

KRISHNA VEER SINGH BACHAN SINGH CHAUHAN

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v.

WASUDEO MOTIRAM KALMEGH AND ANR.

AUGUST 30, 1995

[B.P. JEEVAN REDDY AND M.K. MUKHERJEE, JJ.]

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*Bombay Public Trust Act, 1950 :*

*Ss.2(13), 32, 35 50A—Public trust—Respondents unauthorisedly managed to get control over properties and office of trust—Audited report not showing correct position of income and expenditure of Trust—Account books not available—Held. Deputy Charity Commissioner to make best judgment estimate of income of trust properties—Meanwhile immovable properties of respondents attached.*

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*Public Trust—Administration of—Authorities incharge of ensuring proper management of public trusts to be more vigilant and prompt in discharge of their duties.*

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The petitioner was appointed as Secretary of the Vidharabha Rashtrabhasha Prachar Samiti, in February, 1982 but as alleged by him, the respondents forcibly took control of the affairs of the Samiti. The petitioner applied to the joint Charity Commissioner for a direction to the respondents to hand over the charge of the affairs of the trust to him. The prayer was allowed. On 2.11.1987 the Joint Charity Commissioner passed an order dismissing the respondents from the trusteeship of the Samiti holding that they were proved to have committed misfeasance and misappropriation of the trust property. The respondents challenged the said order in a writ petition before the High Court. In 1988 the Joint Charity Commissioner initiated *suo motu* proceedings under s.50-A of the Bombay Public Trust Act, 1950 to inquiry into the affairs of the trust. The High Court directed the Deputy Charity Commissioner to constitute a body of five persons to which the petitioner and the respondents should hand over the charge to the said *ad hoc* Managing Committee of the Samiti. Aggrieved, the petitioner filed the appeal.

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The Court on 6.8.1990 directed the ad hoc Managing Committee, which included the respondents, to furnish accounts in respect of the

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- A income and expenditure of the trust for the years 1982-83 to 1990-91, and to deposit with the Charity Commissioner the amounts found in the hands of the respondents. The petitioner filed the instant contempt petition alleging that the respondents failed to carry out the order of this Court. On 23.8.1993 this Court directed the respondents to furnish complete accounts and ordered that the proceedings under the Bombay Public Trust Act be expedited.

The Joint Charity Commissioner concluded the proceedings under s.50-A of the Act. Thereupon, trustees were appointed. The petitioner was appointed as the Secretary of the Trust.

- C Pursuant to the order of this Court the respondents filed audited accounts and the Deputy Charity Commissioner filed a report indicating that the total amount of rent deposited by the respondents during the period April 1, 1982 and June 1994 was Rs. 92,489.92. He reported that relevant registers and books of the Samiti were not made available to him.
- D The petitioner alleged that the income of the Samiti was Rs. 1-1 1/2 lakhs every year and the deposit by the respondents of Rs. 92, 497.92 p. for a period of 12 years was not only non-compliance of the order of the Court but also a positive proof of misappropriation and mismanagement.

- E Adjourning the matter for four months, this Court

- HELD : 1.1. The facts of the case show how the validity appointed persons have been thwarted by the respondents from coming into possession of the properties and office of the trust. The respondents were interested in protracting their control and management by one or the other means, obviously with a view to enrich themselves unjustly at the cost of the trust and its properties. They deposited for the period April 1, 1982 to July 31, 1990 a petty sum of Rs. 124,92 on 4.10.1990. For subsequent period, various amounts have been deposited but neither there is any consistency in the amounts deposited nor is there any regularity in the timing of the deposits. In the circumstances, this is proper case where a reasonable ascertainment should be made of the income derived and expenditure incurred by the respondents from April 1, 1982 to August 22, 1994, the period during which they were in management and control of the affairs and the properties of the trust. [169-G-H; 170-A-C]

- H 1.2. Since the relevant account books have been made scarce, the

Deputy charity commissioner, Nagpur shall make a *best-judgment estimate*, of income of the trust properties for the period April 1, 1982 to August 22, 1994 after making such appropriate enquiries as he may find necessary. He can, of course, look into and consider the audited accounts filed by the respondents in this connection. He shall also make an estimate of the expenditure which was reasonably required for running and managing the trust and trust properties. This exercise will disclose the amount that should have been deposited by the respondents for the said period. After giving credit to the amount already deposited, recovery of the balance can be made from the person and properties of the respondents by taking appropriate proceedings according to law. All the immovable properties of the respondents are attached herewith. The attachment shall continue until final orders are passed in this case. [170-E-H; 171-A]

2. The authorities in-charge of ensuring proper management of public trusts should be more vigilant and prompt in discharge of their duties. Delays on their part only help the unscrupulous persons in wasting the trust properties and in other acts of misfeasance. [169-F-G]

CIVIL APPELLATE JURISDICTION : Contempt Petition No. 295 of 1991.

IN

Civil Appeal No. 4374 of 1990.

From the Judgment and Order dated 21.4.89 of the Bombay High Court in C.W.P. No. 1607 of 1988.

Sandeep Mittal for S.K. Mehta for the Appellant.

S.B. Wad, Ms. Usha S. Reddy and Ms. Jayashree Wad for the Respondents.

The following Order of the Court was delivered :

On August 6, 1990, this Court made the following order :

"Having regard to the circumstances that the body that is brought into being is an adhoc managing committee pending final decision by the joint Charity Commissioner it appears to us that ends of

- A justice would be met by directing the said *ad hoc* managing committee, which includes the said Vasudeo Motiram Kalmegh and Suresh Moolchand Agarwal to furnish accounts of the rents or licence fee collected from the licencees (who were not- applicants 4 to 7 respondents before the Charity Commissioner) for the period from April, 1987 to 31st of July, 1990. If upon such furnishing of accounts and funds are found to be in the hands of the *ad hoc* managing committee or with Vasudeo Motiram Kalmegh and Suresh Moolchand Agarwal or any of them, as the case may be, such balance shall also be deposited with the Charity Commissioner within two months from today. The *ad hoc* managing committee shall, with effect from the 1st August, 1990 collect the said licence fee and deposit the same with the Charity Commissioner every month regularly.

- D This arrangement shall continue till the matter before the Joint Charity Commissioner is finally disposed of as envisaged by the order of the High Court.

- E Whatever we have said in this Order or whatever may be implicit in it, it may not be taken into account in the final disposal of the proceedings now pending or to be taken in future in respect of this Samiti, as this order is intended to operate as an interim arrangement."

Complaining that the respondents have failed to carry out the said order, the petitioner, Sri Krishna Veer Singh Bachan Singh Chauhan (K.S. Chauhan) moved the present application for contempt.

- F Vidharbha Rashtrabhasha Prachar Samiti, Nagpur (Samiti) is a body registered under the Bombay Trust Act, 1950 having its office at Nagpur. In February 1982, the petitioner, Chauhan, was appointed as the Secretary of the Samiti. He says that in April 1982, the respondents, Sri Kalmegh and Sri Suresh Agarwal, forcibly took away the keys of the office of the Samiti and took control of the affairs of the Samiti. The petitioner says that he applied to the joint Charity Commissioner to direct the respondents (S/Sri Kalmegh and Agarwal) to hand over the charge of the affairs of the trust to him. Orders were made by the authorities against both the respondents as prayed for by the petitioner. The respondents were also restrained from
- H dealing with or alienating or otherwise transferring the Samiti properties.

On November 3, 1987, the Joint Charity Commissioner passed the following order : A

"Non-applicant No. 1 Prof. W.M. Kalmegh and NA No. 3 Shri Jagannath Jaida are proved to have committee misfeasance and misappropriation in respect of property of Rs.35,000 and 125 cement bags of the trust Vidharbha Rashtrabhasha Prachar Samiti, Nagpur, PTR No. F-639 (Nagpur) and, therefore, they are hereby dismissed from the trusteeship of the aforesaid Trust, PTR No. F-639 (Nagpur)." B

It is stated that the respondents challenged the said order by way of a writ petition in the Bombay High Court, Nagpur Bench. C

In the year 1988, the Joint Charity Commissioner initiated *suo motu* proceedings under Section 50-A of the Bombay Public Trust Act to enquire into the affairs of the trust.

On April 21, 1989, the High Court disposed of the writ petition filed by the respondents directing the Deputy Charity Commissioner, Nagpur "to draw a list of the persons who belong to category Nos. 1 to 3 of clause-7 of the Constitution and cause a body of five persons to be elected by them by treating category Nos.1 to 3 as an electoral college, within two months from the date of this order. The petitioners and the respondent No.1 shall thereupon hand over the charge of the adhoc Managing Committee which will manage the affairs of the Vidharbha Rashtra Bhasha Prachar Samiti, Nagpur, until the matter is finally decided in suo moto proceedings initiated by the Joint Charity Commissioner, Nagpur, under section 50-A of the Bombay Public Trusts Act." D E F

Against the said order, the petitioner approached this Court by way of Special Leave petition (c) Nos. 2545 of 1990 in September 1989. After notice to the respondents and after hearing them, this Court made the aforesaid order August 6, 1990.

In this contempt petition, the following order was made by this Court on August 23, 1993 : G

"We have heard Sri G.L. Sanghi, learned senior counsel for the petitioner and Sri S.B. Wad, Learned senior counsel for the *ad-hoc* trustees." H

A We are afraid the compliance of the order dated 6th August, 1990 by the *ad hoc* trustees is only partial and incomplete. The *ad hoc* trustees are directed to furnish to this Court within four weeks from today an affidavit of the year-wise break-down of the income and expenditure of the Trust for the years 1982-83 to 1990-91. They shall indicate in respect of each year; how many tenants or licensees were in occupation of the property of the Trust; the specification of the area and extent of such occupation; what was the amount of rent or licence fee realisable from them; what amounts were actually realised and what amounts remained unrealised. They shall also indicate in an year-wise break-up what action was taken by the *ad-hoc* trustees to recover the amounts in arrears.

D That apart, in respect of the period 6th August, 1990 to 5th August, 1993, a similar statement with similar break-down of the figures shall also be furnished. It would appear that for none of these years the accounts were got audited by the trustees. The trustees are admittedly governed by the provisions of the Bombay Public Trust Act, 1950. Provisions of Section 32 and 33 statutorily require the trustees to have the accounts audited. We do not know how the authorities under the Act permitted or ignored this lapse.

E Likewise, the petitioners shall also file their affidavits giving the necessary particulars as to how, according to them, the income of Rs. 10 lacs per year.

F Sri was submitted that the trustees have produced the books of accounts before the Charity Commissioner and that they need permission to inspect the books of accounts. The trustees have such permission.

G It would be appropriate if a certificate of a Chartered Accountant is also produced as regards the accounts. This would go in favour of the trustees while examining the rectitude of their conduct in respect of the management of the affairs and funds of the Trust.

H We would also like to comment on the undue protraction of the proceedings under the Bombay Public Trust Act, 1950 which

were commenced *suo motu* by the authorities. It is appropriate that these proceedings are expedited and the Charity Commissioner or the Deputy Charity Commissioner, as the case may be, concludes these proceedings expeditiously and, in any event, not later than within four months from today. Let a copy of this order go to the Charity Commissioner for compliance.

Call on 4th October, 1993. Personal Presence of the contemnors is discharged."

Meanwhile, the Joint Charity Commissioner concluded the *suo motu* proceedings initiated by him under Section 50-A of the act and passed orders on December 31, 1993 framing a scheme for the trust and appointing trustees thereunder. The petitioner was appointed as the secretary of the trust. The said Board was directed to take over charge from the then existing body, whosoever it may be, and to manage the affairs of the trust in accordance with its objects and the law. Pursuant to the orders of the Joint Charity Commissioner, the petitioner says, he obtained possession of the trust properties on August 22, 1994 with the help of police.

Pursuant to the order of this Court dated August 23, 1993, the respondents filed certain audited accounts, the correctness whereof was questioned by the petitioner. when the matter came up before this Court against on November 10, 1994, the following further order was made :

"In this contempt case, this Court made an order on 23rd August, 1993. According to the said order, the *ad hoc* Trustees, who were respondents herein, were directed to submit year-wise breakdown of the income and expenditure of the Trust for the years 1982-83 and 1990-91. Indeed, even subsequent to the year 1990-91, they were directed to continue to deposit the amounts and file accounts so long as they remained in management of the Trust property. It is stated now that the respondent *ad hoc* Trustees were in management of the Trust property till August, 1994. Mr. S.B. Wad, learned senior counsel for the respondents says that in compliance with the aforesaid order as well as earlier order dated 6th August, 1990 the respondents have filed the audited accounts for the years 1982-83 to 1990-91. He further submits that the audited accounts

- A for the subsequent years have been submitted before the Charity Commissioner. Learned Counsel says that in accordance with the said accounts, the deposits have also been made by the respondents with the Charity Commissioner. Learned counsel for the petitioner, however, disputes the correctness of the audited accounts filed by the respondents.
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- Inasmuch as the audited accounts are quite voluminous and also because it is not possible or feasible for this Court to go into the correctness or otherwise of the said accounts, we direct the Charity Commissioner, Bombay, to look into the matter. The Charity Commissioner, Bombay, or such other officer as the Charity Commissioner may designate, will look into the correctness of the accounts, make necessary enquiries and verifications as may be called for in the circumstances of the case, after notice to the petitioner and the respondents herein, and submit a Report to this Court about the correctness of the said accounts and deposits which may have been made by the respondents. It is obvious that the Charity Commissioner or the officer as may be designated by the Charity Commissioner shall be empowered to receive such evidence as may be produced before him or as may be gathered by them for the aforesaid purpose.
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The Report of the Charity Commissioner shall be submitted within four months from today.

- F Copies of the order dated 6-8-1990 and 23-8-1993 shall be enclosed to the copy of this order communicated to the Charity Commissioner."

- Pursuant to the said order, the Deputy Charity Commissioner, Nagpur (who was entrusted the job of submitting the report) has submitted his report dated February 7, 1995. In this report, the Deputy Charity Commissioner has mentioned the total amount of rent deposited by the respondents during the period April 1, 1982 to June 30, 1994 and the dates on which the various amounts were deposited. According to this statement, a total amount of Rs. 92,487.92p. has been deposited for the said period of over twelve years. The Deputy Charity Commissioner has reported that it
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has not been possible for him to check the correctness of the accounts submitted by the respondents inasmuch as the relevant registers and books of the Samiti have not been made available to him. He has reported that while the respondents complain that inasmuch as the possession of the office and properties of the Samiti was taken by the petitioner by force and with police help, and because they do not have access to the office of the Samiti, they are not in a position to produce the accounts and registers to enable the Deputy Charity Commissioner to verify the accounts submitted by them. On the other hand, the report says, the petitioner complained that when he took possession of the office and properties of the Samiti with the police help there were no records, registers and account books of the Samiti in the office and that only a few properties not belonging to Samiti were found in its premises. He stated that all the account books must have been taken away by the respondents to cover up and conceal their acts of misfeasance, misappropriation and mismanagement. The petitioner has also submitted that the income of the Samiti is more than Rs. 1-1/2 lakhs every year and that depositing a measly amount of Rs. 92,497.92p for a period of twelve years is not only a non-compliance of the orders of this Court but also a positive proof of their misappropriation and mismanagement. He prays that the respondents should be directed to deposit the true amount realised by them from the Samiti properties.

Before we deal with the contentions urged by the parties, we feel constrained to reiterate the observations made by this Court in its order dated August 23, 1993 with respect to "under protraction of the proceedings under the Bombay Public Trust Act, 1950 which were commenced *suo motu* by the authorities". The authorities in-charge of ensuring proper management of public trusts should be more vigilant and prompt in discharge of their duties. Delays on their part only help the unscrupulous persons in wasting the trust properties and in other acts of misfeasance. The facts of this case show how the validity appointed persons have been thwarted by the respondents from coming into possession of the properties and office of the trust. It would not be unreasonable to assume in the circumstances of this case that the respondents who somehow came into possession and management of the trust properties were interested in protracting their control and management by one or the other means, obviously with a view to enrich themselves unjustly at the cost of the trust and its properties. The table contained in the report of the Deputy Charity

- A Commissioner discloses that the first deposit by the respondents is in a grand sum of Rs. 124.92p on October 4, 1990. Several amounts have been deposited thereafter from time to time. *Prima facie* it is not explicable how it is that for the period April 1, 1982 to July 31, 1990 only a sum of Rs. 124.92p. was be available and why was it deposited after a lapse of eight years. For subsequent period, various amounts have been deposited but
- B neither there is any consistency in the amounts deposited nor is there any regularity in the timing of the deposits. In the circumstances, this is a proper case where a reasonable ascertainment should be made of the income derived and expenditure incurred by the respondents for the period April 1, 1982 to August 22, 1994, the period during which they were in
- C management and control of the affairs and the properties of the trust. No doubt, they have filed certain audited accounts but the correctness of the said accounts is disputed by the petitioner. The Deputy Charity Commissioner has also not reported that the said audited accounts are acceptable. There is a controversy with respect to the custody and possession of the
- D relevant account books and registers. In this contempt case, it is not possible to go into the truth or otherwise of the rival contentions with respect to the custody and possession of the books possession of the books and accounts. At the same time, the matter cannot be left as it is, more particularly, in view of the fact that not a single paise was deposited for the period April 1, 1982 to July 31, 1990 except a petty sum of Rs. 124.92p.
- E on October 4, 1990. The respondents cannot be allowed to get with trust funds just because the relevant account books have been made scarce. The income and expenditure can yet be ascertained by other means. In the circumstances, the following direction is made: the Deputy Charity Commissioner, Nagpur shall make a *best-judgment estimate* of income of the
- F trust properties for the period April 1, 1982 to August 22, 1994 after making such appropriate enquiries as he may find necessary. He can, of course, look into and consider the audited accounts filed by the respondents in this connection. He shall make an estimate of the expenditure which was reasonably required for running and managing the trust and trust properties. This exercise will disclose the amount that should have
- G been deposited by the respondents for the said period. After giving credit to the amount already deposited, we can then direct recovery of the balance from the person and properties of the respondents by taking appropriate proceedings according to law.
- H All the immovable properties of the respondents are attached

herewith. The attachment shall continue until final orders are passed in this case. The Deputy Charity Commissioner shall give effect to this order by making appropriate directions. A

The matter is adjourned by four months. List after four months. The Deputy Charity Commissioner shall send a report of the proceedings taken and orders passed by him in the said period of four months pursuant to this order. B

R.P.

Petition disposed of.