

(2021) 03 GUJ CK 0025
In the Gujarat High Court

Case No : R/Special Civil Application No. 3397 Of 2021

Society For Clean Earth Through Its Authorized Representative & 4 Other(S) APPELLANT

Vs

Ld. Charity Commissioner, Ahmedabad & 7 Other(S) RESPONDENT

Date of Decision : 05-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Trusts Act, 1882 — Section 2(8), 2(13), 2(18), 18, 19, 41A

Citation : (2021) 03 GUJ CK 0025

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : SN Soparkar, Aditya A Gupta, Mohit A Gupta, AR Gupta, Neeta A Pandit, Mihir Thakore, Mamta R Vyas

Final Decision : Dismissed

Judgement

Vipul M. Pancholi, J

1. This petition is filed under Articles 226 and 227 of the Constitution of Indian, in which, the petitioners have prayed that the order dated 10.02.2021

passed by respondent No.1 in Misc. Application No.15 of 2021 be quashed and set aside.

2. Heard learned Senior Advocate Mr.S.N. Soparkar assisted by learned advocate Mr.Aditya A. Gupta for the petitioners and learned Senior

Advocate Mr.Mihir Thakore assisted by learned advocate Ms.Mamta R. Vyas for respondent Nos.2 to 7.

3. The factual matrix of the case is as under:

3.1 It is the case of the petitioners that petitioner No.1 is a Society registered under the provisions of the Societies Registration Act, 1860, which was

registered on 03.02.2011. It is stated that the Charity Commissioner issued show-cause notice dated 05.08.2019 to some of the members of the governing body of the petitioner Society calling upon the said members to show cause as to why the petitioner Society should not be registered under the Gujarat Public Trusts Act, 1950 (hereinafter referred to as 'the Trusts Act'); as to why the registration of the petitioner Society should not be cancelled and as to why prosecution should not be initiated against them for not registering the society under the Trusts Act. It is stated that pursuant to the show-cause notice, it was agreed amongst the members of the governing body of the petitioner Society that appropriate reply should be filed opposing the notice issued by the Charity Commissioner. However, the then Chairman of the petitioner Society Mr. Jayesh Bhogilal Patel deceptively got the signatures of the members of the governing body of the petitioner Society on the reply and consented to register the petitioner Society under the Trusts Act. Thereafter, the Charity Commissioner passed an order on 30.01.2020 directing the members to move an application before the Deputy Charity Commissioner to register the petitioner Society as Trust under the Trusts Act. It is stated that the petitioners have challenged the said order by filing Special Civil Application Nos. 6591 of 2020 and 11024 of 2020 before this Court. This Court has issued notice in the said petitions.

3.2 It is alleged that as the then Chairman Mr. Jayesh Bhogilal Patel was acting against the interest of the petitioner Society, he was removed from the post of Chairman vide Resolution dated 02.07.2020 and, thereafter, he was removed as Member of the governing body vide Resolution dated 18.07.2020. It is stated that illegal meeting was scheduled on 16.07.2020, which was cancelled by the petitioner Society. It is also stated that Civil Suit has been filed by the petitioner against Mr. Jayesh Bhogilal Patel and the City Civil Court vide order dated 30.09.2020 has granted interim relief in favour of the petitioner Society and, thereby, restrained Mr. Jayesh Bhogilal Patel to represent the Society in any manner. Said Mr. Jayesh Bhogilal Patel has filed AO No. 104 of 2020 before this Court, which is pending.

3.3 It is also stated that Civil Suit No. 628 of 2020 has been filed by Mr. Jayesh Bhogilal Patel for declaration that Resolutions dated 02.07.2020 and 18.07.2020 passed by the petitioners are bad in law. The said suit is pending.

3.4 It is further stated that in pursuance of the order dated 30.01.2020 passed

by the Charity Commissioner, the then Chairman Mr. Jayesh Bhogilal Patel submitted an application dated 27.07.2020 under Section 18 of the Trusts Act for registering the Trust before the Deputy Charity Commissioner, on the basis of which, inquiry under Section 19 of the Trusts Act has been initiated by the Deputy Charity Commissioner. Thereafter, on 17.10.2020, the petitioner Society moved a withdrawal application before the Deputy Charity Commissioner and prayed that it does not want to pursue the said application for registering the petitioner Society under the Trusts Act. The Deputy Charity Commissioner decided to hear such application with the main matter and, therefore, the petitioners have challenged the said order by filing Special Civil Application No.15330 of 2020 before this Court. This Court has issued notice in the said petition.

3.5 The petitioners have further stated that now, the respondents have filed Misc. Application No.15 of 2021 before respondent No.1 Charity Commissioner under Section 41A of the Trusts Act and respondent No.1 has passed the impugned ex parte order dated 10.02.2021 and thereby granted ad interim relief, as prayed for in Paragraphs 11(A), 11(B) and 11(C). The petitioners have, therefore, filed the present petition.

4. Learned Senior Advocate Mr. S.N. Soparkar has mainly contended that respondent No.1 Charity Commissioner has no jurisdiction to decide Misc.

Application which has been filed by respondents under Section 41A of the Trusts Act. Learned Senior Advocate has further assailed the impugned

order on the ground that the impugned order has been passed without giving an opportunity of hearing to the petitioners and no mandatory injunction

could have been granted by respondent No.1 Charity Commissioner in the facts of the present case. Learned Senior Advocate has, at this stage,

referred the provisions contained in Section 41A of the Trusts Act and, thereafter, submitted that the Charity Commissioner can exercise powers

under Section 41A of the Act and give appropriate direction to the concerned trustee of the Public Trust. In the present case, petitioner No.1 Society

is yet not registered as Public Trust and, therefore, it is not open for respondent No.1 to exercise powers under Section 41A of the Act. Learned

Senior Advocate, at this stage, has placed reliance upon the decision rendered by this Court in the case of Amrutlal Keshavbhai Patel Vs. Ismail

Ibrahim Badat reported in 1985 GLH 1177 and the decision rendered by the

Bombay High Court in the case of Dadasaheb Chauhan Satkar Samiti

Vs. The State of Maharashtra and Ors. reported in 1994 (3) Bom CR 682 and the order dated 06.04.2018 passed by this Court in Special Civil

Application No.18696 of 2015.

5. It is further submitted that it is not necessary for petitioner No.1 Society to register the same as Public Trust under the Trusts Act and whether it is

to be registered as Public Trust or not, inquiry is still pending before the Deputy Charity Commissioner and, therefore, respondent No.1 Charity

Commissioner ought not to have passed the impugned order.

6. Learned Senior Advocate thereafter would submit that while passing exparte order, respondent No.1 has not recorded any reasons and there is

non-application of mind on the part of respondent No.1. It is submitted that respondent No.1 has to record satisfaction at the time of passing the order

under Section 41A of the Trusts Act. It is also contended that the impugned order is in violation of the principles of natural justice and ad-interim

relief can be granted only in emergent situation. In the facts of the present case, no such emergent situation has been pointed out by the private

respondents before respondent No.1. Learned Senior Advocate has placed reliance upon the decision rendered in the case of Syedna Mohamed

Burhanuddin V. Charity Commissioner, Gujarat State reported in 1992(1) GLH 331 .

7. Learned Senior Advocate Mr.Soparkar would further submit that at interim stage, no relief of final nature could have been granted by respondent

No.1 and, therefore, this Court may quash and set aside the impugned order. In support of the said contention, learned Senior Advocate has placed

reliance upon the decision rendered by the Honourable Supreme Court in the case of Bank of Maharashtra Vs. Race Shipping and Transport

Company Private Limited reported in 1995(3) SCC 257.

8. On the other hand, learned Senior Advocate Mr.Mihir Thakore appearing for the private respondents referred the details of various litigations filed

by the petitioners before this Court as well as before the concerned City Civil Court against the respondents and/or against one Mr.Jayesh Bhogilal

Patel. It is submitted that the petitioner Society is registered under the provisions of the Societies Registration Act on 03.02.2011. Learned Senior

Advocate has referred the Memorandum of Association of the petitioner Society,

which is placed on record at Page 25 of the compilation. After referring to the objects, for which, Society is established, it is contended that the Society has been registered/established for charitable purposes. It is further submitted that pursuant to the show cause notice issued by the Charity Commissioner on 05.08.2019 to the governing body that why the petitioner Society should not be registered as charitable Trust. Reply was given by the members of the governing body and out of the total five petitioners, three petitioners have signed the said reply. Learned Senior Advocate has, at this stage, referred Pages 151 and 152 of the compilation. It is further submitted that on 30.01.2020, Charity Commissioner passed an order whereby the petitioner Society is asked to file an application for registration of the Society under the provisions of the Trusts Act. It is submitted that the said order is challenged by the petitioners by filing petition before this Court. However, this Court has not granted stay in favour of the petitioners.

8.1 At this stage, learned Senior Advocate has referred the provisions contained in Section 2(13) of the Trusts Act, which provides the definition of

“Public trust”. After referring to the same, it is submitted that as per the aforesaid provision, though the petitioner Society is registered under the

Societies Registration Act, it is a Public Trust within the meaning of Section 2(13) of the Trusts Act and, therefore, even if it is not registered as Public

Trust, for all the purposes, it is a public trust and, therefore, Charity Commissioner has jurisdiction for deciding the various issues under the Trusts Act.

At this stage, learned Senior Advocate has also referred the definition of 'Trustees' as provided under Section 2(18) of the Trusts Act. Learned Senior

Advocate has also referred the definition of 'Manager' as provided under Section 2(8) of the Trusts Act. After referring the aforesaid provisions, it is

contended that the trustee is a person in whom either alone or in association with other persons, the trust property is vested and includes a manager

and Manager in case of society registered under the Societies Registration Act, its governing body, if the property of the society is not vested in a

trustee.

8.2 Learned Senior Advocate Mr.Thakore thereafter submitted that Mr.Jayesh Bhogilal Patel, who was the Chairman at the relevant point of time,

called the meeting of the governing body. However, it could not be convened. In the meantime, the petitioners filed Civil Suit against Mr.Jayesh

Bhogilal Patel. Said Mr.Jayesh Bhogilal Patel convened a meeting on 16.07.2020. Agenda of the meeting is placed on record at PageÂ210 and public

notice for meeting was issued, a copy of which is placed on record at PageÂ211. In the meantime, five members convened a meeting and removed

Mr.Jayesh Bhogilal Patel as Chairman because he gave consent for registering the petitioner Society as Trust under the Trusts Act. It is submitted

that on 16.07.2020, resolution was passed in the meeting and the present respondents are appointed as members. There was a slight change in the

Memorandum of Association of the petitioner Society, a copy of which is placed on record at PageÂ 175. After the said resolution was passed on

16.07.2020, on 18.07.2020, five members removed Mr.Jayesh Bhogilal Patel as a member of the governing body and, thereafter petitioner No.2 filed

Civil Suit No.553 of 2020.

8.3 At this stage, learned Senior Advocate further submitted that on 27.07.2020, an application for registration of the petitioner Society under the

Trusts Act was filed before the Deputy Charity Commissioner and Deputy Charity Commissioner passed order dated 10.08.2020 and objections were

invited. Thereafter, Mr.Jayesh Bhogilal Patel filed Civil Suit No.628 of 2020 and challenged the Resolution passed by the concerned governing body

whereby Mr.Jayesh Bhogilal Patel had been removed as a Chairman. Thereafter, the City Civil Court passed an injunction vide order dated

30.09.2020 whereby Mr.Jayesh Bhogilal Patel is restrained from operating the bank account and representing the Society. Mr.Jayesh Bhogilal Patel

filed Appeal from Order before this Court, which is pending. It is further pointed out that the petitioners filed a withdrawal application before the

Deputy Charity Commissioner which has been filed for registration of the petitioner Society as Trust under the Trusts Act. The Deputy Charity

Commissioner passed an order that the said application be heard with the main matter. The said order is also challenged by the petitioners by filing

Special Civil Application No.15330 of 2020. This Court has though issued notice not granted any stay in favour of the petitioners. At this stage, it is

also submitted that now, petitioner No.1 Society has filed another Civil Suit before City Civil Court.

8.4 After referring to the aforesaid history, learned Senior Advocate Mr.Thakore would submit that petitioner No.2 and other petitioners have filed various proceedings before various forums and spent lakhs of rupees for the payment of advocates' fees. Money of petitioner No.1 Society has been misutilised by the petitioners and, therefore, now the private respondents have filed an application under Section 41A of the Trusts Act before the Charity Commissioner. It is submitted that the petitioners have not placed on record interim application filed by the respondents with the memo of the petition and the respondents have placed on record a copy of the same with the reply.

8.5 It is submitted that the respondent Charity Commissioner has passed only an interim order in favour of the respondents on 10.02.2021 and, thereafter, the matter was immediately kept on 15.02.2021. In fact, the petitioners filed an application for vacating interim relief. However, thereafter, they have withdrawn the said application. It is submitted that it is open for the petitioners to once again file an application for vacating interim relief and the respondents herein will co-operate with the hearing of the said application and this Court may direct the Charity Commissioner to decide the issue within prescribed time limit.

8.6 It is further submitted that as per Section 2(13) of the Trusts Act when the petitioner Society is registered under the Societies Registration Act and the same is registered for charitable purposes, it is deemed to be a charitable Trust. Now, so far as the inquiry contemplated under Section 19 of the Trusts Act is concerned, the Deputy Charity Commissioner has to inquire into the limited aspect whether objects of the petitioner Society are charitable and/or religious or not. If the objects are charitable, then the petitioner Society is required to be registered as Trust under the Trusts Act and at present, it is deemed to be a public Trust. Thus, the Charity Commissioner has jurisdiction to decide the application filed by the respondents under Section 41A of the Trusts Act.

8.7 At this stage, learned Senior Advocate has relied upon the following decisions:

(1) Shri Dnyaneshwar Madhuradwait Sampradayik Mandal, Amravati Vs. Charity Commissioner, Bombay and another reported in 1981 Mh.L.J 35

(2) Ambalal Okarlal Patel Vs. Filoman Pathubhai Patel reported in 2003(3) GLH 306

(3) Pavankumar Jain V. Priyavadan Ambalal Patel reported in 2016 GLR 242

8.8 It is further submitted that the decisions upon which the reliance is placed by the learned Senior Advocate for the petitioners are not applicable in

the facts of the present case. Therefore, it is urged that the petition be dismissed.

9. In rejoinder, learned Senior Advocate Mr.S.N. Soparkar appearing for the petitioners submitted that history of litigation is irrelevant and the present

respondents have not pointed out history before the Charity Commissioner and, therefore, it is not open for the respondents to contend that because of

the history of the litigations, the respondent Charity Commissioner has passed an interim order in favour of the present respondents. It is further

submitted that the respondents are merely executive members and not the members of the governing body. The petitioners have not appointed the

respondents, therefore, it is a disputed question of fact whether the respondents can file an application under Section 41A of the Act before the

Charity Commissioner or not. It is submitted that Executive Committee cannot substitute the governing body.

10. Having heard learned Senior Counsel appearing for the parties and having gone through the material placed on record, it would emerge that

petitioner No.1 is a Society registered under the Societies Registration Act, 1860, which was registered on 03.02.2011. The Memorandum of

Association of the petitioner Society is placed on record by the petitioners at Page 25 of the compilation. It is a specific case of the respondents that

there are certain charitable objects, for which, Society is established and registered under the Societies Registration Act. The Charity Commissioner

issued show cause notice on 05.08.2019 calling upon the members of the petitioner Society to show cause as to why the petitioner Society should not

be registered under the Trusts Act. It is a case of the petitioners that the then Chairman Mr.Jayesh Bhogilal Patel deceptively got the signatures of the

members of the governing body. This is a disputed question of fact, which can be decided by the competent forum. However, thereafter, the Charity

Commissioner passed an order on 30.01.2020 directing the members to move an application before the Deputy Charity Commissioner to register the

petitioner Society as Trust under the Trusts Act. At this stage, it is pertinent to note that though the said order is challenged by the petitioners by filing

Special Civil Application Nos.6591 of 2020 and 11024 of 2020 before this Court,

this Court has not granted stay in favour of the petitioners.

11. It would further emerge that pursuant to the direction issued by the Charity Commissioner vide order dated 30.01.2020, Mr.Jayesh Bhogilal Patel,

who was the Chairman/Member of the governing body, at the relevant point of time submitted an application under Section 18 of the Trusts Act for

registering the petitioner Society as Trust before the Deputy Charity Commissioner. During the course of inquiry, the petitioners submitted an

application dated 17.10.2020 for withdrawal of the application filed by Mr.Jayesh Bhogilal Patel for registering the petitioner Society as a Trust. It is

also pertinent to note at this stage that the Deputy Charity Commissioner decided to hear the said application with the main matter. The said order

passed by the Deputy Charity Commissioner has been challenged by the petitioners by filing Special Civil Application No.15330 of 2020 before this

Court. This Court has though issued notice not granted any relief in favour of the petitioner, till date.

12. Thus, on the aforesaid factual background of the present case, if the case of the present respondents is seen, it is stated that they are the members

of the petitioner Society and are entitled to submit an application under Section 41A of the Trusts Act before the Charity Commissioner. It is

specifically contended that the petitioners are misusing the fund of the petitioner Society and spent lakhs of rupees in filing various litigations before

various forums. The main contention of learned Senior Advocate for the petitioners is that petitioner No.1 is not registered as Trust under the

provisions of the Trusts Act and, therefore, the respondent Charity Commissioner has no jurisdiction to consider the case of the respondents in the

application filed under Section 41A of the Trusts Act and on other hand, it is a case of the learned Senior Advocate for the respondents that the

petitioner Society is registered under the Society Registration Act and as per Section 2(13) of the Trusts Act, it is a deemed Trust. It is further the

case of the respondents that the application for registration of the Trust is also filed before the Deputy Charity Commissioner under Section 18 and

inquiry is also initiated by the Deputy Charity Commissioner under Section 19 of the Trusts Act. The scope of the said inquiry is very limited and the

Deputy Charity Commissioner has to examine whether the object of the petitioner Society is a charitable or not.

13. At this stage, it is pertinent to note that another contention of learned Senior Advocate for the petitioners is that the impugned order has been

passed by the Charity Commissioner without giving an opportunity of hearing to the petitioners and mandatory injunction has been granted by the

Charity Commissioner by way of the impugned order, which is not permissible and, therefore, the impugned order is to be set aside. This Court would

like to examine the said submission first. If the impugned order is carefully examined, it is revealed that the said order has been passed on 10.02.2021.

The respondent Charity Commissioner has granted adÂinterim relief in terms of ParagraphsÂ11(A), (B) and (C). From the record, it appears that the

petitioners have not placed on record the application for interim injunction along with the memo of the petition. However, the respondents have placed

on record the said application at PageÂ231 of the compilation. If the said application is examined, it is revealed that the private respondents have

specifically alleged that the present petitioners are trying to see that the Society is not registered under the Trusts Act and for that purpose, they are

spending fees from the funds of the petitioner Society. It is also alleged that though petitioner Nos.2 to 5 are not administrators of petitioner No.1

Society, they are misusing the letterhead, rubber stamp and chequeÂ books. It is a specific case of the respondents that they are the members of the

governing body and, therefore, in the interest of petitioner No.1, the application is filed. The respondents have, therefore, prayed before the Charity

Commissioner that the present petitioners " original opponents be restrained from operating the bank account of the petitioner Society and they may

be restrained from using the letterhead and rubber stamp of the petitioner Society. It is also prayed that the petitioners herein be restrained from

making any financial transaction from the account of the petitioner Society. Looking to the allegations levelled in the said application, the Charity

Commissioner has granted adÂinterim relief in terms of ParagraphsÂ11(A), (B) and (C) till 15.02.2021.

14. The impugned order passed by the Charity Commissioner is an exÂparte order, therefore, the petitioners were not heard. The Charity

Commissioner immediately kept the matter on 15.02.2021 after granting adÂinterim injunction in favour of the present respondents on 10.02.2021.

Thus, it was open for the petitioners to file an application before the Charity Commissioner with a request to vacate the said adÂinterim injunction. In

fact, the said application was filed by the petitioners but subsequently, it was withdrawn. Yet, the final order has not been passed by the Charity

Commissioner under Section 41A of the Trusts Act.

15. It is prima facie clear that specific allegations are levelled against the present petitioners in the application filed by the respondents before the

Charity Commissioner with regard to the misutilisation of funds and misusing the rubber stamp and letterhead of the petitioner Society and, therefore,

in that context, looking to the facts of the case, Charity Commissioner thought it fit to pass the ad interim relief in terms of Paragraphs 11(A), (B)

and (C) and immediately, the matter was kept after five days.

15. At this stage, it is relevant to note that when the petitioners came to know about the order, they immediately filed an application before the Charity

Commissioner and requested that the ad interim injunction granted vide order dated 10.02.2021 be vacated. However, subsequently, the said

application came to be withdrawn by the petitioners.

16. In the facts and circumstances of the present case, this Court is of the view that the Charity Commissioner has granted ad interim injunction vide

order dated 10.02.2021 and, thereafter, the matter was immediately kept on 15.02.2021 for further hearing. Therefore, it is always open for the

petitioners to remain present before the Charity Commissioner and to request that the ad interim injunction granted in favour of the present

respondents be vacated. It is also open for the petitioners to raise contention that the Charity Commissioner has no jurisdiction to pass order under

Section 41A of the Trusts Act in the facts of the present case.

17. Thus, in view of the above discussion, the petition is dismissed as the petitioners have challenged the ad interim injunction granted by the Charity

Commissioner. Therefore, the other issues raised by the petitioners are not examined at this stage. However, it is open for the petitioners to file an

application for vacating ad interim junction before the Charity Commissioner. As and when such an application is filed, Charity Commissioner shall

decide the same within a period of two weeks from the date of filing of such application.

It is open for the parties to raise all the available contentions before the Charity Commissioner and, thereafter, Charity Commissioner shall pass an

appropriate order, in accordance with law.