

KISHOR K. MEHTA

v.

REKHA H. SHETH & ORS.

(Contempt Petition [C] No.193 of 2014)

MAY 21, 2014

[A. K. PATNAIK AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ]

Contempt of Court – Contempt petition – Trust governed by 1950 Act – Clause in the trust that petitioner, one of the trustees for life time, however respondent 1 to 10 dispute that petitioner continues to be life trustee – Issuance of notice by respondent no. 6 to convene meeting of Board of Trustees at office premises – Application by petitioner and others that respondent no. 6 be directed to give notice of the said meeting to them and they be permitted to participate in the meeting – Refusal by High Court to grant interim relief – SLP thereagainst – Disposal of, holding that the next meeting of the Board of Trustees would be held at Hotel Taj Lands End, and notice would be given to all trustees entitled to participate in the meeting, without considering who all trustees entitled to participate in the meeting of the Trust – Failure of respondent no.6 in addressing notice to petitioner about the said meeting – Contempt petition by petitioner alleging willful disobedience of the order of this Court – Stand of respondent no.6 that he was under a bona fide impression that petitioner and respondent nos.12 to 19 were no longer trustees and were not entitled to participate in the said meeting – Held: Respondent no.6 not guilty of willful disobedience of the order – Contempt proceedings dropped but to do complete justice between the parties, the order disposing of SLP recalled – Interim arrangement/order passed as regards the functioning of the Board of Trustees which would continue till the disposal of SLP – Bombay Public Trust Act, 1950.

Pritam Pal v. High Court of Madhya Pradesh, Jabalpur,

A *through Registrar AIR 1992 SC 904-referred to.*

Case Law Reference:

AIR 1992 SC 904 Referred to Para 4

B CIVIL APPELLATE JURISDICTION : Contempt Petition [C]
No.193 of 2014.

IN

SLP (C) No. 3772 of 2014.

C From the Judgment and order dated 04/02/2014 in CA No.
329 of 2014, WP No. 735 of 2014 of the High Court of Bombay.

D Ashok K. Parija, Ranjit Kumar, Amarendra Sharan, Shyam
Divan, Shankar Chillarge, Addl Govt. Khaitan & Co., Arjun
Garg, Mohit Singh, A.P. Mayee, N. Chidambaram, Subodh K.
Pathak, Subhash Jha, Shashi Ranjan, Dharmendra Kumar
E Sinha, Somnadri Goud, Shashank Bhansali, Parekh & Co.,
Abhani Sahoo, Richa Kapoor, Sangeeta Bharti, Ashish Kumar,
Prerna Mehta, Krishanu Adhikary, Shalin Arthwan, Rekha
Pandey, Ajay Kumar, Manish Desai, Dharendra Sinha, Aman
Verma for the appearing parties.

The Order of the Court was delivered by

O R D E R

F **A. K. PATNAIK, J.** 1. In this Contempt Petition, the
petitioner has alleged that the respondents have wilfully violated
the order dated 14.02.2014 passed by this Court in Special
Leave Petition (C) No.3772 of 2014.

G 2. The facts very briefly are that on 05.07.1978, Lilavati
Kirtilal Mehta Medical Trust (hereinafter referred to as 'the Trust')
was settled by the late Shri Kirtilal Manilal Mehta. The Trust is
governed by the Bombay Public Trust Act, 1950. As per clause
16 of the Trust Deed, the petitioner Kishor Kirtilal Mehta is one
of the permanent trustees for the lifetime. Respondent Nos.1
H to 10, however, dispute that Kishor Kirtilal Mehta continues to

be a life trustee. Various other disputes between the trustees are pending in different courts. While the position stood thus, respondent no.6 issued a notice on 30.01.2014 to convene a meeting of the Board of Trustees on 07.02.2014 at the office premises of respondent no.10. Five persons, namely, Kishor Kiritilal Mehta (petitioner), Rajiv K. Mehta, Rajesh Mehta, Prashant Mehta and Reshma Mehta, filed Civil Application No.329 of 2014 in Writ Petition No.735 of 2014 before the Bombay High Court praying that respondent no.6 be directed to give the notice dated 30.01.2014 of the meeting of the Board of Trustees also to them and they be permitted to participate in the said meeting scheduled on 07.02.2014. A Division Bench of the Bombay High Court in its order dated 04.02.2014, however, took the view that there is no reason to grant any ad-interim relief and that the parties may challenge the proceedings of the meeting by filing appropriate proceedings. This order dated 04.02.2014 of the Division Bench of the Bombay High Court was challenged before this Court in Special Leave Petition (C) No.3772 of 2014 under Article 136 of the Constitution.

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3. On 07.02.2014, this Court directed that the Special Leave Petition be listed on Friday, the 14th February, 2014 and further directed that in the meanwhile, the meeting of the Board of Trustees scheduled to be held on 07.02.2014 will not be held. Thereafter, when the matter was listed on Friday, the 14th February, 2014, this Court disposed of the Special Leave Petition with the following order:

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“These Special Leave Petitions are against the orders passed by the High Court refusing to grant interim relief with regard to the venue of the meeting of Lilavati Kiritilal Mehta Medical Trust as well as to the notice for the convening of the meeting of the Board of Trustees.

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After hearing the learned counsel for the parties, we direct that the next meeting of the Board of Trustees will be held at Hotel Taj Lands End, Bandra, and a notice will be given

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A to all the Trustees who were entitled to participate in the meeting indicating therein the agenda to be transacted in the meeting along with the explanatory notes.

The Special Leave Petitions stand disposed of.”

B Thus, by the aforesaid order, this Court directed that the next meeting of the Board of Trustees will be held at Hotel Taj Lands End, Bandra, and a notice will be given to all the Trustees who are entitled to participate in the meeting indicating therein the agenda to be transacted in the meeting along with the
C explanatory notes and with the said order, disposed of the Special Leave Petition.

4. The petitioner has alleged in this Contempt Petition that despite the aforesaid order passed on 14.02.2014, no notice
D was addressed to the petitioner by respondent no.6 about the meeting of the Board of Trustees scheduled to be held on 25.02.2014 at Hotel Taj Lands End, Bandra, and this was done intentionally. The petitioner has, therefore, prayed that Contemnors be punished for contempt for wilful violation of the
E order dated 14.02.2014 of this Court. In the written submissions, the learned counsel for the petitioner has cited the decision in *Pritam Pal v. High Court of Madhya Pradesh, Jabalpur, through Registrar* [AIR 1992 SC 904] in which this Court has held that the power of this Court to punish for
F contempt under Article 129 of the Constitution is not trammelled by any legislation, including Contempt of Courts Act, 1971 and its inherent power is elastic and not subject to any limit. He has also cited decisions of this Court on the scope of the power of this Court under Article 142 of the Constitution to pass any order to do complete justice.

G 5. On 14.03.2014, we issued notice of the contempt petition only to respondent no.6 and the respondent no.6 has filed his reply in which he has stated that he did not give notice of the meeting of the Board of Trustees of the Trust to the
H petitioner or respondent nos.12 to 19 or any of them as none

of them were trustees of the Trust and were not entitled to participate in the meeting. Learned counsel for respondent no.6 submitted that in view of the facts stated in the reply filed by respondent no.6, it will be clear that respondent no.6 was under a bona fide impression that the petitioner and respondent nos.12 to 19 were no longer trustees and were not entitled to participate in the meeting of the Board of Trustees.

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6. After considering the submissions of the learned counsel for the parties, we find that Special Leave Petition (C) No.3772 of 2014 was taken up by us for the first time on 07.02.2014 and disposed of finally by us on 14.02.2014 without considering the cases of the respective parties as to who were and who were not trustees of the Trust entitled to participate in the meeting of the Trust. As a matter of fact, when we passed the order dated 14.02.2014, we were under the impression that there was no dispute as such with regard to the trustees who were entitled to participate in the meeting of the Trust and the dispute was confined to the venue of the meeting of the Trust and to the notice not being served on all the trustees. We also found from the order dated 14.02.2014 that the said order was passed in the presence of learned counsel for respondent nos.1, 5 and 6 and they never pointed out to the Court that the petitioner and respondent nos.12 to 19 were no longer trustees of the Trust. If the case of respondent nos.1, 5 and 6 was that the petitioner and respondent nos.12 to 19 were not entitled to participate as trustees of the Board of Trustees, they should have prayed before the Court for some time to file a reply and place their case in the reply.

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7. Considering the reply of the respondent no.6, we cannot hold the respondent no.6 guilty of willful disobedience of the order dated 14.02.2014, but at the same time to do complete justice between the parties, we have to recall the order dated 14.02.2014 disposing of the Special Leave Petition (C) No. 3772 of 2014 and issue notice to the respondents to file a reply in the Special Leave Petition and pass an interim order which

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A will remain in force till disposal of the Special Leave Petition.

8. We have heard learned counsel for the parties on the interim order that should be passed and we direct that an interim Board of Trustees comprising the two undisputed permanent or lifetime trustees, namely, Smt. Charu K. Mehta and Smt. Rekha H. Sheth, and Mr. Justice J.N. Patel, former Judge of the Bombay High Court and former Chief Justice of the Calcutta High Court as its Chairman will function till this Court decides the Special Leave Petition. Mr. Justice J.N. Patel will be entitled to a fee of Rs.1,00,000/- (Rupees one lac) per meeting of the Board of the Trustees from the funds of the Lilavati Hospital and he will have the power to convene a meeting of the Board of Trustees as and when a meeting of the Board of Trustees is required to be held for transacting any business including passing of budgets. The management of the Lilavati Hospital and the staff of the Trust will cooperate with and assist Mr. Justice J.N. Patel in the work of the trust in all respects.

9. In the result, we drop the contempt proceedings against respondent no.6, recall the order dated 14.02.2014 in S.L.P. (C) No.3772 of 2014 and issue notice in the Special Leave Petition to all the respondents returnable within eight weeks and direct that interim arrangement made in this order shall continue till disposal of the Special Leave Petition.

F Nidhi Jain

Contempt petition disposed of.