

IN THE HIGH COURT OF BOMBAY AT GOA.**WRIT PETITION NO. 567/2015**

1. SHRI. AMRITPAL SINGH,
Major of age, Indian National,
President, Gurudwara Sri
Guru Singh Sabha,
r/o 202, D-Block, S.N.Horizon,
Jai Ram Nagar,
Dabolim, Goa.
2. SHRI. SAROOP SINGH,
Major of age, Indian National,
Ex-Vice President,
Gurudwara Sri Guru Singh Sabha,
r/o 35-B, Nofra, Airport Road,
Dabolim, Goa.
3. SHRI. GURUSHARAM SINGH,
Major of age, Indian National
Secretary,
Gurudwara Sri Guru Singh Sabha,
r/o 78E, Varunapuri, Mangor Hill,
Vasco-da-Gama, Goa.
4. SHRI RASHPAL SINGH,
Major of age, Indian National,
TREASURE/CASHIER,
Gurudwara Sri Guru Singh Sabha,
R/o 302, Mangor Valley,
Mangor Hill,
Vasco-da-Gama, Goa.
5. SHRI GURDIP SINGH,
Major of age, Indian National,
r/o 72B, Mangor
Hill, Vasco-da-Gama, Goa.
6. SHRI. MALKIAT SINGH,
Major of age, Indian National,
Member, Gurudwara Sri
Guru Singh Sabha,
r/o 501, Mangor Hill
Valley, Mangor Hill,
Vasco-da-Gama, Goa.

7. SHRI. J.S.GREWAL,
Major of age, Indian National,
Member, Gurudwara Sri Guru Singh Sabha,
r/o F-1/2, 1st Floor,
Shivsagar Apartments,
Mangor Hill, Vasco-da-Gama, Goa. ..**Petitioners.**

VERSUS

1. THE INSPECTOR GENERAL OF SOCIETIES,
Office of The Inspector General Of Societies,
Osia Commercial Complex, 2nd Floor,
'D' Wing, Salcete,
Margao, Goa.
2. SHRI. TEJINDER PAL SINGH LALL,
Media Advisor, Major,
r/o. 4A, Amar Apartments,
Behind Sea Scan Maritime
Academy, Airport Road,
Chicalim, Goa-403711.
3. SHRI. JAGWANT SINGH BHATTI,
Major, Indian National,
r/o. Flat No.F-2, Surekha Harmony,
Beside NCS, Airport Road,
Chicalim, Goa-403711.
4. THE POLICE INSPECOR,
Vasco Police Station,
Vasco, Goa.

Respondents

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Shri Vishnuprasad A. Lawande, Advocate for the petitioners.
Shri S.D.Lotlikar, Advocate General with Shri P. Faldessai, AGA for
the respondents no.1 and 4.
Shri D.J. Devidas J. Pangam for the respondent nos. 2 & 3.

CORAM : F.M.REIS & NUTAN D.SARDESSAI, JJ
DATE : 10th JANUARY, 2017.

ORAL JUDGMENT (PER F.M. REIS, J):

1. Heard Shri V.A. Lawande, learned counsel appearing

for the petitioners, Shri S.D.Lotlikar, learned Advocate General appearing for the respondent nos.1 and 4 and Shri D. Pangam, learned counsel appearing for the respondent nos.2 and 3.

2. Rule. Heard forthwith with the consent of the learned counsel. The learned counsel appearing for the respondents waive service.

3. The challenge in the above petition is to the part of the order dated 23rd February, 2015 whereby sanction has been granted under Section 11A of the Societies Registration Act, 1860 to proceed against the petitioners herein. Shri Lawande, learned counsel appearing for the petitioners, submits that the order dated 23rd February, 2015 passed by the respondent no.1 alleging that there was mismanagement of the affairs of the concerned society was challenged before this Court in Writ Petition No.144/2015 which has been disposed of by referring all the disputes between the parties to an Arbitrator. It is further pointed out that the basis of the sanction granted by the respondent no.1 to proceed under Section 11A of the said Act itself does not survive and consequently, the impugned order passed by the respondent no.1 deserves to be quashed and set aside. It is further pointed out that Section 11A of the said Act clearly provides that such sanction can be granted in terms of

Section 11C of the said Act only in cases in which there is a breach in terms of Section 4A of said Act. It is further pointed out that upon reading Section 4A of the said Act, it clearly provides that the respondent no.1 is expected to issue written directions to the petitioners to furnish information and only in cases of such default and after hearing the concerned parties, the proceedings can be initiated in terms of Section 11A of the said Act. The learned counsel further points out that admittedly there was no such procedure followed and as such, the impugned order granting sanction under Section 11A of the said Act would not survive and deserves to be quashed and set aside.

4. On the other hand, Shri S.D.Lotlikar, learned Advocate General, submits that the sanction granted by the respondent no.1 is in terms of Section 11C of the said Act which clearly provides for grant of sanction in cases in which a case is made out in terms of Section 11A of the said Act. It is further pointed out that on reading of the provisions of Section 4A of the said Act it is not very clear as to what information was sought by the respondent no.1 which was not furnished by the petitioners. The learned Advocate General, however, points out that, in any event, the respondent no.1 if he is so satisfied can always file independently FIR in cases in which there is misappropriation or defalcation of funds of the concerned society.

5. Shri Pangam, learned counsel appearing for the respondents no.2 and 3, submits that the respondents have also lodged a FIR on account of breach of trust which has nothing to do with the order impugned in the above petition. We find that this aspect is not the subject matter of the above petition as we are only examining the impugned order passed by the learned Registrar dated 23rd February, 2015.

6. We have considered the submissions of the learned counsel. We have also gone through the record.

7. Section 11A of the said Act reads thus:

"11A. Penalty for contravening section 4A.—If the governing body entrusted with the management of the affairs of any society registered under this Act required to furnish any information or returns—

(i) wilfully refuses or without lawful excuse neglects to furnish such information or returns as may be required under section 4A; or

(ii) wilfully furnishes or causes to be furnished any information or returns which it knows to be false; or

(iii) refuses to answer or, wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under section 4A, such governing body shall, for each such offence on conviction, be punished with fine which may extend to fifty rupees".

Section 4A reads thus :-

“4A. Power of Inspector-General to call for Information or returns from governing body of society and provisions relating thereto.—

(1) The Inspector- General may serve or cause to be served, on the governing body entrusted with the management of the affairs of any society registered under this Act a notice requiring it to furnish in such manner as may be prescribed, information or returns relating to person employed by the society, their conditions of employment (including their emoluments, any contributions, concessions or other benefits and amenities provided for employees) and such other matters relating thereto, as may be prescribed.

(2) The form in which such information or returns shall be furnished, the particulars which they shall contain and the intervals (if any) in which such information or returns shall be furnished, shall be such as may be prescribed.

(3) The notice referred to in sub-section (1) may be served by post.

(4) No information or returns collected for the purposes of this section, shall without the previous consent in writing of the society in relation to which the information or returns was given or made be published in such manner as would enable any particulars to be identified as referring to a particular society.

(5) Except for the purposes of a prosecution under section 11A or under the Indian Penal Code (Central Act 45 of 1860), no person other than the Inspector-General or any person duly specified by him in this

behalf, shall be permitted to see any information or returns furnished as aforesaid.

(6) No suit or other legal proceeding shall lie against the Inspector-General or any person acting under the authority of the Inspector-General in respect of anything in good faith done or intended to be done in pursuance of this section.”

8. On a conjoint reading of the said provisions, it clearly provides that to constitute a breach of the provisions of Section 4A of the said Act, it is incumbent upon the respondent no.1 to issue a written communication to the concerned Managing Body to furnish specific information which has not been furnished. In the present case, upon reading the impugned order, we find that there was no written communication issued to the concerned Managing Body and as such on this count alone, the respondent no.1 was not justified to come to the conclusion that there was a breach of the provision of Section 4A of said Act. As such, we find that, the question of granting sanction in terms of Section 11C of the said Act for breach of the provision of Section 11A of the said Act would no longer survive. Apart from this, it is undisputed that the alleged mismanagement and defalcation of funds claimed by the respondent no.1 are referred for arbitration while disposing of the said writ petition. In such circumstances, as the dispute with regard to the allegations made by the respondent no.1 have not attained finality, we find that the

impugned order passed by the respondent no.1 granting sanction in terms of Section 11A of the said Act does not survive and deserves to be quashed and set aside.

9. In view of the above, we pass the following

O R D E R

The impugned order dated 23rd February, 2015 to the extent in terms of Section 11A of the said Act is quashed and set aside.

10. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J

F.M. REIS, J

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