or the object for which the public trust was created.

...If the Court is of opinion that the carrying out of such intention or object is not wholly or partially expedient, practicable, desirable, necessary or proper in public interest, the Court may direct the property or income of the public trust or any portion thereof to be applied cy pres to any other charitable or religious object.

Sections 55 and 56 are evidently enacted to give statutory recognition to the doctrine of cy pres with certain modifications. Under the law as understood in England, where the original object of a public religious or charitable trust has failed or the purpose of the trust cannot for any reason be carried into effect either in whole or in part, or where there is a surplus left after exhausting the purpose of the trust, the Court may, if there is a general charitable intention expressed by the settlor, direct application of the unexpended fund cy pres, that is, for purposes as nearly as may be possible to the purpose intended, by the settlor. But by Sections 55 and 56 the Bombay Legislature has considerably widened the scope of the application of a fund cy pres where the original object of the public trust has failed or the income or the surplus of the public trust has not been utilised or is not likely to be utilised for the objects of the trust. If in the view of the Court it is inexpedient, impracticable, undesirable, unnecessary or

improper in public interest to give effect to the original intention of the author of the public trust or the object for which the public trust was created, the Court is entitled to direct application of the funds to any other charitable or religious objects. It is evident that the Legislature has conferred jurisdiction of wide amplitude upon the Courts to apply funds cy pres. The Court is entitled on an application u/s 55 to deviate from the directions of the settlor even if the purpose of the trust has not failed, if the Court thinks that it is inexpedient, impracticable, undesirable, unnecessary or even improper in the public interest to abide by the directions. Again the Court is not obliged to apply the fund to a purpose even similar to the purpose of the settlor which has failed, The Court may apply the fund to any other charitable or religious objects. It may be observed that such a direction can only be given in respect of funds of a public trust which is not a trust for religious purposes. The section as originally framed intended to confer authority upon Courts to apply funds cy pres and powers embodied u/s 56 were conferred in respect of all public trusts, religious or charitable. But the Supreme Court in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, , held that in so far as the Legislature sought to enact legislation which permitted Courts to apply funds cy pres of religious trust contrary to the objects of a religious association, the provision was ultra vires. The Legislature then amended Clause (c) of Section 55 and limited its application to those cases where the public trust was for a charitable purpose and not a trust for a religious purpose.

6. The first question which falls to be determined in this appeal is whether the trust in this case may be regarded as a trust for a charitable purpose or for a religious purpose. The Act does not define the expression "a trust for a religious purpose" and "a trust for charitable purpose". The definition in Section 2(13) of the Act of a "public trust" includes religious and charitable endowments and trusts. Section 9 of the Act includes trusts for charitable purposes, such as, relief of poverty or distress, education, medical relief and the advancement of any other object of general public utility, in the connotation of trust for charitable purposes but expressly excludes a trust for purposes which relate to sports and religious teaching or worship. That, however, is not a definition but purports to include in the ambit of a charitable object certain objects which may not otherwise be included. There being no definition provided by the Legislature, the Court has to decide, having regard to prevailing notions, whether the trust for providing "caste dinner" to the members of the community of the testator may be regarded as a trust for religious purposes or a trust for charitable purposes. Out of the twelve objects which are enumerated in Clause 7 of the will of the testator, in our opinion, a large majority of the objects must be regarded as charitable and not religious. It was urged that the testator himself called the objects "religious". But we are unable to accept that contention. The testator has used the word "dharmik" as qualifying the objects. But it is now well settled (see *Ranchordas Vandrawandas v. Parvatibhai* (1899) 26 I.A. 71 that the expression "dharma" and its grammatical variations imply objects charitable and

philanthropic and not essentially religious. The expression "dharma" is defined in standard dictionaries as meaning "duty, legal or moral, law, virtue", and it does not necessarily connote religion. Looking at the description of the objects in the will, for which the bequests were to be applied, it appears that the testator wanted to make provision for giving food and clothes to members of his own and other communities and for providing facilities for education. Except the third item, we do not think that the other bequests can be regarded as religious. A bequest to Panjrapole, i.e. a home meant for maimed, aged and deformed animals, can by no stretch of imagination be regarded as a religious bequest. Similarly, a bequest for practising kindness to all forms of life cannot, in our judgment, be regarded as a religious bequest; and a bequest for providing food to pilgrims visiting temples or providing clothes to Jain male and female Sadhus and Sadhvis cannot also be regarded as a bequest for religious purposes. A bequest for providing food and education to orphans of Hindu community or spreading education among Jains, is also not a bequest for religious purposes.

7. Mr. Desai on behalf of the appellants contended that the Court must be guided by the motive of the testator in giving the bequests, and ascertain whether in making the bequest the testator was actuated by motives of earning religious merit. Mr. Desai said that if the testator was actuated by that motive, the bequests must be regarded as bequests for religious purposes. We are unable to accept that argument. There is a vital difference between the nature of the bequest or trust and the motive with which the benefit of the bequest or trust is given. If a settlor endows an educational institution or provides a scholarship to be given to students studying in an educational institution, the trust must be regarded as a charitable trust even if the motive of the settlor in making that provision was to earn religious merit. In our view, the motive of the settlor is immaterial in considering whether a trust is a religious trust or a charitable trust.

8. The bequest for giving "caste dinner" does not by itself rise to a religious trust, and the fact that the "caste dinner" is to be given on the occasion of a religious festival or on days which have a religious significance does not invest the trust for providing feasts on those days with the character of a religious trust. In our view, the object of the testator in providing funds for an annual caste dinner to the members of his community was primarily a charitable object. Being a charitable object the Court was competent to entertain an application u/s 55 of the Bombay Public Trusts Act, and, if the Court came to the conclusion that the income had not been utilised for the public trust for which it was intended, to direct the application cy pres. For nearly 11 years the income of the trust had admittedly not been utilised for charitable purposes for which it was intended, and the income not having been utilised, an application was maintainable u/s 55 for application of the accumulated fund cy pres, Mr. Desai contended that merely because "caste dinners" could not be provided in certain years the object of the trust did not on that account fail, and since the sumptuary rules have now been repealed it is possible to serve "caste dinners" as directed by the testator, and as in the view of the learned trial Judge the

recurring income of the trust is insufficient to provide "caste dinners" every year, the Court should direct that the unexpended and accumulated income be utilised for meeting the annual deficit, which may be incurred hereafter, in giving "caste dinners". We are unable to accept that contention. The income having remained unexpended, the jurisdiction of the Court to direct application of the fund *cy pres* was attracted and the Court was competent to give direction in that behalf. In any event, we see no reason why the Court should regard it expedient, practicable, desirable or even necessary or proper in public interest that the large accumulated fund should be utilised in meeting the deficit likely to be incurred in giving to the members of the community of the testator feasts year after year, and the fund should not be utilised for effectively securing a charitable benefit to the society of a less ephemeral nature. We do not think that in the context of the present times providing a feast to members of a community even on the occasion, of a religious festival or on days which may be regarded as holy or auspicious, is expedient, desirable, necessary or proper in public interest. In our view, the learned trial Judge was right in holding that application of the fund accumulated in the hands of the trustees was not expedient or desirable in the public interest. The learned Judge in the Court below having regard to the nature and extent of the fund directed that it should be distributed between two charitable institutions, and we do not think sitting in appeal we can interfere with the exercise of that discretion.

9. Before parting with the case we may point out that the learned Judge in the Court below has made an observation which was strictly speaking unnecessary. Immediately preceding his final order he has observed:

In my opinion the trustee should be directed that he should go on accumulating the excess of income over expenditure every year until he has sufficient funds in his hands to give a dinner in Pachusan as directed in the trust.

In our view, the learned Judge was not called upon to give any direction about the income or accumulations of the income hereafter. We, therefore, direct that that observation of the learned Judge and the consequent direction given by him in that behalf should be deleted.

10. On the view taken by us, the appeal fails and is dismissed with costs of the Charity Commissioner and of the trustees.

No order or Civil Application No. 3370 of 1956.