
(1982) 03 BOM CK 0065
In the Bombay High Court
Case No : First Appeal No. 836 of 1981

Gajanan Narayan Patil

APPELLANT

Vs

Chhagan Devchand Patil of Shirud and Others

RESPONDENT

Date of Decision : 30-03-1982

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 47, 70

Citation : (1984) 2 BomCR 87

Hon'ble Judges : D.M. Rege, J

Bench : Single Bench

Advocate : M.L. Dudhar and M.L. Apte, for respondents Nos. 1, 2 and 4, for the appearing parties; N.D. Hombalkar, A.G.P., for the Respondent

Judgement

D.M. Rege, J.—This is a First Appeal under the Bombay Public Trusts Act by the original applicant against the order of the District Judge, Dhule, dated 10th September, 1981. The Appeal arises as under :

2. There is a trust called Kalika Vidya Prasarak Sanstha at Dhule registered under the Bombay Public Trusts. The said Trust has one of its objects to run school's and educational institutions. It is the case of the applicant that prior to September 1979, one Chhagan Devchand Patil, respondent No. 1 was the President of the Managing Committee of the Trust. On 7th September, 1979, he handed over his resignation as the President to a clerk and the Secretary of the Trust, one R.P. Patil. On 9th September, 1979, the said Patil gave a notice of the meeting to all the members of the Managing Committee to be held on 16th September, 1979. One of the items to be considered at the meeting was the resignation of the said Chhagan Patil, Respondent No. 1 as the President of the Managing Committee. At the said meeting, the resignation of respondent No. 1 was accepted and the Applicant was appointed as the President of the Managing Committee. On 28th September, 1979 a Change Report No. 1004/79 as regards the President of the Managing Committee was filed. There were certain other proceedings in between which are not relevant for my consideration. However, on

the 3rd Commissioner at Bombay under his Application No. 52 of 1980 for transfer of hearing of the Change Report from the Assistant Charity Commissioner ex parte stay was granted which was vacated on 9th September, 1980 and ultimately the said application was rejected and the Assistant Charity Commissioner, Nasik, was directed to proceed with the hearing of the application.

3. At the hearing before the Assistant Charity Commissioner as regards the said change report, the appellant gave evidence. Respondent No. 1 however did not cross-examine him. At the instance of 1st respondent the matter was adjourned for over 11 times and only at the fag end of the hearing, Respondent No. 1 filed his written statement. He however did not seek to lead evidence nor did he apply to recall the applicant for cross-examination. No contention was also raised by respondent No. 1 that the resignation alleged to have been given by him was forged or prepared subsequently on the blank paper signed by him or that the meeting was invalid. The Assistant Charity Commissioner by his order dated 22-1-1981 accepted amongst others the said Change Report No. 1004 of 1979.

4. Respondent No. 1 filed an Appeal to the Charity Commissioner being Appeal No. 2 of 1981 against the said order of the Assistant Charity Commissioner. The ex-parte stay granted in the said appeal was vacated on 5-2-1981 and on that day appeal was transferred to the Deputy Charity Commissioner for being heard. Respondent No. 1 again made an application to the Deputy Charity Commissioner for maintenance of status quo by a issue of a stay. Ad interim stay granted on 10-2-1981 was vacated on 27-2-1981. Certain other proceedings took place which are not relevant. It seems that before the appeal could be disposed of by the Deputy Charity Commissioner sometime in April 1981, new elections of the Body were held. Both the parties which are rival parties in this case are claiming to be in power under the elections held by them. However, on 22nd May, 1981, the Appeal before the Deputy Charity Commissioner was heard and he, by his order dated 22-5-1981 set aside the order of the Assistant Charity Commissioner accepting the Change Report No. 1004/79 and remanded the matter back to the Assistant Charity Commissioner only on the ground that no issues were framed and no findings were given as he was required to do under the Bombay Public Trusts Act, and directed the Assistant Charity Commissioner to frame issues and give his findings.

5. Against the said order of the Deputy Charity Commissioner, two appeals came to be filed, one by the appellant being Appeal No. 47 of 1981 and the other by respondent No. 1, being Appeal No. 48 of 1981 to the District Court, Dhulia. The learned Assistant Judge who heard the said appeals, rejected the appeal filed by the appellant being Appeal No. 47 of 1981 and allowed the appeal filed by respondent No. 1 being Appeal No. 48 of 1981 on the ground that by reason of section 47 of the Bombay Public Trusts Act acceptance of resignation of the President by the Managing Committee was invalid.

6. In the meantime, by reason of the fresh election, on 6-6-1981 the appellant made an application to the Deputy Charity Commissioner for certain clarifications

which clarifications were ultimately granted by him by pointing out that the appellant should not be removed from the post of the President.

7. It may be pointed out that the Assistant Charity Commissioner had considered the matter on merits. He pointed out various circumstances which go to show that more than reasonable opportunity was given to respondent No. 1 to lead evidence and raise his contention, which he failed to do. Accordingly, he had accepted the Change Report.

8. Strangely enough, the Deputy Charity Commissioner set-aside that order only on the ground that according to him the Assistant Charity Commissioner had not framed issues and given his findings thereon, as was required of him under the provisions of section 22 read along with section 70 of the Bombay Public Trusts Act, 1950. The said view of the Deputy Charity Commissioner does not appear to be correct. All that the provisions of the said section indicate was that the learned Assistant Charity Commissioner was required to give his finding. It does not make it obligatory on him to raise issues in all cases so much so that if he were to give his finding without raising issues his or her was liable to be vitiated. Issues are required to be framed when necessary to clarify or pin-point the disputes between the parties. However, non raising of issues cannot vitiate the order. The order of the Assistant Charity Commissioner after discussing the material before him and the rival contentions in detail does ultimately contain a finding that the legal change had occurred and that the Change Report was legal, which was the only thing that he was required to determine. Under the circumstances, it was not necessary for him to raise issues and not doing so can not make his order bad. The order of the Deputy Charity Commissioner in remanding the matter back to the Assistant Charity Commissioner on that ground was erroneous.

9. The learned Assistant Judge in appeals both by the appellant and respondent No. 1 against the order of the Deputy Charity Commissioner, has sought to reject the appellant's appeal and allowed the appeal of the 1st respondent. He did so only on the basis that u/s 47 of the Bombay Public Trusts Act, it was only the Charity Commissioner who was to accept the resignation of the trustee from the trusteeship and therefore in this case the Managing Committee had no power to accept the resignation of the 1st respondent from the presidentship of the Managing Committee. According to him therefore the acceptance by the Managing Committee of the trustees in this case of the resignation of the 1st Respondent from the presidentship of the Managing Committee, was invalid.

10. It is difficult to see what application can section 47 of the Bombay Public Trusts Act have to the case of the resignation by the 1st Respondent by the Managing Committee from the presidentship of the Managing Committee. Section 47 of the said Act deals with power of the Charity Commissioner to deal with an application of a third party for appointment of a trustee of a public trust where none existed for the suspension, removal or discharge of a trustee was to cease to exist for any of the grounds mentioned therein. The said section further

requires the Charity Commissioner to decide such application after hearing the parties and having regard to the wishes of the author of the Trust. The said section, therefore, has not even a remote relevance to the facts of this case. The learned Counsel for both the parties also have not sought to support the said reasoning of the learned Assistant Judge who has devoted whole of his judgment in discussing how the said section 47 applied to the case and how therefore in this case the resignation of respondent No. 1 accepted by the Managing Committee was invalid. The said view of the learned Assistant Judge in considering section 47 of the said Act as applicable to the facts of this case, was totally erroneous.

11. The Assistant Charity Commissioner in his order has considered in detail the material on record as regards the charge report 1004/79 as well as the evidence. He also found that the 1st respondent not only did not cross-examine the applicant, but had himself led no evidence and filed his written statement at the fag end of the hearing. He has also rightly negated the 1st respondent's plea about his resignation being written subsequently on the blank paper on which his signature was earlier obtained, as improbable and without any material to support it. Nothing was pointed by the learned Advocate for the Respondent against the said reasoning of the Assistant Charity Commissioner. In my view the said order of the Assistant Charity Commissioner was right.

12. Under the circumstances, the appeal is allowed. Order of the Assistant Judge as well as the Deputy Charity Commissioner is confirmed. No order as to costs.

13. The learned Counsel for respondent No. 1 has stated that Respondent No. 1 would like to adopt separate proceedings as regards the action alleged to have been taken by the Appellant in removing certain teachers from the school which is conducted by the Trust. The learned Counsel for the Appellant has denied that he was responsible in removing any of the teachers. Parties are at liberty to agitate their grievance in that regard against each other in any other proceedings that they may be advised to adopt and obtain necessary orders. For the purpose till 30-4-1982 the interest of the parties would be sufficiently protected if the following interim order in the same term as the order passed by this Court on 11-1-1981 in Letters Patent Appeal No. 140/81, is passed viz.

"The appellant and the respondents /shall maintain status quo as it existed on 11-1-1982 with respect to the administration and management of the said Kalika Vidya Prasarak Sanstha till 30-4-1982. The Appellant will, however, till 30-4-1982 continue to disburse the salaries of the teachers of the staff members of the said Sanstha and maintain a proper and correct account of income and expenditure of the Sanstha. The appellant also till 30-4-1982 will not remove or suspend the teachers of the Sanstha nor will he employ new teachers or take any further action against the teacher who is suspended after 30th September, 1981."

14. In the even of respondent No. 1 making any application in the matter to the Charity Commissioner or other officer he undertakes to give to the appellant a

clear 4 days" notice in writing prior to his making such an application.

15. Writ along with the record to be despatched to the Lower Court as expeditiously as possible.