

(2004) 06 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application No. 1745 of 2004

Harijan Sevak Sangh

APPELLANT

Vs

Joint Charity Commissioner

RESPONDENT

Date of Decision : 28-06-2004

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 41A

Citation : (2005) 1 GLR 224

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : P.J. Kanabar, for the Appellant; H.D. Dave, Asst. Government Pleader for Respondent No. 1 and 4 and G.M. Joshi and 3, for the Respondent

Judgement

Jayant Patel, J.—Respondent No.3 deleted.

2. Rule. Mr.H.D.Dave, Ld.AGP appears and waives service of rule on behalf of respondent No.1 & 4. Mr.Joshi appears and waives service of rule on behalf of respondent Nos 2 & 3. With the consent of learned advocates of both sides the matter is taken up for final hearing today.

3. The present petitioner has approached this court challenging the legality and validity of the order, dated 24.9.2003 passed by the Jt.Charity Commissioner in Misc.Appln.No.24/98 whereby application u/s 41A hasn been rejected and the interim protection granted earlier is vacated. The petitioner has also prayed for giving direction to the respondent No.1 to decide the Scheme Application Nos 18 & 19/98 preferred u/s 20A of the Act and the Appeal No.6/98 pending before the respondent No.1 as early as possible.

4. Upon hearing Mr.Kanabara for the petitioner, Mr.Joshi and Mr.Dave, Ld.AGP for respondents, it appears that there is interse dispute amongst the trustees and as a result thereof the trust which is running two institutions is financially suffering on account of nondisbursement of grant by the authority of the State Govt. It has been submitted by the learned advocate for the petitioner and learned

advocate appearing for private respondents that if some interim arrangement is made by the court with a view to see that the institutions which are under the control of the trust may not be paralysed on account of nonavailability of grant and if the Jt.Charity Commissioner is directed to decide the scheme applications and appeals within some stipulated time limit their respective clients would not object for the same. So far as the State authorities and the respondent No.1 are concerned they have left the matter to the court for appropriate decision.

5. Under the above circumstances, without examining the larger issue as to whether such dispute would fall u/s 41A of the Bombay Public Trusts Act or not, it appears that the paramount consideration at this stage would be to see that the institutions and the students who are the beneficiaries of the institutions may not suffer on account of nonavailability of grant from the State Govt as there is dispute inter se amongst the trustees. There are cross claims for functioning as the trustees including that the disputes for change report and of the schemes are at large pending before the respondent No.1. It appears that considering the facts and circumstances, the respondent No.1 can be directed to decide the aforesaid disputes within some reasonable time and in the mean time some interim arrangement can be made with a view to see that the institutions which are under the control of the trust may not be put to peril on account of nonavailability of financial assistance/grant from the authorities concerned. I find it proper to leave the matter at that stage without observing further since the learned advocate for both parties have agreed for such purpose for such interim arrangement as may be found proper by this court.

6. Under the above circumstances, the management of Shri Sarvajani Kumar Chhatralaya, Bhuj and Shri Thakkarbapa Viodyarthi Ashram, Anjar shall be taken over by the officer of the State Govt who may be nominated by the Charity Commissioner for such purpose and the regular activities and day to day affairs of the trust shall be managed by such officer until final orders are passed by the Charity Commissioner as stated herein. However, for the purpose of deciding any policy matter, the said officer shall constitute a committee comprising himself as Chairman and Shri Hirjibhai Makwana who is petitioner herein as one of the members and one person who shall also be the member as may be nominated by Gujarat Harijan Seva Sangh. Such committee shall be formed within weeks from the taking over of the charge. In case of any difference of opinion amongst two members of the said Committee it will be open to the aforesaid Govt.officer to finally rule upon the issue and to take appropriate decision.

7. The respondent No.1 before whom the proceedings of the Scheme Application Nos 18 & 19/98 and Appeal No.6/98 are pending, shall decide the same as early as possible preferably within a period of six months from the date of receipt of writ of this court.

It is made clear that the aforesaid interim arrangement shall not prejudice the right of the either side in the aforesaid proceedings and it will be open to the respondent No.1 to take appropriate decision in accordance with law.

The officer of the Govt shall be recognised as having due authority for running the aforesaid two institutions for the purpose of grant, utilisation of grant and also incurring of expenses. If any expenses are already incurred by any of the trustees on behalf of the trust it would be open to such trustees to place the material and authenticated record for such purpose before the aforesaid Govt officer and after due verification and if it is legally permissible, it would be open to the Govt officer to reimburse such expenses from the fund which may be received from the State Govt by way of grant.

8. Petition shall stand disposed of in terms of aforesaid directions. Rule is made absolute to the aforesaid extent. Considering the facts and circumstances of the case, there shall be no costs.