IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 2479 OF 2014

(Govind Narayan Shende vs. State of Maharashtra thr. Secretary, Tribal Development Department & Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI &
A.P. BHANGALE, JJ.
JANUARY 19, 2015.

Heard Shri Khapre, learned counsel for the petitioner, Mrs. Joshi, learned AGP for respondent Nos. 1 to 3 & 14 and Shri Gordey, learned Senior Advocate with Shri Thakare, learned counsel for respondent No. 5 and Shri Sambre, learned counsel for respondent Nos. 6 to 13.

The challenge is to the order passed by the Assistant Charity Commissioner on 30.04.2014 under Section 41-A of the Bombay Public Trust Act, 1950, restraining the present petitioner from interfering with the management and administration of public trust. The directions (five in number) are contained in operative clauses 2 to 6 of the impugned order. Those directions are as under :

"2. The Applicants are hereby directed to manage the management and administration trust and institution thereof by majority decision in the regular meetings till the disposal of change reports and scheme application.

> *3. Non-applicants no. 1 to 8 are directed not interfere in the management and administration of the trust as well as not to pose the selves as trustees of the trust and not use seal, stamp and letter head of the trust.*
>
> *4. Non-applicant no. 1 and 3 are hereby directed to deposit an amount of Rs.7,39,020/- illegal withdrawn by them, in the account of the trust.*
>
> *5. Non-applicant no. 9 to 11 are directed not deal with non-applicant no. 1 to 8 in respect monetary transaction until further orders.*
>
> *6. Pending change reports as well as scheme applications are expedited for disposal according to law."*

The contentions of Shri Khapre, learned counsel, are Respondent No. 5 in present writ petition was applicant No. 1 in 41-A proceedings. In fact, he was party to election which was conducted on 27.01.2013, however, thereafter he turned hostile and has shown second election alleging that it has been held on 07.04.2013. The petitioner has incurred expenditure for running Ashram School and spent for children staying in hostel. Those grants amounting to Rs.7,39,020/- were received in due course. As Respondent No. 5 was not cooperating and the amount was to be paid back to the persons from whom the purchases were effected on credit by the petitioner, a separate account was opened and that cheque was deposited there. He further submits that in the meanwhile an Administrator was appointed on hostel and School, as such, the separate account was of no use thereafter as Administrator was bound to have his own account and hence that account was discontinued. He submits that the expenditure incurred from time to time, purchases effected on credit were all on record and can be looked into in appropriate jurisdiction as that is not the scope of Section 41-A proceedings. The learned Assistant Charity Commissioner could not have treated this act as misappropriation or any financial irregularity and should have refused to exercise the jurisdiction or at the most directed the respondents (applicants before him) to invoke appropriate provisions of Bombay Public Trust Act. He has also invited our attention to the documents on record to show how Respondent No. 5 was in fact party to election conducted on 27.01.2013. He also submits that by impugned direction, the working of Administrator has been adversely affected.

Shri Gordey, learned Senior Advocate strongly opposes this contention. He points out that election was forged by present petitioner in which he has shown his son elected as Secretary. He further submits that the opening of separate account was totally unnecessary and the party in-charge of the Trust including the Administrator could have taken care of amount outstanding and payable by Trust to the suppliers. He, therefore, argues that the election, induction of son as Secretary and opening of new Bank account only for few days and for only limited purposes, are rightly looked into by the Administrator in Section 41-A proceedings. He also states that the Administrator has been appointed on hostel and on Ashram School and he is working smoothly. Respondent Nos. 1 to 8 are only concerned with the administration of Trust and are not interfering with any work of the Administrator.

The learned AGP supports the impugned order.

In reply arguments, Shri Khapre, learned counsel submits that after Respondent No. 5 turned hostile, the petitioner was constrained to make alternative arrangement in terms of constitution of Trust. His son who was duly elected as Joint Secretary has started functioning as a Secretary.

We do not wish to go into these rival contentions. The purpose of Section 41-A proceedings is only to see that the Trust property is not wasted, does not fall in wrong hands and trust is administered properly. There are two groups here in Section 41-A proceedings and both claim to be legally elected. Those Change Reports are still pending and the Assistant Charity Commissioner has expedited the same by the impugned order.

The petitioner claims that he had effected some purchases on credit. The credit purchases, material received and other expenditure incurred shall form part of Trust accounts. The grants received from Government to meet that expenditure, therefore, must also be reflected in trust account and person in-charge of trust including the successor in office due to the election or Administrator could have used those funds to clear the outstanding amounts. It was not necessary for the petitioner to open a new bank account and to deposit that cheque in that account. The account has been discontinued after the cheque was encashed.

The Assistant Charity Commissioner has found this conduct not proper. We are also not in a position to appreciate such conduct when the controversy, in the background of which the same is required to be judged, is looked into. The statement is made by Respondent Nos. 1 to 8 that the Administrator is functioning smoothly in accordance with law. The learned AGP has also not made any grievance about undue interference by anybody in the working of Administrator.

In the circumstances, we find no case made out warranting interference. Writ Petition is rejected. No order as to costs.

JUDGE **JUDGE**

*G.S.