

(1988) 02 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 2348 of 1984

Pandurang Hari Kulkarni (Dr.) and Others

APPELLANT

Vs

Manohar Gopal Vedalkar and Another

RESPONDENT

Date of Decision : 23-02-1988

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 47, 47(1), 47(2)
Poona University Act, 1974 — Section 42F

Citation : (1988) 1 BomCR 648

Hon'ble Judges : S.N. Variava, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : R.S. Bhonsale and P.S. Patankar, for the Appellant; Y.S. Jahagirdar and V.A. Gangal A.G.P., for the Respondent

Judgement

C.S. Dharmadhikari, J.—The litigation involved in this writ petition has a chequered history. The petitioners Rashtriya Shikshan Mandal, Pune run the Tilak Ayurved Mahavidyalaya, which is affiliated to the Pune University. The respondent Manohar Gopal Wadalkar was initially appointed as a Demonstrator in the said college in the year 1945. Then he was promoted as a Professor in the year 1955 and from 15th April, 1972 he was working as a principal. From 14th December, 1975 one Mr. Prabhugaonkar came to be appointed as the Principal. Thereafter respondent Wadalkar continued in service as a Professor and head of the department till he completed the age of 58 years on 25th March, 1980. It was his case that in view of the rules of the University, he was entitled to continue in service till he attains the age of 60 years. However, he came to be retired by an order dated 25th of March, 1980 on his attaining the age of 58 years. It was the case of the petitioners that since the salary of the respondent-Vadalkar was admissible as per the grant in aid scheme of the Government, he stood retired on completing the age of 58 years as per the provisions of the grant in aid and the rules of the University did not apply to his case. This order of retirement was challenged by the respondent---Vadalkar before the Tribunal constituted under the University Act. The Tribunal by its order dated 27th August,

1980, allowed the appeal filed by the respondent and directed his reinstatement. The Society filed a writ petition against the said order, which came to be dismissed. The society also filed a SLP before the Supreme Court which was also dismissed. It was the case of the respondent---Vadalkar that at no time the order passed by the Tribunal was stayed either by this Court or by the Supreme Court of India and, therefore, the society was obliged to comply with the said order and take him on duty. Since the order of Tribunal was not obeyed the respondent---Vadalkar filed a Criminal Complaint before the Additional Chief Judicial Magistrate, Pune u/s 42-F of the Poona University Act, 1974. The Additional Chief Judicial Magistrate, Pune, by his judgment dated 29th April, 1983 convicted the society as well as its Trustees for an offence punishable u/s 42-F(1)(a) of the Poona University Act and sentenced them to pay a fine of Rs. 100/- or in default to suffer S.I. for 10 days. Against the said order a revision was filed before the Additional Sessions Judge, Pune which also came to be dismissed on 10th of July, 1982. Further the Criminal Writ Petition filed before this Court was also dismissed on 13th August, 1984. In the meanwhile, Respondent No. 1 filed an application before the Joint Charity Commissioner, Pune u/s 47(1)(i)(2) of the Bombay Public Trusts Act, 1950 for removal of the trustees on the ground that the petitioners in this writ petition were convicted for an offence involving moral turpitude. An application for interim order was also filed by the opponent---Vadalkar before the Joint Charity Commissioner vide his order dated 6th June, 1984 passed an order temporarily suspending the petitioners from the posts of trustees till the disposal of the application, which the Court directed, will be disposed of after the final decision in the Criminal Revision No. 211 of 1983 pending in the Sessions Court. As already observed said revision petition came to be dismissed on 10th July, 1984 and the writ petition filed against the said judgement was also dismissed on 13th August, 1984. It is this order of the Joint Charity Commissioner, Pune dated 6th June, 1984 which is challenged in present petition.

2. Shri. Raja S. Bhonsale, learned Counsel appearing for the petitioners contended before us that the Joint Charity Commissioner committed an error apparent on the face of record in coming to the conclusion that the conviction u/s 42-F of the Poona University Act, amounts to a conviction for an offence involving moral turpitude. According to the learned Counsel the said offence is technical in nature and does not involve any moral turpitude. It was also contended by him that if the action taken by the society, directing the retirement of the respondent---Vadalkar, is considered with the attending circumstances i.e. that the college was bound by the grant in aid rules of the Government, which lays down that the employee shall stand superannuated on completion of age of 58 years, then it cannot be said that the society or the trustees acted either mala fide or with the ulterior motives. The salary payable to the respondent---Vadalkar has been paid by the Government under grant in aid scheme. Therefore, the society felt that it was bound by the terms and conditions of the grant in aid Code. Therefore, it acted bona fide in passing the order of retirement. It is no doubt true that the said order was set aside by the University Tribunal and the

writ petition filed against the same also came to be dismissed, so also SLP before Supreme Court. But it cannot be forgotten that all through the society as well its trustees acted bona fide and in the interest of the society. It is also through that in the criminal case filed by the respondent, they came to be convicted but the said conviction cannot be termed as conviction for an offence involving moral turpitude. In support of this contention Shri Bhonsale has placed reliance upon the following decisions:---

(1) AIR 1963 S.C. 1313 ---In the matter of Mr. "P" an Advocate Jaysing Rangarao Raut Vs. Maharashtra State Electricity Board and Another, .

(2) 1981 Bom C R 423, Mohd. Hanif v. Addl. Commissioner and Addl. Regional Director, Aurangabad and others.

(3) 1986 L I C 1976, M/s. Bharath Gold Mines Ltd. Oorgaum v. The Regional Labour Commr. (Central) Bangalore & others.

and the decision of Punjab and Haryana and Allahabad High Courts referred to in the said aforesaid decisions.

3. On the other hand it is contended by Shri. Jahagirdar, learned Counsel appearing for the respondent---Vadalkar that all through the petitioners have acted malafide with the sole intention to harass the respondent---Vadalkar. In this context he has placed reliance upon the earlier writ petition filed before this Court and the orders passed therein. He also contended that the petitioners did not follow the order passed by the University Tribunal. Not only this but also did not obey the direction issued by the Registrar of the University. He then contended that all other staff members are required to serve upto the age of 60 years while respondent alone was removed at the age of 58 years. This action was per se mala fide. At no stage the order passed by the University Tribunal was stayed by any Court of law. Therefore, the petitioners were obliged to obey the orders. During the litigation respondent completed the age of 60 years. Ultimately the Court has to pass orders directing the Government to pay the full salary of the respondent which came to be paid. Therefore, it is contended by the learned Counsel that if the conviction of the petitioners u/s 42-F of the Poona University Act is considered with the attending circumstances, a conclusion is inevitable that the petitioners were convicted for an offence involving moral turpitude.

4. For properly appreciating the controversy raised before us it will be worthwhile if a reference is made to section 42-F of the Poona University Act and section 47(1)(i) and (2) of the Bombay Public Trusts Act, 1950, which read as under:---

"42-F (1) If the management fails without any reasonable excuse to comply with any direction issued by the Tribunal u/s 42D within the period specified in the direction or within such further period as may be allowed by the Tribunal, the management shall on conviction be punished;

(a) for the first offence with fine which may extend to one thousand rupees

provided that, in the absence of special and adequate persons to the contrary to be mentioned in the judgment of the Court the fine shall not be less than Rs. 100.

(b) For the second and the subsequent offences, with fine which may extend to two thousand rupees provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than five hundred rupees.

(2a) Where the management committing an offence under this section is a society every person who at that time the offence was committed was in charge of and was responsible to the society for the conduct of the affairs of the society, as well as the society shall be liable to be proceeded against and punished accordingly provided that nothing contained in this sub-section shall render any person liable to the punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence.

Section 47(1)(i) and (2) of the Bombay Public Trusts Act:---

"47(1)(i)---is convicted of an offence punishable under this Act or an offence involving moral turpitude.

(2) The Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by order appoint any person as a trustee or may also remove or discharge any trustee for any reasons specified in sub-section (1)."

From the bare reading of section 42-F it is quite clear that the conviction under this section is contemplated, if the management fails without any reasonable excuse to comply with any direction issued by the tribunal u/s 42-D of the Poona University Act. Therefore, it will have to be seen as to whether the conviction under this section could be set to be a conviction for an offence involving moral turpitude. The term "moral turpitude" is rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to fellow men or to society in general. Every act punishable in law would not amount to an offence involving moral turpitude. If that had been the intention then there was no necessity to say that a person convicted of an offence involving moral turpitude would be exposed to certain consequences or disqualifications. The legislature would have merely stated that a person who is punished for violation of any law would be exposed to such consequences. The question whether a particular offence involves moral turpitude will depend upon the facts and circumstances of each case. However, in order to come within the ambit of the said phrase, there must be element of baseness, and depravity in the act alleged. The act must be vile or harmful to society in general or contrary to accepted rules or rights and duties between man and man. It cannot be forgotten that sometimes a person may be technically guilty without any intention on his part. As to what is the import of phrase

"moral turpitude", has been considered by the Division Bench of this Court in Jaysing Rangarao Raut Vs. Maharashtra State Electricity Board and Another, , and 1981 Bombay Cases Reporter 423 Mohd. Hanif v. Addl. Commissioner & Addl. Regional Director, Aurangabad & others. The tests which should ordinarily be applied are as follows:---

1) Whether act leading to a conviction was such as could shock the moral conscience of society in general?

2) Whether the motive which lead to the act was base one, and;

3) Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who owes to be looked down upon by the society.

5. Section 47 of the Bombay Public Trusts Act, deals with the removal or discharge of trustees on the ground that the trustee is convicted of an offence punishable under the said Act (Bombay Public Trusts Act) or the offence involving moral turpitude. When the Legislature wanted that the removal could be for mere conviction it has said so in the first part of sub-section (1). Second part of the sub-section deals with the offence involving moral turpitude. This clearly indicates that the conviction of an offence punishable under the Bombay Public Trusts Act, is treated distinctly from the conviction of an offence under other enactments. For removal of a trustee, for an offence under other law, the conviction should be for an offence involving moral turpitude. We are concerned in this case with an interim order which is based on prima facie conclusion. Therefore, we do not propose to decide wider question as to whether in no case that the disobedience of the order of the Tribunal and conviction for it will not amount to an offence involving moral turpitude. This must depend on the facts of each case and attending circumstances has also ultimate evidence and material placed on record. We also informed that in the meanwhile fresh election have taken place. It is the contention of the petitioners before us that in view of these fresh elections the main application itself becomes infructuous. We do not want to decide all these questions at this interim stage when the application is still pending and the complainant wants to place further material before the Charity Commissioner in support of his contentions.

6. It is the case of the petitioners that since the management thought that it was bound by the rules of the Government regarding superannuation, it issued order of retirement and although they acted bona fide. This is clear from the conduct of the Govt. itself. This will also require further probe and adjudication.

7. It is no doubt true that the order passed by the Tribunal was not stayed by any higher Court and therefore, there was an obligation on the part of the management to comply with the said order. Therefore, omissions to comply with it resulted in conviction u/s 42-F of the Poona University Act. However, from that alone, without anything more, a conclusion cannot be drawn that the offence for which they were convicted per se involved depravity and wickedness of character

or disposition. In this view of the matter it is not possible for us to accept the finding recorded by the Joint Charity Commissioner that a mere conviction for an offence punishable u/s 42-F of the Poona University Act, could prima facie or per se be termed as a conviction for an offence involving moral turpitude.

Hence, Rule is made absolute and the interim order passed by the Joint Charity Commissioner dated 6th of June 1984 is set aside. However, in the circumstances of the case there will be no order as to costs.