

# SUPREME COURT OF INDIA

Hidayatkhan Bismillakhan Pathan

Vs.

Vajjnath

C.A.No.3267 of 2009

(S.B. Sinha and Cyriac Joseph JJ.)

05.05.2009

## JUDGMENT

**S.B. Sinha, J.**

1. Leave granted.

2. Marathwada Sarvodya Shikshan Prasarak Mandal is a public Trust registered under the *Bombay Public Trust Act, 1950* (hereinafter called, for the sake of brevity, 'the Act') as also the *Societies Registration Act, 1850*. Its office is situated at Partur, District Jalna in the State of Maharashtra. It was created inter alia for the purpose of imparting education to the children of the rural area. The constitution of the Trust provides for 15 life members out of which 13 would be the ex-officio members of the Executive Committee and the other two would be the co-opted members from amongst the General Members elected by the majority of the life members of the Executive Committee which is an elected body. The tenure of the elected body is five years. Members of the Managing Committee were elected in an election held on 30th June, 1996. However, before expiry of its term of five years, respondent No.1 submitted his resignation on 31st December, 1999. A change report to that effect was filed and approved by the competent authority under the Act.

3. Fresh elections took place on or about 26th June, 2001. The term of the said Committee expired in 2006. Again elections were held in the year 2006. However, after the elections were held in 2001, a change report had been submitted. It was accepted by the Assistant Charity Commissioner, Jalna on 5th August, 2002. It is stated that about 82 meetings were held thereafter and the first respondent participated in almost all of them. He had, thus, accepted the election of the second respondent, Babasaheb Akat, as the President of the Trust. Since 2001 several changes took place for which 'change reports' were filed and accepted by the Assistant Commissioner from time to time.

4. Disputes and differences allegedly arose between the first respondent and the second respondent in October, 2003. Respondent No.1 filed a revision petition before the Joint Charity Commissioner questioning the validity of the elections held in 2001. The Joint

Charity Commissioner by its judgment dated 4th June, 2004 opined that the revision application filed by the first respondent was barred by limitation but despite the same proceeded to initiate a purported suo moto proceeding under Section 70-A of the Act. The revision application was allowed inter alia observing that the notice dated 26th June, 2001 calling for the meeting had not been issued as per the by-laws of the society and, thus, the business conducted in that meeting on the basis of such defective notice cannot be said to be legal and valid and in that view of the matter office-bearers had also not been elected validly. It was concluded :- "The matter may be contested or non contested then also a duty is cast upon lower authority to satisfy that change is occurred as per the by laws of the society and call for some necessary information documents etc for its satisfaction. But here Ld. Lower authority passed mechanically order without any application of mind and therefore the impugned order of the lower authority cannot (sic) be said to be legal and valid." The learned Joint Charity Commissioner, however, further held that while filing the revision application, the first respondent did not act bona fide and the same did not advance the cause of justice. The order impugned before him, however, was set aside pointing out the aforesaid irregularities. We may place on record that as the first respondent had approached the revisional authority with a 'false case', costs were imposed on him.

5. Aggrieved by and dissatisfied therewith, the second respondent filed an application before the District Judge, Jalna. The learned District Judge by his order dated 28th June, 2004 allowed the said application in part and remanded the matter back to the Joint Charity Commissioner with a direction that all the trustees and co-opted members of the Trust be given notice and fresh enquiry under Section 70A of the Act be held and a fresh decision be rendered.

6. An appeal was preferred thereagainst by the first respondent before the High Court of Judicature at Bombay and by reason of an order dated 16th October, 2004 the said appeal was dismissed.

7. The Joint Charity Commissioner, however, instead of hearing the matter himself remitted the same to the Assistant Charity Commissioner. A Miscellaneous Application was preferred thereagainst and by a judgment and order dated 7th July, 2006 the learned 4th Adhoc Additional Judge, Jalna, upon reviewing the entire fact situation including the subsequent events, as also relying on or on the basis of a decision of *Jagatnarayan Singh Swarupsingh Chithere and Ors. v. Swarupsingh Education Society and Anr.*<sup>1</sup> held as under :- " In the light of ratio of this case it is thus futile to reject the applications and again direct the fresh inquiry in this matter that would not only consume the time but harass the parties. Therefore, it is just and proper to allow the applications the term of the Managing body is already expired and the parties can face the fresh election thereafter. In view of all these facts I answer point No.1 & 2 in the affirmative and proceed to pass the following order. ORDER 1. The Misc. Application No. 27/2006 and Misc. Application No.42/20006 are hereby allowed with costs. 2. The impugned order passed by the learned Jt. Charity Commissioner in Revision Petition No.3/2004 remanding the matter of Enquiry No.373/01 to the Learned Asstt. Charity Commissioner, is thereby set aside."

8. First respondent preferred a second appeal thereagainst which, by reason of an order dated 18th July, 2007, purported to be on a concession made by the appellant as also of the parties who had filed caveats, was allowed, holding :- "The Joint Charity Commissioner appears to have committed impropriety and judicial indiscipline by not complying with the directions of the District Court passing on the buck by remanding the matter to the Assistant Charity Commissioner. That itself is improper. He should not have directed further remand when he was asked to consider the additional evidence and decide the matter afresh. Though the Joint Charity Commissioner is a revisional authority, yet the scope of revision is not limited like a criminal revision and supervisory jurisdiction is available in order to rectify the errors as well to do complete justice and decide the questions involved. In this view of the matter, it will not serve any useful purpose in admitting the matter or taking any further decision by this Court and, therefore, the learned Counsel have fairly conceded to remand the same to the Joint Charity Commissioner for afresh decision irrespective of the fact that subsequent elections have been allegedly conducted and subsequent change report is pending for enquiry before the Assistant Charity Commissioner."

9. Indisputably respondent Nos. 6, 10 and 20 before the High Court, inter alia, had not been given any notice of the said second appeal. Respondent No.6 before the High Court has filed the present appeal by special leave petition. An application (I.A. No.2 of 2008) to withdraw the special leave petition has been filed by the petitioner. On the other hand, respondent Nos. 10 and 20 filed application (I.A. No.3 of 2008) for their transposition to the category of the petitioners. We allow the application of transposition.

10. Mr. P.S. Narasimha, and Mr. Uday Umesh Lalit, learned senior counsel appearing on behalf of the transposed appellants, in support of the appeal, would contend that having regard to the subsequent events and in particular, the fact that elections had been held in the meantime, the impugned judgment cannot be sustained. It was furthermore contended that as admittedly no notice had been issued, the High Court but for the purported concession made by the respondents appearing before it, could not have allowed the appeal as a result whereof the parties have been relegated to the same position where they stood in 2004.

11. Mr. Shyam Diwan, learned senior counsel appearing on behalf of respondent No.1, on the other hand, would submit :- (1) Respondent No.20 being the wife of respondent No.2, should not be allowed to be transposed to the category of the appellant and side with her husband, who had already made a concession before the High Court. (2) A special leave petition against a consent order is not maintainable and furthermore in the original special leave petitioner suppressed various facts, no order on the application for transposition should be passed. (3) The Joint Commissioner having conducted an enquiry pursuant to the order of the High Court, no interference with the order of the High Court is unwarranted. (4) An objection made to the change report being in the nature of a suit, any consequence emanating therefrom, namely effect or validity of the meetings and the transactions made should be allowed to be taken to its logical conclusion.

12. The Act was enacted to regulate and make better provisions of administration of public, religious and charitable trust in the State of Bombay. In terms of the provisions thereof the

Charity Commissioner, the Joint Charity Commissioners and other statutory authorities exercise wide jurisdiction. Indisputably a trust should be administered strictly in accordance with law. A change report filed in terms of Section 22 of the Act must be considered on its own merit. Section 17 of the Act provides for maintenance of books, indices and registers, as prescribed therein. Whenever a change in the said books, indices and registers takes place, a change report is to be filed under Section 22 of the Act.

13. A change report, thus, may have to be effected in regard to the particulars of the Managing Directors of the Trust or in respect of any property which was the subject matter of any transaction.

14. When a change report is filed under Section 22 of the Act the Assistant Charity Commissioner would be entitled to make an enquiry in regard thereto. An objection can be filed not only by a Member of the Committee but also by a party who may be affected by reason thereof. For the said purpose an enquiry is required to be conducted in terms of the procedure prescribed under the *Small Causes Courts Act, 1882*. Other procedures laid down in the Bombay Public Trusts Rules, 1951 are also required to be followed.

15. Section 70 of the Act provides for appeal from an order passed by the Deputy of Assistant Charity Commissioner. Section 70A of the Act confers on the Charity Commissioner suo moto jurisdiction to call for and examine the record of such authority for the purpose of satisfying himself as to the correctness or otherwise of the order recorded or passed by it. For the said purpose the parties affected thereby are required to be given an opportunity of hearing. Section 72 provides for an application before the District Judge from a decision of a Charity Commissioner inter alia rendered under Section 70A of the Act. Sub-section (4) of Section 72 thereof provides for a further appeal to the High Court.

16. The jurisdiction of the Charity Commissioner or an Appellate Commissioner to initiate a suo moto proceeding, however, is limited. Although the scope of the present appeal is limited, keeping in view the nature of controversy involved herein we have heard the parties at length so as to enable us to consider not only the validity or otherwise of the impugned judgment passed by the High Court but also the desirability to put an end to the entire controversy between the parties.

17. It is now a well settled principle of law that a court of law or a superior Tribunal would not entertain an appeal or revision application wherein no effective order can be passed. For the said purpose not only the fact situation as was obtaining on the date of filing of the application shall be taken into consideration but also the events which took place subsequent thereto. Although no period of limitation is prescribed for initiating a suo motu proceeding, it is beyond any cavil that such a power should not be exercised after a long time.

18. The election in question was held in the year 2001 validity whereof was questioned only in 2003. The Joint Charity Commissioner in his order dated 04.06.2004 categorically opined; (1) the appeal filed by the first respondent was barred by limitation; (2) his action was not bona fide; and (3) he did not have any prima facie case.

19. A suo motu jurisdiction, as envisaged under Section 70A of the Act can be initiated for the purposes mentioned therein. It is an enabling provision. The said jurisdiction need not be exercised only because it would be lawful to do so. For the said purpose not only the parties are required to be heard but also subject to the limitations provided for in sub-section (2) thereof. Some limitations have been provided for in regard to exercise of the jurisdiction by the Charity Commissioner (1) it must be exercised within the prescribed period of limitation; and (2) where an order has been passed either under Sections 70 or 71 of the Act. In this case an appeal was preferred before the Charity Commissioner who did not exercise its jurisdiction before it became barred by limitation the application. Even in the appellate order, the appeal was not only held to be not maintainable being barred by limitation but also no prima facie case therefor was found. The Joint Charity Commissioner arrived at a finding that the first respondent, although preferred the appeal, in fact attended all the proceedings and participated in the meetings. If no prima facie case was found in the appeal of the first respondent as his action was found to be lacking bona fide, it should not have, in our opinion, exercised its suo motu powers. It is true that the order of the learned District Judge dated 16th October, 2004 had attained finality in the sense that an enquiry was directed to be held. However the purpose and object for which such an enquiry was directed to be held, in our opinion, was no longer available, keeping in view the fact that even fresh election had taken place in the year 2006.

20. The tenure of the Managing Committee had come to an end by efflux of time. Change report in respect of the registers for achieving the said purpose was required to be filed for satisfying the requirement of law, although no effective order could be passed thereupon. It is one thing to say that the change report sought to be effected in respect of the names of the Members of the Managing Committee and/or its President lost its object but it is another thing to say that any transaction which had been entered into may still be subject to an enquiry.

21. In *Shahabad Coop. Sugar Mills Ltd. v. Spl. Secretary to Govt. of Haryana Corpn.*<sup>2</sup> this Court relying on a decision of this Court in *D.N. Roy and S.K. Bannerjee v. State of Bihar*<sup>3</sup> while opining that a revision application would not be maintainable, held:-

"26. If the revision application was not maintainable, a fortiori suo motu power could not also be exercised. Even otherwise if suo motu power is to be exercised, it has to be stated so. In *D.N. Roy and S.K. Bannerjee v. State of Bihar*, this Court opined: "7. It is true that the order in question also refers to `all other powers enabling in this behalf'. But in its return to the writ petition the Central Government did not plead that the impugned order was passed in exercise of its suo motu powers. We agree that if the exercise of a power can be traced to an existing power even though that power was not purported to have been exercised, under certain circumstances, the exercise of the power can be upheld on the strength of an undisclosed but undoubted power. But in this case the difficulty is that at no stage the Central Government intimated to the appellant that it was exercising its suo motu power. At all stages it purported to act under Rules 54 and 55 of the Mineral Concession Rules, 1960. If the Central

Government wanted to exercise its suo motu power it should have intimated that fact as well as the grounds on which it proposed to exercise that power to the appellant and given him an opportunity to show cause against the exercise of suo motu power as well as against the grounds on which it wanted to exercise its power. Quite clearly the Central Government had not given him that opportunity. The High Court thought that as the Central Government had not only intimated to the appellant the grounds mentioned in the application made by the 5th respondent but also the comments of the State Government, the appellant had adequate opportunity to put forward his case. This conclusion in our judgment is untenable. At no stage the appellant was informed that the Central Government proposed to exercise its suo motu power and asked him to show cause against the exercise of such a power. Failure of the Central Government to do so, in our opinion, vitiates the impugned order."

22. If in the aforementioned situation, the learned District Judge had taken a different view having regard to the manner in which the Joint Commissioner has exercised its suo moto jurisdiction, namely in stead and place of making an enquiry himself remanded the matter back to the Assistant Charity Commissioner, no illegality can be said to have committed by him. Furthermore in view of the subsequent events which had taken place, namely holding of the election in the year 2006, we are of the opinion that he cannot be said to have committed an error in passing the said order. Even respondent No.1 should not have been allowed to prefer an appeal. Appeal having been dismissed by the Joint Charity Commissioner no further appeal, at his instance, before the High Court should have been entertained. The High Court furthermore did not apply its mind to the merit of the matter. Evidently it had no occasion to do so as some of the counsel appearing for the caveators conceded that the matter may be remitted back to the Joint Commissioner for a decision afresh as he was guilty of breach of judicial discipline. Despite the same the High Court should have complied with the principles of natural justice. Each of the parties before it was entitled to be heard.

23. No notice admittedly had been issued to a large number of persons including respondent Nos. 10 & 20 who have been transposed to the category of the appellants. There is no legal foundation that respondent No.20, being the wife of respondent No. 2 cannot be directed to be transposed to the category of the appellant, admittedly she was not represented before the High Court in the second appeal. The order of the High Court, therefore, is liable to be set aside.

24. Although ordinarily we would have remanded the matter back to the High Court, we clarify that that we have exercised our jurisdiction under Article 136 read with Article 142 of the Constitution of India, keeping in view the peculiar facts and circumstances of the case so as to do complete justice between the parties as also in view of the fact that any further litigation would be unnecessary since no actual relief can be granted to any of the parties thereto in this case.

25. For the reasons aforementioned the impugned judgment is set aside. The appeal is allowed. No Costs.

<sup>1</sup>1980 Mah. L.J. 372

<sup>2</sup>(2006) 12 SCC 404

<sup>3</sup>(1970) 3 SCC 119