
(1994) 02 BOM CK 0039
In the Bombay High Court
Case No : First Appeal No. 100 of 1994

Dr. A.U. Shaikh and Another

APPELLANT

Vs

Dr. N.N. Kailas and Another

RESPONDENT

Date of Decision : 22-02-1994

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 47

Citation : (1994) 96 BOMLR 333

Hon'ble Judges : D.R. Dhanaka, J

Bench : Single Bench

Judgement

D.R. Dhanuka, J.—This appeal is directed against the order, dated 19th August, 1993, passed by the Charity Commissioner. Maharashtra State, Bombay u/s 47 of the Bombay Public Trusts Act, 1950 in the matter of "Kailas Seva Sadan" a public trust duly registered under Bombay Public Trusts Act, 1950. The Respondent No. 1 had expired.

2. About 40 years ago, a public trust known as "Kailas Seva Sadan" was founded by Dr. N. N. Kailas, Dr. M. D. Gilder, Mr. C. C. Sheth, Mr. Mangaldas Pakvasa and other prominent social workers. The said trust was duly registered as required (sic registered) under the Bombay Public Trusts Act, 1950. Prior to 31st January, 1993, Dr. N. N. Kailas, Dr. A. U. Shaikh and Mr. M. U. Chauhan were the only three, trustees of the said trust. It was the requirement of the rules and regulations governing the said trust that there shall be not less than three and not more than eleven trustees of the trust. The relevant portion of the said rules and regulations also inter alia provided as under :

The Trustees shall at a meeting elect from amongst themselves a President, Chairman. Honorary General Secretary and Honorary Treasurer for each year. Five Trustees shall form a quorum in a meeting. In view of the number of trustees being reduced to three no valid meeting could be held of the trustees of the said trust.

3. It is the contention of the appellants that on 31st January, 1993, the appellants by a majority decision appointed Dr. D. Y. Patil and Dr. M. A. Patankar as additional trustees. A Change Report is filed in this behalf by Dr. A. U. Shaikh being Change Report is still pending.

4. In this situation, the Charity Commissioner stepped in while deciding application No. 5 of 1993 made by Dr. N. N. Kailas, seeking appointment of additional trustees by the Charity Commissioner u/s 47 of the Bombay Public Trusts Act, 1950. The Charity Commissioner appears to have taken the view that six additional trustees must be appointed as trustees of the said trust for the time being so that the board of trustees would consist of nine trustees i.e. "Dr. N. N. Kailas, Dr. A. U. Shaikh and Mr. M. U. Chauhan and six newly appointed trustees. As regards Dr. D. Y. Patil and Dr. N. A. Patankar is concerned, their appointment is in very much dispute and the issue pertaining to acceptance or non-acceptance of Change Report was kept open.

5. Being aggrieved by the said order; dated 19th August, 1993, Dr. A. U. Shaikh and M. U. Chauhan have filed this appeal.

6. The learned Counsel for the appellant has submitted that the appellants were entitled to appoint Dr. D. Y. Patil and Dr. N. A. Patankar as additional trustees by a majority decision even though the rules and regulations governing the trust provide for at quorum of at any valid meeting of the trust. Prima facie I am not impressed by this submission. I need not discuss this aspect any more as the Change Report referred to herein above is still pending before the Deputy Charity Commissioner.

7. The learned Counsel for the appellant has submitted that the Charity Commissioner ought to have considered the wishes of the continuing trustees including the appellants before passing an order under Sub-section (2) of Section 47 of the Act. It appears from the record that the Charity Commissioner has appointed additional trustees bona fide and in exercise of his statutory powers. I did ask the learned Counsel for the appellant to state as to what were the objections of the appellants regarding the selection and appointment of Dr. Pramod Jhaver, Mr. Sidheswar De, Dr. Ravindra Bhaskar Nadkarni, Dr. Dilip Govinddas Sampat and Dr. Kapoor Rajendra Krishna and Dr. Pyarelal Tiwari as additional trustees of the said trust. No reply was forthcoming to this question. It appears to me that the Charity Commissioner has selected fit and proper persons to be appointed as additional trustees and there can be no valid "objections to their appointment.

8. It is true that the said trust is not functioning for the time being and is sometimes described by one or the other trustees as a defunct trust. That however, makes no difference to the exercise of the power by the Charity Commissioner u/s 47 of the Bombay Public Trusts Act. It is the duty of the Charity Commissioner to take steps to revitalise the activities of the trust and appoint additional trustees wherever required in an attempt that the trust may

survive and function.

9. The learned Counsel for the appellants has submitted that the Charity Commissioner was not justified in making the following observations in Para 6 of his order under appeal "in short subsequent act on the part of the opponents smacks of their bona fide." The learned Counsel for the appellants submits that the appellants are respectable social workers and the Charity Commissioner was not seized of the Change Report while deciding the application u/s 47 of the Bombay Public Trusts Act. There is some force in this contention of the learned Counsel for the appellants :

10. In the Result I pass the following order :

(1) The appeal is dismissed as there is no merit in the appeal.

(2) The observations made in para 6 of the order of the Charity Commissioner imputing mala fide to the appointments are expunged.

(3) The Deputy Charity Commissioner shall decide the Change Report No. ACC 12565/93 filed by Dr. A. Shaikh pertaining to appointment of Dr. D. Y. Patil and Dr. M. A. Patankar expeditiously.

(4) The Charity Commissioner shall call a meeting of Dr. A. U. Shaikh, Mr. Chauhan and the six newly appointed trustees within six weeks from today in an attempt to activate the trust. The Charity Commissioner may appoint an Assistant Charity Commissioner or Deputy Charity Commissioner for the purpose aforesaid, A report shall be submitted to this Court regarding the proceedings of the said meeting within three months from today. If necessary more than one meeting would be held for this purpose. If the Change Report referred to in earlier part of this order is accepted, Dr. D. Y. Patil and Dr. M. A. Patankar would also be entitled to attend such meeting. If the Change Report is not accepted, Dr. D. Y. Patil and Dr. M. A. Patankar would not be entitled to attend such meeting until further orders are obtained by the trustees interested from any competent Court or other statutory authority.

11. The First Appeal No. 100 of 1994 shall be placed on board for consequential directions if required after receipt of the said report and after expiry of three months from today, even though the first appeal is finally disposed of. This direction is given with a view to enable the Court to issue further consequential directions in this behalf, if required.

12. The appeal is finally disposed of subject to the above.

13. The Registrar, High Court, Appellate Side is directed to forward a copy of this order to the Charity Commissioner, expeditiously with a request to comply with the said order.

14. Issue of certified copy is expedited.