

(2004) 12 BOM CK 0099

In the Bombay High Court

Case No : Writ Petition No's. 1768, 1920, 1977, 4421 of 2004

Shobhatai Krishnarao Zoting and Others

APPELLANT

Vs

Joint Charity Commissioner and Others

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 41D, 41D(1), 72
Constitution of India, 1950 — Article 227

Citation : (2005) 2 ALLMR 237 : (2005) 2 BomCR 560

Hon'ble Judges : Dharmadhikari B.P., J

Bench : Single Bench

Advocate : Sunil Manohar and A.A. Naik, in W.P. No. 1768/2004, Joshi, in W.P. No. 1977/2004, Paliwal, in W.P. No. 4421/2004 and U.A. Patil, in W.P. No. 1920/2004, for the Appellant; Khapre in W.P. No. 1768/2004 for respondent Nos. 2 to 10, U.A. Patil in W.P. No. 1768/2004 for respondent Nos. 11 and 12, A.G.P., in W.P. Nos. 1768, 4421/2004 for respondent No. 1 in W.P. Nos. 1920, 1977/2004 for respondent Nos. 1 and 2 and Paliwal in W.P. No. 4421/2004 and A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari B.P., J.—By these four petitions arising out of order dated 11th March, 2004 passed by Joint Charity Commissioner, Nagpur upon application u/s 41-D of Bombay Public Trusts Act, 1950 which came to be registered as Application No. 1 of 1999. By the said order the Joint Charity Commissioner has partly allowed the application. He has held that second part of charge No. 2 levelled against non-applicants 1 to 10 before him is proved and hence, has ordered their removal from trusteeship as per provisions of Section 41-D(1)(c) of Bombay Public Trusts Act, 1950 (hereinafter referred to as "Trusts Act"). He has further declared that their removal was not disqualification for next election. He has constituted a body of five per-sons as body of fit persons to administer the trust in the meanwhile and has directed the said body to complete the process for holding fresh elections as per 1996 voter's list of the trust within three

months. This order is challenged by applicant No. 2 and applicant No. 4 before Joint Charity Commissioner as also one Adarsh Prakash Raut, Nisha d/o. Krishnarao Zoting as petitioners in Writ Petition No. 1768/2004. Nisha Zoting is nominated as President of body of fit persons by the Joint Charity Commissioner by the impugned order. The relief sought for by these petitioners is that the respondents who have been removed by the Joint Charity Commissioner by impugned order should also be declared as disqualified for contesting the next election. The next relief is that the elections should not be held on the basis of voters" list of 1996.

2. Writ Petition No. 4421 of 2004 is filed by non-applicant No. 1 before the Joint Charity Commissioner questioning her removal from the post of trustee by impugned order. Other removed trustees are respondents in this petition. However, later on she has moved Civil Application No. 7126 of 2004 for adding/transposing these removed trustees as petitioners.

3. Writ Petition No. 1920 of 2004 is filed by applicant No. 1 before the Joint Charity Commissioner and in it he has sought direction to permit members enrolled on 9th October, 2002 to vote in the elections. He also sought interim orders for same purpose.

4. Writ Petition No. 1977 is filed by two persons who claimed that they have been enrolled on 9th October, 2002 as members alongwith others and hence, their names should also be included in voters" list and they should be permitted to participate in the election process to be held as per directions contained in impugned judgment dated 11th March, 2004. Thus the petitioners have also sought interim directions on the same lines. The Writ Petition Nos. 1977 of 2004 and 1920 of 2004 have been considered for grant of interim relief on 9th June, 2004 by this Court and after holding that the petitioners were enrolled as members on 9-10-2002 this Court has permitted them to vote in the elections which were then scheduled on 11-6-2004. The Election Officer was directed to allow these 88 members to cast their votes in separate ballot boxes. It was made clear that these votes would be taken into consideration as per further directions of this Court.

5. In Writ Petition No. 1768 of 2004 the petitioners contend that the Joint Charity Commissioner has found that the removed trustees are guilty of charge i.e. misconduct and therefore, he could not have permitted them to participate in the elections. It is their contention that these members should have been declared as disqualified to participate in future elections. It is their further contention that the Joint Charity Commissioner has acted arbitrarily in directing the elections to be held on the basis of 1996 voters list by wrongly observing that change report submitted in pursuance of those elections was not objected to. They have placed on record alongwith their petition the said change report and objection thereto as raised by Shri Diwakar Game on 23-12-1996. As already stated above, Shri Diwakar Game is petitioner in Writ Petition No. 1920 of 2004. The petitioners have pointed out that the order of Joint Charity Commissioner should be modified

and elections be held on the basis of 1999 change report as according to petitioners, it is last valid change report filed before the Charity Commissioner. The petitioners have further stated that petitioner Nos. 3 and 4 have acquired membership of the trust in the year 1999. It is the case of the petitioners that Joint Charity Commissioner did not offer to them any opportunity, of hearing while fixing cut-off date for the purpose of voters list. It is their contention that they were not put to any notice about any such exercise by Joint Charity Commissioner. They have also pointed out in their written notes of arguments that there are some inconsistent directions issued by Joint Charity Commissioner in the matter. However, the petition does not contain any prayer expressly for quashing any of such directions.

6. In so far as Writ Petition No. 4421 of 2004 is concerned, the petitioners/ removed trustees contend that finding of guilt in relation to second part of Charge No. 2 reached by Joint Charity Commissioner is totally misconceived as there is no such material on record. It is her contention that the material on record on the contrary shows that none of the trustees were responsible in the matter and findings reached by the Joint Charity Commissioner are perverse. She has therefore, contended that the order of her removal needs to be quashed. Other removed trustees are respondents in this petition and vide Civil Application No. 7126 of 2004 prayer is made by her to transpose them as petitioners alongwith her. The said civil application is opposed by respondent Nos. 12, 13 and 14. It is to be noted that these respondents are petitioners 1, 2 and 3 in Writ Petition No. 1768 of 2004. It will thus, be seen that Writ Petition No. 1768 of 2004 and W.P. No. 4421 of 2004 are infact counter petitions opposing each other. It is the case of the petitioner in W.P. No. 4421 of 2004 that there is no loss caused to the trust on account of her or any other trustees. She contends that procedure for appointment and removal of teachers in various institutions of the trust is as per law Government Resolutions and Rules and their salary has also been released by Government as per procedure. She contends that the Education Officer has to declare teachers as surplus and absorb them and when Education Officer delayed the matter, she or other trustees could not have been blamed. She further points out that internal transfers of staff were also made as per procedure and transfer is condition of service. She further states that though transfers are from aided schools to non-aided schools or vice versa the service conditions every where are the same. She further points put that though Education Department has proposed recovery from management on this count, the said recovery is stayed by High Court in writ petition.

7. Tenability of this writ petition is challenged by respondent Nos. 12, 13 and 14 pointing out that against the order of removal remedy of filing appeal u/s 72 before the District Court is available to the petitioner and she cannot be permitted to the writ petition directly before this Court. It is further contention of these respondents that grievance made in Writ Petition No. 4421 of 2004 cannot be even treated as cross-objection in Writ Petition No. 1768 of 2004. Thus, the respondents have also contended that scope of Article 227 does not permit this

Court to interfere in the matter. The petitioner as also these respondents have filed their written notes of argument on record and have relied upon various cases in support of their contention.

8. In other two petitions it is the case of the petitioners that selection of cut-off year 1996 for the purpose of preparation of voter's list to vote in the elections of executive Committee of the trust is arbitrary. They have pointed out that they have become members on 9-10-2002 i.e. after 1996. It is therefore, their stand that they should be permitted to participate in the process of election. In Writ Petition No. 1920 of 2004 original application No. 1 Diwakar Game has stated that though the body of fit persons was then administering the trust, still in the interest of administration of the trust and as the trust needed financial support to discharge its liabilities, it enrolled new members in accordance with the procedure and law. He contends that there was no prohibition in this respect against the body of fit persons. He has pointed out that there were Court orders which require immediate payments to be made to the teachers and contempt proceedings were also pending. He has also pointed out that on 19-2-2002, 86 persons were enrolled as ordinary members and two persons were enrolled as benefactor members and total amount of Rs. 56,000/- was collected as per Constitution of the trust from them. He points out that out of this amount Rs. 40,000/- were then given to four contempt petitioners. Thus, he states that these members enrolled on 9-10-2002 must be permitted to participate in election and to elect new Managing Committee thereof. The grievance in the Writ Petition No. 1977 of 2004 is also the same. Interim orders passed by this Court on 9-6-2004 in both those petitions are already mentioned above.

9. It appears that the applicants and non-applicants in Application No. 1 of 1999 before the Joint Charity Commissioner are fighting amongst themselves to acquire power in so far as trust by name Gramin Vikas Sanstha, Hinganghat is concerned. It is registered trust and also a society having registration No. P.T.R. F-72 Wardha. Shri Krishnarao Zoting Patil is stated to be the founder of this trust and he was its President. He expired on 7-11-1987. It is stated that after his death the petitioner in Writ Petition No. 4421 of 2004 was elected as President. It appears that this trust is running about 16 to 17 educational institutions as per statement made in para 1 of Writ Petition No. 1920 of 2001. Several change reports are seen to be pending before the Assistant Charity Commissioner and these change reports are having numbers 12 of 1987, 248 of 1991, 398 of 1994, 258 of 1997, 3 of 1998, 83 of 1999, 241 of 1999 and 464 of 2001. The record shows that on 3rd April, 1998 first body of fit persons was appointed by the Assistant Charity Commissioner to look after the affairs of the trust by passing orders on Application No. 4 of 1998. On 8-1-1999 Joint Charity Commissioner issued further directions in this respect while passing orders on Application No. 3 of 1999. He constituted body of fit persons on 3-8-1999. In Application No. 1 of 1999. On 3-8-1999 itself the charges were framed against non-applicant Nos. 1 to 10 therein. Perusal of the impugned order reveals that the charges made by the parties against each other in Application No. 1 of 1999 were of grave and

serious nature. However, on 2nd of July, 2003 compromise was reached between original non-applicant No. 1 i.e. petitioner in Writ Petition No. 4421 of 2004, petitioner in Writ Petition No. 1920 of 2004 and his wife who is original applicant No. 3 before Joint Charity Commissioner. On 22-8-2003 the Joint Charity Commissioner was required to reconstitute body of fit persons by deleting applicant Nos. 2, 3 and 4 before it from body. It is also to be noticed that by impugned order said body of ten persons was reduced in size and only five persons were appointed on it by Joint Charity Commissioner. The person appointed as President of the said body Ku. Nisha has become member in 1999 and she is petitioner No. 3 in Writ Petition No. 1768 of 2004 and in contending that selection of the year 1996 by Joint Charity Commissioner for the purpose of preparation of voters list is arbitrary. Perusal of the order of Joint Charity Commissioner also reveals that large number of interim orders were required to be passed from to time. It is thus, clear that affairs of trust are being managed by body of fit persons from 3rd April, 1998 till 11-6-2004. It will further be seen that non-applicants 1 to 10 before Joint Charity Commissioner were trusts from 1988 to 3-8-1999 i.e. the date on which charges were framed and body of fit persons was constituted by Joint Charity Commissioner. It will further be seen that in such circumstances also Diwakar Game applicant No. 1 before the Joint Charity Commissioner filed change report vide change report Case No. 83 of 1999 on 10-3-1999 contending that election has taken place as per Constitution in the year 1999. Not only this but the petitioner in Writ Petition No. 4421 of 2004 and non-applicant No. 1 before the Joint Charity Commissioner has herself filed change report having No. 464 of 2001. She has contended that election has taken place on 2nd October, 2001. As per Constitution of the trust the tenure of elected body is five years. Validity of all these elections is still under consideration and Joint Charity Commissioner has therefore, issued certain directions about their disposal while passing impugned orders. It is to be noted that when from 3rd April, 1998 the trust is being administered continuously by body of fit persons, there could not have been any scope for holding elections and for submitting change report.

10. Perusal of impugned order reveals that the Joint Charity Commissioner has considered the issue of recovery as it emerges from the letter of Education Officer, he has also found that the teachers were surplus and they were appointed and found excess during the regime of non-applicant No. 1 and that there were transfers from aided to non-aided schools and there is direction issued by the High Court to the management to pay salary of these teachers out of trust fund. It has also found that the management was thus, unnecessarily required to pay salary of these teachers and was also required to face contempt proceedings. After considering the entire material on record the Joint Charity Commissioner has found that second part of the charge No. 2 stands proved against the body headed by non-applicant No. 1. It has therefore, found that, there is no question of restoring these non-applicants to their original position unless and until all pending change reports are decided. This finding is reached

after considering evidence and material available on record. I do not find any perversity in it.

11. In paragraph No. 53 Joint Charity Commissioner has held that lapse on the part of non-applicant Nos. 1 to 10 was mere irregularity and was not warranting dismissal. The Joint Charity Commissioner has thereafter found that the challenge to recovery proceedings is pending in High Court. Hence, instead of taking stringent view and dismissing non-applicant Nos. 1 to 10 Joint Charity Commissioner has ordered their removal from membership which did not disqualify them from contesting any future elections. Even this application of mind by Joint Charity Commissioner cannot be faulted with. The contention of the petitioners in Writ Petition No. 1768 of 2004 that Joint Charity Commissioner, therefore, ought to have disqualified the non-applicants fails and is rejected.

12. Similarly contention of the petitioner in Writ Petition No. 4421 of 2004 that her removal is unwarranted, fails. It is apparent that appropriate steps as required were not taken by the management within time and therefore, issue of recovery cropped up. Even though the Joint Charity Commissioner has found management not guilty in the matter of submitting accounts within time, still that has been done only on the basis of oral evidence that the management about issue of warning letters to all Head Masters of the schools for not furnishing the accounts within time. In these circumstances, I do not find that any case is made out for revocation of the order of her removal in the writ petition.

13. Several change reports as mentioned above, are pending and from April, 1998 body of fit persons is administering the trust. The Joint Charity Commissioner was therefore, right in holding that the last elected body was elected in the year 1996. The Joint Charity Commissioner has further found that therefore, there cannot be any debate about the voters' list as obtained in the year 1996 and used in the said election. It is further clear that the Joint Charity Commissioner has found that there may be dispute about members who may have been enrolled by subsequent executive body headed by non-applicant Nos. 1 after 1996, headed by applicant No. 2 after 1999 and after last elections of 2001 allegedly held by non-applicant No. 1. He has held that in the year 1996 there was no counter change report. Thus, the year 1996 as cut-off year for the purpose of preparation of voter's list has been validly selected and there is nothing wrong with this application of mind by the Joint Charity Commissioner. The contention of the petitioners that it should have been voter's list of the year 1999 (as contained in paragraph No. 9 of W.P. No. 1768/04), therefore, cannot be accepted. Their contention that change report submitted in the year 1996 was also objected to is totally irrelevant in view of the above finding recorded by the Joint Charity Commissioner. The said change report is objected to by applicant No. 1 Diwakar Game on the ground that record of elections has been fabricated. Therefore, only members enrolled subsequent to 1996 have not been permitted to be included in the voters list by Joint Charity Commissioner. It is to be noticed

that this applicant No. 1 has in fact compromised with non-applicant No. 1 the controversy in applicant No. 1 of 1999 and non-applicant No. 1 has furnished the said change report of 1996. Pendency of various change reports and conduct of parties therefore, reveal that the parties are trying to grab the powers and the administration of the trust. Faced with such situation, the Joint Charity Commissioner had no option but to find out latest and undisputed list of members and that has been done correctly. Interest of trust is paramount consideration and handing over its affairs to the democratically elected body was the need of hour. Situation has been aptly dealt with and resolved by learned lower authority. The necessary material to decide cut off year for voters list was already on record and parties were aware about said material. There is no challenge to the power of Joint Charity Commissioner to direct holding of elections. In the facts of case it was necessary to fix cut off year for preparation of voters list as it was part of direction to hold elections. When directions to hold elections are issued after hearing parties, voters who have been enrolled later on and whose eligibility is in dispute, can not complaint about fixation of such cut off year or alleged absence of hearing while fixing it. Even otherwise none of the petitioners have demonstrated any prejudice caused to them in the matter as selection of the year 1996 by learned Joint Charity Commissioner is neither arbitrary nor illegal.

14. Coming to the demand of petitioners in Writ Petition No. 1920 of 2004 and 1977 of 2004 that their names should also be included in voter's list or that their votes are also be counted in elections which have taken place on 11-0\6-2004, question which arises is, whether, these persons are validly enrolled as members of the trust? It is admitted position that they are enrolled either in the year 1999 or on 9-10-2002. From the proceedings it is apparent that about 88 members have been enrolled by body of fit persons on 9-10-2002. It is argument of the petitioner in W.P. No. 4421 of 2004 who has filed civil applications for permission to intervene in these petitions that body of fit persons could not have enrolled new members. Reliance has been placed on two judgments (1) reported at Ramachandra Ganpat Shinde and another Vs. State of Maharashtra and others, reported at Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others, . In the later ruling the Hon''ble Apex Court has considered the scope of powers available to administer or the Committee appointed as care taker Committee while elected Committee of management of the society under suspension. The provisions considered are Section 30(3) of Karnataka Co-operative Societies Act, 1959 and Section 32(4) of Kerala Co-operative Societies Act. The Hon''ble Apex Court has found that such administrator or Committee appointed to take care and exercise only those powers and functions as are required to protect interest of Co-operative Society and should conduct elections with members as are available on rolls and are not Vested with powers to enroll hew members. It is observed that the Committee of management regularly elected is empowered to enroll new members and such enrollment involves alteration of the composition of the society itself and hence, such powers should not be exercised by the

Committee run by an administrator or a Committee appointed by Registrar while the regular Committee of management is under supersession. The expression "have power to exercise all or any of the functions of the Committed" has been considered and it has been held that such administrator or ad hoc Committee has Only job of bringing on an even keel a ship which was in doldrums. The same reasoning holds good even in present case. The arguments of the petitioners that the Joint Charily Commissioner of Assistant Charity Commissioner did not impose any riders upon their powers in this respect therefore, Cannot be accepted. In these circumstances, I do not find that the said petitioners or 88 persons who have been permitted to cast their votes by this Court vide its interim orders dated 9-6-2004 are entitled to participate in the process Of election which has taken place on 11-6-2004. The selection of the year 1996 for the purpose of said election by Joint Charity Commissioner is just and proper and calls for no interference.

15. From the discussion above, it is apparent that all the petitions are liable to be dismissed and no interference is called for in exercise of writ jurisdiction. The respondent Nos. 12 to 14 in Writ Petition No. 4421 of 2004 have raised certain preliminary objections. However, from the pleadings in that petition it is clear that the petitioner therein initially made efforts to obtain same relief in W.P. No. 1768 of 2004 and thereafter she was permitted to withdraw her application with liberty to file proceedings before appropriate forum. As all these, petitions are pending before this Court, filing of an appeal before the District Court by her thereafter could have added to the confusion and could have resulted in inconsistent orders to the detriment of interest of trust. Hence, when entire situation was being considered by this Court and the said writ petition is infact, a counter to Writ Petition No. 1768 of 2004. I do not find any merits in the said preliminary objections.

None of the petitioners have demonstrated any error apparent or jurisdictional lapse by lower authority. View taken by Joint Charity Commissioner is just and proper and warrants no interference.

For the reasons mentioned above, the writ petitions fail and are dismissed accordingly. No order as to costs.