

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
COMPANY APPELLATE JURISDICTION**

**Company Appeal (AT) No. 47 of 2017**

**(arising out of Order dated 19<sup>th</sup> December, 2016 passed by  
National Company Law Tribunal, Mumbai Bench, in T.C.P. No.  
97/397-398/CLB/MAH/2013)**

**Mr. P.B. Amolik & Ors. .... Appellants**  
**Vs**  
**The Bombay Diocesan Trust Association**  
**Private Limited & Ors. .... Respondents**

For the Appellants:- Mr Karan Adik with Mr Javaid  
Muzaffar, Advocates

For the Respondents:- Mr Daljeet Singh Bhatia, Mr  
Harinder Toor and Ms Vanshika  
Chandra, Advocates.

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

The question involved in this appeal is whether in view of the decision of the Charity Commissioner, Bombay, removing the Appellants as Trustees under Section 41D of the Bombay Public Trusts Act, 1950, (hereinafter referred to as BPT Act, 1950) the petition preferred by the Appellants under Section 397 and 398 of

the Companies Act, 1956 against alleged removal as directors of the company can be held to be "*res-judicata pro-veritate accipitur*".

2. The relevant facts of the case for disposal of the appeal are as follows:

The 1<sup>st</sup> Respondent company was incorporated on 7<sup>th</sup> January 1929, limited by guarantee and not having share capital under Section 26 of the Companies Act, 1913. According to Respondents they are registered as a company under Section 25 of the Companies Act, 1956.

The 1<sup>st</sup> Respondent company is an association formed as limited company for promoting Christian religion in India and under the provisions of the said Act, is also a public charitable trust registered under the provisions of Bombay Public Trusts Act, 1950, bearing registration no. E-923 (BOM). The 1<sup>st</sup> Respondent company is involved in charitable activities and is a trust registered with the Charity Commissioner.

It appears that in compliance with the provisions of Companies Act, 1956 and Articles of Association of the company, the Annual General Meeting (hereinafter referred to as AGM) of the company is held every year and the office bearers/directors are elected every year after holding elections; Annual Report along with audited accounts is filed by the company with the Registrar of

Companies, Income Tax authorities and Charity Commissioner, Bombay. Based on the result of the election held, the names of duly elected office bearers/directors are entered in the record of Registrar of Companies and records of Charity Commissioner, Bombay and based on the charge report, Schedule 3 of the Articles of Association of the company is amended from time to time showing the names of directors/office bearers of the company.

3. Further, before the Tribunal, case of Appellants was that the persons elected as directors of 1<sup>st</sup> Respondent company are nominated as Trustees. No separate election is conducted for elected Trustees for public companies.

4. It appears that first Appellant was arrested. After his arrest a notice dated 15<sup>th</sup> January 2010 was issued for a Special Requisition meeting of the Board of Directors/Trustees calling for review of the situation arising out of filing of T.R. No. 104/2009 leading to the arrest of the 1<sup>st</sup> Appellant.

5. Minutes of the Special Requisitioned meeting of Board of Directors/Trustees to take necessary action in the interest of 1<sup>st</sup> Respondent company was issued. A Resolution was passed by Board of Directors to remove the 1<sup>st</sup> and 2<sup>nd</sup> Appellant from the post of directors and trustee.

6. A notice dated 30<sup>th</sup> January 2010 was issued to 1<sup>st</sup> Appellant giving opportunity of representation before the Board of Directors/Trustees on 4<sup>th</sup> February 2010. By minutes of meeting held on 4<sup>th</sup> February 2010, the Board of Directors/Trustees of 1<sup>st</sup> Respondent company after giving opportunity to the 1<sup>st</sup> and 2<sup>nd</sup> Appellants, removed them as directors. They were given opportunity before their removal. The minutes of the meeting dated 19<sup>th</sup> January, 2010 were confirmed in the meeting held on 4<sup>th</sup> February, 2010 and only after giving opportunity to 1<sup>st</sup> and 2<sup>nd</sup> Appellant to make a representation before the Board.

7. According to Respondents, the 1<sup>st</sup> and 2<sup>nd</sup> Appellant immediately reinstated themselves as the directors of the company by using digital signatures of Appellant no. 3 and filed Form 32. It is alleged that an illegal meeting of Board of Directors/Trustees was held on 9<sup>th</sup> July 2011 by some of the Appellants which was subsequently signed on 23<sup>rd</sup> July 2012. Further, according to Respondents, illegal notice dated 1<sup>st</sup> December 2011 was issued by Appellants for calling for illegal Annual General Meeting to be held on 8<sup>th</sup> December 2011 without giving 21 days' notice. Illegal minutes of Annual General Meeting by Appellants held on 8<sup>th</sup> December, 2011 where, *inter-alia*, they resolved to extend their term.

8. The 1<sup>st</sup> Appellant filed a change report on 23.12.2011 before the Office of the Charity Commissioner, Bombay. In the said Report the 1<sup>st</sup> Appellant stated the reason for change is the election held in the meeting dated 8.12.2011 and enclosed notice dated 1.12.2011 along with the minutes dated 8.12.2011.

9. The 8<sup>th</sup> and 9<sup>th</sup> Respondents filed objection on 27.4.2012 before the Charity Commissioner against the change report dated 23.12.2011. They prayed to declare the purported notice dated 1.12.2011 as illegal and void for want of proper notice period as contemplated under Clause 17 of the Articles of Association. It was further alleged that the purported Annual General Meeting was convened on 8.12.2012 and the same meeting may be declared as illegal, unlawful and void *ab initio* for want of proper notice, proper authority and proper quorum.

10. Another notice for Annual General Meeting was called for by the parties. A notice dated 16.6.2012 for meeting of Board of Directors/Trustees was issued for meeting to be held on 23.6.2012. In the said meeting it was resolved that all illegal resolutions passed in the illegal meeting held on 9.7.2011 and AGM held on 8.12.2011 by the Appellants as illegal and null and void. The Charity Commissioner on hearing the parties, by order dated 17.12.2012 under Section 41-D of the BPT Act allowed the application of Respondents and dismissed 1<sup>st</sup> Appellant from the

trusteeship of 1<sup>st</sup> Respondent company forthwith forever, 3<sup>rd</sup> to 7<sup>th</sup> 9<sup>th</sup> and 10<sup>th</sup> Appellants for a period of six months and 8<sup>th</sup> Respondent for a period of five years from the date of passing the order. It further directed the Deputy Charity Commissioner to dispose of all pending change reports before him in respect of Respondent company within a period of six months and further directed Assistant Charity Commissioners to take over the charge of Respondent company and to look after the day to day management and administration of the Trust and conduct election without taking any policy decision. The order also directed the Assistant Charity Commissioner (II) to hold enquiry in respect of the property of Trust in regard to sale of its properties and other related issues. The said order also directed him to assess the loss caused to the Trust by the misappropriation, negligence in duties, breach of trust at the hands of Appellant trustees.

11. The Charity Commissioner, Mumbai on hearing the parties by order dated 17<sup>th</sup> December, 2012 passed an order under Section 41D of the BPT Act., 1950. In the said case the Appellants challenged the authority of the Charity Commissioner to remove the Appellants as trustees under the said Act. According to the Appellants, they are elected Directors first and then the Trustees of the Trust. The issue of maintainability was rejected by the Charity Commissioner on 17<sup>th</sup> December, 2012 which was not

entertained by the Bombay High Court in Writ Petition No. 8422 of 2012.

12. The 1<sup>st</sup> and 2<sup>nd</sup> Appellants challenged the order of the Charity Commissioner before the City Civil Court, Bombay but failed to get any interim order. The Appellants prayed for the following reliefs: -

- i. Restraining Respondent Nos. 2 to 12 from posing as the directors/members/trustees of the company.
- ii. Appellants to have representation in the board of the company.
- iii. Special Requisition Meeting conducted by the Respondents on 19<sup>th</sup> January 2010 to be declared null and void.
- iv. Form 32 filed with the Registrar of Companies, Mumbai for cessation of the Petitioners 1 & 2 as directors of the company pursuant to resolution passed at the illegal meeting held on 19<sup>th</sup> January 2010, and also to declare null and void the meeting of Board of Directors/Trustees conducted by the Respondents on 4<sup>th</sup> February, 2010 and Board meeting conducted by Respondent Nos. 8 or 9 or 10 on 23<sup>rd</sup> June 2012.
- v. Petitioners be reinstated on the Board of Directors of the company forthwith and status quo ante be restored and

vi. the Register of Directors and members be forthwith rectified as may be necessary to give effect to such direction.

13. However, no relief having been granted by the City Civil Court, Bombay, the Appellants preferred the petition under Section 397 and 398 of the Companies Act, 1956 against their removal as director which has been rejected by the Tribunal by impugned judgment dated 19<sup>th</sup> December 2016 with following observation: -

*“When the subject matter has jurisdiction before two competent forums, the order earlier passed will be governed by a doctrine called ‘res-judicata pro-veritate accipitur’ (a thing adjudicated is received as the truth. A judicial decision is conclusive until reversed, and its verity cannot be contradicted.) It need not be said in many words that the issue already decided cannot be retried from a different angle on the same point.”*

14. Ld. Counsel for the Appellant submitted that the Tribunal wrongly held that by order dated 19<sup>th</sup> December, 2016 the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had created third party rights on the trust, profits and syphoned money of the trust. It is not based on record except the order dated 17<sup>th</sup> December 2012 passed by the Joint Charity Commissioner.

15. It appears that the order of Joint Charity Commissioner, Bombay was appealed to the City Civil Court, Mumbai by Appellants. The City Civil Court, Mumbai set aside order dated



17<sup>th</sup> December 2012 passed by the Ld. Charity Commissioner. Thereafter, the 7<sup>th</sup> Respondent preferred an appeal before the Bombay High Court which set aside the order of the lower court and remitted back the matter to the City Civil Court, Mumbai. Thereafter, the City Civil Court vide its judgment and order dated 30<sup>th</sup> December 2012 dismissed both the applications filed by rival groups.

16. From the aforesaid fact we find that the order passed by the Charity Commissioner reached finality.

17. Ld. Counsel appearing on behalf of the Appellants contended that the relief as prayed for under the Companies Act emanate from fraudulent acts committed by respondents by holding of alleged meeting dated 23<sup>rd</sup> May 2012. The Appellants, as a result doubt the authenticity of the meetings.

18. Ld. Counsel for the Appellants further submitted that unilateral act of removal of the appellants in one go at the purported meeting, especially after 81<sup>st</sup> Annual General Meeting is illegal and fabricated minutes dated 23<sup>rd</sup> June 2012 have been prepared.

19. From the record we find that Appellant No. 1 and 2 were arrested as they were indulging in criminal activities and had committed breach of trust and specially since the Joint Charity

Commissioner held against these two Appellants. The Appellants accept that the criminal case is pending.

20. The petitioner under Section 397 and 398 of the Companies Act, 1956 has to some extent discretionary jurisdiction. Even if it is found by the Tribunal that there is some oppression and mismanagement, the Tribunal is well within its jurisdiction to decide as to what relief should be granted. The relief is granted taking into consideration the interest of the company.

21. Admittedly, the 1<sup>st</sup> Respondent company is not a profit-oriented company but is a trust for the welfare of the people. Therefore, it is legally prudent to hold that Board of Directors and Trustees are inseparable and one and same for the purposes of performing its duties.

22. The Articles of Association and Memorandum of Association of the company also mandate and permit other activities that are not strictly charitable. However, in a case where admittedly the criminal cases are pending and the Appellants have been removed from Trusteeship and other trustees have been appointed for that if no relief is granted, the impugned order cannot be held to be illegal.

23. We find no merit in this appeal. It is accordingly dismissed.  
However, in the facts and circumstances of the case, there shall be  
no order as to cost.

Sd/-  
(Mr. Balvinder Singh)  
Member (Technical)

sd/-  
(Justice S.J. Mukhopadhaya)  
Chairperson

NEW DELHI  
1<sup>st</sup> May, 2017

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