

(2000) 04 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 4259 of 1999

Raisinh P. Bhoi

APPELLANT

Vs

Dineshbhai Keshavbhai Patel

RESPONDENT

Date of Decision : 18-04-2000

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 20, 41(A), 50
Trusts Act, 1882 — Section 20

Citation : (2000) 3 GLR 15

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : G.M. Joshi, for the Appellant; A.J. Patel and Jayesh M. Patel, for the Respondent

Judgement

M.R. Calla, J.—This Special Civil Application is directed against the order dated 15.6.99 passed by the Joint Charity Commissioner, Vadodara, Division -Vadodara in Judicial Misc. Application No.24/99. The dispute relates to Charotar Education Society, which is a public trust registered under the Bombay Public Trusts Act, 1950. This Trust is also a Society registered under the Societies Registration Act, 1860. The petitioners Nos.1 and 2 claim to be the members of the aforesaid Trust i.e. petitioner No.3. According to the petitioners, the respondent herein, namely, Dineshbhai Keshavbhai Patel, was a volunteer as understood under the Rules and Regulations of the Trust and he was also appointed as a Secretary of the Council about five years back. The case of the petitioners is that because of high handed behavior of the respondent with the other members of the Trust as also the staff of the Educational Institutions run by the Trust and the students studying thereat, there was an agitation by the students, which made the members of the council as also the beneficiaries of the trust to come forward in support of the students, because they were satisfied that there was mismanagement and misappropriation of the Society's funds. Petitioners go on to state that they also came to know that the respondent had asked for money in cash from those who wanted service in Schools and Institutions run by the Trust

under the Society as also from the students for getting admission in the higher classes of the Schools run by the Society. The entire constitution of the society was thereafter changed because of the resignation tendered by the members of the Council as also the Chairman of the Society. It has been stated that a meeting took place on 10.4.99 in which certain decisions were taken according to which the following 10 persons were elected as Members of the Council and later on when earlier Chairman resigned from the Chairmanship on 12.4.99, Shri Chimanbhai Manibhai Patel(Sathi) was elected as the new Chairman of the Trust.

1. Chimanbhai Manibhai Patel (Sathi)
2. Vinodbhai Fulabhai Patel
3. Vinubhai Dhulabhai patel
4. Pragneshbhai Viththalbhai Patel
5. Vinodbhai Vallabhbhai Parmar
6. Rajnikant Thakorlal Shah
7. Dineshbhai Chhotabhai Patel
8. Bharatbhai Shantilal Patel
9. Indrajit Valavbhai Patel
10. Bipinchandra P. Patel

It is the claim of the petitioners that the entire administration of the Society as also the Educational Institutions under the Society is/are being run by this newly constituted body and the said body is in power and is managing the affairs of the School since April 1999. At this very meeting of 10.4.99 a Resolution was passed to hold inquiry against the respondent and to suspend him pending the proceedings. Aggrieved from the proceedings, the respondent herein filed Application under S.41A of the Bombay Public Trusts Act before the Joint Charity Commissioner, Vadodara on 15.4.99 alongwith an application for interim order. A reply dt.20.4.99 was filed on behalf of the Members of the Council before the Joint Charity Commissioner in the proceedings of Application No.24/99. In these proceedings under Sec. 41A Joint Charity Commissioner passed the order dt.15.6.99 whereby he issued certain directions. (As per page 77(W) to 77(Y) of the Paper Book of this Special Civil Application). An English translation of which from Gujarati is as under:-

"DIRECTIONS.

1. You should not obstruct the applicant of this case in the discharge of his duties as a secretary of the said trust under the provisions of the constitution of the trust until any order is obtained by taking legal proceedings against the applicant of this case restraining him from discharging duties as a secretary.

2. You the opponents including the applicant should not incur any expenses for the said trust or the educational institutions managed by the trust for any purchase or construction, until approval is accorded by a majority resolution for incurring such expenses after furnishing complete details to each member of the Executive Committee of the trust and Board of Directors; and if expenses for purchase or construction exceeding Rs.5000/- are required to be incurred, then in that case, tender system should be adopted.

3. Payment of an amount of Rs.20,000/- or more for the trust or educational institutions managed by the trust must be made by you the applicant or the opponents only after obtaining approval in the meeting of the Board of Trustees; and the payment must be made to the concerned person or institute only by an account payee cheque.

4. The meetings of the Executive Committee and Board of Directors as per the constitution of this trust should be convened, if possible, every two months regularly; and all the details regarding the activity for recruitment of employees for the educational institutions managed by the trust should be placed before the meetings; and the opponents including you the applicant should take decision for taking action for recruitment of the staff only after a resolution is passed at such meeting.

By this decision, the rights of any kind of the parties are not decided, or it will not in any manner effect the legality of the meeting held on 10.4.1999 or representations and disputes of the parties in that behalf or the rights of opponent No.10 or any other trustees of the trust to take legal action against the applicant or the case of enquiry against the applicant; or any party will not be entitled to take any benefit of this decision in any such proceeding or any change report which may be submitted before the Assistant Charity Commissioner, Nadiad; or this decision will not affect the jurisdiction of any such enquiry officer or Assistant Charity Commissioner. This decision is declared with the aforesaid clarification.

It is ordered that the parties to this case to bear their own entire cost of this application, including advocate's fees personally."

2. Aggrieved from this order dt.15.6.99 the present petition was filed in this Court on 17.6.99 and on 18.6.99 notice returnable on 6.7.99 was issued by the Court and ad interim relief in terms of para 16(B) was also granted meaning thereby that the execution, implementation and operation of the impugned order dt.15.6.99 Annexure "M" with the petition was stayed and suspended. After hearing both the sides, the Rule was issued on 23.7.99 and the matter was directed to be listed for final hearing on 28.7.99 and the interim order was continued.

3. Special Civil Application alongwith the documents filed therewith, and affidavit in reply dt.5.7.99 filed by the respondent alongwith documents and an affidavit in rejoinder dt.11.7.99 alongwith the documents filed by one of the petitioners

form the part of pleadings in this case.

4. While making reference to the Rules and Regulations of the Charotar Education Society, Mr. Joshi, learned counsel for the petitioners, has referred to Rule 6, which is reproduced as under:-

"6. No person can become a Volunteer of the Society unless he is a graduate, and unless he promises in writing to serve in any of the Society's activities for at least 20 years on a salary fixed by the Governing Body of the Society, and to devote his time and energies to the aims and objects of the Society, and unless he is elected by the council on the nomination of the Board of Volunteers and on the recommendation of the Governing Body."

5. There is no dispute that the respondent became a volunteer of this Society within the meaning of Rule 6, as above. Rule 11 contemplates four bodies, namely, council, the governing body, the Board of Trustees and the Board of Volunteers for the management of all matters connected with the Society. Rule 12 provides for the constitution of the council in two cases, when the number of volunteers is seven or more than seven, and the other when the number of volunteers is less than seven. Rules 11 and 12 are reproduced as under:-

"11. For the management of all matters connected with the Society there shall be four bodies:-

- (a) The council,
- (b) The Governing Body,
- (c) The Board of Trustees,
- (d) The Board of Volunteers.

12. The Council shall consist of A. When the number of volunteers is seven or more than seven. (a) All the Volunteers of the Society; (b) As many Associates elected by the whole body of Associates as there may be volunteers of the Society; (c) As many other members elected by the Patrons, Vice-Patrons, Donors and Fellows of the Society from among themselves as there may be Volunteers of the Society.

B. When the number of Volunteers is less than seven. (a) Seven Associates elected by the whole body of Associates; (b) Seven members elected by the Patrons, Vice-Patrons, Donors and Fellows of the Society from among themselves; (c) All the Volunteers of the Society and as many other qualified members elected by the Volunteers as are required to make up the number seven."

6. Rules 13 and 14 provides for the election of the members of the council and the chairman of the council. Rule 15 describes the business of the council and under Rule 15 (j) the council may take every necessary measures for the furtherance of the interest of the Society. After the formation of the Council, the

governing body is to be elected by the members of the Council from amongst themselves as provided under Rule 17. In terms of Rule 17(b) four volunteers elected by the Board of volunteers out of whom one secretary and one Assistant Secretary have to be appointed by the Council. Rule 17(b) is reproduced as under:-

"17. After the formation of the new Council, the Governing Body shall be elected, by the members of the Council from among themselves and shall consist of: (a) ***** (b) Four volunteers elected by the Board of volunteers out of whom one secretary and one Assistant Secretary will be appointed by the council."

7. The term "Board of Trustees" finds place in rule 33(a) and the same is reproduced as under:-

"33. (a) The property and permanent funds of the Society excluding Government and other Securities prescribed in Section 20 of the Indian Trust Act, 1882, shall be vested in the Board of Trustees consisting of 2 members, who shall be elected from amongst the Patrons, Vice-Patron, Donors and Associates at the general meeting, for a period of three years, the same members being re-eligible but they shall not be competent to be members of the Council."

8. Such being the Scheme of the Rules and Regulations of the Charotar Education Society, there is no dispute that respondent herein, who was a volunteer, was appointed as Secretary by the Council as provided in Rule 17(b).

9. It is also clear from the Scheme of Rules and Regulations, as above, that the Council is the supreme plenary body of this Society and the Resolution dt.10.4.99 had been passed by the Council whereby a decision was taken to hold an inquiry against the respondent and to place him under suspension during the pendency of this inquiry. It has been very candidly pointed out by Mr. Joshi, learned counsel for the petitioners, that the effect of the suspension is only to deprive the respondent from functioning as a Secretary and his contention is that in the wake of the serious allegations against the respondent, it had become necessary for the Council to place the respondent under suspension during the pendency of the Inquiry. It has also been submitted that the respondent had already been charge-sheeted. A copy of the document, which has been filed as Annexure "N" with the petition includes the charges and allegations dt.3.6.99 and at Item No.2 it has been mentioned that a F.I.R. had also been filed against the respondent at Anand Police Station with regard to the misappropriation of the amounts which had been taken by the respondent from the students. It is ofcourse true that the charge sheet was given to the respondent after the filing of the Application under S.41A by the respondent before the Joint Charity Commissioner, Vadodara while the respondent was already under suspension since 10.4.99.

10. The impugned order dt.15.6.99 has been sought to be defended on behalf of respondent by Mr.A.J.patel on the grounds that the Resolution dt.10.4.99 itself is invalid because there was no valid meeting and that the petitioners had no right

to suspend the respondent and much stress has been laid on behalf of the respondent that the respondent is in fact a Trustee and his name finds place in the Register of Public Trusts. The xerox copy of which has been enclosed with the affidavit in reply at page 97, wherein the name of the respondent is entered at Sr.No.15 in the column of "name of Trustees and Managers with their Address" against the name of Charotar Education society, Anand in column No.2 i.e. "Name of the Trustees". Mr.A.J.Patel, learned counsel for the respondent, has made reference to Sec.50 of the Bombay Public Trusts Act, 1950 and has submitted that without the Court's order the respondent could not be removed as a Trustee, unless there is a Court's order and a pointed reference was made to Sec.50(b), which deals with the removal of any Trustee or Manager in cases enumerated in the Section itself. It was also submitted that the directions, as have been issued by the Joint Charity Commission in the impugned order, were necessary in the interest of the Trust and such directions could be issued by the Joint Charity Commissioner in accordance with Sec.41A of the Bombay Public Trusts Act. Sec.41A of the Bombay Public Trusts Act is reproduced as under:-

"41A. (1) Subject to the provisions of this Act, the Charity Commissioner may, from time to time, issue directions to any trustee of a public trust or any person connected therewith to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust.

(2) It shall be the duty of every such trustee and person to comply with a direction issued to him under sub-section (1)."

11. In view of the pleadings and contentions filed and urged before this Court, it is required to be considered as to whether the Council was competent to suspend the respondent as a Secretary by its Resolution dt.10.4.99 during the pendency of the inquiry proposed to be held against the respondent and as to whether the Joint Charity Commissioner was right in issuing the directions as have been issued by him vide impugned order dt.15.6.99.

12. Having gone through the Scheme of the Rules and Regulations in the printed Booklet, which was supplied by the learned counsel for the petitioners and the relevant Rules to which the reference has been made hereinabove, it is clearly made out that the business of the council under rule 15 includes the business of taking every necessary measure for the furtherance of the interest of the Society under Rule 15(j). Merely because in the Register of Trust the name of the respondent is entered in the column of names of Trustees and Managers with their addresses, it cannot be inferred that under Rule 15(j) the Council had no power to take a decision to initiate inquiry against the Secretary and place him under suspension during the pendency of such inquiry. May be that the name of the respondent is entered in the column captioned as above but it may be clarified that under this column his name has been qualified with the words "Swayam Sevak" and "Mantri". This Court is, therefore, concerned only with the question of the Council's power to suspend a Secretary. Even otherwise it is

clear that the column of " Name of Trustees and Managers with their Address" in the Register of Public Trusts include the word "Manager" and it has been given out by the learned counsel for the petitioners appearing on behalf of the Trust that the "Manager" is synonymous to the word Secretary. In the Rules of the Society there is no word like Manager. In any case, once it is found that as a part of the business of the Council, the Council may take every necessary measure for the furtherance of the interest of the Society, it cannot be said that the suspension of a Secretary in an appropriate case during the pendency of inquiry for the serious allegations is not a measure for the furtherance of the interest of the Society. In view of the above, it has to be held that the Council has the power to place the Secretary under suspension during the pendency of the inquiry. Besides this, this too is a settled position and the basic tenet in this regard that an authority which has the power to appoint has an inherent power to suspend such an appointee. There is no dispute that the respondent was appointed as a Secretary by the Council and the Council, therefore, has the inherent powers to place the person holding the office of the Secretary under suspension during the pendency of the inquiry. It is also settled that even if there is no specific power or Rule with regard to the suspension, yet the appointing authority has the inherent powers of suspension pending inquiry and, therefore, on the question of authority and power of the council no exception can be taken to the suspension of the petitioner during the pendency of the inquiry.

Dt:18.4.2000

13. It is not necessary for this Court to go into the question that the Resolution dt.10.4.99 stands invalidated on the ground that there was no valid meeting because in the impugned order dt.15.6.99 itself while issuing directions under S.41A the Joint Charity Commissioner himself has made it clear that, by his decision, any kind of the rights of the parties are not decided, or it will not in any manner effect the legality of the meeting held on 10.4.99 or representations and disputes of the parties in that behalf or the rights of opponent No.10 or any other trustee of the trust to take legal action against the applicant or the case of enquiry against the applicant or any party will not be entitled to take any benefit of this decision in any such proceeding or any change report which may be submitted before the Assistant Charity Commissioner, Nadiad and further that this decision will not affect the jurisdiction of any such enquiry officer or Assistant Charity Commissioner. The legality of the meeting dt.10.4.99 therefore cannot be gone into in these proceedings at the instance of the respondent and once the legality of that meeting cannot be collaterally challenged in these proceedings and that too by contesting respondent, there is no question of examining the validity of the suspension order of the respondent in these proceedings on the ground as to whether the Resolution dt.10.4.99 is valid or not by reason of there being no valid meeting. It was also given out during the course of arguments that the respondent had even challenged the inquiry proceedings itself by way of moving a separate Application being Application No.66/99 before the same Joint Charity Commissioner on the ground that the

meeting was invalid and in those proceedings i.e. Application No.66/99 under S.41A the same Joint Charity Commissioner has also stayed the further inquiry proceedings. It was pointed out that in those proceedings the basis of the challenge is the validity of the meeting in which the Resolution dt.10.4.99 was passed so as to place the respondent under suspension. That being so and even otherwise, this Court does not find it appropriate for the purpose of present petition to examine the question of validity of such meeting and such meeting whereat the Resolution dt.10.4.99 was passed. 14. The controversy in this case is limited to the extent as to whether the Council had the power to place the respondent under suspension pending inquiry or not and as to whether the Joint Charity Commissioner was right in issuing the directions under S.41A so as to undo the effect of such a suspension in favour of the respondent. The learned counsel for the respondent has raised an argument that it is a case of the removal of the respondent as a Trustee and that it could not be done in absence of any Court's order and he has also made reference to S.50(b) of the Bombay Public Trusts Act, 1950, which deals with the question of removal of any Trustee or Manager. There is no dispute that the respondent was functioning as a Secretary of the said Trust and the inquiry is sought to be held against the respondent's conduct as a Secretary and in that context the Council decided to place him under suspension and such a course of action, as was adopted by the Council so as to place the respondent under suspension, cannot be said to be illegal. Thus, even if we proceed on the basis that the Joint Charity Commissioner in exercise of the powers under S.41A may issue appropriate directions to any Trustee of a public trust or any person to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust and that it is the duty of every such trustee and person to comply with the directions issued by him under sub-section (1) and that such power even includes the power to deal with the question of suspension of the respondent, it cannot be said in the facts and circumstances of this case that the Joint Charity Commissioner was right in issuing the direction so as to undo the effect of suspension of the respondent during the pendency of the inquiry, particularly in face of serious nature of allegations which are sought to be inquired into by the Council. The Joint Charity Commissioner has also not given any cogent reason in support of his direction in favour of the present respondent and against the trust that it should not obstruct the respondent in discharge of his duties as a Secretary of the said Trust under the provisions of the Constitution of the trust until any order is obtained by taking legal proceedings against the respondent restraining him from discharging duties as a Secretary. It appears that this direction, which has been given by the Joint Charity Commissioner at No.1 in the impugned order in favour of the respondent, is based on the premise that the respondent was a Trustee and, therefore, the legal proceedings were required under S.50(b) of the Bombay Public Trusts Act. This premises has no legal basis inasmuch as the inquiry is being held against the respondent in his capacity as a Secretary and the discharge of his duties as Secretary of the Trust and not as a

Trustee, more particularly when the fact itself is in question as to whether the respondent was a Trustee or not. The admitted position is that he was a Secretary and the Council being his appointing authority could certainly hold the inquiry and direct his suspension during the pendency of this inquiry. For the purpose of examining the question of his suspension pending inquiry as Secretary, no amount of confusion can be infused by presuming that he was a Trustee, merely because his name has been mentioned in the column of "Name of Trustees and Managers with their Address" in the Register of Public Trusts. This Column deals with the Names of the Trustees and Managers and it has been given out that the word "Manager" is synonymous to the word "Secretary". Even if it is taken on the basis of the provisions of S.50(b) of the Bombay Public Trusts Act that it is the case of the removal of the respondent as a Trustee or Manager, it cannot be said that for the purposes of placing the respondent under suspension any such Court's order was required or that the suspension could not be ordered without Court's order. S.50 essentially deals with the Suits relating to public trusts and the provisions of S. 50 are of enabling nature so as to cloth the Charity Commissioner with the power to file suits in cases where the direction of the court is deemed necessary for the administration of public trusts and for that reason it is proper that the Charity Commissioner may institute a Suit within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situate, to obtain a decree for any of the reliefs, including the removal of any Trustee or Manager as provided in S. 50(b). This enabling power given to the Charity Commissioner does not divest the Council or the Trust of the power to hold an inquiry against the Manager/Secretary or to place him under suspension. The removal of any Trustee or Manager has to be effected in accordance with law and besides the other relevant provisions, to which the reference has already been made herein-above in the earlier part of this order, S. 50 has to be read in aid so that in appropriate cases, if the appropriate body of the Trust itself does not act, the Charity Commissioner may also proceed to institute the proceedings for the purpose of removal of any Trustee or Manager and that too when the direction of the Court is deemed necessary for the administration of any public trust by the Charity Commissioner himself. This mode, as has been provided under S. 50 with regard to the suits relating to public trust, is not an embargo against the exercise of power by the Council of a Trust to proceed against its Secretary to hold inquiry and to place him under suspension and as a matter of fact, the result of such inquiry may constitute the material for the Charity Commissioner to act in accordance with the provisions of S. 50, if he himself deems necessary and that will be in the nature of a material to form an opinion as to whether the direction of the Court is deemed necessary for the administration of any public trust or not. Therefore, it cannot be said that there is no scope or power for holding the inquiry by the Council against its Secretary and that in no case, an inquiry can be held against the Secretary by the Council and that he cannot be placed under suspension by the Council.

15. The net result of the discussion, as aforesaid, is that the direction at No.1

given by the Joint Charity Commissioner in the impugned order dt.15.6.99 is found to be unlawful and unjustified and the same is hereby quashed and set aside. In so far as the directions at Nos.2, 3 and 4 are concerned, it is made clear that in these directions the reference to the applicant i.e. respondent herein is unwarranted once it is found that the respondent was rightly placed under suspension he cannot be associated with the functioning of the Trust during the period of his suspension for the purposes of carrying out the directions at Nos.2,3 and 4 as given by the Joint Charity Commissioner. The directions at Nos.2, 3 and 4 are, therefore, not interfered with except for the following parts:- (a) In first line of direction No.2 the words, "including the applicant" (b) In third line of direction No.3 the words, "you the applicant or" and (c) In seventh line of direction No.4 the words, "including you the applicant". These words shall not be read as a part of the directions and henceforth the operative directions and operative part of the impugned order will be as under:-

"2. You the opponents should not incur any expenses for the said trust or the educational institutions managed by the trust for any purchase or construction, until approval is accorded by a majority resolution for incurring such expenses after furnishing complete details to each member of the Executive Committee of the trust and Board of Directors; and if expenses for purchase or construction exceeding Rs.5000/- are required to be incurred, then in that case, tender system should be adopted.

3. Payment of an amount of Rs.20,000/- or more for the trust or educational institutions managed by the trust must be made by the opponents only after obtaining approval in the meeting of the Board of Trustees; and the payment must be made to the concerned person or institute only by an account payee cheque.

4. The meetings of the Executive Committee and Board of Directors as per the constitution of this trust should be convened, if possible, every two months regularly; and all the details regarding the activity for recruitment of employees for the educational institutions managed by the trust should be placed before the meetings; and the opponents should take decision for taking action for recruitment of the staff only after a resolution is passed at such meeting."

This Special Civil Application is, therefore, partly allowed as above. Rule is made absolute to that extent. No order as to costs.