

CASE NO.:
Appeal (civil) 1554 of 2007

PETITIONER:
Nanshibhai S/o Ganeshbhai Mirani

RESPONDENT:
Bhupendra P. Popat & Anr

DATE OF JUDGMENT: 23/03/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No. 24675 of 2005)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Bombay High Court allowing prayer made by respondent No.1 for certain directions and directing to have a fresh meeting of Sri Lohana Mahaparishad (hereinafter referred to as the 'Mahaparishad').

A brief reference as projected by the appellant to the factual aspects would suffice.

A suit was filed relating to the function of Mahaparishad. On the basis of the consent order i.e. in an appeal from the order No.427/2005 the High Court directed to have a General Body Meeting containing 23 Agendas including the agenda for holding the election of President of the Mahaparishad and four trustees. The suit was accordingly disposed of. A Court Commissioner was appointed and the agenda notice containing the details of 23 agenda items were circulated to more than 650 members and the meeting was fixed at Ahmedabad on 3.7.2005. The meeting of the Madhyastha Maha Samiti (in short 'Maha Samiti') of Mahaparishad was held. On the request of majority of members, item no.9 pertaining to the election of four trustees in place of the retiring trustees and agenda no.22 pertaining to election of the President was taken up first after first formal agendas. Shri Jayantilal Govindji Kundalia was elected as a President and four persons including one T.R. Chitwani were elected as trustees. It is to be noted that in the election for the post of President and trustees both Shri Kundalia and Shri Chitwani were contesters. As noted earlier Shri Kundalia was elected as President while Shri Chitwani was elected as a trustee. Respondent no.1 Sri Bhupendra P. Popat was the Chief Polling Agent of Shri Chitwani. It is not disputed that considering the paucity of time the meeting was adjourned for consideration of the remaining agenda items at the later date. According to appellant after due notice to all the members the meeting was held on 4.9.2005 and the remaining items of agenda were considered and adopted. Respondent no.1 Sri

Bhupendra P. Popat filed an application making grievance that the decision could not have been taken at a subsequent meeting and it was only the earlier Board which could have taken up the remaining agenda items and not the newly elected governing body. The appellant questioned correctness of the acceptability of the stand of the respondent no.1. It was highlighted that after the new governing body was elected, the question of the old body whose term had expired on 31.12.2004 could not have taken any decision. The High Court accepted that the old governing body was the only body which could have taken the decision so far as the remaining items of the agenda are concerned and, therefore, there was violation of the specific order as contained in the consent order.

Learned counsel for the appellant submitted that the High Court has clearly fallen into error by holding that it was the old body which had to take the decision. That would put the clock back and process of the election of the new body would be an exercise in futility. In fact, there was a meeting held on 4.9.2005 where after due notice to eligible persons, decisions were taken. Respondent no.1 Sri Bhupendra P. Popat at the behest of Shri Chitwani who lost presidential election had filed application in a disposed of case. The High Court had erroneously entertained the application. In response, learned counsel for the respondents held that various vital agenda items were to be considered. It was only the old governing body which had taken various resolutions which were to be discussed in terms of various agenda items and the new governing body had no role to play so far as these items are concerned.

We find that the High Court failed to consider two very relevant aspects. Firstly, the scope of re-opening the entire matter in the case after passing of the consent order was required to be considered. Secondly, it has failed to consider the effect of the decisions/resolutions taken at the meeting held on 4.9.2005. It is the stand of the appellant that due notice was given to the respondents and all eligible members and the resolutions were adopted after thorough discussion.

We do not think it proper to say anything about the effect of the resolutions/decisions. It would be appropriate for the High Court to consider the maintainability of the application filed by respondent no.1 in the matter and the effect of resolutions taken on 4.9.2005, if it comes to hold that the application was maintainable. Accordingly, we remit the matter to the High Court for fresh consideration of the aforesaid two aspects for which we express no opinion.

Since the matter is of urgency, we request the High Court to dispose of the matter within three months from the date of receipt of order.

The appeal is disposed of accordingly with no order as to costs.