(2014) 08 BOM CK 0087

In the Bombay High Court

Case No : Writ Petition Nos. 7424 and 7451 of 2014

Shahid Javed Maniyar — APPELLANT

Vs

Sagir Munirkhan Sarguroh — RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 31, 32, 33, 34

Citation : (2015) 2 ALLMR 296 : (2014) 6 BomCR 126 : (2014) 2 MhLj 823

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

Bench : Single Bench

Advocate : Vijay D. Patil i/b. Kalpesh U. Patil and Vinod Y. Jadhav, Advocate for the Appellant; Vinod Y. Jadhav, Rajesh P. Behere, Pratap Bhosale and S.D. Rayrikar, AGP, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

R.M. Savant, J.—Insofar as Writ Petition No. 7424 of 2014 is concerned, the learned Counsel appearing for the Petitioners Shri. Patil seeks deletion of the Respondent Nos. 2 to 23 as they are formal parties and the main contesting Respondent is the Respondent No. 1. The said Respondents are accordingly allowed to be deleted at the risk of the Petitioners.

Insofar as Writ Petition No. 7451 of 2014 is concerned, the learned Counsel appearing for the Petitioner seeks leave to amend so as to correct the cause title insofar as the description of the Petitioner is concerned. Leave granted. Amendment to be carried out forthwith.

2. Rule, considering the nature of the controversy involved in the above Petitions, made returnable forthwith by the consent of the learned Counsel appearing for the parties and heard.

3. The short question which arises for consideration in the above Petitions is whether the learned Joint Charity Commissioner could have issued the direction as contained in the clause (6) of the operative part of the impugned order dated

30th April, 2014, thereby restricting the voters to the pre 1997 enrolled members of the Trust and thereby directing the deletion of the post 1997 enrolled members from participating in the ensuing election to the Managing Committee of the said Trust.

4. The Petitioner in Writ Petition No. 7451 of 2014 is the Secretary of the Trust known as Muslim Education Trust, Dapoli, which runs educational institutions i.e. primary and secondary schools in Taluka Dapoli, District Ratnagiri. The Management of the Trust is a contentious issue between the Respondent No. 1 and the Petitioners in the above Writ Petitions. It appears that till the year 1997, the Respondent No. 1 Dr. Sagir Munirkhan Sarguroh was a Trustee and it has been alleged against him that he has mismanaged the Trust as also misappropriated the property and that he was not a member, who has been elected in the general election. It appears that post 1997, the group owing allegiance to the Petitioners came to power and filed 13 change reports. It appears that in the said change report proceedings, the Respondent No. 1 gave his no-objection to all the change reports except for the year 1997 and accepted that one Usman Kazi as a Secretary of the Trust. It appears that the Respondent No. 1 propounded a new scheme, whereby he sought to get himself the status of permanent lifetime Trustee and tried to incorporate hereditary Trusteeship. The said scheme propounded by the Respondent No. 1 was not sanctioned by the learned Joint Charity Commissioner and was rejected by order dated 20th July, 2006. During the entire period, the persons belonging to the Petitioners'' group were in power. It appears that pursuant to the directions issued by this Court in Writ Petition No. 4637 of 2007, which was filed by the group belonging to the Respondent No. 1, this Court by an interim order, directed the Assistant Charity Commissioner to appoint an appropriate officer to supervise the elections, which were to be held to the Trust. It appears that since the said order was sought to be allegedly misused by the group of the Respondent No. 1 that the Petitioners'' group filed Writ Petition No. 5617 of 2007, wherein, this Court issued a direction to the Assistant Charity Commissioner to appoint an officer from his office as an Election Officer for conducting the election to the Managing Committee of the said Trust. In the said election held in the year 2007, the Petitioners'' group was successful and was elected, pursuant to which, change report No. 456 of 2007 came to be filed, however, the said change report came to be rejected by the Assistant Charity Commissioner, against which, an Appeal is pending. It appears that the persons owing elegance to the Petitioners were again successful in the elections which were held for the period 2010 to 2013, pursuant to which, a change report has been filed, which is pending.

5. Since the term of the present Managing Committee expired in November, 2013, the Respondent No. 1 Dr. Sagir filed an application u/s 41A and 47 of the Bombay Public Trust Act (for short "the said Act") seeking directions to hold elections and for appointment of Trustees. Insofar as the application u/s 41A of the said Act is concerned, it is required to be noted that the Respondent No. 1 also prayed for fixing a cut off date for preparation of the voters list. It is an

admitted position that the Petitioners herein were not parties to the said application and were therefore not before the learned Joint Charity Commissioner, when the said application was adjudicated. The learned Joint Charity Commissioner has, by the impugned order, rejected the application filed u/s 47, however, has allowed the application invoking Section 41A of the said Act and has issued various directions, which are contained in the operative part of the impugned order. Whilst so issuing the directions, the learned Joint Charity Commissioner has adverted to the orders passed in change report proceedings being No. 456 of 2007 and also sought to advert to the order passed in application No. 18 of 2005. It is on the said basis that the learned Joint Charity Commissioner has issued a direction vide clause (6) that only the persons in respect of whom there is no dispute would be entitled to vote and therefore has fixed the cut off date as 1997 and accordingly directed that only those persons who are enrolled prior there to would be entitled to participate in the elections, meaning thereby those enrolled after 1997 would not be entitled to participate in the elections. As indicated above, it is the said order dated 30th April, 2014 which is taken exception to by way of the above Petition.

6. Heard the learned Counsel appearing for the parties. The learned Counsel appearing for the Petitioners in WP/7424/2014 Shri. Patil would contend that the directions in the nature issued by the learned Joint Charity Commissioner could not have been issued u/s 41A of the said Act, as the said power u/s 41A of the said Act is construed to be an administrative power and therefore no adjudication that can take place in an application filed u/s 41A of the said Act, more so in the case of holding election and fixing a cut off date for the voters. In support of the said contention, the learned Counsel sought to place reliance on the Judgment of a learned Single Judge of this Court in the matter of Lahudas Sambhaji Karad Vs. The State of Maharashtra and Others, The learned Counsel would contend that insofar as Change Report No. 456 of 2007 is concerned, an Appeal has been filed, which is pending. The learned Counsel would contend that the reliance placed by the learned Joint Charity Commissioner on the order passed in Application No. 18 of 2005 is erroneous, as what has been quoted by the learned Joint Charity Commissioner in the impugned order is the submission advanced on behalf of the party therein and is not a finding which has been recorded by the learned Joint Charity Commissioner. The learned Counsel would lastly contend that though the election process has reached the stage of the date of withdrawal of nominations, the post 1997 members can still be enrolled as voters without interfering with the election process.

The learned Counsel appearing for the Petitioner in Writ Petition No. 7451 of 2014 would support and adopt the submissions made by Shri. Patil.

7. Per contra, the learned Counsel appearing for the Respondent No. 1 Shri. Behere would support the impugned order and would contend that the directions in the nature issued in the instant case can be issued by the learned Joint Charity Commissioner in exercise of the powers conferred by Section 41A of the said Act,

as in the instant case, the learned Joint Charity Commissioner was concerned with the issue of election and therefore, fixing of cut off date is merely ancillary to the main direction, which was sought. The learned Counsel sought to place reliance on the Judgment of a learned Single Judge of this Court in the matter of Shobhatai Krishnarao Zoting and Others Vs. Joint Charity Commissioner and Others, The learned Counsel would contend that since the voters'' list prior to the year 1997 is undisputed, the learned Joint Charity Commissioner has issued the direction as contained in clause (6) of the operative part of the impugned order.

8. Having heard the learned Counsel appearing for the parties, I have considered the rival contentions. As indicated above, the issue in contention is as to whether the directions of the nature issued vide clause (6) of the impugned order could have been issued by the learned Joint Charity Commissioner, whilst considering an application filed u/s 41A of the said Act. It would therefore be apposite to reproduce the direction as contained in clause (6) for the sake of ready reference, which reads thus:

"6. The Election Officer shall hold the election of trust considering the cut off year 1997 for the preparation of members list i.e. undisputed position as per the provisions of constitution of trust within four months from the date of this order."

9. Hence, what the learned Joint Charity Commissioner has done by issuing the direction is to prepare the list of voters by fixing the cut off of date of the year 1997, which, according to him is an undisputed position, as per the provisions of the Constitution of the Trust. As indicated above, in issuing the said direction, the learned Joint Charity Commissioner has adverted to the orders passed by the learned Deputy Charity Commissioner in the change report proceedings being No. 456 of 2007 as also the order passed in Application No. 18 of 2005. Insofar as Change Report No. 456 of 2007 is concerned, the change report is in respect of the Petitioners being the Trustees of the Trust in question. Though the said change report has been rejected, the Petitioners have filed an Appeal against the order rejecting the said report, which is admittedly pending. Hence, there is no conclusivity insofar as the said change report proceedings are concerned, as an Appeal is admittedly pending. It is further required to be noted that the period covered by the change report i.e. the tenure of the Managing Committee has come to an end long back i.e. in the year 2010.

Insofar as the reference to the order purportedly passed in Application No. 18 of 2005 is concerned, the learned Counsel appearing for the Petitioner Shri. Patil drew my attention to the order passed in the said Application No. 18 of 2005. A reading of the said order discloses that there is no finding recorded, a reference to which is sought to be made by the learned Joint Charity Commissioner in the impugned order. In fact, the submission made on behalf of the party i.e. the Respondent No. 1 in the said proceedings, which has been recorded in paragraph of the said order has been sought to be referred to as a finding recorded in the said proceedings. Hence, the impugned order can be said to have proceeded on a erroneous premise that such a finding has been recorded in application No. 18 of

2005. Hence, in my view, both the aspects i.e. the order passed in Change Report No. 456 of 2007 as also in Application No. 18 of 2005 would go out of the contention insofar as reliance placed upon them by the learned Joint Charity Commissioner is concerned.

10. The moot issue, however, remains as to whether the directions issued by the learned Joint Charity Commissioner could have been issued in exercise of the powers conferred by Section 41A of the said Act. It is trite, as held in numerous Judgments of this Court that the power conferred by Section 41A of the said Act is an administrative power, which has to be exercised in the interest of the Management of the Trust and its finances. The said provision has been incorporated by way of an amendment to the said Act in the year 1985 so as to aid the power of the Charity Commissioner, which has been conferred by Sections 31 to 41 of the said Act in respect of the Management of the Trust. In the instant case, the learned Joint Charity Commissioner, as can be seen, has entered into an adjudicatory process in respect of the voters list and thereafter has issued the directions as contained in clause (6) of the operative part of the impugned order.

11. Now, coming to the Judgment relied upon by the learned Counsel appearing for the Petitioner in the matter of Lahudas Sambhaji Karad (supra), the said case concerns an application made u/s 41A and which application was filed in respect of the elections to be held in respect of the Trust and one of the relief sought was for constricting the voters list from 834 to 483. The Charity Commissioner, in the light of the said application, directed that the voters list should be constricted to 483 from 834. This was found fault with by a learned Single Judge in the said case. The learned Single Judge, in the said Judgment has observed that the elections and the matters connected therewith are wholly beyond the purview of the said provision i.e. Section 41A. The proposition as regards the jurisdiction u/s 41A can be said to be crystallised by the observations made by the learned Single Judge in Paragraph 25 of the said Judgment, which, for the sake of ready reference, is reproduced herein under:

"25. This would show that the main safeguards that have to be kept in mind by the Charity Commissioner or the Joint Charity Commissioner are in respect of the property and other affairs of society. If there is negligence in the management of affairs of the society, directions could be issued but the scope of section 41-A would certainly not cover the interference with the process of election and also interference in respect of the members entitled to vote. They are the disputes which can be corrected by filing change reports after the elections u/s 22 of the Act. I, therefore, feel that the Joint Charity Commissioner should not have entertained the application No. 3/92 filed by Halge and Deshmukh. They had the remedy to approach the Assistant Charity Commissioner questioning the change report. Merely because no further action was likely to be taken on the part of the society or others to challenge the voters'' list, the Charity Commissioner did not acquire any powers to look into these affairs and rectify them by virtually stalling the election.

(emphasis supplied)"

The learned Single Judge, therefore, in terms, held that the scope of Section 41A of the said Act would certainly not cover the interference with the process of election and also interference in respect of the members entitled to vote. They are the disputes which can be corrected by filing change reports after the elections u/s 22 of the Act. Hence, having regard to the well settled position in law as regards to the nature of jurisdiction conferred by Section 41A of the said Act, the directions as contained in clause (6) of the operative part of the impugned order, can be said to be unsustainable.

12. Now, coming to the Judgment cited by the learned Counsel appearing for the Respondent No. 1 in the matter of Shobhatai Krishnarao Zoting and Ors. (supra), the said case concerned an application filed u/s 41D of the said Act alleging illegality on the part of the Ad-hoc committee enrolling new members and allowing them to vote. It is in the said context of the application being one u/s 41D of the said Act that the learned Single Judge of this Court held that the directions issued by the Charity Commissioner under the said provision as regards the voters list could not be taken exception to. In my view, the said Judgment would have no application, as the in the said case the Court was concerned with an application u/s 41D of the said Act parameters for which are totally different than the parameters for an application u/s 41A of the said Act.

13. In that view of the matter, the impugned order insofar as clause (6) of the operative part is concerned would have to be quashed and set aside and is accordingly quashed and set aside. The election would have to be held on the basis of the voters list which would be prepared without the said cut off date and would include the names of the members who are enrolled after 1997, and up to the date when the learned Joint Charity Commissioner passed the impugned order.

14. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

15. It is clarified that the election process is not being interfered with and will go on from the stage on which it is present albeit by the inclusion of the names of the persons who have been enrolled as members post 1997 and are there on record up to the date when the learned Joint Charity Commissioner passed the impugned order.

16. The parties to act upon an ordinary copy of this order duly authenticated by the Sheristedar of this Court.

