

(2008) 04 BOM CK 0041

In the Bombay High Court

Case No : Appeal No"s. 368 and 740 of 2007 and 23 of 2008 in Miscellaneous
Petition No. 17 of 2006

Khojeste Mistree and Others

APPELLANT

Vs

Minoo Rustomji Shroff and Others

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 50A(3)

Citation : (2008) 5 MhLj 783 : (2008) 5 MhLj 330

Hon'ble Judges : S. Radhakrishnan, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : V.V. Tulzapurkar and S. Jagthiani, Patwardhan, instructed by Solemn and Co., R.N. Sethana and Vedpathak, instructed by Maneksha Sethana, Sarang V. Kotwal and Sunil R. More, for the Appellant; I.M. Chagla and D.J. Khambata, Shyam Mehta, S.V. Doijode, P.A. Kadi and Falguni Thakkar, instructed by Doijode and Associate, P.G. Lad, AGP, P.D. Bhamgam, R.N. Sethana and Vedpathak, instructed by Maneksha Sethana, Rustom Sheriar Tirandaz, P.R. Patel, Z.B. Johangid, S.V. Kotwal, Sunil More and P.C. Amraliwala, V.V. Tulzapurkar, S. Jagthiani and Patwardhan, instructed by Solemn and Co., for the Respondent

Final Decision : Dismissed

Judgement

S. Radhakrishnan, J.—In all the above three Appeals, the Appellants are challenging the order dated 5th April, 2007 passed by the learned single Judge in Misc. Petition No. 17 of 2006. We have heard all the learned Counsel as well as parties in person mentioned hereinabove. The brief facts pertaining to Misc. Petition No. 17 of 2006 are, that the petitioners at the time of filing of the said petition were six trustees for the time being of the funds and immovable properties of the Parsee Panchayat of Bombay, hereinafter referred to as the "BPP" Scheme.

2. The petitioners in Miscellaneous Petition No. 17 of 2006 are the six trustees for the time being of the Funds and Immovable Properties of the Parsee

Panchayat of Bombay (hereinafter referred to as the BPP). The Scheme for the Election of Trustees of the BPP (hereinafter referred to as the Scheme) was originally sanctioned by this Court on 18-6-1910 in Suit No. 689 of 1906 and thereafter amended from time to time by this Court. The necessity for filing this petition had arisen in the following circumstances:

a) The petition to carry out the last amendments to the Scheme was filed on 27-1-2000. During this period, the petitioners allege that the Parsee community has developed a very strong consensus that the trustees should be elected by a system of universal adult franchise. The same has met with the approval of the petitioners by virtue of their unanimous resolution dated 4-10-2006.

b) Under the present scheme, the trustees are elected by an Anjuman committee consisting of both elected and Donor members. The elected members of this committee are elected by the Parsee community in general. The electorate numbers approximately 18,000. There are generally 6,000-7000 voters as well as nominated candidates, out of which a total of 3,000 are elected as elected members of the Anjuman Committee. The petitioners contend that this situation is anomalous.

c) Since 2006, differences arose among the petitioners inter se which led to petitioners No. 1,4,5 and 6 submitting their letters of resignation dated 20-6-2006 and 19-6-2006 respectively. However, before the letters were accepted, the matter was resolved through the intervention of community leaders and the four trustees decided to continue as trustees. Chamber Summons No. 899 of 2006 was taken out by some community members in Miscellaneous Election Petition No. 4 of 2000 praying for a declaration that these four trustees can no longer continue in office. This was dismissed by this Court by its order dated 21-8-2006.

d) In the earlier Miscellaneous Election Petition No. 4 of 2000, an amendment was sought by the then trustees to provide that no person who has been a trustee for a total three terms or for the total number of 21 years shall be eligible for re-election. However, when the Scheme was sanctioned by this Hon'ble Court by its order dated 1-4-2005, the wording of the order seems to suggest that even as a trustee whose term of office has not expired must resign prematurely as soon as he completed 21 years in office. The term of petitioner No. 1 will expire on 2-8-2007, if one considers the completion of 21 years in office. However, his third term would normally have expired only on 2-8-2010 since his first term under the Scheme was for 10 years. The petitioners allege that a large proportion of the Parsee community profess confidence in petitioner No. 1 and wish him to continue in office up to August, 2010.

e) Clause 70 of the Scheme authorises the Trustees to, by a majority, at any time, submit to a Judge of the High Court in Chambers for sanction of this Scheme provided the Trustees give a four clear days notice in writing to the Charity Commissioner of any application intended to be made by the Trustees

under this rule, setting forth in full the proposals to which the sanction of the Court is intended to be asked and the Charity Commissioner and the Charity Commissioner is entitled to appear and be heard on any such application. The petitioner trustees have approached this Hon"ble Court pursuant to the above clause.

f) Further Clause 74 of the Scheme makes it mandatory for the Trustees to publish once the notice for every such application mentioned in Rule 73, and the day fixed for hearing thereof together with brief particulars of the proposed alterations and additions, in a Gujarati daily newspaper published in Mumbai, at least 14 days before the day fixed for hearing. The petitioners had published the said notice in the "Mumbai Samachar" as well as the "Jam-e-Jamshed".

g) The last of amendments to the Scheme were sanctioned on 1-4-2005 (formally on 21-8-2006).

h) Taking into consideration the view and suggestions received from the members of the Parsee community, the petitioners held further discussions in respect of the proposed amendments and have reached a unanimous opinion that the proposed changes ought to be made to the scheme. The gist of these proposed changes are set out hereunder:

i) The Register of the Elected Members of the Anjuman Committee shall be abolished. In its place a General Register consisting of Parsee Zoroastrians residing in Mumbai who are registered atleast 60 days before the date of election of a Trustee shall be eligible to vote, and each such person shall have one vote at each Trustee election. Every person who is registered on the Donor Register atleast 60 days before the date of election of a trustee is eligible to vote and each Donor shall have two votes at the election of a Trustee.

j) Clause 13.1 (which has been dealt with in Paragraph iv) dealing with the maximum number of terms that a Trustee can serve in office for, shall be clarified and petitioner No. 1 , Mr. Minoo Shroff, shall be entitled to continue in office for his original term expiring on 2-8-2010.

k) There shall be a Vice-chairman who shall preside at the meeting on the Trustees, in the absence of the Chairman. At a meeting held on 26-9-2006, the petitioner No. 3, Mr. Dadi Engineer has been designated as the first Vice-Chairman and whenever petitioner No. 1 ceases to be Chairman, petitioner No. 3 shall be appointed as chairman. However, this arrangement is only for the present situation and not to be treated a precedent.

l) Presently, the trustee senior most in office is designated as a Chairman. This practice shall be continued, however, if all the trustees other than the senior most trustee resolve to displace the seniority principle for that particular appointment, the Chairman shall then be elected by the Board of Trustees by majority vote.

m) A trustee seeking to resign his office shall address his letter of resignation to

the Chairman who shall convene a meeting to consider it. Such resignation shall become effective from the date upon which a change report has been filed to this effect under the provisions of Section 22 of the Bombay Public Trusts Act, 1950.

n) The trustees submit that after this Court sanctions the proposed amendments, they shall arrange, as soon as it is practicable, to hold trustee elections for all seven seats, with the understanding that the present six trustees shall cease to hold office from the date on which the seven trustees are elected to office.

3. The learned single Judge by the aforesaid judgment and order dated 5th April, 2007 had sanctioned the changes proposed in the above scheme and also fixed the age of eligible member to be admitted as a member as 18 years instead of 21 years. This reduction in age was accepted by the petitioners in the said petition, by their affidavit dated 4th April, 2007.

4. In all the above three Appeals, broadly, the following challenges were made. Firstly, the contention was, that this Court has no jurisdiction to modify or sanction the scheme and the said power was vested only with the Charity Commissioner under the provisions of Bombay Public Trusts Act, 1950. In this context, it is necessary to note that this very issue that this Court has no jurisdiction to sanction the scheme and only the Charity Commissioner has jurisdiction to decide the same was raised before the Learned Single Judge of this Court in Misc. Petition No. 270 of 1969 and by an unreported judgment in the said petition dated 2nd April, 1970, the learned Single Judge had considered the issue in depth and referred to the judgment of the Hon'ble Supreme Court in Raje Anandrao Vs. Shamrao and Others, and categorically held that this Court has jurisdiction to entertain the petition and the Charity Commissioner did not have jurisdiction in that behalf. It is also important to note that the same issue that this Court has no jurisdiction to sanction the scheme was again raised before the learned Single Judge in Misc. Petition No. 4 of 2000 which was decided by the learned single Judge on 1st April, 2005 which is reported in Mr. Minoo Rustomji Shroff and Others Vs. Charity Commissioner and Others, , wherein also the learned Single Judge relying on the aforesaid judgment of the Hon'ble Supreme Court in the case of Raje Anandrao (supra) holding that this Court has jurisdiction to entertain such a petition for sanction of a scheme.

5. Even apparent from plain reading of Section 50-A(3) of the Bombay Public Trust Act a Charity Commissioner can modify the scheme in respect of the trust which has been framed by him. That is to say any scheme framed by this Court in a suit will be outside the purview of powers of the Charity Commissioner u/s 50-A(3) of the Act. Accordingly, this Court has jurisdiction to frame the scheme and sanction the scheme. In the light of the above, the above objection has no substance and the same stands rejected.

6. Secondly, the objection raised was that the petition filed by the petitioners had no locus-standi to file the above Misc. Petition No. 17 of 2006 since four of the petitioners had already resigned and as such they have no locus standi to do so.

In this context, we have considered the issue of the validity of the said resignations and we have by our judgment of even date in Appeal No. 167 of 2007 held that the aforesaid resignations of the said four petitioners were not at all effective in law in the sense, they were no valid resignations in the eye of law. In view thereof, the petitioners do have locus-standi to file the above petitions for sanction of Scheme. Even the said objection stands rejected.

7. Thirdly, the challenge was with regard to the proposed amendment, whereby the petitioners are seeking to displace the elected Anjuman Committee, which action is alleged to be mala fide action. However, on a perusal of the entire scheme as proposed, it is apparent that there is no mala fides at all is involved and in fact the proposed amendment is in general interest and would in fact further the interest of the trust. In this context, it is necessary to note that the learned Single Judge in an earlier order dated 1st April, 2005 in Misc. Petition No, 4 of 2000 had strongly suggested that there has to be Universal Adult Franchise. Having regard to the aforesaid suggestion, it appears that since the entire community has accepted that it is high time that every adult is given an opportunity to select the trustee and the said power should not be vested only in a limited body as that of Anjuman Committee. Therefore, there is absolutely nothing wrong in the new proposal and the same is in general interest and in fact would further interest of the trustees and incorporate the principle of Universal Adult Franchise of direct election of trustees and the Anjuman Committee has to be dispensed with and there is absolutely nothing mala fide in the same. Even with the said objection we are not satisfied, the same also stands rejected.

8. Fourthly, the objection was raised that the donor member should not be allowed to have two votes and with regard to the same it should be noted that this very issue was raised before the learned Single Judge in Misc. Petition No. 4 of 2000 and the learned Single Judge by his judgment and order dated 1st April, 2005 has categorically accepted that the donor member can have two votes and there is nothing obnoxious about it. This order of the learned single Judge dated 1st April, 2005 in Misc. Petition No. 4 of 2000 has not been challenged. Under these circumstances, the above challenge also does not hold water. Hence, the same stands rejected.

9. Fifthly, the challenge with regard to the suggestion of the Universal Adult Franchise. On this issue, it is very clear to note that the petitioners being the Trustees had strongly after consultation of the entire Parsee Community had accepted the suggestion made by this Court in the earlier order dated 1st April, 2005 in Misc. Petition No. 4 of 2000. In fact, for a proper election of trustees, ideal would be Universal Adult Franchise, which has been accepted and proposed as an amendment in the said scheme. Hence, we do not find anything wrong in providing such Universal Adult Franchise for the purpose of direct election of trustees.

10. The sixth challenge is that the petitioner No. 1 ought to be allowed to continue upto August, 2010, when his actual term expires. This was rejected by

the learned Single Judge holding that even the petitioner No. 1 will be bound by the newly sanctioned scheme and he will not be entitled to continue till August, 2010. Against the said order, the petitioner No. 1 has not challenged the same. Hence, the challenge also stands rejected.

11. As far as the amendment to Rule 52 with regard to resignation of trustees is concerned, the learned Single Judge has sanctioned the same in the following manner:

In the sense that the modification in Rule 52 will have to be re-drafted to the effect that if a Trustee decides to resign, he may send his resignation to the Chairman. The Chairman, in turn will then convene an urgent meeting of all the trustees and table the said resignation before the Board of Trustees. It is only after the Board accepts the resignation, the same has to take effect and not at an earlier point of time. In other words, mere tabling of resignation in the meeting will not be sufficient, the resignation will have to be accepted by the members of the Board of Trustees, so as to make it effective.

13. The learned Single Judge has recorded in paragraph 25 of his order that the learned Counsel for the petitioner fairly accepted that the change can be made in the proposed Rule 52. Under these circumstances, we do not find anything wrong in the said proposed amendment to Rule 52, and the said proposal is a fair and just one.

14. Under the aforesaid facts and circumstances of the case, we do not find any ground made out for interfering with the judgment and order of the learned Single Judge in sanctioning the above modifications in the proposed scheme. Hence all the above Appeals stand dismissed, however with no order as to costs. We make it clear that the election process for the post of all the seven trustees should commence immediately and the same should be completed expeditiously. To ensure that every eligible Parsee member above the age of 18 years, whose name is entered in the General Register or Donor Register is entitled to take part in the aforesaid Universal Adult Franchise to elect the trustees. We direct that the enrolling of new members and electoral roll shall be completed within a period of two months from today and the entire exercise of election shall be completed within a period of four months thereafter, so that there is a proper elected Board of Trustees to take charge. With the above observations all the aforesaid three Appeals stand dismissed, however, with no order as to costs.