

(2010) 04 MAD CK 0233

In the Madras High Court

Case No : C.R.P. (PD) No. 1624 of 2009 and M.P. No. 1 of 2009

D. Natesan Pillai

APPELLANT

Vs

S. Karthikeyan

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : (2010) 04 MAD CK 0233

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : T.R. Rajagopalan, for R.K. Chandramohan, for the Appellant; K.V. Subramanian, for K. Govi Ganesan, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This Civil Revision Petition has been filed to set aside the proceedings of the Scheme Judge (Subordinate Judge), Thiruvarur, dated 22.4.2009, in so far as it relates to the appointment of the respondent, as a member of the Board of Trustees of the Anbanathapuram Vahaiyara Charities Trust, Thirunindalur, Mayiladuthurai, Nagapattinam District, under the general category.

2. The above civil revision petition has been filed by the petitioner against the fair and decretal order of the Scheme Judge (Subordinate Judge), Thiruvarur, dated 22.4.2009, rejecting the application of the petitioner for his appointment, as a member of the Board of Trustees of the Anbanathapuram Vahaiyara Charities Trust, (hereinafter referred to as "the Trust").

3. The petitioner has stated that the Trust is running many educational institutions, for the past several decades, which are reputed institutions, in the field of education, in the State of Tamil Nadu. The Trust is being managed, as per the amended Scheme Decree, dated 22.3.2002, in O.S. No. 234 of 1994, on the file of the Principal Subordinate Judge, Mayiladuthurai. As per the scheme

decree, the Chairman and five of the trustees of the charity shall be elected from the five families of Anbanathapuram Vahaiyara, namely, Anbanathapuram, Eanadhimangalam, Kargudi, Pallavarayanpettai and Genganaputhur, besides another member to be elected, under the general category, who shall also be from among the members of the five families.

4. It has been further stated that, as the posts of trustees of the Trust fell vacant, applications for filling up the posts were called for, from the members of the Anbanathapuram Vahaiyara families, by the Scheme Judge (Subordinate Judge), Thiruvavur. The petitioner had applied for the post of trustee, under the general category, as well as in the name of his family. The Scheme Judge, without considering the merits of the petitioner, for being appointed as the member of the Board of Trustees of the Trust, had appointed the respondent as a Trustee, without comparatively analyzing the merits and the demerits of the petitioner, as well as the respondent.

5. It has also been stated that the Scheme Judge had overlooked the fact that the petitioner was a former Chairman of the charities and he has an unblemished record in developing the educational institutions functioning under the charities and that he is a retired village Munsif. Even though the report of the Chairman of the charities is not a material to be relied upon for considering the applications, for the appointment of the members of the Board of Trustees, the Scheme Judge had considered the report for rejecting the application of the petitioner, arbitrarily, and without application of mind. In such circumstances, the rejection of the application of the petitioner for being appointed, as a Trustee of the Trust, requires reconsideration.

6. It is further stated that the Scheme Judge ought to have disclosed the factors that had weighed in his mind, while making the assessment for rejecting the application of the petitioner. If there was any adverse aspect that was considered by the Scheme Judge, to reject the application of the petitioner, it should have been communicated to him, for seeking an appropriate explanation. No such thing was done by the Scheme Judge before the application of the petitioner was rejected. The petitioner had also made it clear that he is not questioning his non-selection in the family-wise category. However, he is aggrieved due to his non-selection under the general category, especially, when the rejection of his application in the family-wise category had been taken to reject his claim, under the general category.

7. It has also been stated that the consideration of the petitioner's application was not done in a proper manner. The rejection of his application is not acceptable, especially, when nothing was found against him and when all the factors relating to his service, age and educational qualifications were in his favour. Further, the Scheme Judge ought to have considered the fact that the petitioner had been selected to be appointed as a Trustee, earlier. The only obvious reason for the rejection of the application of the petitioner, by the Scheme Judge, seems to be the report of the Chairman of the Board of Trustees.

In such circumstances, the order of the proceedings of the Scheme Judge, dated 22.4.2009, is to be rejected, as arbitrary, illegal, contrary to the Scheme Decree and non est in the eye of law.

8. The learned Counsel appearing on behalf of the petitioner had stated that the Scheme Judge had erred in placing reliance on the report of the Chairman of Anbanathapuram Vahaiyara Charities, to reject the application of the petitioner, without considering the other factors, which are in his favour. The Scheme Judge had erred in inferring that the petitioner does not possess the necessary educational qualifications for being considered, for the appointment to the post of trustee of the Trust. No good reasons have been given by the Scheme Judge to select the respondent for being appointed, as a Trustee of the Trust, overlooking the claim made by the petitioner, for such appointment. The Scheme Judge had failed to consider the fact that the petitioner was a former Chairman of the Anbanathapuram Vahaiyara Charities Trust and that he had contributed, immensely, towards the development of the educational institutions functioning under the charities. The Scheme Judge had erred in placing reliance on the report of the Chairman of the charities, as the Scheme Decree, dated 22.3.2002, in O.S. No. 234 of 1994, on the file of the Principal Subordinate Judge, Mayiladuthurai, does not provide for such consideration, while appointing the trustees to the Board of Trustees of the Trust.

9. It has also been stated that the Scheme Judge had failed to record his reasons as to how the respondent's answers, during the personal interview, was more satisfactory than those of the petitioner. The Scheme Judge had failed to analyse, comparatively, the merits and the demerits of the petitioner and the respondent, before appointing the respondent, as a member of the Board of Trustees. The Scheme Judge had erred in finding, from the report of the Chairman of the charities, that the petitioner's service, during his previous tenure, was not satisfactory. In fact, no such report was available on the file of the Scheme Judge, as seen from the 'no such report' endorsement made on the copy application, which had been returned to its applicant.

10. Mr. T.R. Rajagopalan, Senior Advocate, appearing on behalf of the petitioner, had relied on the following decisions in support of his contentions:

10.1. In E.S. Chockalingam v. E.S. Rathnakumar 1986 TLNJ 172, (C.R.P. No. 955 of 1986), it had been held as follows:

...That apart, nothing is mentioned against Mr. E.S. Chockalingam that he cannot efficiently act as a trustee of the Trust. First of all in appointing trustees in Charities, one should consider the age of the petitioner. If young persons are appointed as trustees, there will not be any smooth administration excepting heated exchanges. Comparing the age of the respondent and the petitioner, the petitioner is 19 years older than the respondent. He is a Doctor by profession and he has enough experience to assist the administration of the Trust. Just because there is an observation in Clause 5(c) of the Scheme, that does not

mean that the legal right of the petitioner to represent his family should be negated particularly when no member from the Enathimangalam family functions as a trustee. It is on this aspect, I am of the view that the impugned order of the Court below is unsustainable.

10.2. By an order, dated 25.11.1987, in C.R.P. No. 4423 of 1985, a learned Single Judge of this Court had held as follows:

Lastly, learned Counsel for the respondent raised a contention that the order passed by the Scheme Court cannot be revised u/s 115 C.P.C., as according to him, there is no error of jurisdiction on the part of the learned Judge. In support of his contention, he relied on the decisions of the Supreme Court in *D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others*, and *M.C. Sethi v. R.P. Kapur* AIR 1972 S.C. 2379 wherein it has been held that while exercising its jurisdiction u/s 115 C.P.C, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the errors have relation to the jurisdiction of the Court to try the dispute itself. Even in these decisions, the Supreme Court has held that the errors contemplated by the said Section may relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision. In this case, it is patently clear that the learned Judge has taken into consideration of extraneous matters in coming to the conclusion and that he has not followed the procedure contemplated under the Scheme Decree. The same aspect was considered by this Court relating to the appointment of trustees to the very same trust in *Chockalingam E.S. v. N. Retninakumar* 100 L.W. 787 and this Court has held that when once the order of the Subordinate Judge is such which affects the very appointment which has not been regularly done as per the tenor of the Scheme Decree, this Court has jurisdiction to revise that order u/s 115 C.P.C.

11. Per contra, Mr. K.V. Subramanian, Senior Advocate, appearing on behalf of the respondent had stated that the appointment of the respondent, as a member of the Board of Trustees of the Anbanathapuram Vahaiyara Charities Trust, had been made by the Scheme Judge only on proper comparative assessment of the qualifications of both, the petitioner and the respondent. All the relevant factors, including the age, educational qualifications and experience had been considered by the Scheme Judge before appointing the respondent, as a Trustee of the Board of Trustees of the Trust. The same parameters had also been followed in the case of the others, who had submitted their applications for being appointed, as trustees of the Trust. The appointments had been made by the Scheme Judge taking into consideration the changing role of the Trust, especially, in the field of education. The respondent had better educational qualifications, as compared to that of the petitioner. Further, in the personal interview that was conducted by the Scheme Judge the respondent was found to be better qualified, for being appointed as a Trustee of the Board of Trustees. Personal satisfaction of the Scheme Judge is a very important factor, for making such appointments.

12. It had also been stated that no adverse report of the Chairman of the

charities had been taken into consideration by the Scheme Judge, to reject the application of the petitioner, for the post of Trustee of the Board of Trustees. It had also been stated that the process followed by the Scheme Judge, for the selection of the trustees, is in accordance with the Scheme Decree. Since it is open and transparent there is no chance for arbitrariness in the said process. Before the selection was made there was a publication in the daily newspaper. Notice calling for objections had been displayed on the notice Boards at the relevant places. Adverse reports from the public, if any, were also invited. Based on all the relevant factors the selections were made. The selection of the respondent was based on his higher and better qualifications. However, the non-selection of the petitioner was not due to his disqualification.

13. It has also been stated that none of the positive factors that had weighed in favour of the selected candidate had been challenged by the petitioner. The selection of the respondent was only based on his better qualifications in the interest of the Trust and for the betterment of education, in general. The Scheme Judge had given sufficient indications to make it clear that his decision to select the respondent, for being appointed, as the Board of Trustees, was purely on merits. It is only an opinion that had been taken from the Chairman of the charities and it is not a report, as alleged by the petitioner. As such, the petitioner cannot have a valid grievance, with regard to his non-selection, as a Trustee of the board of trustees of Anbanathapuram Vahaiyara Charities Trust. In such circumstances, the civil revision petition filed by the petitioner is not maintainable, as it is devoid of merits.

14. The learned Counsel appearing on behalf of the respondent had relied on the decision, reported in *Kandasamy v. Krishnamandiram Trust, Karur* (2001) 3 M.L.J. 500 wherein, it had been held that the power of revision of the Civil Procedure Code, 1908, cannot be invoked to interfere with the decision of the lower Court, unless the decision of the lower Court involves a question regarding irregular exercise, non-exercise of jurisdiction or illegal assumption of jurisdiction.

15. In reply, the learned Counsel appearing on behalf of the petitioner had submitted that it has been clearly stated, in ground No. 10 of the grounds in the civil revision petition, that even though the Scheme Judge had considered the report of the Chairman of the charities, in rejecting the claim of the petitioner, for appointment as a trustee, the said report was not available on the file of the Subordinate Court concerned. Thus, it is clear that no opportunity had been given to the petitioner before rejecting his claim for appointment as a trustee of the Trust, based on the adverse report of the chairman of the charities. As such, the petitioner was not put on notice regarding the negative aspect of the report, before the Scheme Judge had decided to appoint the respondent, instead of appointing the petitioner. Therefore, the Scheme Judge is to be directed to consider the matter afresh, after giving an opportunity of hearing to the petitioner, regarding the adverse report, considered by the Scheme Judge, before making his decision.

16. In view of the averments made on behalf of the petitioner, as well as the respondent and the contentions raised by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to interfere with the order of the Scheme Judge (Subordinate Judge), Thiruvavur, dated 22.4.2009, declining to appoint the petitioner, as a trustee of the Anbanathapuram Vahaiyara Charities Trust and appointing the respondent instead. The order of the learned Scheme Judge, dated 22.4.2009, cannot be said to be arbitrary, erroneous or illegal, as it is a well considered order. The learned Scheme Judge had discussed, elaborately, the reasons for appointing the respondent as a member of the board of trustees of the trust and for rejecting the claim of the petitioner. There is nothing on record to show that the learned Scheme Judge had considered certain adverse remarks, said to be found in the alleged report of the chairman of the charities. The petitioner has not been in a position to show that the proceedings of the Scheme Judge was contrary to the Scheme Decree, dated 22.3.2002, made in O.S. No. 234 of 1994, on the file of the Principal Subordinate Judge, Mayiladuthurai.

17. It is also noted that the learned Scheme Judge had considered all the relevant factors necessary, for the appointment of the trustees of the Trust. He had also the benefit of the personal interviews with the candidates, who had applied for the posts of trustees. The learned Scheme Judge had found that the respondent has all the necessary qualifications, for being appointed as a trustee, including the necessary educational qualifications. Therefore, the contentions raised on behalf of the petitioner stating that the petitioner has better qualifications and more experience, in managing the educational institutions run by the Anbanathapuram Vahaiyara Charities Trust and as such he should have been appointed, as a trustee of the trust, instead of the respondent, cannot be countenanced. In fact, the learned Scheme Judge had found that the respondent has higher and better qualifications, as compared to that of the petitioner. Further, the reliefs sought for by the petitioner, in the present civil revision petition, under Article 227 of the Constitution of India, cannot be granted. However, it would be open to the petitioner to seek the alternative remedies that may be available to him, in accordance with law. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.