(2010) 10 DEL CK 0199

In the Delhi High Court

Case No : Writ Petition (C) 13450 of 2009

Inspiration APPELLANT

Vs

The National Trust and Another RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

National Trust for Welfare of Persons with Autism, Cerepral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 — Section 11(1), 3(4), 4(4), 4(5)

Citation : (2011) 1 ILR Delhi 513

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Colin Gansalves and Divya Jyoti Jaipuriar, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The Petitioner, which is a society registered under the Societies Registration Act, 1860 is aggrieved by a letter dated 18th July 2006 written to it by the National Trust, Respondent No. 1, asking it to refund "the entire amount grant-in-aid of Rs. 27,89,342/- at the earliest." The Petitioner is also aggrieved by the implied debarment of the Petitioner from applying for any further grants to the National Trust as evident from a notice dated 3rd September 2008 placed on the website of the National Trust. Certain other consequential reliefs are also prayed for.

2. The Petitioner?s organisation is represented by its President Smt. Saswati Singh and has its office at Tilak Nagar at New Delhi. It was granted registration as a society on 22nd June 1996. The Petitioner is running a day care centre in Tilak Nagar having about 75 to 80 students mostly from the lower income-group strata. It also runs a home in Dehradun for about 25 students. The Petitioner states that one of its main tasks is to work for intellectually challenged special children, and to develop awareness about the causes and interventions required for intellectually challenged children and adults. The Petitioner?s special schools

deal with the training and rehabilitation for students from ages 2 to 35. The Petitioner also provides a range of therapies including alternative therapies. The focus is on self-help skills, vocational training and parents? training. The Petitioner?s group home in Dehradun caters to autistic young adults with severe challenges, where the students are trained along with parents. The students from regular schools and colleges are encouraged to volunteer and interact with the students of the Petitioner?s school and day care home, which according to the Petitioner, helps in their personality development and self-confidence.

3. The Petitioner states that its Director Smt. Saswati Singh, is highly qualified and has considerable experience in providing for the care and rehabilitation of special children who are intellectually challenged. It is stated that she has received a large number of awards both at the national and international level. She received the National Trust Annual Award 2007 the best individual parent of a person with disability.

4. Respondent No. 1 is the National Trust. It is a statutory body established by the Ministry of Social Justice and Empowerment (?MSJE?), Government of India under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (?National Trust Act?). The MSJE, Government of India has been impleaded as Respondent No. 2 to the present petition. For the period of 2001-05 the National Trust made a total grant of Rs. 9,28,800/- to the Petitioner. This helped support the school and day care centre run by the Petitioner. It is stated that the money was received by an office order No. 104 dated 19th December 2001. It is stated that this money was used for payment to 6 therapists, 1 medical doctor, 10 assistant teachers, 1 sweeper, 1 chowkidar and for purchase of occupational therapy equipments, educational toys etc.

5. On 3rd April 2002, in continuation of the order dated 19th December 2001, the National Trust sanctioned an additional sum of Rs. 3,51,200/- to the Petitioner towards recurring cost for the expenditure of additional staff. Out of this, Rs. 1,75,600/- was released as a first instalment 2002-03. By an office order dated 30th October 2002, the MSJE sanctioned to the National Trust a sum of Rs. 6,10,400/- in favour of the Petitioner which included Rs. 2,40,000/- towards non-recurring grant and Rs. 3,70,400/- towards the 2nd instalment of the recurring grant.

6. In continuation of the sanction order dated 19th December 2001, the National Trust sanctioned a grant of Rs. 7,10,142/- to the Petitioner towards recurring expenditure for day care centre. Consequently, a sum of Rs. 3,54,942/- was released to the Petitioner by the National Trust by an order dated 23rd June 2003.

7. It is reiterated by the Petitioner that the above monies were released pursuant to the Petitioner being given a grant by the National Trust in 2001 and pursuant to the contract entered into that year between National Trust and the Petitioner. The contract was for three years i.e. 2001-04. The period was extended to 2005.

It is stated that the total grant received by the Petitioner from the National Trust pursuant to the above contract was Rs. 27,89,342/- and has been utilized for the purposes of the day care centre and for the payment of staff in the two centres run by the Petitioner.

8. It is stated that the National Trust was desirous of inducting into its Board, persons who were representative of the mental disabilities sector. It is stated that Smt. Saswati Singh had at that stage specifically enquired from the then Chairperson of the National Trust whether there would be any adverse implications for the grants made to the Petitioner if she was a member of the Board. According to the Petitioner, the Chairperson of the National Trust assured her that the already sanctioned grants would not be affected.

9. The National Trust approached the then Additional Solicitor General of India (?ASG?) for his opinion. The specific queries posed to the learned ASG were as under:

Issue 1:4

Section 4(5) of the Act appears to disqualify those organizations from receiving aid whose members are on the Board of the Querist. Some Board members of the Queriest belong to registered organizations that receive grants-in-aid from the Trust. In some instances such members came on the board after a grant to their organization had already been approved by the Board. While one installment of the grant has already been disbursed, the other installment is yet to be given to the registered organisation.

5) In view of these facts, the following have arisen:

(i) Whether in view of Section 4(5) of the Act the registered organizations whose representatives are on the Board of the Trust are eligible to apply for grants-in-aid u/s 11(1)(c) of the Act.

(ii) Would the National Trust be justified in:

a) Disbursing the remaining installments which were part of the amount sanctioned at the time when they were not on the Board of the National Trust?

b) Renewing such grants for subsequent years.

10. By a letter dated 28th August 2003 the learned ASG gave the following opinion:

6. A perusal of Section 4(5) clearly shows that a Board member is not entitled to receive any grant in aid. This is a salutary provision as it militates against any possible conflict of interest. The bar under this provision is absolute and not in the nature of a bar which would permit the Board to approve funds after an interested member excuses himself from any proceeding where a discussion about the grant to his organization takes place.

7. However, in case a grant has already been approved, but not fully disbursed,

there is no occasion not to give the rest of the amount. In such a case there can be no possible conflict of interest. A purposive construction of the Act shows that it does not bar the mere disbursement of money already due...the possibility of favouritism in the decision making.... Since the member did not participate in the decision making process, there can be no objection to releasing money to the organisation.

8. Section 11(1)(c) deals with the grant in aid. There is no concept of renewal of a grant under the Act. Therefore, each application for grant has to be a fresh application. Consequently, if an organisation is barred from receiving a fresh grant, it is also barred from an alleged renewal of the grant.

9. Therefore, I answer the queries posed above as under:

Query 1: No, registered organizations whose representatives are on the Board of the Trust are not eligible to apply for grants-in-aid u/s 11(1)(c) of the Act.

Query 2(a) : The National Trust may disburse any remaining amount.

Query 2(b) : No "renewal" of a grant can be made in case a member of the organization is also a member of the Board.

11. The above opinion was categorical that mere disbursements of moneys already granted to an organisation would not be constituted as a bar to an individual representing such grantee organisation from coming on to the Board of the National Trust. It is stated that on the basis of the above opinion of the learned ASG, Smt. Saswati Singh and one Dr. Dholakia stood for election and joined the Board of the National Trust.

12. A notification dated 9th December 2003 was issued by the MSJE u/s 3(4) of the National Trust Act whereby the Petitioner and certain others were appointed as Members of the Board of the National Trust.

13. On 21st October 2005 the Director General of Audit wrote to the Chairperson of the National Trust enclosing the statement of fact regarding irregular release of grants under the ERI scheme and asking for confirmation and comments. This issue was discussed at the 20th Meeting of the Board of the National Trust on 7th September 2005. It was again discussed on the meeting of the Board held on 20th December 2005. The deliberations of the said meeting as recorded in the minutes reads as under:

Agenda Item No. 7: CAG Audit for the year 2004-05 Irregular release of grants under ERI scheme

At the outset JS&CEO pointed out that the letter of the Addl. Solicitor General is very clearly worded on this issue & there is no need for second opinion in the matter. Mrs. Saswati Singh pointed out if she had prior knowledge of this, she would not have joined the Board and it will be very difficult for the parent?s organisation to refund the money at this juncture. Shri P.K. Ray, JS, Ministry of Labour pointed out that since it will be difficult for organizations to refund the money, a request may be made to the CAG. It was unanimously decided that a request may be made to the CAG for waiving this amount in view of the peculiar circumstances in this case. Thereafter the Board will be approached again depending upon the reply received from them. It was pointed out by the Chairperson that in future Board member will not be the beneficiaries of any schemes. There was one vote of dissent by Shri Udai Singh, who pointed out that the views of the Addl. Solicitor General are very clear in the matter that every year it should be treated as a new grant.

14. It is stated by the Petitioner that despite the opinion of the learned ASG the National Trust sent the impugned letter dated 18th July 2006 to the Petitioner seeking refund of Rs. 27,89,342/-. It is further stated that the amount disbursed to the Petitioner after Smt. Saswati Singh joined the Board of the National Trust was Rs. 8,28,000/- whereas the National Trust was asking the Petitioner to refund the entire amount of Rs. 27,89,342/-.

15. It may be mentioned here that the Petitioner?s term on the Board of National Trust has since come to an end. Further, it is stated that the Petitioner was adversely affected by the impugned letter dated 18th July 2006. Subsequently, on 3rd September 2008 a notice was placed on the website of the National Trust where application for release of grant were invited from all NGOs except a few which included the Petitioner. According to the Petitioner, the effecting of the debarment of the Petitioner from receiving any grant from the MSJE, Government of India, has been adverse. The Petitioner states that all the special educators except two were discontinued because salaries could not be paid. The occupational therapy equipments got worn out and had to be discarded and could not be replaced because there were no funds. The number of students dwindled from 100 in 2001 to about 75 as on the date of filing of the writ petition i.e. 18th November 2009.

16. While directing notice to issue to the Respondents on 26th November 2009, this Court restrained the Respondents from taking any coercive steps for recovery of the aforementioned sum of Rs. 27,89,342/- from the Petitioner.

17. The reply filed by Respondent No. 1 National Trust, inter alia, acknowledged that opinion had been given by the learned ASG on 29th August 2003 that "there would be no conflict of interest as envisaged in Section 4(4) & (5) of the NT Act if the sanctions were made prior to the members coming on the Board and the disbursements were made thereout during the tenure of the members in an on-going project. He advised against giving fresh sanctions to the members? organizations during the period they were members on the Board or any renewal of the grants."

18. Also annexed to the counter affidavit of the National Trust as Annexure R-7 are its comments on the draft paragraph in the report of the Director General of Audit titled "release of grant-in-aid in violation of an act of Parliament" in respect of the National Trust. The relevant extract of the said comment reads as under:

"Under the provisions of Section 3(4)(b) of the Act ibid, Dr. H.T. Dholakia and Smt. Saswati Singh, who are associated with the NGOs namely Association for the Welfare of the Persons with Mental Handicap in Maharashtra (AWMH), Mumbai, and INSPIRATION, Delhi, respectively, were appointed as Members of the Board of the National Trust, both w.e.f. 09.12.2003. While Dr. Dholakia ceased to be the Member of the Board of the Trust beyond 03.11.2005. Smt. Singh is still continuing as the Member of the Board.

The total amount of grants released by the Trust to these NGOs during the tenure of their functionaries as Members of its Board is Rs. 13,23,132/- only and not Rs. 40.23 lakh as stated in the draft audit paragraph.

The NGOs, with which these Members are associated with, had been in receipt of grants from the Trust since 2002-03 and 2001-02 respectively and during their tenure as Members of the Board, their NGOs received grants of Rs. 4,94,332/- and Rs. 8,28,800/- respectively.

The fact cannot be ignored that these two Members are not the direct beneficiaries of the grants released by the Trust. The amounts have been released to the NGOs of these Members for utilization for the benefits of the persons affected by Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. The persons with these disabilities are the real beneficiaries of the grants and neither the Members of the Board of the Trust nor the functionaries of the concerned NGOs. A such the grants released to these NGOs may not be treated as grants released in violation of Section 4(5) of the Act. Meantime the said scheme (ERI) has been discontinued with effect from 1.4.2005.

Further, as earlier stated that u/s 3(4)(b) of the Act persons associated with the NGOs are to be appointed as Members of the Board of the Trust. Appointment of the eminent persons associated with NGOs should not debar their NGOs to receive grant from the Trust for utilization for the benefits of the target group of persons with disabilities. If such a ban is imposed and release of grants to such NGOs is discontinued during the tenure of the functionaries of the NGOs as Members of the Board of the Trust, the NGOs will not be in a position to render services to the target group thereby the real beneficiaries i.e. the person with disabilities will be deprived of the benefits of the Schemes of the Trust. Hence, release of grants under the Scheme of the National Trust to the NGOs during the tenure of their functionaries as Members of the Board of the Trust may not be treated as violation of Section 4(5) of the National Trust Act.

19. As regards the allegation that the National Trust had released Rs. 8.49 lakhs to the two NGOs including the Petitioner herein, even after the registration of the said NGOs with the Trust had expired, the comments of the MSJE are as under:

The NGOs are registered with the Trust initially for a period of five years followed by renewal from time to time on receipt of application from the NGOs for such renewal. The initial validity period of registration of the above said NGOs expired on the 11th/12th March, 2005. Their request for renewal of their registration being under process in the Trust, the amount of AWMH, Mumbai, and the Inspiration, Delhi respectively in June, 2005. Since, the process of renewal of registration of these NGOs with the Trust in continuation of the initial registration period was in progress, such release of grants to these NGOs by the Trust for continuous implementation of its Scheme may be treated as for the benefits of the target group of persons with disabilities and this aspect may not be objectionable.

20. By a subsequent affidavit filed on 25th February 2010, the National Trust has clarified as under:

b) The said sanctioned amount was released in installments from time to time partly before and partly after the above said members joined the Board of the Trust. All release Orders carried the words ?sanction order? in a routine fashion were in fact ?release orders? and were in continuation of earlier ?sanction order? or as "installments of recurring expenses". As such, it may be taken that the said release order cannot be construed as sanction orders.

21. It appears that on 9th September 2008 the National Trust wrote to the MSJE confirming that the entire funds released to the Petitioner "has been utilized for the benefit of persons with disabilities which included small sum of Rs. 88,200/- (@ Rs. 4200/- per month) paid to Smt. Saswati Singh, Board Member as honorarium for providing her services as a trained teacher (Therapist)". It was further observed as under:

(ii) Had the services of therapist been outsourced, it would have been much more expensive than acquiring the services of above Board Member by paying the nominal honorarium.

(iii) Out of the above honorarium, Rs. 21,000/- was paid during the intervening period (August, 2003-December, 2003) when the office bearers were elected as Board Member but the Notification in this regard was issued. The total payment of Rs. 6.23 lakhs to both the NGOs including this small portion of honorarium made during this intervening period is, however terms as unethical by the Audit, though strictly it is not in violation of the provisions of the National Trust Act.

22. The recommendation was that a sum of Rs. 67,200/- i.e. (Rs. 88,200-21,000/-) paid to Smt. Saswati Singh as honorarium, may at the most be considered as recoverable.

23. The MSJE has filed an affidavit dated 26th March 2010. This affidavit confirms that that National Trust had advised the MSJE that there was no possibility of recovering the amount already released to the Petitioner. However, it was confirmed that "There is no report of misuse of funds by NGOs on the basis of which recovery of the grants-in-aid in question could have been made."

24. While stating that action taken note (?ATN?) incorporating the comments by the MSJE was under finalisation, the stand of the MSJE is that the present petition is premature.

25. The MSJE?s comments on the draft audit paragraph are more or less similar to that of the National Trust. The relevant portions of the said note are as under:

The fact cannot be ignored that these two Members are not the direct beneficiaries of the grants released by the Trust. The amounts have been released to the NGOs of these Members for utilization for the benefits of the persons affected by Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. The persons with these disabilities are real beneficiaries The fact cannot be ignored that these two Members are not the direct beneficiaries of the grants released by the Trust. The amounts have been released to the NGOs of these Members for utilization for the benefits of the persons affected by Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. The persons with these disabilities are the real beneficiaries of the grants and neither the Members of the Board of the Trust nor the functionaries of the concerned NGOs. A such the grants released to these NGOs may not be treated as grants released in violation of Section 4(5) of the Act. Meantime the said scheme (ERI) has been discontinued with effect from 1.4.2005.

Further, as earlier stated that u/s 3(4)(b) of the Act persons associated with the NGOs are to be appointed as Members of the Board of the Trust. Appointment of the eminent persons associated with NGOs should not debar their NGOs to receive grant from the Trust for utilization for the benefits of the target group of persons with disabilities. If such a ban is imposed and release of grants to such NGOs is discontinued during the tenure of the functionaries of the NGOs as Members of the Board of the Trust, the NGOs will not be in a position to render services to the target group thereby the real beneficiaries i.e. the person with disabilities will be deprived of the benefits of the Schemes of the Trust. Hence, release of grants under the Scheme of the National Trust to the NGOs during the tenure of their functionaries as Members of the Board of the Trust may not be treated as violation of Section 4(5) of the National Trust Act.

26. The response as regards the release of Rs. 8.49 lakhs is identical to the comments offered by the National Trust.

27. Importantly, by a letter dated 28th November 2008 addressed by the MSJE to the Director General of Audit, it was pointed out that "As such, there is no evidence of any special effort put in or unusual interest shown in the process of getting the ERI projects of the said two NGOs approved or extended." It was also observed as under:

(vi) There is no report that NGOs had misutilized the funds, on the basis of which, recovery of the grants-in-aid in question could have been made. In this regard, copies of the relevant utilisation certification and audited statement of accounts in respect of the released grants-in-aid in question together with the list of beneficiaries concerned are enclosed for ready reference.

28. This Court first examines the purport of Sections 4(4) and 4(5) of the Trust Act which read as under:

4(4) Before appointing any person as the Chairperson or a Member, the Central Government shall satisfy itself and that the person does not and will not, have any such financial or other interest as is likely to affect prejudicially his function as such member.

4(5) No member of the Board shall be beneficiary of the Trust during the period such member holds office.

29. The object of the above provisions is to ensure that there is no conflict of interest in a member of the Board functioning as such and the relationship such member may have with the National Trust independent of that. The second object is that no member of the Board should be able to use that position to gain any favours, after becoming such member. In the context of the present case, a member of the organisation of such member should not be given any new grants or renewal of grants already made. Obviously the bar under Sections 4(4) and 4(5) would be attracted only upon a person becoming a member. It cannot apply retrospectively to affect grants already made to an organisation to its representative becoming a member of the Board.

30. Turning to the facts on hand, the above narration shows that both the National Trust as well as the MSJE acknowledged that there has been absolutely no misutilisation of the funds released to the Petitioner. The second fact that emerges is that although the orders are termed ?sanction orders? they were in fact orders for release and disbursement of the money that had already been granted to the Petitioner earlier to the induction of Smt. Saswati Singh on the Board of the National Trust. The opinion of the learned ASG obtained earlier to the induction of Smt. Singh on the Board of the National Trust, and which was acted upon by the National Trust made it clear that Section 4(5) of the National Trust Act would not come in the way of the release of monies pursuant to a grant already made to an organisation, even after a representative of that organisation is inducted in the Board of the National Trust. It was only after being supported by legal opinion that the induction of Smt. Singh in the Board of the National Trust took place. She cannot therefore be visited with adverse consequences for no fault of hers. The narration of facts also shows that there has been no single instance of Smt. Saswati Singh trying to misuse her position as Member of the Board of the National Trust to get any new grants released in favour of the Petitioner. The monies released to the Petitioner were consequent to the grant already made to the Petitioner, i.e., prior to Smt. Saswati Singh becoming a member of the Board.

31. In the above circumstances, this Court is of the view that that National Trust was not justified in seeking to recover from the Petitioner the entire sum of Rs. 27,89,342/- being the total money released to the Petitioner as a result of grant made to it by the National Trust. Once it was clear that the entire monies were utilised for the purposes for which they were released there was no justification in seeking refund. This Court is of the view that there is no violation of Section 4(5) of the National Trust Act. The release of the monies to the Petitioner,

pursuant to a grant already made in 2001, was not in violation of any provision of the National Trust Act.

32. Consequently, the demand raised by the letter dated 18th July 2006 by the National Trust is hereby quashed.

33. The debarment of the Petitioner from being eligible for any grant of the National Trust was a result of the erroneous stand of the Respondents that the release of the monies to the Petitioner, after Smt. Saswati Singh was inducted into the Board of the National Trust, was contrary to the provisions of the National Trust Act. This Court has held that this stand of the Respondents was not sustainable in law. Consequently, the decision of Respondent No. 1, the National Trust, to debar the Petitioner from receiving further grants, as evidenced by its notification dated 3rd September 2008, has also to be held to be unsustainable in law. The debarment of the Petitioner from receiving grants shall be lifted forthwith by Respondent No. 1 the National Trust.

34. The writ petition is allowed in the above terms with costs of Rs. 10,000/- which will be paid in equal halves by Respondent Nos. 1 and 2 respectively to the Petitioner within a period of four weeks from today.