

A NANSHIBHAI S/O GANESHBHAI MIRANI  
v.  
BHUPENDRA P. POPAT AND ANR.

MARCH 23, 2007

B [DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

*Code of Civil Procedure, 1908:*

C *Trust—Governing body—Function and power of—Filing of a suit relating to function of Sri Lohana Mahaparishad—Consent order passed by High Court directing the Mahaparishad to hold a General Body Meeting to consider 23 Agenda items—Consideration of few items in one meeting by the existing governing body and remaining in the next meeting by newly constituted governing body—Challenge to—High Court held that the old governing body was the only body which could take decision on the remaining items—On appeal, Held: High Court failed to consider two aspects, viz., the scope of reopening the entire matter after passing the consent order and the effect of decision taken by the newly constituted governing body—Hence the matter remitted to the High Court for consideration of these aspects.*

E A suit was filed relating to the function of Sri Lohana Mahaparishad, in which a consent order was passed by the Court against which an appeal was filed by respondent No.1 before the High Court. The High Court directed to have a General Body Meeting to consider 23 Agenda items including holding the election for the post of President and four trustees of the Mahaparishad.

F In the meeting of the Madhyastha Maha Samiti of Mahaparishad, 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 item no. 22 pertaining to election of the President was taken up. President and four trustees were elected. Respondent no.1 was the Chief Polling Agent of one of the trustees. Due to paucity of time the meeting was adjourned for consideration of the remaining agenda items at later date. According to appellant after due notice to all the members the next meeting was held and the remaining items of agenda were considered and adopted. Aggrieved, the respondent no.1 filed an application alleging that the decision on remaining agenda items could not have been taken at a subsequent meeting by the newly elected governing body. The

H petition was allowed by the High Court holding 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. Hence the present appeal. A

Appellant contended that the High Court has clearly fallen into error by holding that it was the old governing 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; that in fact, the meeting was held after due notice to eligible persons and decisions were taken; and that respondent No.1, at the behest of another candidate who lost presidential election, had filed the application and the High Court had erroneously entertained the application. B

Respondents submitted 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. C

Disposing of the appeal, the Court D

**HELD: 1.1.** 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 earlier. [Para 7] [401-D-E] E

**1.2.** 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, the matter is remitted to the High Court for fresh consideration of the aforesaid two aspects for which no opinion has been expressed. [Para 8] [401-F-G] F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1554 of 2007.

From the Judgment and Order dated 09.09.2005 of the High Court of Judicature at Bombay in C.A. No. 915/2005 in A.F.O. No. 427/2005. G

R.F. Nariman, H.A. Raichura, S.H. Raichura and R.M. Vitlani for the Appellant.

Rajeev N. Narula and Hardeep Singh Anand for the Respondents. H

A The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

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

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

C 4. 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 D 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 E 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 F 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 G 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 H 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. A

5. 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. B C

6. 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. D

7. 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. E

8. 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. F G

9. 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.

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

S.K.S.

Appeal disposed of. H