
(2018) 01 BOM CK 0254
In the Bombay High Court
Case No : 7109 of 2017

Dr. Hemkrushna Shamraoji Kapgate

APPELLANT

Vs

The Assistant Charity Commissioner & Ors.

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

[Maharashtra Public Trusts Act, 1950](#), Section 47, Section 26, Section 72(1)

Citation : (2018) 01 BOM CK 0254

Hon'ble Judges : Z. A. Haq

Bench : Single Bench

Advocate : A.P. Thakare, ?A.M. Balpande, ?M.P. Khajanchi, ?S. Borkar, ?K.H. Deshpande, ?A.M. Sudame

Final Decision : Disposed

Judgement

CAW No. 2882/2017 in Writ Petition No. 7161/2017

1. Writ Petition No. 7161/2017 is filed by three members out of five members of the adhoc committee appointed by the Joint Charity Commissioner under Section 47 of the Maharashtra Public Trusts Act, 1950. The applicants claim that they are elected as members/trustees in the election held on 04/03/2016 and in respect of which the change report is pending.

2. Considering the facts of the case, the applicants are permitted to get themselves impleaded as the respondent nos. 4 and 5. The civil application is allowed accordingly. Writ Petition No. 7161/2017 and Writ Petition No. 7109/2017 These two writ petitions are disposed by the common judgment as both the writ petitions are arising out of the same order passed by the Assistant Charity Commissioner.

Heard.

Rule. Rule made returnable forthwith.

2. This is a classic case of misuse of the process of law by the parties.

The Secondary Education Society, Sakoli is a public trust registered under the provisions of the Maharashtra Public Trusts Act, 1950 (hereinafter referred as "the Act of 1950"). Change Report No. 289/1999 was filed by Dr. Hemkrishna Shamraoji Kapgate, informing the Assistant Charity Commissioner the change which occurred because of elections alleged to have been held on 27/02/1999. Another change report bearing No. 290/1999 was filed by Nandlal Pagaji Kapgate informing the change which occurred according to him, as per the elections alleged to have been held on 04/03/1999. By order dated 28/11/2001, the Assistant Charity Commissioner rejected the Change Report No. 289/1999, and accepted the Change Report No. 290/1999 and directed that the entries in Schedule I of the public trusts register be amended. The order passed by the Assistant Charity Commissioner accepting the Change Report No. 290/1999, was challenged by Dr. Hemkrishna Shamraoji Kapgate in Appeal No. 54/2001. This appeal was dismissed by the Joint Charity Commissioner. Simultaneously, the learned Joint Charity Commissioner appointed the adhoc committee of five members, exercising his jurisdiction under Section 47 of the Act of 1950.

The petitioners in both the writ petitions are the members of this adhoc committee. Clause 19 of the operative order passed by the learned Joint Charity Commissioner on 27/03/2003, by which the adhoc committee was appointed is relevant and it reads as follows:

"(19) The entire process of election shall be completed by the end of June, 2003 and from 172003, the newly elected executive body shall take over the administration of the trust from the adhoc body."

This order passed by the learned Joint Charity Commissioner on 27/03/2003 was challenged before the District Court under Section 72 (1) of the Act of 1950. The learned District Judge dismissed the application and maintained the order passed by the Joint Charity Commissioner. The challenge was further carried in Second Appeal No. 530/2003 which is decided on 17/03/2009. The second appeal is dismissed. The learned advocates for the respective parties have submitted that because of an interim order which was passed by this Court in Second Appeal No. 530/2003, the elections as directed by the Joint Charity Commissioner by order dated 27/03/2003, could not be held.

3. The claim of the petitioners in Writ Petition No. 7161/2017 is that the elections were held on 31/03/2009 and Change Report No. 356/2009 was filed. According to these petitioners, Change Report No. 356/2009 is dismissed on 09/03/2015. It is informed that this order is challenged in appeal which is pending.

4. The respondents (private parties) claim that the elections were held on 29/06/2014 and Change Report No. 88/2014 was filed which is dismissed by the Assistant Charity Commissioner on 07/05/2015. This order dated 07/05/2015 is challenged in appeal which is pending before the Joint Charity Commissioner. The respondents (private parties) further claim that again the elections are held on

26/01/2016 and Change Report No. 65/2016 is filed which is pending before the Assistant Charity Commissioner.

5. Surprising part of it is that, because of the various proceedings, the adhoc body which was appointed by the Joint Charity Commissioner by order dated 27/03/2003, the appointment being till 30/06/2003 continued. The authorities have not passed any order continuing the adhoc body from 01/07/2003. Now by the impugned order, the Assistant Charity Commissioner has directed deletion of names of the three members of the adhoc body (who are the petitioners in Writ Petition No. 7161/2017). This exercise is undertaken by the Assistant Charity Commissioner under Section 26 of the Act of 1950.

6. The submission on behalf of the petitioners is that as the adhoc committee is appointed by the Joint Charity Commissioner, the Assistant Charity Commissioner cannot direct deletion of names of the three members of the adhoc body, exercising the powers under Section 26 of the Act of 1950. It is further submitted that Change Report No. 88/2014 is dismissed and therefore, the claim of the respondents that they were elected in the elections held on 29/06/2014 is not accepted by the Assistant Charity Commissioner and as Change Report No. 65/2016 is still pending, therefore, the respondents cannot claim the right to administer the affairs of the public trust and the institutions managed by it. The petitioners claim that they are entitled to continue as the members of the adhoc body until they are discharged by the competent authority according to law.

7. The submission made on behalf of the respondents (private parties) is that by the order passed on 27/03/2003 the adhoc body was appointed till 30/06/2003 and the learned Joint Charity Commissioner had specifically directed that the elections should be held till the end of June, 2003 and the newly elected body to take over the administration of the public trust from the adhoc body from 01/07/2003 and therefore the adhoc body has no right to continue after 01/07/2003.

8. It is rightly submitted on behalf of the petitioners that the names of the three members of the adhoc body cannot be deleted resorting to the powers under Section 26 of the Act of 1950. Section 26 of the Act of 1950 only enables the authorities to maintain the register kept under Section 17 of the Act of 1950 and to amend the entries in accordance with the decisions of the authorities. Section 26 of the Act of 1950 does not confer any power on the authority to adjudicate any issue. Furthermore, the adhoc body was appointed by the Joint Charity Commissioner, and therefore the names of the three members of the adhoc body cannot be deleted by the Assistant Charity Commissioner who is subordinate to the Joint Charity Commissioner.

9. Though the impugned order directing deletion of names of the three members of the adhoc body from Schedule I of the public trusts register is without power and is unsustainable, the adhoc body cannot be permitted to continue. These petitions arise out of the proceedings under the Act of 1950. It is well settled

that the authorities under the Act of 1950 are custodian of the public trust and its properties. In my view, this Court while examining the legality of the order passed by the Assistant Charity Commissioner can exercise the powers conferred by the Act of 1950 on the authorities under that Act, and issue appropriate directions for protecting the interests of the public trust and its properties.

10. As recorded earlier, the appointment of the adhoc body was till June, 2003 and the learned Joint Charity Commissioner, while appointing the adhoc body was very clear in his mind that the adhoc body should not continue from 01/07/2003. Taking advantage of the various proceedings, the adhoc body continued even after June, 2003 and the authorities have turned a blind eye to the factual position and have overlooked whether the adhoc body can continue after June, 2003. Moreover, the adhoc body has failed to perform its obligation of conducting the elections till June, 2003. And not only this, the members of the adhoc body started creating disputes in the administration of the institutions managed by the public trust. In the facts of the case, the following order is passed

O R D E R

1. The impugned order is set aside.
2. However, it is directed that the members of the adhoc body appointed by the order passed by the learned Joint Charity Commissioner on 27/03/2003 shall not administer the public trust and shall not interfere in the management of the institution administered by the public trust.
3. The learned Joint Charity Commissioner, Nagpur shall take over the charge of the public trust and its institution forthwith.
4. The learned Joint Charity Commissioner shall make appropriate arrangements, including the appointment of new adhoc body if felt necessary to administer the public trust and the institution/institutions managed by the public trust.
5. The proceedings i.e. the change report and the pending appeals arising from the order/orders passed on the change report shall be disposed by the concerned authorities expeditiously and in any case till 30/06/2018.

The writ petitions are disposed in the above terms. In the circumstances, the parties to bear their own costs.