
(2009) 09 BOM CK 0038

In the Bombay High Court

Case No : Second Appeal No's. 99 and 100 of 2009

Madhukar Narayanrao Agrulwar and Another

APPELLANT

Vs

Shriram Zinguji Bhalavi and Others

RESPONDENT

Date of Decision : 30-09-2009

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 70, 72(1)

Citation : (2010) 5 BomCR 409

Hon'ble Judges : Pangarkar C.L., J

Bench : Single Bench

Advocate : R.L. Khapre, for the Appellant; J.T. Gilda and Amol Deshpande, for the Respondent

Judgement

Pangarkar C.L., J.—These two appeals can be disposed of by a common judgment since parties to the appeal are identical and they relate to the change reports in respect of the same Society/Trust.

2. The facts giving rise to the appeals are as follows:

There is a Society known as Patanbori Education Society, Distt. Yavatmal. It is also registered as a Public Trust. The said society was constituted in the year 1963. The elections of the General body of the said Society and the Executive Committee were being held from time to time. An Executive Committee was elected by election dated 4/7/2004. The tenure of the said Executive Committee is of three years. Therefore, the elections, in fact, were due in the month of July, 2007. However, it is alleged that Respondent No. 1, who claims to be the Secretary of the Society, held meeting on 18/2/2007 of the Executive Committee and decided to hold a General Body Meeting on 25/3/2007. It is alleged that accordingly, elections were held on 25/3/2007 and the new body came to be elected. Respondent No. 1 was once again elected as Secretary of the said Society. He filed change report No. 86 of 2007 informing that elections were held and the new body has been elected. A notice of this was issued. The present appellants object to the change report. According to them, Respondent No. 1

Shriram Bhalavi was, in fact, not taking interest in the function of the society and the school and therefore, his powers to function as a Secretary were withdrawn. It was, therefore, alleged that he had no right to call the meeting dated 18/2/2007 or 25/3/2007. It is contended that, therefore, both the meetings were in fact invalid. It was also further contended that no meeting of the Executive Committee was held on 18/2/2007 as on that date scholarship examinations were being held in the school premises where the said meeting was supposed to be held. They submit that in fact no meeting whatsoever was held on 18/2/2007. It is further their contention that they had informed Respondent No. 1 that he had no authority to requisition such meeting since his powers have been withdrawn and he was acting against the interest of the Society.

3. The learned Assistant Charity Commissioner, who held enquiry found that notices were served on the present appellants and other office bearers of the Executive Committee and they had chosen not to participate in the said meeting. The meeting was valid and he, therefore, accepted the change report. The Joint Charity Commissioner as well as the District Judge confirmed the order passed by the Assistant Charity Commissioner. Hence, Second Appeal No. 99 of 2009 is preferred.

4. The other appeal arises out of change report filed by the present appellants. They contended that meeting of the Managing Committee was held on 22/3/2007 and it was decided to hold General Body Meeting on 22/4/2007. It is their contention that in meeting dated 22/4/2007, a new body was elected and therefore, the present appellant Madhukar filed a charge Report No. 122 of 2007. The Assistant Charity Commissioner after holding an enquiry found that the meeting was invalid because of the fact that the notices in respect of the meeting were issued by the Joint Secretary and not by the Secretary. According to him, it was only Secretary who could have legally issued the notices. Further, it was found that the new members, who were inducted were illegally inducted and they have no right to cast a vote. He, therefore, rejected the change report and hence reporting trustee has preferred this appeal. His appeals to the Joint Charity Commissioner and District Judge also came to be rejected. Hence, this Second Appeal No. 100 of 2009.

5. Appeal No. 99 of 2009 was admitted on the following substantial question of law by Joshi, J.

(a) Did the Appellate Court act u/s 72(1) of the Bombay Public Trusts Act legally in upholding the judgments impugned before it, without recording a finding as to how the meeting held on 18th March, 2007 on the basis of notice issued by Secretary without authorization from the Chairman or the Managing Committee is legal and proper?

(b) Is the judgment of learned District Judge correct in absence of discussion, reference and effect of powers of:

(i) Managing Committee to convene the meeting under Clause 13(5) of the

Constitution of the Society?

(ii) Secretary in holding a meeting in exercise of powers of Secretary to convene the meeting of General Body in own Authority in absence of empowerment under Clause 17 of the Constitution of Society?

And Appeal No. 100 of 2009 was admitted on the following substantial question of law.

Is the judgment passed by Appellate Court acting u/s 72(1) of the Bombay Public Trusts Act correct and proper being based on judgment which was rendered in Enquiry No. 86/2007 in disregard to Rules 13(5) and 17 of the Constitution of the Society?

6. I have heard the learned Counsel for the appellants as well as respondents.

7. The Change Report No. 86 of 2007 is filed in pursuance to resolution passed in General Body Meeting dated 25/3/2007. This meeting dated 25/3/2007 was convened in pursuance to the resolution passed by the Executive Committee on 18/2/2007. It would be appropriate to mention here that the Executive Committee consists of eleven members as can be seen from the constitution as well as application in Enquiry No. 86 of 2007. Following were the members of the Executive Committee before the Change Report No. 86 of 2007 was filed.

8. Exh. 40 is the notice dated 11/2/2007 issued by Respondent No. 1 for calling meeting of Executive Committee on 18/2/2007. The said notice is issued by Respondent No. 1 as a Secretary under his signature. From the reply filed by the appellants, in Enquiry No. 86 of 2007 (Exh. 13), it is clear that notice of this meeting was served on the appellants. The appellants had also sent a reply through Advocate Jawade (Exh. 51) to the notice calling Executive Body Meeting. In this reply, the appellants say that Respondent No. 1 has no authority to call the meeting since powers as a Secretary were withdrawn by resolution dated 12/7/2005. I will, therefore, first deal with this objection. Assuming that resolution withdrawing power was passed, the question would be - Does it have any legal effect?. The answer necessarily has to be in the negative. If Respondent No. 1 is appointed as a Secretary, he is entitled to function as a Secretary until he is actually removed from that post. There is no concept such as withdrawal of power. The person holding such post himself has to be removed. This is because, if the powers are so withdrawn, the question that arises is - Who is invested to those powers of Secretary?. The Society cannot be run without Secretary. Therefore, a person, who is appointed as a Secretary, continues to work as a Secretary until he is actually removed by a resolution passed by the Society and a change to that effect is reported to the Charity Commissioner and is accepted by him. Respondent No. 1, therefore, was certainly a Secretary of Society on 11/2/2007 when he issued the notice. The finding of the courts below to this effect cannot be faulted with.

9. This takes me to consider if the Executive Committee meeting called on

18/2/2007 was at all held and was it lawful. We have seen that there is no manner of doubt that notices were served on more than seven to eight members out of eleven in respect of meeting dated 18/2/2007. Bye laws of the Society make a provision with regard to the Managing Committee and its meeting in form of Clause No. 15. It would be necessary to reproduce here Clause No. 15.

15. Managing Committee:

The Managing Committee shall consist of eleven members (President, Two Vice-presidents, Secretary and Joint Secretary, shall be ex-officer members of the managing committee. The remaining members of the managing committee shall be the persons amongst the members of the Society vide Rule 6.

(a) The first managing body will consist of eleven members.

(b) The managing body shall be elected at the end of every three years. The same members being eligible for re-election. The first body will last till 31/3/1966.

(c) A vacancy occurring in the managing committee shall be filled by the election of the members of the Society in the General Meeting.

The Meetings of the Managing Committee.

(a) The meetings of the managing committee shall be convened whenever necessary.

(b) The meeting of the managing committee may be convened by the Secretary or the President. They on receiving requisition duly signed by at least 1/4th members (fraction to be omitted) on the roll of the managing committee.

(c) Four members of the Managing Committee shall form a quorum. No quorum is required for an adjourned meeting.

(d) President or in his absence the Vice President and in their absence any member elected as a President from amongst the members present shall preside over the meeting of the managing committee.

(e) All questions before the managing committee shall be decided by majority of votes. In case of equality of votes the President shall have a casting vote.

10. Therefore, it is clear that a Secretary or President can convene a meeting of Executive upon requisition of 1/4th members of the said Committee. If the affidavit of Respondent No. 1 Shriram at Exh. 14 is seen, it would be clear that he does not say that he had received any requisition for holding such meeting. The notice (Exh. 40) does not disclose that any requisition was received. Although notice says that it is decided to call meeting on 18/2/2007, no copy of any such decision is filed on record. In the circumstances, it is not possible to hold that there was any requisition to call the meeting of the Executive Committee. On the other hand, seven members of the Executive Committee had categorically informed that Respondent No. 1 had no right to call the meeting.

Inspite of such intimation by members having more than two-thirds majority having informed that meeting should not be held, yet Respondent No. 1 proceeded to hold the meeting. Since there is no proof of requisition by one-fourth of the members of the Executive Committee, the meeting dated 18/2/2007 itself was illegal.

11. It was contended that on 18/2/2007, no meeting was held at all and the proceedings is false. The evidence of Respondent No. 1 Shriram Bhalavi itself shows that on 18/2/2007 scholarship examinations were being held in the school premises and no class room was vacant. In the context, the evidence of the Headmaster who is a servant of the society is material. Shri Prabhakar Dharme is examined at Exh. 55. He states that on that day there was a scholarship examination and the class rooms were occupied for examination and office was occupied by the teachers. He also states that no meeting was held and he had drawn panchanama to that effect upon request of appellant Ramesh and others. This panchanama is at (Exh. 59). The panchas were the employees of the school. The panchanama shows that besides appellants no other member was present and no meeting was held in the school premises. One of the panchas - Ramrao is also examined as a witness. He too corroborates the contents of the panchanama and version of the headmaster. There is nothing in their cross-examination to discredit them. This evidence shows that no meeting was actually held on 18/2/2007 in the premises of the school.

12. I need not consider the question of validity of meeting dated 25/3/2007 because I find that the meeting in which the resolution to hold meeting on 25/3/2007 was passed itself was not held and if at all held it was illegal. The second reason is - there is a disproof of a meeting being held at the school premises on 18/2/2007. Consequently, there was no legal decision of the Executive Committee to convene a meeting dated 25/3/2007. The meeting dated 25/3/2007 is therefore, illegal. Orders passed by the courts below in respect of change Report No. 86 of 2007 therefore need to set aside and change report stands rejected.

13. This takes me to consider whether the Change Report No. 107 of 2007 was rightly rejected by the Court below. The main ground upon which change report is rejected is that the meetings dated 22/3/2007 and 22/4/2007 were called by notice issued by the Joint Secretary. The courts below have found that it is the Secretary alone who can issue notice of meeting and not the Joint Secretary. Rule 15 clearly indicates that the meeting can be convened either by the Secretary or the President. In this case, the meeting having been convened under the signature of the Joint Secretary could not be said to be valid. I have gone through the proceeding book of 22/3/2007. In this meeting a resolution was passed to hold meeting on 22/4/2007 of the General Body. If this proceeding book of 22/3/2007 is seen, it would be clear that it too does not speak of meeting having been called under the requisition of 1/4th members. No meeting of Executive Committee in fact, can be convened by the Secretary or by the

resident without requisition as can be seen from Clause 15 of the bye-laws. Further, the learned Assistant Charity Commissioner has observed that 18 new members were not lawfully made the members of the society. He finds that there ought to be some advertisement inviting applications from public and those applications ought to be placed before the Executive Committee for approval. He also finds that no documentary evidence about applications and substitution was placed before him and therefore, according to him, there was no proper enrollment of eighteen persons as members. Mr. Khapre, learned Counsel appearing for the appellants, submits that copies of the application and subscriptions receipts were placed before the Joint Charity Commissioner under an application Exh. 6 in the appeal but Joint Charity Commissioner did not pass any order on the same. He submits that the appellants cannot be punished if Court failed to pass the order. He submits that therefore, those documents ought to be considered by the Court. It seems that vide Exh. 6 about 40 documents i.e. copies of the applications and subscription receipts were filed and no order was actually passed on that application. The learned Joint Charity Commissioner should have passed an order on it since Section 70 of the Public Trust Act empowers him to deal with such situations. It seems from the resolution Exh. 50 dated 9/9/2006 [filed in Appeal No. 53 of 2008 before Joint Charity Commissioner] that 18 new members were admitted by the executive Committee. These 18 new members were admitted by the Executive Committee which came into existence on 4/7/2004 which could legitimately work till 31/3/2007. It is not in dispute at all, that this Executive Committee which came into existence on 4/7/2004 could continue up to 31/3/2007 and was duly elected Executive Committee. Thus, the decision to admit these 18 new members was taken by the Executive Committee which was a legitimate committee as on 9/9/2006. I would, therefore, say that 18 members were validly enrolled.

14. In this case meeting having been convened under signature of Joint Secretary could not be said to be valid one. However, since it appears that requisition of meetings dated 22/3/2007 and 22/4/2007 was not proper these meetings could be treated as illegal. The change report upon resolution in such meetings was rightly rejected.

15. Before parting with this appeal, it must be observed that Respondent No. 1 Shriram Bhalavi has not been taking interest in the Society/Trust. His conduct appears to be far from fair. The proceeding book Article B shows that the Secretary did not care to call any meeting from 17/6/2005 till 25/3/2007. There is no explanation from him why he did not call such meeting and why he felt it necessary to call the meeting on 25/3/2007 all of a sudden and that too when there was an opposition to his calling meeting by more than 2/3rd of the Executive Committee members. It appears that because Respondent No. 1 did not take interest, the meetings were held in his absence, as can be seen from the proceedings book (Article D) filed by the appellants before the Joint Charity Commissioner. It contains proceedings of the meeting from 12/7/2005 onwards till 24/4/2007. In none of these meetings Respondent No. 1 was present. From

proceedings book (Article D) it is also clear that until meeting dated 17/12/2006 even respondent Vilas Rajulwar attended all meetings convened by the present appellants. It is only on 18/2/2007 that he seems to have joined hand with Respondent No. 1 Shriram Bhalavi. It is thus clear that even when Shriram Bhalavi was absent from 2005, Vilas Rajulwar was attending all meetings and endorsing all the decisions. He himself was party to the decision of enrolling eighteen new members on 9/9/2006. One wonders how he now opposes the present appellants and say that the eighteen new members were not properly enrolled. In fact, in every meeting from 2005 onwards all members of the Executive except Respondent No. 1 Shriram Bhalavi and Respondent No. 17 Shrimantkumar Gedam, were present. These two were consistently absent. It seems that because there was only one member with Respondent No. 1 that he did not dare to call any meeting till 18/2/2007. It is only when Vilas Rajulwar joined hand and they became 1/4th in number that Respondent No. 1 decided to hold meeting in breach of the democratic tradition. In fact, the business of a trust needs to be run in a democratic way. The appellants' group has eight members on his side while Respondent No. 1's group has only three. Yet he wants to hold meeting and grab the power in an undemocratic way. Respondent No. 1's conduct in informing the police of meeting dated 25/3/2007 also speaks of his use of strong arm tactics. This I have observed since it has become necessary to hold fresh elections since both change reports stand rejected. In the circumstances, I find that fresh elections of the said trust need to be held.

16. Appeal No. 99 of 2009 is allowed and the orders passed by the courts below are set aside. Appeal No. 100 of 2009 is dismissed and the orders of courts below are confirmed. The Assistant Charity Commissioner is directed to see that fresh elections of the Society are held within period of two month. The original forty one members and new eighteen members would be eligible to vote in the said election.

The Assistant Charity Commissioner may appoint a responsible officer from his office to act as Election Officer. The election should be held within period of two months positively. In the meanwhile, the appellants' body which is duly elected in the year 2004 shall act as interim body and shall run the Trust and School in consultation with the Joint Charity Commissioner, Amravati. However, no major policy decision or financial decision be taken until the elections are held and new body takes over. No order as to costs.

17. The learned Counsel for the respondent prays for withholding the operation of the order of this Court for a period of four weeks. Operation of the order of this Court is stayed for a period of four weeks.