

Shri K.M. Bhatnagar & Anr vs Union Of India & Ors on 22 July, 2020

Author: Anup Jairam Bhambhani

Bench: Anup Jairam Bhambhani

\$~11

via Video-conferencing

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 7445/2017 & CM APPL. Nos. 44798/2019, 7603/2020, 6045/2020, 6048/2020, 15998/2020 & 15999/2020

SHRI K.M. BHATNAGAR & ANR.

.....Petitioners

Through : M r . K a n w a l C h a u d h a r y ,
Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through : M r . B . B . G u p t a , S e n i o r
Advocate for the Administrator.
Mr. Ajay Digpaul, CGSC for
UOI/R1 along with Mr. Kamal
R. Digpaul, Advocate.
M r . P r a d e e p K . B a k s h i ,
Advocate for Sai Bhakta
Samaj.
Mr. Vikalp Mudgal, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI
ORDER

% 22.07.2020 CM APPL. No. 15999 (for exemption) Exemption is granted, subject to just exceptions and subject to the applicant completing all requirements of filing clear/properly margined copies of documents, attested affidavits and court fee within 10 days of physical re-opening of the court.

Application stands disposed of.

W.P.(C) 7445/2017 & CM APPL. Nos. 6045/2020, 6048/2020 The present writ petition was filed by two petitioners S/Sh. K.M. Bhatnagar and R.K. Chopra, who are life members of Shri Sai Bhakta Samaj ('Samaj', for short), which is a society registered under the Cooperative Societies Act, 1965 that manages the Shri Sai Baba Temple, Lodhi Road, New Delhi.

2. The essence of the allegations in the petition were of mis- management, irregularities and illegalities in the administration of the affairs of the Samaj. One of the principal grievances was that no elections had been conducted to the Managing Committee of the Samaj after 2006. In this backdrop, the petitioners had made the following prayers :

"(a) Issue an appropriate writ, order and/or direction, declaring that term of the present Managing Committee has come to an end and thus, is illegal; and

(b) Issue an appropriate writ, order and/or direction, directing for conducting of election of Respondent No.4 Society forthwith under the supervision of Administrator and Receiver appointed by this Hon'ble Court with direction to immediately take over and manage its affairs till new Managing Committee is elected in terms of Rules and Regulations of the Society; and

(c) Issue an appropriate writ, order and/or direction, directing the Administrator to conduct and hold election of Respondent No.4 Society forthwith in terms of existing list of membership as finalized by Shri L.S. Solanki, ADJ (Retd.), vide its Report dated 5.6.2013 (Annexure P-7); and

(d) Issue an appropriate writ, order and/or direction, directing Respondent Nos.1 to 4 to conduct enquiry into the affairs of the Respondent No.4 Society during the period of present Managing Committee being run illegally and unauthorizedly w.e.f. September, 2009; and/or...."

3. While much has transpired in the course of proceedings from 25.08.2017 onwards, vide order dated 21.08.2019, this court appointed a former Hon'ble Judge of this court as Administrator to take-over, manage and administer the affairs of the Samaj, with certain specific mandates. To aid, advise and assist the Administrator in the discharge of her functions, this court also appointed a Senior Counsel of this court by the same order. The Administrator was also permitted to engage the services of an appropriate Chartered Accountant/firm to assist in sorting-out the financial affairs of the Samaj.

4. One of the principal tasks entrusted to the Administrator was to conduct elections to the Managing Committee of the Samaj on the basis of the last approved members lists comprising 622 members, on the basis of which previous elections were conducted in October 2006, within 02 months of the receipt of order dated 21.08.2019. The Administrator was also directed to declare the results of the elections; whereafter, it was recorded in the order, that this court would pass orders to hand-over the management and affairs of the Samaj back to the Managing Committee so elected at the appropriate stage, after taking stock of the state-of-affairs at that time. The Administrator was also tasked to file bi-monthly reports on the management and affairs of the Samaj.

5. In compliance of court orders, elections to the Samaj were conducted on 15.12.2019; results were declared; and requisite report dated 20.12.2019 was filed by the Administrator before this court.

6. By order dated 10.01.2020, this court permitted that report dated 20.12.2019 may be inspected by the parties to these proceedings or by any other person who may be interested; and objections, if any, to the report may be filed in the matter. This court also directed that the accounts of the Samaj for all financial years from 01.04.2006 onward be audited by an independent Chartered Accountant in order to be sure that the financial affairs of the Samaj had been conducted and its accounts

maintained in a regular, transparent and legal manner.

7. In the meantime, the Administrator and her advising Senior Counsel continued to sort-out the other affairs of the Samaj, including by taking stock of the substantial donations received, both in cash and kind; conducting a broad based scrutiny of the financial and taxation affairs of the Samaj, including regulatory compliances; as also by taking stock of the assets and liabilities; and generally streamlining the functioning of the Samaj.

8. In response to the order inviting objections to the Administrator's report on the elections conducted, one solitary letter dated 07.01.2020 i.e. bearing a date even prior to the date of order dated 10.01.2020 by which objections were invited, was received by this court on 15/16.01.2020 signed by one Sh. N. K. Gupta who only gave his address as "Lodhi Road Complex, New Delhi", raising certain objections in relation to the affairs of the Samaj including the elections conducted on 15.12.2019. No one appeared in court to pursue the objections contained in the letter nor was any subsequent communication received.

9. The Court put the letter dated 07.01.2020 to counsel appearing for the petitioners as well as to contesting respondent No. 4, being the newly elected Managing Committee for their comments on the objections; and also directed that a copy of the letter be sent to the Administrator for her comments thereupon.

10. The essence of the allegation in letter dated 07.01.2020 was that even though fresh elections had been conducted, the old committee members who were mismanaging the affairs of the Samaj had come back by re-election. As recorded in order dated 17.01.2020 however, counsel for the petitioners and for respondent No. 4 stated that the allegations in letter dated 07.01.2020 were false and factually incorrect and deserved no credence. Subsequently, by a communication dated 25.06.2020, the Administrator has also indicated that while some members who held office in the previous Managing Committee have indeed been re-elected, but since this happened as a result of a fair-and-square election process, no objection could be taken to their re-election.

11. In the course of proceedings in the present matter, the Administrator has filed four reports dated 08.11.2019, 20.12.2019, 08.01.2020 and 06.06.2020

12. It must be recorded that from 16.03.2020 till 04.06.2020, no hearing could be conducted in the present matter by reason of the prevailing coronavirus pandemic, and the consequent closure and subsequent restricted functioning of the court.

13. Subsequently, an application CM Appl. No. 11780/2020 was moved by the petitioners seeking early hearing of application CM Appl. No. 6048/2020, which early hearing was allowed; and CM Appl. No. 6048/2020 along with another application CM Appl. No. 6045/2020 were taken-up for hearing.

14. CM Appl. No. 6045/2020 had been filed by the Administrator seeking directions to the Employees Provident Fund Organization to facilitate compliance of certain formalities in relation to

the employees accounts and filing of statutory returns. By way of CM Appl. No. 6048/2020 the petitioners had sought modification of order dated 10.12.2019, by which this court had directed that the accounts of the Samaj for the financial years 01.04.2006 onwards be conducted by an independent Chartered Accountant; and also seeking that the charge of the affairs of the Samaj be handed-over to the newly elected Managing Committee.

15. The audit of the accounts of the Samaj which commenced sometime in January 2020 was interrupted by reason of the prevailing pandemic and consequent lockdown, during which religious places had been closed by governmental directive till 08.06.2020. Thereafter, the independent audit was completed; and Auditor's Report dated 10.07.2020 was submitted to this court.

16. The major findings of the forensic audit are under the following heads :

- i. Non-filing of Income Tax returns;
- ii. Unpaid Income Tax demand of INR 9.33 crores;
- iii. Non-compliance of conditions prescribed under Income Tax Act;
- iv. No practice of passing resolutions at meetings ;
- v. Contradictions in tender system;
- vi. No system of recording and verification of jewellery received in donation;
- vii. Non-maintenance of register for donations received in-kind ;

viii. Non-maintenance of fixed-deposits register; ix. Non-conducting of statutory audit for financial year 2018-19;

x. Non-availability of ownership documents of Shirdi property;

xi. Non-maintenance of fixed assets register; xii. Non-disclosure of closing stock in balance sheet; xiii. Non-availability of internal audit reports of the trust.

17. The details of the audit objections are contained in a report dated 10.07.2020. In addition to the objections, the Auditor's Report also makes several recommendations as to the measures that need to be adopted to rectify and streamline the accounting systems of the Samaj.

18. By order dated 13.07.2020, the petitioners and respondent No. 4, being the main contesting parties, were directed to file affidavits as regards their objections or acceptance of the Auditor's Report. In compliance, petitioner No. 2/Sh. R.K. Chopra, who is also now the Honorary Secretary in the newly elected Managing Committee of the Samaj has filed an affidavit dated 15.07.2020, in which affidavit, while making certain observations about the forensic audit, he states the following :

"3. I further say that pursuant to the above order of this Hon'ble Court, an emergent meeting of newly elected Managing Committee of Resp. No.4 Society was held on 14th July 2020 at residence of Deponent to consider the response to be filed to the Auditor's Report in compliance with order dated 13.07.2020. Copies of Order and

Auditor's Report were circulated to all members prior to aforesaid meeting."

***** "5. I further say that all the findings arrived at and recommendations and suggestions made in the Report are in line with the allegations of illegalities committed, mismanagement and non compliances by the President and Hony. Secretary of previous Committee, contained in the Writ Petition.

"6. That newly elected Managing Committee is in agreement in principle with the findings, recommendations and suggestions made in the Report.

"7. That based on the discussions of Managing Committee at its meeting on 14th July 2020, it was resolved that:

a. It has taken note of the recommendations and measures made by Auditors in it's Report and shall make all endeavours to rectify and/or combat the discrepancies pointed out in the said Auditor's Report and comply with all the suggestions and measures suggested, in future, and put in place the required SOP's in this regard.

b. Take all steps to recover the previous records/documents of the Society not available at the Society's office (as stated by the Auditors).

c. Fix responsibilities for illegalities, mismanagement and non compliances and take necessary and appropriate action in this regard.

Copy of above Resolution dated 14th July 2020 is annexed hereto and marked as Annexure-A.

"8. That the newly elected Committee shall take all necessary steps, as may be required, including the recommendations and suggestions made by Auditors in its Report, to ensure compliance of all requirements in law, in running the affairs of the Society."

(emphasis supplied)

19. A copy of resolution dated 14.07.2020 signed by 08 members of the Managing Committee was annexed to the affidavit; but during the course of hearing, another copy of the resolution purporting to be signed by all members was forwarded by Mr. Kanwal Chaudhary learned counsel appearing for the petitioners via e-mail, in support of the affidavit filed.

20. Let the signed resolution forwarded by e-mail be brought on record.

21. In addition to the aforesaid, vidé report dated 08.01.2020, the Administrator has made certain suggestions for the overall better management and administration of the affairs of the Samaj, which are as follows :

"5. The undersigned takes this opportunity to recommend to this Hon'ble Court to consider the following:-

i) Enrolling new and fresh members to the Samaj: It is so because it was brought to the notice of the undersigned that since 2006, no new and fresh member has been enrolled, and as seen and noticed during the course of elections held on 15.12.2019 that either most of the members were the senior citizens and/or there were more than one member from one family.

ii) It is noted that an amount of about eighty crores is lying deposited with the bankers of the Samaj in form of Fixed Deposit Receipts. Taking into consideration the location of the Temple and the office of the Samaj, where presently, there is seen hardly any possibility of horizontal or even vertical expansion of its present building, some amount may be kept as replacement and maintenance fund both for the building and other charitable services being provided by the Samaj, and the remaining amount may be incurred for the expansion of charitable activities of the Samaj, which may include:

a) Grant of scholarships to the students, the criteria for which may be fixed;

b) Improvement/upgradation in the medical services being provided. It may be ensured that the doctors engaged by the Samaj either on permanent basis or as those visiting the Samaj must possess the age, specific qualifications and the necessary experience criteria as in the cases of Mohalla Clinics in Delhi;

c) Improving the schemes and facilities being provided to the poor and needy people including gifts in the community marriages and the like....;

d) Utilisation of the land of the Samaj in Shirdi (Maharashtra) for charitable purposes like hospital, lodging with kitchen and/or old age or orphanage for the children and elderly people;

e) Free and/or subsidized education to the poor students by opening a school which will not only educate the poor and needy children but also provide employment to many;

f) The substantial part of the building of the Samaj at Lodhi Road, New Delhi was constructed in 1960's. It is got to be repaired and renovated;

g) The present library of the Mandir may be upgraded;

h) To take appropriate steps for the welfare of the

employees and staff of the Samaj in the form of their minimum pay scale fixation, provident fund facility, ex-gratia payment in case of death or physical disability, for

which purpose a Welfare Fund may also be set up.

iii) Taking into consideration that out of 622 members, notices of the election could be served only on 337 members and the rest came undelivered for several reasons including 'the person has left without leaving the forwarding address', 'the address is incomplete and cannot be located', or 'no such person lives on that address', etc., a public notice may be issued, inter alia informing all the named members that they should get their records corrected and updated as also clear all their dues from the dates of their enrolments failing which their names shall be removed from the Roll of Members/struck off from the Register of Members.

The payment of the update monthly subscription at the rate as noted hereinafter (as per the Rules and Regulations of the Samaj) gains significance because it was brought to the notice of the undersigned that since the date of respective enrolments of the present members, none has paid any monthly subscription.

iv)

- The membership fee of the new members to be enrolled

may be revised to a reasonable amount, as also the monthly subscription to be paid by each and every class of member (whether new or old). This may result only those persons either continuing as members of the Samaj or becoming the members of the Samaj who will really believe in the Sai Baba's principles and tenets, and will be ideally interested in participating and contributing to the management, maintenance and betterment of the Samaj."

22. Upon a conspectus of the foregoing, and especially in view of the commitment and undertaking given by the members of the newly elected Managing Committee of the Samaj by way of affidavit dated 15.07.2020, that they would make all endeavours to rectify and remedy the discrepancies pointed-out in the Auditor's Report; and shall take all necessary steps as may be required to implement the recommendations and suggestions made by the Auditors to ensure compliance with all requirements of law in relation to the functioning of the Samaj, this court passes the following directions:

(a) Expressing its deep gratitude for the noble service rendered by Hon'ble Ms. Justice Pratibha Rani, former Judge of this court and Mr. Brij Bhushan Gupta, learned Senior Advocate, in conducting the elections and remedying the issues in the management and affairs of the Samaj, this court discharges the learned Administrator and senior counsel from the tasks entrusted to them vide order dated 21.08.2019. It is directed that the Administrator and Senior Counsel may take from the Samaj accounts their entire balance honorarium/fee along with all out-of-pocket and miscellaneous expenses incurred, till 21.07.2020, within 03 days of receipt of this order ;

(b) The learned Administrator is requested to hand-over the management and affairs of the Samaj to the newly elected Managing Committee, through its President and

Honorary Secretary, within 01 week of receipt of this order;

(c) The newly elected Managing Committee is directed to take all steps and actions in compliance of Auditor's Report dated 10.07.2020 and to file a compliance report in respect thereof, at least 01 week before the next date of hearing;

(d) The newly elected Managing Committee is also directed to promptly take action as warranted in law in respect of any wrongdoing pointed-out in the Administrator's Reports against errant persons who are/were incharge of the affairs of the Samaj at the relevant time ;

(e) The newly elected Managing Committee is further directed to consider and adopt the suggestions made by the learned Administrator as set-out above; and

(f) Mr. Brij Bhushan Gupta, learned Senior Advocate is appointed as Amicus Curiae to assist this court in monitoring the compliance of Auditor's Report dated 10.07.2020 and the other directions contained in this order.

23. CM Appl. Nos. 6045/2020 and 6048/2020 are disposed of in the above terms.

24. List for filing compliance report by respondent No. 4/new Managing Committee on 22.09.2020.

CM APPL. No. 7603/2020 (for various reliefs)

25. Though this application was filed on 24.01.2020 by Sh. Deepak Nabe who was a candidate for the post of Treasurer of the Samaj, it has not been pressed. On several dates none appeared for the applicant. Be that as it may, it is seen that all prayers in the application stand substantially satisfied by various orders made in the matter. Moreover, this court is of opinion that once elections have been conducted and its affairs have been streamlined, it would not be justifiable to keep the Samaj under the Administrator any longer.

26. However, for the applicant to press residuary issues, if any, list on 22.09.2020.

CM APPL. No. 15998/2020 (for copy of audit report and comments)

27. List on 22.09.2020.

CM APPL. No. 44798/2019 (for expunging remarks)

28. List on 22.09.2020.

29. A copy of this order be sent via e-mail to learned Senior Counsel assisting the learned Administrator as also to counsel appearing for the parties.

ANUP JAIRAM BHAMBHANI, J.

Released on :

28th July, 2020 j