

K. Shamrao & Ors vs Assistant Charity Commissioner on 4 March, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1828, 2003 (3) SCC 563, 2003 AIR SCW 1281, 2003 AIR - KANT. H. C. R. 794, 2003 (2) UPLBEC 1245, (2003) 2 SCR 523 (SC), 2003 (2) SLT 500, 2003 CRILR(SC MAH GUJ) 327, (2003) 4 ALLINDCAS 980 (SC), 2003 (5) SRJ 295, 2003 CRILR(SC&MP) 327, 2003 (2) ALL CJ 1408, 2003 (1) CHANDCRIC 323, 2003 (4) INDLD 236, 2003 (1) LRI 661, 2003 CALCRILR 746, 2003 (2) ALLCRIR 1333, 2003 (2) SCALE 585, 2003 (3) ACE 190, 2003 ALL MR(CRI) 823, 2003 (4) ALLINDCAS 980, (2003) 2 JT 378 (SC), 2003 (1) UJ (SC) 558, (2003) 25 OCR 409, (2003) 2 CURCRIR 7, (2003) 2 EASTCRIC 113, (2003) 2 MAHLR 392, (2003) 2 UPLBEC 1245, (2003) 2 SUPREME 445, (2003) 2 SCALE 585, (2003) 2 KCCR 1317, 2003 (4) BOM LR 408, 2003 BOM LR 4 408

Author: H.K. Sema

Bench: H.K. Sema

CASE NO.:

Appeal (crl.) 1534 of 1995

PETITIONER:

K. Shamrao & Ors.

RESPONDENT:

Assistant Charity Commissioner

DATE OF JUDGMENT: 04/03/2003

BENCH:

Y.K. Sabharwal & H.K. Sema

JUDGMENT:

J U D G M E N T Y.K. Sabharwal, J.

Whether Assistant Charity Commissioner appointed under Section 5 of the Bombay Public Trust Act, 1950 (for short, the Act') as applicable to Karnataka is a 'court' for the purposes of the Contempt of Courts Act, 1971 is the question involved in this appeal.

The contempt proceedings have been initiated against the appellants in the High Court on reference made by the Assistant Charity Commissioner, Belgaum for taking contempt action as a result of

publications in a daily newspaper. The three original appellants were the Managing Editor, Editor, Printer and Publisher respectively of the said publication. The first appellant died during the pendency of the appeal and, therefore, the appeal in so far as the said appellant is concerned stands abated. The items published in the said newspaper on three dates were said to be scandalous and intended to interfere with the administration of justice. It is not necessary to go into the factual matrix since the present appeal has been filed against the judgment of the High Court deciding a preliminary objection raised by the appellants before the High Court. The objection was that the Assistant Charity Commissioner is not a Court and, therefore, contempt action cannot be initiated against them. The High Court, overruling that objection, has held that the Assistant Charity Commissioner under the Act is a court within the meaning of Sections 2 and 3 of the Contempt of Courts Act, 1971. The decision of the High Court on the preliminary objection is under challenge in the present appeal.

The Assistant Charity Commissioner was a Civil Judge working in the judicial department of the State. His services were placed at the disposal of the Government for being appointed as Assistant Charity Commissioner under the provisions of the Act. To determine whether the Assistant Charity Commissioner is a court, it would be necessary to find out, having regard to the provisions of the Act, whether the Assistant Charity Commissioner possesses the attributes of a court.

The expression 'court' is not defined in the Contempt Act. The definition of the said expression in Section 2(4) of the Act is of no assistance or relevance for determining the question in issue.

Before we examine the provisions of the Act for the purposes aforesaid, certain decisions of this Court wherein similar question was considered albeit in different context, may be noticed.

In *The Bharat Bank Ltd., New Delhi v. Employees of the Bharat Bank Ltd., Delhi & Anr.* [(1950) SCR 459], while dealing with the question whether industrial tribunal constituted under the Industrial Disputes Act, 1947 was a Court for the purpose of Article 136 of the Constitution of India, it was observed by Fazal Ali, J. that the Tribunal has all the trappings of a Court.

In *Brajnandan Sinha v. Jyoti Narain* [(1955) 2 SCR 955] considering the question whether a Commissioner appointed under the Public Servants (Inquiries) Act, 1850 was a Court within the meaning of Contempt of Courts Act, 1952, reference was made to the decision in *Bharat Bank's case* (supra) and various other decisions and it was held by this Court that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

In *Shri Virindar Kumar Satyawadi v. The State of Punjab* [(1955) 2 SCR 1013] it was laid down by this Court that what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence

adduced and in accordance with law. When a question, therefore, arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a court.

The aforesaid decisions were cited with approval in *Thakur Jugal Kishore Sinha v. Sitamarhi Central Co-operative Bank Ltd. & Anr.* [(1967) 3 SCR 163], where the question was whether the Assistant Registrar of Co-operative Societies, an authority under the Bihar and Orissa Co-operative Societies Act, 1935 could be regarded as a Court for the purposes of Contempt of Courts Act, 1952. It was held that to determine whether a statutory authority was functioning as a court, the provisions of the concerned statute have to be looked into. After examining the provisions of the Act and the powers, duties and functions of the Assistant Registrar thereunder, this Court held that the Assistant Registrar performed judicial functions. The Assistant Registrar was regarded as a Court for the purpose of Contempt of Courts Act, 1952.

To determine the question in issue, let us now examine the provisions of the Act. The Act is intended to regulate and make better provision for the administration of public and charitable trusts in the State. Chapter IV of the Act deals with registration of public trust after due inquiry. An application for registration of a trust as a public trust is required to be made under Section 18 of the Act, Section 19 stipulates an inquiry for registration. The inquiry shall be held on an application made by any person having interest in the public trust or on his own motion by the Assistant Charity Commissioner to ascertain :

- (i) whether a trust exists and whether such trust is a public trust,
- (ii) whether any property is the property of such trust,
- (iii) whether the whole or any substantial portion of the subject-matter of the trust is situate within his jurisdiction,
- (iv) the names and addresses of the trustees and manager of such trust,
- (v) the mode of succession to the office of the trustee of such trust,
- (vi) the origin, nature and object of such trust,
- (vii) the amount of gross average annual income and expenditure of such trust, and
- (viii) any other particulars as may be prescribed under sub-section (5) of section 18.

Under Section 73, in holding inquiries under the Act, the officer holding the same shall have the same powers as are vested in courts in respect of the following matters under the Code of Civil Procedure, 1908 in trying a suit :

- "(a) proof of facts by affidavits,

- (b) summoning and enforcing the attendance of any person and examining him on oath,
- (c) ordering discovery and inspection, and compelling the production of documents,
- (d) issuing of commissions."

Section 74 provides that all inquiries and appeals under the Act shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code. Section 76 provides that save in so far as they may be inconsistent with anything contained in the Act, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court under the Act.

Sections 79 and 80 are of significant importance to determine the point in issue. Section 79 provides that any question, whether or not a trust exists and such trust is a public trust or particular property is the property of such trust, shall be decided by the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal as provided by this Act. The decision of the Deputy or Assistant Charity Commissioner or the Charity Commissioner in appeal, as the case may be, shall, unless set aside by the decision of the court on application or of the High Court in appeal be final and conclusive. Section 80 bars the jurisdiction of the Civil Court. It provides that save as expressly provided in the Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, and in respect of which the decision or order of such officer or authority has been made final and conclusive.

Chapter XI dealing with functions of Charity Commissioner, procedure, jurisdiction and appeals, provides for appeal against the finding or order of the Deputy or Assistant Charity Commissioner to the Charity Commissioner under Section 70 in following cases :

- "(a) the finding and order, if any, under Section 20;
- (b) the finding under section 22;
- (b-1) the findings under Section 22A;
- (c) the findings under section 28;
- (d) the order under sub-section (3) of section 54;"

Under Section 72, any person aggrieved by the decision of the Charity Commissioner under various provisions mentioned therein or on the question whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust may, within sixty days from the date of the decision, apply to the court to set aside the said decision. It also, inter alia, provides that an appeal shall lie to the High Court, against the decision of the Court under sub-section (2) as if

such decision was a decree from which an appeal ordinarily lies. The matters relating to the public trust in respect whereof the jurisdiction is conferred on the officers appointed under the Act, but for the bar of jurisdiction of Civil Court, would be triable by the Civil Court as provided in Section 92 of the Code of Civil Procedure. A person to be appointed as a Deputy Charity Commissioner and or the Assistant Charity Commissioner, as provided in Section 5(2) of the Act, shall be either a judicial officer or a member of the bar. The officer is, therefore, required to have a legal background. As already noticed, the Assistant Charity Commissioner, in the present case, was a serving judicial officer of State Judicial Services whose services had been placed at the disposal of the Government to be appointed as an Assistant Charity Commissioner.

The scheme of the Act, the powers conferred on the Assistant Charity Commissioner and the perusal of the aforesaid provisions of the Act clearly show that the Assistant Charity Commissioner has to be a judicial officer or an officer with a legal background; has to hear parties wherever dispute is raised with regard to existence of a public trust or with regard to a property being trust property or otherwise and then give a definitive judgment after taking evidence having regard to the facts of the case and by application of law. The judgment is final unless interfered with in appeal or thereafter tested in appeal before the High Court. The jurisdiction of the Civil Court has been barred in the matters inquired into and decided by the Assistant Charity Commissioner.

The aforesaid provisions make it clear that the Assistant Charity Commissioner has not only the trapping of a judicial tribunal but also has power to give a decision or a definitive judgment which has finality and authoritativeness which are essential tests of a judicial pronouncement. The Assistant Charity Commissioner, therefore, possesses all the attributes of a court. The fact that the Assistant Charity Commissioner has also to perform some administrative functions is not of any relevance for coming to the conclusion that he is not a court, having regard to the provisions of the Act which substantially confer on him the power to give a definite judgment subject to finality in appeal, after hearing all concerned. Functions of the Assistant Charity Commissioner are predominantly adjudicatory. The Assistant Charity Commissioner has almost all the powers which an ordinary Civil Court has including power of summoning witnesses, compelling production of documents, examining witnesses on oath and coming to a definite conclusion on the evidence induced and arguments submitted.

For the foregoing reasons, we hold that the Assistant Charity Commissioner is a Court for the purposes of Sections 2 and 3 of the Contempt of Courts Act, 1971. The appeal is accordingly dismissed leaving the parties to bear their own costs.