

(2012) 09 DEL CK 0547

In the Delhi High Court

Case No : Regular First Appeal (OS) 81 of 2010

Indian Youth Centres Trust and Others

APPELLANT

Vs

Shishir Bajaj and Others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Companies Act, 1956 — Section 397, 398
Trusts Act, 1882 — Section 47, 48

Citation : (2012) 193 DLT 584

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : V.P. Singh, Instructed By Ms. Saroj Bidawat, s No. 1 and 2. Mr. M.M. Kalra and Mr. G. Tushar Rao, s No. 4 and 5, for the Appellant; Sudhir Chandra Instructed By Mr. Uday Kumar, Sanjay Kumar Singh and Mr. Praveen K. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The late Prime Ministers of India, Shri Morarji Desai and Ms. Indira Gandhi, along with eminent personalities such as Navel Tata and R.K. Bajaj incorporated a public charitable trust by the name :WAY India Youth Centres Trust" as per Deed of Settlement dated August 10, 1961 and for reasons unknown, under a supplementary Deed executed by the then trustees of the Trust, on June 05, 1973 the name of the Trust was changed to "Indian Youth Centres Trust". The terms of the Deed of Trust remained the same. With respect to the appointment of trustees, Clauses 13, 14, 15, 17 and 18 of the Deed of Trust are relevant and we are noting the same for the reason the dispute set forth in the plaint instituted by respondents No. 1, 2 and 3 concerns the said Clauses. They read as under:

Clause 13

The number of Trustees shall not be less than 5 and more than 11 provided

however that if the number of Trustees become less than 5 the surviving or the continuing Trustees shall be entitled to act with a view to appoint new Trustee or Trustees, so as to bring the number of Trustees to the minimum as herein provided.

Clause 14

The Trustees shall be entitled to appoint not more than two persons from amongst themselves as the Managing Trustee or Trustees with such power and for such period and upon such terms as the Trustees may from time to time decide.

Clause 15

Whenever any Trustee shall resign, die or become insolvent or be convicted of a criminal offence involving moral turpitude or desire to be discharged from or refuse or become unfit or incapable to act, then and in every such case, the surviving or the continuing Trustees or trustee for the time being, shall be entitled to appoint a Trustee or Trustees in place of the Trustee or Trustees so resigning or ding, or becoming insolvent or being convicted or refusing or becoming unfit or incapable to act as aforesaid. The surviving or continuing Trustees shall also be entitled to appoint additional Trustee or Trustees from time to time as they may consider proper but so that the number of Trustees shall not be more than eleventh.

Clause 17

Every new Trustee appointed as aforesaid shall as well before as after such transfer of the Trust fund or property, have the same powers, authorities and discretions and shall in all respects act as if he had been originally appointed a Trustee under these presents.

Clause 18

Every resolution of the Trustees and every decision by them, unless unanimous shall be taken by majority of the Trustee present and voting and in case of equality of voters, the Chairman shall have a casting vote. The Trustees may pass any resolution by circular if it is unanimous.

Needless to state, a co-joint reading of the afore-noted five clauses would reveal that the Deed of Trust requires:

- (i) The number of trustees to be not less than five and not more than eleven.
- (ii) The power of appointing new trustees is vested in the surviving/continuing trustees.
- (iii) The decision to appoint new trustees has to be either unanimous or by majority of the surviving and continuing trustees; and
- (iv) The surviving and continuing trustees to ensure that number of trustees do

not fall below five.

2. As of October 23, 2007 the trustees were the three plaintiffs i.e. Shishir Bajaj, Manohar Gopelwar, Rajat Kumar Narayan, and M.V. Rajasekharan, Viresh Pratap Chaudhary, P.T. Kuriakose and Dr. L.S. Kothari. The last two having submitted their resignations the other five trustees met on October 23, 2007 and resolved as under:

2. Resignation letters of Shri P.T. Kuriakose and Dr. L.S. Kothari and appointment of new Trustees:

The Board then discussed the resignation letters forwarded by Dr. L.S. Kothari and Shri P.T. Kuriakose. The Board placed on record its deep sense of gratitude to the services rendered by Shri Kuriakose and Dr. Kothari, and accepted their resignations. Shri Viresh Pratap Chaudhary stated that it would be in the fitness of things if the two vacancies that have occurred in the Board of Trustees, consequent to the resignation of Shri P.T. Kuriakose and Dr. L.S. Kothari, were filled as early as possible. After some deliberations, it was decided that the Trustees might recommend suitable names to the Chairman within a month and the Chairman, in consultation with the Managing Trustee, might then induct two more Trustees in the Board of Trustees."

3. We may highlight that the source of the conflict is the resolution passed that two vacancies occasioned by the resignations of P.T. Kuriakose and Dr. L.S. Kothari be filled by the Chairman in consultation with the Managing Trustee from amongst suitable names recommended by the trustees. The conflict is: Whether the resolution amounts to a delegation of their functions and powers by the trustees or whether it is to empower the Chairman to act on behalf of all the trustees in a manner that the act of the Chairman would be deemed to be an act on behalf of all.

4. Apparently no progress was made till April 2009 when the Chairman of the Trust Shri M.V. Rajasekharan wrote a letter to Shishir Bajaj on April 03, 2009 as under:

Shri Shishir Bajaj

Managing Trustee, Indian Youth Centres Trust

C/o Bajaj Hindustan Ltd.

Bajaj Bhawan, 226,

Nariman Point

Mumbai - 400021.

Dear Shri Shishir Bajaj,

As you are kindly aware, the Board of Trustees of the Indian Youth Centres Trust at its Meeting held in October, 2007 had decided that the Trustees might

recommend suitable names to fill the vacancies, to the Chairman and the Chairman in consultation with the Managing Trustee, might then induct the new Trustees. Since no names were received, the Chairman urged the Trustees to send the nomination for the three vacancies that had arisen.

I had received the recommendations from all the Trustees. I before taking decision, consulted the Managing Trustee, and as well as other Trustees.

Keeping in view the recommendations received and the consultations held, I decided that I should take the consent of the following four eminent persons to become Members of the Trust:

1. Dr. Bhishma Narain Singh
2. Shri Gopal Krishna Gandhi
3. Shri Anil K. Shastri
4. Shri R.N. Anil

Accordingly, I wrote to each one of them. Only Shri Gopal Krishna Gandhi declined to send his consent, due to heavy burden of his work, as he is a Governor. The other three persons have sent their consents.

Accordingly, I have nominated the following as Trustees of the Indian Youth Centres Trust, with immediate effect:

1. Dr. Bhishma Narain Singh
2. Shri Anil K. Shastri
3. Shri R.N. Anil

5. Shishir Bajaj responded by a letter dated April 09, 2009, in which after extracting the Board resolution dated October 23, 2007, he responded:

From the above it is clear that both your goodself and me were jointly given the responsibility by the present Trustees to only appoint 2 Trustees and not 3 Trustees, with mutual consent, in view of the resignation of Shri Kuriakose and Dr. Kothari.

As you may recall I and Rajat had met you at the Kendra's office on 26 February 2009 and we had a discussion about the names of Trustees who could be considered for this August Body. In fact, I had discussed the names of Mr. Justice Chandrasekharji Dharmadhikari and Smt. Usha Gokhani, Chairman of Mani Bhavan, Mumbai, where Mahatma Gandhi had stayed for many years. She also happens to be the granddaughter of Mahatma Gandhi (daughter of Shri Ramdas Gandhi).

I also remember Rajat discussing the name of the candidate which he had proposed and few other names including that of Shri Gopal Gandhi. However, we frankly did not get a chance to discuss other recommended names given by the

other present Trustees of the Indian Youth Centres Trust. In view of the same no two categorical names of the Trustees were finalized between yourself and me.

In the history of this August Body there has never arisen any dispute over the appointment of Trustees. Hence I would humbly request you to immediately put in abeyance the appointment of the above 3 Trustees.

6. In reply where to, and also to a similar protest letter sent to the Chairman by Rajat Kumar Narayan, the Chairman of the Trust responded vide his reply dated April 15, 2009 as under:

I find that some of the facts in your letter, as also the letter of Shri Rajat Narain ji have not been correctly set out. The correct facts, so far as I know, are as under:-

You have in your letter under reference, set out correctly the relevant extracts of the Proceedings of the Meeting of the Board of Trustees held on 23.10.2007. However, when that matter came up again in the Meeting of the Board of Trustees held on 11.10.2008, Shri Viresh Pratap Chaudhury ji pointed out that apart from two vacancies on the Board of Trustees, another vacancy on account of the demise of Shri Ravindra Verma ji had since arisen, and that the same should also be filled by the same process, as had been decided in the Meeting of the Board of Trustees held on 23.10.2007. This was agreed to in the Meeting. However, when the Draft Minutes of the Meeting held on 11.10.2008 were circulated by Shri Suresh Ambekar, Director of the Kendra, there was no mention of the said point in the Draft Minutes. I came to know that Shri Viresh Pratap Chaudhry ji had sent a letter in response to the Draft Minutes for incorporation of the said point in the Minutes and Shri Chaudhry ji has sent me a copy of the letter which he had written to Dr. Ambekar in this behalf. Even otherwise, the clear vacancy arose due to the sudden passing away of former Chairman Shri Ravindra Verma ji. Therefore there were three clear vacancies existed on the Board.

In furtherance of completing the process of inducting New Trustees, the Director of the Kendra sent me your letter dated 28.1.2009 in which you had recommended only one name of Shri K.S. Vaidyanathan, Shri Rajat Narain ji also sent a letter dated 30.1.2009 to Shri Ambekar, recommending the name of Shri Kusharga son, but he stated that Shri Kushagra Nain Bajaj was in his own right eminently suited to be inducted as a new Trustee.

After all the Trustees had sent their recommendations. I had asked Shri Ambekar to prepare a list of all such recommendations and send a copy to you and to me. Shri Ambekar did so.

As I was to be in Delhi on 26.2.2009, I thought of discussing with you the names of the proposed Trustees, and invited you to meet me in the office of the Kendra. Earlier, I had also got in touch with Shri Rajat Narain ji at Haridwar, requesting him to give some more names. Shri Rajat Narain ji incidentally was also in Delhi

on 26.2.2009. He had also accompanied you in your meeting with me in the office of the Kendra on that date. I had a free and frank discussion with you, as well as Shri Rajat Narain ji, for quite some time. I also indicated my reservation for the Chandrasekhar ji Dharmadhikari and Smt. Usha Gokhani. Shri Rajat Narain ji also suggested the name of Shri Gopalkrishna Gandhi. Regarding the names circulated to Managing Trustee and the Chairman, I had also consultation about the names with Shri Manohar Golpelwar ji and Shri Viresh Pratap Chaudhury ji. Neither you nor Shri Rajat Narain ji indicated to me any reservation about the other names in the list prepared by Shri Ambekar. The name of Shri Gopalkrishna Gandhi appeared to me to be suitable. Therefore, I sent him a letter seeking his consent, but he declined. I had also sought consent of Dr. Bhishma Narain Singh ji. Shri Anil K. Shastri ji and Shri R.N. Anil ji. They have sent their consents. Thereupon, I nominated them as new Trustees on the Board of Trustees of the Indian Youth Centres Trust and intimated them about their induction as new Trustees. By my letter dated 3.4.2009, I also intimated you and other Trustees about the said nominations.

In view of what I have stated above, I feel that it would not be correct to keep in abeyance the decision to induct the three New Trustees. That decision has already come into effect.

7. On September 19, 2009 a meeting of the trust was fixed and at the venue of the meeting Bhishma Narain Singh, Anil Shastri and R.N. Anil were present. Shishir Bajaj, Manohar Gopelwar and Rajat Kumar Narain protested at said three persons participating in the meeting of the trust, but the Chairman of the trust permitted the said three persons to participate in their capacity as trustees of the trust, Shishir Bajaj, Manohar Gopelwar and Rajat Kumar Narain left after protesting and filed a suit for declaration and permanent injunction to declare the appointment of Dr. Bhishma Narain Singh, Anil Shastri and R.N. Anil as trustees to be void and to restrain said three persons to act as trustees of the Trust and to declare void the resolution passed at the Board meeting on September 19, 2009.

8. Not being too sure whether the relief claimed by them was personal i.e. an inter-se dispute between the three plaintiff trustees and the other two trustees and the co-opted three trustees and hence Section 92 of the CPC not attracted or whether the issue related to the breach of a public charitable trust, they filed an application seeking leave to institute the suit u/s 92 of the Code of Civil Procedure.

9. Vide impugned order dated July 26, 2010 granting leave to maintain the action u/s 92 of the Code of Civil Procedure, the main question decided by the learned Single Judge is: Whether defendants No. 4 to 6 i.e. Dr. Bhishma Narain Singh, Dr. Anil Shastri and Shri R.N. Anil were validly inducted as trustees keeping in view the Trust Deed dated August 10, 1961.

10. The learned Single Judge has opined that the Trust Deed obliged the trustees to either act unanimously or by majority to discharge their duties as trustees i.e.

to jointly execute the Trust and thus has concluded that the procedure agreed to be followed when the trustees resolved on October 23, 2007 on the terms noted by us in paragraph 3 above was illegal. The suit has been accordingly decreed.

11. We eschew reference to minor errors in the impugned decision which have no bearing on the principal question as to the manner in which a Trust has to be discharged.

12. Learned counsel on either side cited decisions with respect to trusts and highlighted for our benefit Sections 47 and 48 thereof. The decisions throw light on the principles of law pertaining to the discharge of a Trust. The decisions are : AIR 1980 SC 17 In the matter of: J.P. Srivastava and Sons Pvt. Ltd. and Others Vs. Gwalior Sugar Co. Ltd. and Others, J.P. Srivastava & Sons Pvt. Ltd. & Ors. v. Gwalior Sugar Co. Ltd. & Ors., and AIR 1973 Guj. 13 Atmaram Ranchhodbhai v. Gulamhusein Gulam Mohiyaddin & Anr., and thus we need to discuss the said three discussions to extract the ratio therefrom.

13. The three decisions concern Section 47 of the Trust Act 1882 which reads as under:

47. Trustee cannot delegate.-A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation--The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

14. In Re: H.E.H. The Nizam's Jewellery Trust's case (supra), clause-13 of the Trust Deed in question was the subject of focus which empowered the trustees to sell the property which was the subject matter of entrustment i.e. priceless jewellery. The clause reads as under:

13. Subject to the Trusts aforesaid in respect of the articles referred to in clause 3(c), (d), (e) and (f) hereof, during the lifetime of his eldest son Prince Azam Jah (If and so long as the Dynasty of the Settlor continues and Prince Azam Jah succeeds him as the Nizam of Hyderabad) it shall be at the option of the trustees either to keep the said jewels and other articles mentioned in the First Schedule hereunder written unsold or to sell, the same or any part thereof at such time or times and in such manner as they may in their discretion think fit, but subject as aforesaid, after death of the Settlor as well as of the said Prince Azam Jah the Trustees shall sell the said jewels and other articles specified in the First Schedule hereunder written within a period of three years after the date of the death of the survivor of the Settlor and the said Prince Azam Jah and any such sale as aforesaid shall be effected by the Trustees at such price or prices or for such consideration and on such terms as the trustees may in their absolute

discretion think fit and either in India or in any foreign country without the trustees being liable or accountable to any person whomsoever for the propriety of or justification for any such sale or for the reasonableness or otherwise of the price or consideration or other terms in respect of the sale of any of the said articles.

15. The backdrop facts were that the five trustees took a decision to sell the jewellery by making a first offer to the government. After making a valuation, the government acquired 18 select pieces of jewellery due to their cultural and historical importance and paid a mutually negotiated price of Rs. 1.17 crores. The Chairman of the Trust, who happened to be holding the post of Additional Secretary to the Government of India in the Ministry of Finance intimated to the Board of Trustees the decision of the government not to buy the remaining jewellery at a board meeting held on January 09, 1978, resulting in a unanimous board resolution by the trustees to immediately sell the jewellery. Clearance had to be obtained from the Director of Archaeological Survey of India before the jewellery could be sold. A draft of the terms of the proposed sale were drawn up by the Secretary of the Trust and at a board meeting held on January 25, 1978, in which the Chairman of the Trust was absent, the four remaining trustees passed a resolution approving the terms on which the jewellery had to be sold. Certain codal formalities pertaining to the sale required to be completed and on being completed, the Board of Trustees met on March 08, 1978, at which meeting the Chairman of the Trust was absent and the remaining trustees resolved that if no satisfactory offer for the jewellery was made through the tendering process, the jewellery be sold by negotiating the price with the person who would pay the highest. The next day i.e. on March 09, 1978, in the absence of the Chairman the remaining trustees opened the tenders and accepted the highest bid except in respect of one group of jewellery items. The very next day i.e. March 10, 1978 a suit was filed by a beneficiary of the Trust questioning the bids being accepted for the jewellery except in respect of one group of jewellery item.

16. It is in the aforesaid context, of one out of the five trustees not being present at the Trust meetings held after January 09, 1978, that the issue arose: Whether the Trustees had to act together in discharging their fiduciary responsibility towards the trust or four out of five trustees could give effect to the unanimous decision taken on January 09, 1978 to sell the jewellery entrusted to the Trustees as Trust.

17. With reference to Section 47 of the Trust Act the Supreme Court observed that Section 48 of the Trust Act required all Trustees to join in the execution of the Trust except where the instrument of Trust otherwise provides. Thus, it was opined that if there are more than one trustees, all must join in the execution of the Trust except as provided by Section 48. The Supreme Court then held that as per the mandate of Section 47 there were only four situations which were an exception to a trustee not be competent to delegate his office or his duties to

even a co-trustee, but observed (refer para 27) that where the act of a trustee is done with the sanction and approval of the co-trustees, it could be regarded as an act of all the trustees. But for which i.e. sanction or approval, there must be strict proof.

18. The Supreme Court then proceeded to analyze the board resolution dated March 09, 1978, and noted that what transpired in the board meeting was shrouded with suspicion inasmuch as the minutes of the meeting were never proved at the trial. But noting the alleged resolution passed by the four trustees, the Supreme Court proceeded to consider whether the said resolution, if at all passed, authorized the trustees to accept any bid.

19. With reference to the language of the resolution, the Supreme Court noted that the four trustees resolved that tender offers may be rejected if found wanting and in said situation, to negotiate the sale of any item of jewellery to any party for a higher price and went on to draw the distinction between authority to negotiate and authority to bind. The decision concludes by holding that in the absence of one out of the five trustees participating in the board meetings the Trust would not be bound by the acts of four trustees. On facts it was additionally held that the board resolution in question did not authorize the four trustees to accept any bid.

20. In J.P. Srivastava & Sons" case (supra), in para 29, the Supreme Court observed:

29. Therefore although as a rule, trustees must execute the duties of their office jointly, this general principle is subject to the following exceptions when one trustee may act for all (1) where the trust deed allows the trusts to be executed by one or more or by a majority of trustees; (2) where there is express sanction or approval of the act by the co-trustees; (3) where the delegation of power is necessary; (4) where the beneficiaries competent to contract consent to the delegation; (5) where the delegation to a co-trustee is in the regular course of the business; (6) where the co-trustee merely gives effect to a decision taken by the trustees jointly.

and with reference to the deed of trust in question, opined that clauses 7, 12, 16 and 19 of the Trust Deed authorized the trustees to allow any one co-trustee to carry out the trust and to act for the trust and with respect to the resolutions passed by all the trustees held that petition filed under the signatures of Ms. v Nini Srivastava u/s 397 and 398 of the Companies Act on behalf of J.K. Srivastava Family Trust was a validly instituted petition and that for the purposes of determining whether the petitioners, complaining of mismanagement and oppression, to reach the magical figure of 1/10 of the issued share capital would be entitled to include 1029 preference shares held by the Trust. Holding that the trust deed authorized the trustees to permit one or more of the trustees to execute the trust and on facts finding such permission by the trustees in favour of Ms. Nini Srivastava, the issue was decided in favour of the version projected

by the trust.

21. Atmaram Ranchhodbhai's case (supra) states the same principles of law as have been determined by the Supreme Court in *In Re.: H.E.H. The Nizam's Jewellery Trust's case* (supra).

22. Suffice would it be to state that the principal of general law pertaining to an instrument of Trust, or for that matter any other indenture authorizing living human beings to act on behalf of a juristic entity would require the living human beings to act within the powers conferred upon them by the written instrument. Thus, a body of living person's have to act within the confines of the charter which empowers them and thus would mean that they must act together or in a manner where the act by a few is with the sanction and approval of the remainder and can be regarded as an act on behalf of all. No delegation is permissible.

23. An act which requires discretion to be exercised cannot be delegated by a trustee as against acts which do not require discretion to be exercised, which acts would be broadly called ministerial acts.

24. In the instant case the various clauses of the Deed of Trust which have been culled out by the learned Single Judge have been correctly opined to be not permitting any delegation by the trustees and that the Trust has to be discharged by all trustees acting together and in case of a split by majority. Thus, the trustees have been correctly opined to be ill-advised to follow and adopt a course of conduct at the board meeting dated October 23, 2007 and since this wrong course resulted in defendants 4 to 6 being wrongly co-opted as trustees of the Trust, has rightly decreed the suit.

25. We may add a few more words with reference to paragraph 27 of the Supreme Court in the decision reported as *H.E.E. The Nizam's Jewellery Trust's case* (supra) on the subject whether the act of the Managing Trustee was done with the sanction and approval of the co-trustees in a manner that it could be regarded as an act of all the trustees. The Managing Trustee asserts that the resolution dated October 03, 2007 requires it to be construed that his decision, after consultation with the Managing Trustee would be treated as a decision having the consent of all the co-trustees. This view is incorrect for the reason as we have already observed the legal position is that where the resolution by the trustees requires no further discretion to be exercised and only a ministerial functioning has to be performed alone then can it be said that the act of ministerial functioning would be treated as an act on behalf of all the trustees. But where a matter of discretion remains and the further decision has to be taken by exercising the discretion, as in the instant case, it would amount to a delegation of authority and not empowering a particular trustee to act on behalf of all. This is not permissible for the reason a trust has to be discharged by the trustees acting in unity and where the trust deed permits, by majority. The appeal is accordingly dismissed but without any order as to costs.