

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.321 OF 2017
WITH
CIVIL APPLICATION NO.679 OF 2017**

Chidanand Gurulingappa Partbadi and Ors. ... Appellants

Vs.

State of Maharashtra through Collector,
Solapur and Ors.

... Respondents

.....

Mr. Shailendra S. Kanetkar for the appellants.

Mrs. Anamika Malhotra, AGP for respondent Nos.1 to 4.

Mr. Anant Vadgaonkar for respondent Nos.5 and 6.

Mr. Prasad B. Kulkarni for respondent Nos.7 to 10.

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CORAM : M. S. KARNIK, J.

DATE : 7th OCTOBER, 2019.

P. C.:

1. Heard learned counsel for the parties.
2. This appeal challenges the judgment and order passed by the First Appellate Court dismissing the appeal filed by the appellants against the judgment and decree of the Trial Court.
3. Both the Courts below have concurrently held that the issue involved in the suit filed by the appellants-original plaintiffs concerns the administration of the Trust and therefore the suit is

not maintainable unless permission of the Charity Commissioner is obtained under the provisions of Section 51 of the Maharashtra Public Trusts Act (hereinafter referred to as 'the said Act' for short).

4. Learned counsel for the appellants assailing the order passed by the Courts below would invite my attention to the averments made in the plaint and the reliefs prayed. It is his contention that the respondent Nos.5 and 6 have contravened various provisions of law while appointing the respondent Nos.7 to 10 as assistant teachers. Learned counsel would submit that only because the Trustees of the respondent No.6 comprise a majority, they have in a high handed manner and in utter breach of provisions of law appointed the respondent Nos.7 to 10-original defendant Nos.7 to 10 as Assistant Teachers. He invited my attention to the provisions of Section 50 and 51 of the said Act. It is his submission that in the present case having regard to the frame of the suit and the reliefs sought, the permission of the Charity Commissioner is not required under Section 51. He would urge that essentially the plaintiff challenge the action of the Trust

appointing respondent Nos.7 to 10 illegally. According to him, the respondent Nos.1 to 4 are the various authorities empowered to approve the appointments made and therefore the relief is sought against the respondent Nos.1 to 4 that the approvals granted to respondent Nos.7 to 10 are illegal. Learned counsel would submit that it is only when relief in the nature of one provided in clause (p) and (q) of Section 50 is prayed for that the permission of the Charity Commissioner is required. It is his submission that the appellants are not seeking any relief based on the contention that there is breach of the Trust deed or any of the provisions of the said Act. In his submission the issue of appointment of teachers is covered by the provisions of Maharashtra Employees of Private Schools Act ('the MEPS Act' for short) and the Rules framed thereunder. He would submit that it is only in respect of those matters which fall within the ambit of the administration of public trust within the meaning of the said Act that for relief in the nature of one claimed under Sub Section (p) and (q) of the Section 50 that the permission of the Charity Commissioner is required to be obtained. It is thus his contention that the relief sought by the plaintiff is completely outside the

purview of the said Act. He would vehemently urge that the appointments which are made in defiance of the provisions of the MEPS Act do not in any manner relate to the administration of the Trust. The appellants are seeking to challenge the action of the Trust in appointing the teachers contrary to the provisions of MEPS Act and the rules framed thereunder. This action according to him can in no manner be said to be a matter concerning the administration of the Trust which would warrant a need for Charity Commissioner's permission under Section 51.

5. In support of his submission learned counsel would rely upon the following judgments :-

- 1) **Charu K. Mehta Vs. Lilavati Kirtilal Mehta Medical Trust and ors.** reported in 2013 (2) Bom. C.R. 119.
- 2) **Vidarbha Kshatriya Mali Shikshan Sanstha Vs. Mahatma Fuley Shikshan Samiti** reported in 1986 Mh.L.J. 773.
- 3) **Yamunabai Dhankude and ors. Vs. Raosaheb Mohanlal Chimanlal Maniyar Trust and ors.** reported in 2012(2) Mh.L.J. 55.
- 4) **Gafoor Ali Hussain and ors. Vs. Ram Mahadik and ors.** reported in 2000 (1) Mh.L.J.
- 5) **Shree Bhairavanath Devasthan Trust Vs. Bajaba Nathu Pathare and ors.** reported in 2000(1) Bom.C.R. 426.

- 6) **Rajgopal Raghunathdas Somani Vs. Ramchandra Hajarimal Jhavar** reported in 1967 Mh.L.J. 799.
- 7) **Social and Cultural Association and ors. Vs. State of Maharashtra and ors.** reported in 2014(4) Bom.C.R. 284.
- 8) **Shri Akola Gujrati Samaj Vs. Akola Municipal Corporation** reported in 2016(3) Mh.L.J.
- 9) **Mahomed Hassan Samru Vs. Peer Hazarath Diwanshah Dargah Trust and ors.** reported in 2002(6) Bom. C.R. 253.
- 10) **S.H. Jawandhiya and ors. Vs. Onkareshwar Birbal Prasad Mishra** reported in 1997 Bom.C.R. 873.

6. Learned counsel for the respondent Nos.5 and 6 would support the orders passed by the Courts below. According to him, the Courts below rendered concurrent findings to come to a conclusion that the appointments of respondent Nos.7 to 10 which the appellants claim to be contrary to the provisions of law are very much part of the administration of the Trust. In any case he would submit that as the Courts below have concurrently held that permission of the Charity Commissioner is required under Section 51 as the relief claimed in the suit is in the nature of one under Sub Section (p) and (q) of Section 50, therefore the findings of the Courts below cannot be said to be erroneous. He would urge that the present Appeal does not raise any substantial question of law.

7. Heard learned counsel. The appellants claim to be trustees seek to challenge the action of the management in appointing the respondent Nos.7 to 10 as Assistant Teachers by filing the suit. The relief claimed is to declare these appointments as null and void. Section 50 of the said Act provides that in any case for any declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof, two or more persons having obtained the consent in writing of the Charity Commissioner as provided in Section 51, may institute a suit whether contentious or not in the Court within the local limits of whose jurisdiction the whole or part of the subject matter of the trust is situate, to obtain a decree for any of the following reliefs :-

“(p) declaring or denying any right in favour of or against a public trust or trustee or trustees or beneficiary thereof and issuing injunctions in appropriate cases ; or

(q) granting any other relief as the nature of the case may require which would be a condition precedent to or consequential to any of the aforesaid relief or is necessary in the interest of the trust.”

8. Section 51 of the said Act would read thus :-

“Section 51 Consent of Charity Commissioner for institution of suit

(1) If the persons having an interest in any public trust intend to file a suit of the nature specified in section 50, they shall apply to the Charity Commissioner in writing for his consent. [If the Charity Commissioner after hearing the parties and making such enquiries (if any) as he thinks fit is

satisfied that there is a prima facie case, he] may within a period of six months from the date on which the application is made, grant or refuse his consent to the institution of such suit. The order of the Charity Commissioner refusing his consent shall be in writing and shall state the reasons for the refusal.

(2) If the Charity Commissioner refuses his consent to the institution of the suit under sub-section (1), the persons applying for such consent may file an appeal to the Court, as if such order was an order passed by the District Court from which an appeal lies, within sixty days from the date of the said order, which shall otherwise be final.

(3) In every suit filed by persons having interest in any trust under Section 50, the Charity Commissioner shall be a necessary party.

9. A reading of Section 50 clearly indicates that for declaration or injunction in favour of or against a public trust or trustee or trustees or beneficiary thereof is sought then the consent of the Charity Commissioner is required for instituting the suit.

10. In so far as the present case is concerned, the appellants claim to be trustees. There is some dispute whether the Appellants are still the trustees. In any case, whether they are trustees or not will not be material as the appellants filed the suit on the footing that they are trustees and therefore the question is whether the suit against the Trust can be instituted without the permission of the Charity Commissioner. The appointment of

teachers is very much a part of administration of the Trust. Merely because appointments are to be made in accordance with the provisions of the MEPS Act and the rules framed thereunder will not mean that these appointments get excluded from the purview of administration of Trust. The appellants say that they are trustees. It is their case that the trustees who are in majority and managing the Trust have made these appointments contrary to the provisions of law. The appellants are in fact challenging the decision of the management in appointing the respondent Nos.7 to 10 as teachers. A declaration is sought that the appointments are null and void being contrary to law. This declaration is essentially against the Trust and as to their decision to appoint these teachers as being contrary to law.

11. Thus as contemplated by clause (p) of Section 50, the plaintiffs are denying the right of the trust to make these appointments which according to plaintiff is contrary to law. The decisions relied upon by the learned counsel for the appellants will have no application in the facts of the present case in as much as declaration which the plaintiffs have claimed in the suit

squarely falls under Sub Section (p) and (q) of Section 50 of the said Act. In this view of the matter, the issue raised by the plaintiff in the suit squarely falls within the realm of administration of the Trust and therefore the consent of the Charity Commissioner for instituting the suit as provided under Section 51 is necessary. I see no reason to interfere with the view taken by the Courts below.

12. The Appeal is dismissed with no order as to costs.

13. In view of the dismissal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

14. It is however clarified that it is open for the appellants to make an appropriate application to the Charity Commissioner under Section 51 and further take recourse according to law. It is however clarified that the observations of the Trial Court that it has no jurisdiction is obviously in the context that the permission of the Charity Commissioner was not obtained before instituting the suit. It is once again clarified that if the application is made to

the Charity Commissioner under Section 51, the necessary enquiry for granting consent shall be carried out by the Charity Commissioner in accordance with law. In case the consent is obtained, the appellants may institute the suit which shall be considered on its own merits without being influenced by any observations made by the Courts below.

(M. S. KARNIK, J.)