

(2017) 07 BOM CK 0103
In the Bombay High Court
Case No : 359 of 1998

Santosh S/o Shankarlal Agrawal

APPELLANT

Vs

Purushottam S/o Jaganath Murme, & Anr.

RESPONDENT

Date of Decision : 18-07-2017

Acts Referred:

[Societies Registration Act, 1860](#), [Section 15](#) - Member defined
[Bombay Public Trusts Act, 1950](#), [Section 22](#)
[Section 70](#), [Section 72\(4\)](#)

Citation : (2017) 07 BOM CK 0103

Hon'ble Judges : Shalini Phansalkar-Joshi

Bench : SINGLE BENCH

Advocate : A.S. Mehadia, R.A. Jain

Final Decision : Allowed

Judgement

1. This appeal takes an exception to the judgment and order dated 15/12/1997 delivered by 2nd Additional District Judge, Nagpur in Miscellaneous Civil Application No. 363/1995. By the impugned order, the learned Additional District Judge has dismissed the revision application, which was preferred against the judgment and order dated 03/06/1995 passed by the Joint Charity Commissioner, Nagpur (for short, "JCC") in Appeal No. 28/1994, preferred under section 70 of the Bombay Public Trust Act, 1950 (hereinafter will be referred to as "Act" for convenience). By his impugned order, JCC has allowed the said appeal and set aside the order passed by the Deputy Charity Commissioner, Nagpur (for short "DCC") rejecting the Change Report No.229/1992 and accepting the same.

2. Brief facts of this appeal can be stated as follows: Appellant and respondent no.2 are the founder members of the Trust, by name Shri Sadashivrao Patil Shikshan Sanstha, Kamptee, District - Nagpur. It was initially registered as society under the Societies Registration Act, 1860. After the Bombay Public Trust

Act, 1950 came into effect, the said society was deemed to be registered as a Trust. Respondent no.2 was also the Secretary of the Society.

3. The grievance of the appellant is that the meeting of the executive committee of the Trust was held on 24/09/1990, in which some of the outsiders were inducted as members and some members alleged to have made payment of arrears of life member subscription at the rate of Rs.1,000/each. Appellant and respondent no.2 were not given notice about the said meeting nor the Resolution was conveyed to them. Another meeting was thereafter convened on 06/01/1991 at Kamptee for election of new members. The legal and valid notice of 15 days of the said meeting as per the Memorandum of Association of the said Trust, was however not given to the appellant and respondent no.2. The notice is alleged to be issued on 21/12/1990 and is sent by Under Certificate of Posting on 22/12/1990, for the meeting which was proposed to be held on 06/01/1991. Thus, there was no clear 15 days notice of the said meeting. Despite that, the meeting was held on 06/01/1991 and in the said meeting, by passing a Resolution, the appellant and respondent no.2 were removed from the Trust.

4. Respondent no.1 presented the Change Report about the same under section 22 of the Act, in the Office of Charity Commissioner, Nagpur and it came to be registered as Change Report Inquiry No.229/1992. When the notices thereof were issued to appellant and respondent no.2, both of them filed their objection challenging the legality of the Change Report. In the said proceeding respondent no.1 was examined as his witness vide Exh.21. Appellant was also examined vide Exh.36, whereas respondent no.2 was examined vide Exh.53.

5. On appreciation of this evidence and after considering the various clauses in the Memorandum of Association of the Trust, learned DCC was pleased to reject the Change Report, holding it to be illegal on two grounds that 15 days notice of the said meeting was not given, and secondly appellant and respondent no.2 could not have been removed from the life membership, without giving them an opportunity of hearing.

6. Against this order of the DCC, respondent no.1 preferred an appeal under section 70 of the Act. The learned JCC, Nagpur was pleased to allow the appeal holding that as the appellant and respondent no.2 has failed to pay the subscription fee of Rs.2000/, they were no more entitled to participate or vote in the said meeting. Hence the question whether they had received the notice of the said meeting or not, does not assume significance. Accordingly the JCC, vide his order dated 01/08/1995, set aside the order of the DCC rejecting the Change Report.

7. Being aggrieved thereby, appellant and respondent no.2 preferred the appeal under section 72(4) of the Act before the District Judge, Nagpur. Vide his impugned judgment and order, District Judge, Nagpur was pleased to confirm and uphold the findings in the order of JCC; thereby accepted the Change Report and set aside the order of DCC.

8. While challenging the impugned order, submission of learned counsel for appellant is twofold. In the first place, he has submitted that appellant and respondent no.2 being the life members, they were not liable to pay any subscription fees as per clause 4(b) of the Memorandum of Association of the Trust. Secondly, it is submitted that, even if they were liable to pay such subscription fees, they could not have been removed from the Trust without giving them an opportunity of hearing and for that purpose, legal and valid notice was required. Thirdly, it is submitted that, the notice which was issued to them was not of 15 days as required under clause 16(C) and 18 of the Memorandum of Association of the Trust. It is urged that on these grounds, the resolutions passed in the said meeting and the Change Report filed on the basis of those resolutions was illegal and was rightly rejected by the DCC. The impugned orders passed by JCC and District Judge, therefore setting aside the order of the DCC and accepting the said Change Report are clearly against the byelaws of the Memorandum of Association and also against the principles of natural justice, therefore, required to be quashed and set aside.

9. The notice of this appeal was duly served on respondent no.1. The pursis is also filed by learned counsel for appellant stating that the copy of private paper book is duly served on respondent no.1 at the time of final hearing. Despite that, respondent no.1 has failed to remain present.

10. In this appeal, I have heard learned counsel for appellant and perused the impugned orders passed by the DCC, JCC and the District Judge. He has also drawn my attention to the relevant clauses in Memorandum of Association of the Trust.

11. It is undisputed position that appellant and respondent no.2 were the founder members of the Trust and respondent no.2 was also a Secretary of the Trust. Article no.4A of the Memorandum of Association defines the life members and further states that the founder members will come in the category of life members. According to learned counsel for appellant, therefore, they were not liable to pay any amount of subscription, and hence they cannot be removed for nonpayment of subscription fees.

12. In my considered opinion, it is not necessary to enter into the question as to whether they were the founder members and therefore had become the life members, and hence not liable to pay subscription fees. The only question which becomes relevant to be considered is, when admittedly they were the members of the Trust and even assuming that they had not paid the subscription fees, whether they can be removed from the membership of the Trust without giving them show cause notice and opportunity of hearing? The answer is obviously in negative, because it will amount to violation of principles of natural justice. The law, in this respect is clearly well settled, as laid down in the judgment of Shri Sarbjit Singh and others Vs All India Fine Arts and Crafts Society and others, ILR (1989) II Delhi 585, that under section 15 of the Societies Registration Act there is no provision for expulsion or removal of member from the society for

nonpayment of subscription fees unless such opportunity of hearing is given to the member. Section 15 of the Societies Registration Act only lays down that such member cannot be entitled to vote or participate in the meeting. However, that does not mean that notice of the meeting itself should not be issued to him.

13. Here in the case, admittedly the notice of the proposed meeting, according to respondent no.1 also was issued to appellant and respondent no.2. The question is whether that notice was legal and valid in view of the mandate of the Memorandum of Association. As stated above, clause 16(C) of the Memorandum of Association lays down that 15 days written notice in advance be given to the members before the election of the members for executive committee. Clause 18 further lays down that the notice of 15 days in advance must be received by the member for any proposed meeting of General Body. Here in the case, admittedly the notice is alleged to be issued on 21/12/1990 and it is stated to be sent Under Certificate of Posting on 22/12/1990 as the meeting was proposed on 06/01/1991 and held on that day, it follows that there was no 15 days in advance notice before the date of meeting. It is apart that as per the case of appellant and respondent no.2 they had not received the notice and the proof of Under Certificate of Posting cannot be a valid proof of service of notice as there is no acknowledgement receipt.

14. In view of this situation, it is apparent that in the first place 15 days notice in advance was not received by appellant and respondent no.2 and on this very ground itself the DCC has rightly held that the meeting was not legal, proper and valid. Secondly, ousting of the appellant and respondent no.2 in the said meeting and induction of some other members in the Executive Committee was also done without giving an opportunity of hearing to appellant and respondent no.2. Even assuming that they had not paid the subscription fees, on this count also their removal from the membership in the said meeting and induction of some outsider members to the Executive Committee cannot be upheld.

15. Thus, looked at it from any angle, it cannot be said that the Change Report filed by the respondent no.1 before the DCC on the basis of the resolution passed in the said meeting was legal, valid and correct. The DCC has rightly rejected the same. The orders passed by the JCC and District Judge, Nagpur in upholding the said Change Report and setting aside the order of the DCC, being not legal and valid, need to be quashed and set aside.

16. Accordingly, appeal is allowed.

17. The impugned order passed by the District Judge, Nagpur is set aside and the order passed by the DCC rejecting the Change Report is upheld and confirmed.

18. Appeal stands disposed of.