

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.35164 of 2009

REKHABEN H. SHETH

... Petitioner

Vs.

CHARU K. MEHTA & ORS.

... Respondents

WITH

SPECIAL LEAVE PETITION (C) No.6685 of 2010

JUDGMENT

J U D G M E N T

ALTAMAS KABIR, J.

1. These Special Leave Petitions arise out of an order dated 11th September, 2009 passed by a

learned Single Judge of the Bombay High Court in Contempt Petition No.123/09 arising out of an order passed on 9th September, 2008, in Writ Petition No.5732/08.

2. The Respondent No.1, Charu K. Mehta, is a permanent Trustee of the Lilavati Kirtilal Mehta Medical Trust. She had filed an application under Section 41D of the Bombay Public Trusts Act, 1950, against the Petitioner herein and the Respondent Nos.2 - Vijay K. Mehta, Respondent No.3 - Dr. Amritlal C. Shah, Respondent No.4 - Niket V. Mehta, and Respondent No.5 - Sushila V. Mehta in SLP(C)No.35164/09, for their removal from Trusteeship of the aforesaid Trust on the ground of malfeasance, misfeasance, misappropriation of Trust funds, breach of Trust, etc. An interim application was also

filed for the removal/ suspension/dismissal of the colluding Trustees. Charges were framed against the Petitioner and the aforesaid Respondents by the Joint Charity Commissioner, Mumbai, on 3rd June, 2008, and the Trustees were restrained from taking any policy decision and from entering into any financial transaction with regard to the Trust.

3. The aforesaid Respondents Nos.2 and 3 in SLP(C)No.35164/09 challenged the said order of the Joint Charity Commissioner in Writ Petition Nos.3849 and 3850 of 2008. By common orders passed in those writ petitions on 11th July, 2008 and 15th July, 2008, the orders impugned in the writ petitions were set aside and the Joint Charity Commissioner was directed to pass fresh orders in accordance with law. Thereafter, the Joint Charity

Commissioner passed an ad-interim order on 9th September, 2008, restraining the Petitioner and the Respondent Nos.2, 3, 4 and 5 herein from taking any policy decision and entering into financial transactions, without the prior approval of the Joint Administrators appointed by this Court. Aggrieved by the said ad-interim order, the Respondent Nos.2 and 3 herein filed Writ Petition No.5732/08, wherein the High Court modified the aforesaid order passed by the Joint Charity Commissioner on 9th September, 2008. The operative part of the order of the Joint Charity Commissioner was modified to the extent that the prior approval was to be taken not from the Administrators but from the Joint Charity Commissioner.

4. The Bombay High Court, therefore, confirmed the order of the Joint Charity Commissioner

that the Respondents Nos.1 to 9 in the Application filed before him should not take any policy decision and should not enter into any financial transaction with regard to the Trust without the prior approval of the Joint Charity Commissioner till further orders.

5. In the Contempt Petition filed by the Respondent No.1 herein, it has been alleged that the Petitioner herein and the Respondents Nos.2, 3, 4 and 5 had withdrawn huge amounts from the Trust funds and had issued cheques in favour of solicitors and advocates appearing for them in the litigations pending before the various courts, including the proceedings before the Joint Charity Commissioner under Section 41D of the Bombay Public Trusts Act, 1950. Rejecting the defence of the Petitioner and the Respondents Nos.2, 3, 4 and 5 herein

that payment of fees to advocates and solicitors did not amount to financial transactions being undertaken by the Trust and that the services of the advocates and solicitors had to be engaged to defend the interest of the Trust, the learned Single Judge observed that the question as to whether payments to advocates were financial transactions within the meaning of the order passed by the Joint Charity Commissioner, as modified by the High Court, was still at large.

6. The learned Single Judge arrived at a *prima facie* view that the payments made to advocates would constitute financial transactions with regard to the Trust and, therefore, prior approval of the Joint Charity Commissioner was required to be obtained before such payments

were made to the advocates. While making such observations, the learned Judge also noticed that the Trust was not a party in many of the proceedings which were initiated by one group of Trustees against the others. The learned Single Judge, accordingly, issued notice to the Petitioner and the Respondent Nos.2, 3, 4 and 5 herein to show cause as to why action should not be taken against them under the Contempt of Courts Act for having willfully disobeyed the directions contained in the order dated 9th September, 2008 in Writ Petition No.5732/08 by issuing cheques to professionals without the prior sanction of the Joint Charity Commissioner.

7. It is the said order of the learned Single Judge of the Bombay High Court and the notice issued to show cause on the Contempt Petition

filed by the Respondent No.1 herein, that is the subject matter of the present Special Leave Petitions.

8. Appearing for the Petitioner, Rekhaben H. Sheth, in S.L.P. (c) No.35164 of 2009, Mr. Ashok Desai, learned Senior Advocate, urged that the expression "financial transactions" indicated in the order passed by the Joint Charity Commissioner on 9th September, 2008, subsequently modified by the High Court, did not include the payment of fees to professionals, such as Solicitors, Advocates and Chartered Accountants for the services rendered by them in the interest of the Trust. It was submitted that such transactions were meant to cover the essential expenses incurred for the day-to-day running of the hospital and were entered into in lieu of goods provided to

the hospital. Mr. Desai submitted that it is only for the purposes of acquiring certain tangible objects that the hospital could enter into financial transactions and not for other purposes where there was no return involved. In fact, according to Mr. Desai, applying the said expression for effecting payment to professionals would lead to an absurd situation where every time professional such as an Advocate or Solicitor has to be engaged, the prior permission of the Joint Charity Commissioner would have to be taken. It was urged that the entire process would be lengthy and self-defeating and would be difficult to put into operation each time matters came up before different Courts for consideration.

9. Mr. Desai contended that the expenses incurred towards payment of professional fees to

Solicitors, Advocates and Chartered Accountants were not on account of defending the Trustees in personam but to defend the interests of the Trust and the hospital against the repeated litigations initiated by the Respondent No.1, Charu K. Mehta, against the other Trustees. Referring to the various definitions of the aforesaid expression, Mr. Desai contended that the same could not apply to the facts of this case.

10. Mr. Desai also contended that even if it be held that the Petitioner and the Respondent Nos.2 to 5 and the other Trustees had acted against the interests of the Trust in utilizing its funds for payment to lawyers and other professionals, the same could at best be a case before another forum, but there was no element of contempt of Court involved since

the monies paid were not on account of any tangible goods received, but for preservation and protection of the Trust. Mr. Desai submitted that the contempt petition which has been filed by the Respondent No.1, upon which cognizance has been taken by the learned Single Judge, was wholly erroneous and was liable to be set aside. Mr. Desai submitted that the contempt proceedings had been initiated by the Respondent No.1, against all the other Trustees with the sole intention of harassing the other Trustees and disturbing the smooth management of the Trust.

11. On the question of maintainability of the contempt proceedings, it was urged by Mr. Desai that although Section 19 of the Contempt of Courts Act, 1971, made provisions for appeals against orders which adversely

affected those in contempt, since appeal was a creature of statute the provisions of Section 19 of the above Act would still continue to be operative.

12. In support of the submissions made by him, Mr. Desai firstly referred to the decision of this Court in Union of India v. Mario Cabral e Sa [(1982) 3 SCC 262] and Tamilnadu Mercantile Bank Shareholders Association v. SC Sekar [(2009) 2 SCC 784], wherein it had been reiterated that once a period which had been prescribed under the Act had expired, contempt proceedings which had been initiated earlier could not be proceeded with further.
13. Mr. Desai's submissions were reiterated by learned counsel appearing for the respondents in the other Special Leave Petitions. Mr.

Ranjit Kumar, learned Senior Advocates, contended that on a mistaken interpretation of the expression "financial transactions", the High Court had taken cognizance of the contempt petition filed and had directed notices to issue thereupon. Referring to the order of the Joint Charity Commissioner dated 3rd June, 2008, Mr. Ranjit Kumar submitted that the said order was capable of being de-compartmentalized in that the same neither indicated any policy decision nor a financial transaction which could have brought the matter within the ambit of a contempt under the Contempt of Courts Act vis-à-vis the said order. Mr. Ranjit Kumar further urged that the two have to be read together and would have to be read conjunctively and not disjunctively so as to give a meaningful and

harmonious construction thereto. It was further contended that till a decision was rendered as to what would constitute "financial transactions", contempt proceedings would not lie, since such decision would determine whether the alleged contemnors could be said to be in contempt of the order passed by the Joint Charity Commissioner on 9th September, 2008.

14. On the question of issuance of notice, Mr. Jayant Bhushan referred to and relied upon the decision of this Court in State of J&K v. Trehan Industries (P) Ltd. [(2005) 11 SCC 459], where the question of civil contempt fell for the consideration of the Jammu & Kashmir High Court. Mr. Bhushan pointed out that in the said decision it had been categorically pointed out that the petitioners

therein could not have a cause of grievance persuading them to approach the Supreme Court. Mr. Jayant Bhushan concluded on the note that no special circumstances existed in regard whereof the Special Leave Petition could have been filed. He lastly pointed out that the Joint Charity Commissioner had by his order dated 10th October, 2008, suspended the Petitioner and the Respondent Nos.2 to 5 and had appointed an Administrator to look after the affairs of the Trust on the application filed by the Respondent No.1 herein, Charu K. Mehta, under Section 41D of the Bombay Public Trust Act, 1950.

15. Having carefully considered the submissions made on behalf of respective parties, we see no reason to interfere with the order of the learned Single Judge issuing notice on the

contempt petition filed by the Respondent No.1 herein. The learned Judge observed that the Respondent No.1 had raised serious objections in the main application about the payment of Advocate's fees from Trust funds for fighting personal litigations of the Trustees. The learned Judge took sufficient care to indicate that except for cognizance of the allegations made against the Petitioner and the Respondent Nos.2 to 5, cognizance against the other Trustees had not been taken as the material against them were insufficient to frame charges. However, liberty was also given that when sufficient material in support of the allegations was placed on record, it could take cognizance of such complaint. A chart has been filed on behalf of the Petitioner, Respondent Nos.2 to 5 and the other Trustees

to show the amounts which had been paid to the learned counsel amounting to approximately Rs.3½ crores. Although, an attempt was made by Mr. Desai to justify such expenditure, we are unable to agree with his submissions, since as observed by the learned Single Judge of the Bombay High Court, most of the said funds were spent by the Petitioner, the Respondent Nos.2 to 5 and the other Trustees for defending themselves in respect of the various cases which had been brought against them by the Respondent No.1, Charu K. Mehta.

16. We are not convinced with Mr. Desai's submissions that payments made to lawyers, advocates and solicitors does not amount to Contempt in the special facts of this case. This Court cannot ignore the fact that the funds of the Trust were being utilized to a

considerable extent, not for the purposes of the Trust but for defending the Trustees against the allegations brought against them by the Respondent No.1. There are, of course, prima facie observations which should not influence the outcome of the matter pending before the High Court which has to decide the matter on its own merits.

17. In these circumstances, we are not inclined to interfere with the order of the High Court and the Special Leave Petitions are, accordingly, dismissed, but without any order as to costs.

18. We have, however, been informed by Mr. Ranjit Kumar, learned senior counsel, who has appeared for Amritlal C. Shah, in S.L.P. (C) No.6685 of 2010, that after the matter was heard, the Petitioner No.3, Vijay K. Mehta, passed away on 23rd July,

2010. Since we have dismissed the Special Leave Petitions, it will now be open to the other Petitioners herein to inform the learned Court below of the subsequent event and take further steps in that regard.

.....J.
(ALTAMAS KABIR)

.....J.
(A.K. PATNAIK)

New Delhi
Dated: 29.07.2010