

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3077 OF 2022

Mr. Milind Purushottam Jahagirdar & Ors.	...Petitioners
Versus	
The Ld. Joint Charity Commissioner, Nashik Region Nashik & Ors.	...Respondents

Dr. U. P. Warunjikar for the Petitioners.

Mr. P. B. Shah i/b. Mr. K. P. Shah for Respondent Nos. 2 to 11, 15 to 15 and 17 to 22.

CORAM: SANDEEP V. MARNE, J.

DATE : 21 AUGUST 2023.

ORAL ORDER:

1. By this petition, petitioners challenge judgment and order dated 23 November 2021 passed by the Jt. Charity Commissioner, Nashik Region, Nashik setting aside the order dated 17 March 2020 passed by the Deputy Charity Commissioner, Nashik and remanding the Change Report No.3440 of 2017 to the Deputy Charity Commissioner for fresh decision after giving opportunity of hearing to 176 newly inducted members of the Trust. Petitioners, who were successful before

the Deputy Charity Commissioner in rejection of the Change Report No.3440 of 2017, are aggrieved by the order of remand.

2. Dr. Warunjikar, the learned counsel appearing for Petitioners would submit that the Deputy Charity Commissioner has not decided the issue of removal of membership of 176 newly inducted members and that therefore it was not at all necessary for the Deputy Charity Commissioner to issue notice to such newly added persons. In support of his contention, he would rely upon judgment of this Court, Bench at Nagpur in **Sandeep Ram Meghe & Ors. Vs. Pundlikrao Balaji Gohad (dead) and Ors.**, 2013 (4) Mh.LJ 703. That the scope of inquiry under Section 22 of the Maharashtra Public Trusts Act, 1950 is narrow wherein the Deputy Charity Commissioner is supposed to decide the issue of validity of elections held in pursuance of which a Change is reported. That such an inquiry does not encompass any inquiry into termination of membership of members.

3. *Per contra* Mr. Shah, the learned counsel appearing for Respondent Nos. 2 to 11, 13 to 15 and 17 to 22 would oppose the petition submitting that Petitioners are no longer members of the Trust and therefore would have no locus to file the petition. He would further submit that the present petition is otherwise rendered infructuous on account of conduct of fresh elections of the Trust for the period for 2022–2027 on 08 May 2022 and results have been declared on 11 May 2022. According to Mr. Shah since new body has been elected in pursuance of the elections held on 08 May 2022, new members elected

would be necessary parties to the present petition. That the issue of correctness of elections conducted for the year 2017-2022 is now rendered academic. In support of his contention Mr. Shah rely upon judgment of the Apex Court in **Hidayatkhan Bismillakhan Pathan Vs. Vaijnath & Ors.** (2009) 7 SCC 506.

4. In rejoinder, Dr. Warunjikar would dispute that the petition has become infructuous. He would further submit that fresh elections were conducted subject to outcome of the present petition as per this Court's interim order dated 02 May 2022 and that therefore the Petitioners be permitted to adopt appropriate legal remedies in respect of fresh elections.

5. After hearing the learned counsels for the parties, the short issue that arises for consideration in the present petition is whether 176 newly inducted members prior to holding of the elections were required to be heard by the Deputy Charity Commissioner before passing the order dated 17 March 2020. In paragraph No.42 of his order, the Deputy Charity Commissioner held as under-

“४२. वर विवेचन केल्याप्रमाणे न्यासाचे सन २०१७ ते २०२२ या कालावधीकरीता कार्यकारी मंडळ निवड प्रक्रीयेद्वारे निवडणूक होउन निवड झालेले आहे. व त्याप्रमाणे बदल झालेला आहे. परंतु वर विवेचन केल्याप्रमाणे व अभिलेख्यावरील लेखी व तोंडी पुरावा पाहता, हरकतदार क्रमांक २ ते ४ यांचे सभासदत्व कायदेशीर प्रक्रीयेद्वारे रद्द केले असे सिध्द होत नाही. त्यांचे सभासदत्व रद्द केलेबाबतचा ठराव बेकायदेशीर आहे. त्यांची नावे अंतीम मतदार यादीत असने क्रमप्राप्त होते. तसेच निवडणूक प्रक्रीया सुरू केल्यानंतर दिनांक ०४.०३.२०१७ रोजीची व इतर विधीयुक्त सभा न घेता अजेंड्यावर विषय नसताना १७६ अजीव सभासदांना दिलेली मंजुरी कायदेशीर, योग्य व घटनेप्रमाणे नाही. त्यामुळे सदर १७६ व्यक्ती हे न्यासाचे आजीव सभासद होत नाहीत. या १७६ व्यक्तींचा समावेश करून केलेली अंतिम यादी व त्याद्वारे घेतलेली निवडणूक प्रक्रीया पुर्णपणे बेकायदेशीर आहे. तसेच तीन वर्षे

अजीव सभासद नसलेले व्यक्तींना म्हणजेच अॅड. भानुदास शौचे, श्री. संजय करंजकर, संगीता बाफना यांना उमेदवारी प्रदान करण्यात आली. तसेच इतरही चार सभासदांचे सभासदत्व रद्द केलेले होते ते पुनर्बहाल करून सदरच्या निवडणूकींत त्यांना उमेदवारी दिली. याप्रमाणे घटनेतील तरतुदींचे उल्लंघन करून निवडणूक प्रक्रीया पार पाडलेली आहे. त्यामुळे कथीत निवडणूक ही कायदेशीर व वैध नाही. त्याद्वारे झालेला बदल हा कायदेशीर व वैध नाही. निवडणूकीपुर्वी सभासद यादीवरील सर्व हरकतींवर सुनावणी घेउन अंतिम केल्याबाबत अभिलेख्यावर पुरावा नाही. न्यासाच्या सभा, सभाशास्त्रानुसार झालेल्या नाहीत. अर्जदार सदरचा बदल घटनेप्रमाणे वैध व कायदेशीर असल्याचे सिध्द करण्यास अपयशी ठरला आहे. करीता मुद्दा क्रमांक १ चे उत्तर होकारार्थी व मुद्दा क्रमांक २ चे उत्तर नकारार्थी नोंदवित आहे.”

6. While setting aside the order of the Deputy Charity Commissioner, the Jt. Charity Commissioner has recorded following findings-

“12. Therefore, it clearly reveals that, Id. Dy.C.C. has declared the membership of 176 members as illegal and invalid. But prior to giving all those findings Id. Dy.C.C. ought to have given opportunity to these 176 members for putting forth their defense or grievance in support of their membership. The judgment is under Section-22 of M.P.T. Act, which covers change report. No doubt, legality and validity of judgment has to be decided but the base for this judgment while declaring the change as illegal is that, the membership is declared invalid by Id. Dy.C.C. and on that basis the change is declared to be illegal. 176 members are affected by the judgment. Admittedly, they were incorporated as members, therefore, civil right is created in their favour. When Id. Dy.C.C. has declared their membership as illegal then the judgment directly affected on the civil rights of such persons. Therefore, it was incumbent on the part of Id. Dy.C.C. to issue notice to these 176 persons and then ought to have decide the legality of their membership. It was necessary for Id. Dy.C.C. to give opportunity to those persons before declaring their civil rights as illegal. If notice would have been issued to them and opportunity of hearing would

have been given to them then the position would be different because such 176 members would have produced valid evidence regarding their membership. Under such circumstances, there is clear cut breach of principle of natural justice.

13. Ld. Dy.C.C. in Para No. 17 of judgment has observed as under :

“दिनांक २९-०२-२०१७ रोजीचे संपूर्ण इतिवृत्त सादर केलेले नाही. ठराव क्रमांक ७ ते १० इतिवृत्त छयांकित प्रत सादर केली आहे. ठराव क्र. ७ ते १० मध्ये मिलींद जहागिरदार, विनया केळकर व स्वानंद बेदरकर यांचे कार्यकारी मंडळातील सदस्यत्व किंवा पद हे निलंबित केले किंवा त्यांचे न्यासाचे सभासदत्व (Membership) निलंबित केले हे दर्शविणारा कोणताही ठराव पारीत झालेला नाही. या लेखी पुराव्याअभावी हरकतदारांना निलंबित केले याबाबतचा साक्षीदारांचा तोंडी पुराव्याला कोणतेही महत्व नाही.”

14. After perusal of above paragraph it reveals that, xerox copy of resolution Nos. 7 to 10 is produced and entire proceeding was not produced due to which ld. Dy.C.C. could not decide the expulsion. Under such circumstances, it was the duty of ld. Dy.C.C. either to ask the concerned person to produce such evidence because Section-22 of M.P.T. Act contemplates judicial enquiry. Under judicial enquiry, the Court can very well ask the parties to produce evidence, if such evidence is material to decide the core issue. Moreso, ld. Dy.C.C. in Para Nos. 18 and 23 also has observed that, evidence was not produced regarding written requisition of 50 members so also evidence was not produced about 2/3rd majority resolution.

15. I have carefully gone through the citations produced on record by both parties. It is hereby respectfully noted that, there is no dispute about the ratio of all these Rulings but the facts and circumstances of the present case are altogether different from the case-laws relying on by the parties.

16. The some and substance of above discussion is that, ld.

Dy.C.C. while rejecting the change report has declared the membership of 176 persons as illegal and invalid. This finding is given without hearing of these 176 persons. Under such circumstances, it is breach of principles of natural justice, hence it is necessary to remand the matter for considering the issue afresh. Under such circumstances, I record my findings accordingly and pass following order:”

7. From the findings recorded by the Deputy Charity Commissioner, it is clear that while the method of their admission is adversely conducted upon, Deputy Charity Commissioner has not directed removal of those 176 new members from membership of the Trust. As against this, the Jt. Charity Commissioner has proceeded on an assumption that membership of 176 persons is declared as illegal and invalid. On such an erroneous presumption, the Jt. Charity Commissioner has proceeded to remand the Change Report for fresh decision to the Deputy Charity Commissioner by granting opportunity of hearing to the said 176 members.

8. There can be no dispute to the proposition that the Deputy Charity Commissioner does not have jurisdiction to expel those members of a Trust and that the same would fall within exclusive jurisdiction of a Civil Court. Under Section 22 of the Maharashtra Public Trusts Act, 1950, the scope of inquiry is limited to the correctness of the elections held and the Change reported. In the present case, perusal of the Order passed by the Deputy Charity Commissioner does not indicate any direction for expulsion of any member.

9. Now turning back to the issue of grant of opportunity to 176 newly admitted members by the Deputy Charity Commissioner while deciding the Change Report, reliance of Dr. Warunjikar on judgment of this Court in *Sandeep Ram Meghe* (supra) appears to be apposite. This Court held in paragraph No.22 of the judgment as under-

“As an extension to this issue, it was also argued that if at all any decision was to be taken in respect of the validity or otherwise of induction of 49 members, it was incumbent on the part of the learned Joint Charity Commissioner to issue notices to the said 49 members. As already stated, the learned Senior Counsel Mr. K. H. Deshpande has submitted that since the source of induction of the members itself was polluted, they were not members of the general body and therefore, they did not deserve any hearing. The issue before the Joint Charity Commissioner was as to whether the meetings were held on 2nd March, 2006 and 12th April, 2006 in which 49 members were inducted and were later on confirmed. After hearing both the sides on this issue, I have come to a conclusion that it was not incumbent on the part of the Joint Charity Commissioner to issue notices to the said 49 members inasmuch their participation in the proceedings, in any manner, would not have assisted the Joint Charity Commissioner to decide the issue as to whether the said meetings were genuine or otherwise. **Moreover, issuance of notice to the affected persons may not be necessary in every enquiry under section 22 of the Act.** It is to be decided by the Enquiry Officer and the appellate Authority as to whether a particular person is affected party and will assist the Enquiry Officer or the appellate Authority, as the case may be, to decide the issue before it. In a case of *Marutiras Vishwanath Bagal and ors vs. Dinkar Kashinath More and ors.* reported at 2004(4) MhLJ 982 this Court had occasion to deal with requirement of issuance of notice to the affected person. The Court while dealing with the said issue had framed following question of law :

"(i) Whether the learned Assistant Charity Commissioner committed an error by deciding Change Report Proceedings

under section 22 of the said Act of 1950 without issuing a notice to the outgoing Trustees who were likely to be affected by the order passed in the Change Report Proceedings?”

While deciding the said question of law, this Court has made following observations at paragraph 10:

“10. When the change report is as regards election of new Trustees held in a meeting, it is not necessary in every case that the notice must be served of the change report on the outgoing trustees....”

Though in the said case this Court held that notice was required to be issued, it was also held that it is not necessary that in every case notice must be served of the change report on the outgoing trustees. **It was argued that in the present case, the notices should have been issued to 49 members whose induction was held to be invalid. I have already stated that those members were part of the electorate and not executive body. If the Joint Charity Commissioner was satisfied that the notices to the said 49 members were not necessary to be issued, the proceedings before him were, to my mind, not vitiated. As stated earlier, the presence of the said 49 members could not have, in any manner, assisted the Joint Charity Commissioner.”**

(emphasis supplied)

10. Thus, law appears to be well settled that while conducting an inquiry under Section 22 of the Act, it is not necessary to issue notice to the newly admitted members.

11. Perusal of the order of the Jt. Charity Commissioner would indicate the only reason recorded for remanding the Change Report for fresh decision is non grant of opportunity of hearing to 176 members. Considering the law laid down by this Court in ***Sandeep Ram Meghe***, it appears that grant of such opportunity was not necessary. Therefore, the

reasoning adopted by the Jt. Charity Commissioner is flawed.

12. Mr. Shah has strenuously contended that this Court should not decide issue of correctness of the order passed by the Jt. Charity Commissioner in the light of subsequent event in the form of fresh elections conducted on 08 May 2022 and result declared on 11 May 2022. His contention is referable to the decision of the Apex Court in ***Hidayathkhan Bismillakhan Pathan*** (supra), in which it is held as under-

“25. It is true that the order of the learned District Judge dated 16-10-2004 had attained finality in the sense that an enquiry was directed to be held. However, the purpose and object for which such an enquiry was directed to be held, in our opinion, was no longer available, keeping in view the fact that even fresh election had taken place in the year 2006.

26. The tenure of the Managing Committee had come to an end by efflux of time. Change report in respect of the registers for achieving the said purpose was required to be filed for satisfying the requirement of law, although no effective order could be passed thereupon. It is one thing to say that the change report sought to be effected in respect of the names of the members of the Managing Committee and/or its President lost its object but it is another thing to say that any transaction which had been entered into may still be subject to an enquiry.”

13. However, though the Apex Court held that the order of District Court in directing an inquiry was rendered futile on account of conduct of fresh elections, the Apex Court has still proceeded to determine the validity of order passed by District Court. Therefore judgment in ***Hidayathkhan Bismillakhan Pathan*** cannot be cited in support of an absolute proposition that in every eventuality of conduct of

fresh elections for a new term, legality of elections for the earlier term cannot be tested before a Court of law. Therefore, reliance of Mr. Shah on the judgment is of no avail.

14. So far as the objection of Mr. Shah about requirement of impleadment of trustees elected in pursuance of elections dated 08 May 2022 is concerned, I find this objection to be completely misplaced. All newly elected trustees were not (and could not have been) parties to the proceedings either before Dy. Charity Commissioner or Jt. Charity Commissioner. Therefore, it is incomprehensible why their presence is needed for deciding validity of Change Report pertaining to the period 2017-22.

15. So far as the objection of Mr. Shah about Petitioners not having any *locus standi* to file present petition is concerned, objection is stated only to be rejected. Petitioners were undoubtedly objectors to the Change Report before the Dy Charity Commissioner and also impleaded as Respondents in proceedings filed before the Jt. Charity Commissioner. They therefore possess the *locus* to file the present petition.

16. After considering the entire conspectus of the matter, I find order passed by the Jt. Charity Commissioner to be indefensible. The same is liable to be set aside. I accordingly proceed to pass the following order.

- i) Order dated 23 November 2021 passed by Jt. Charity Commissioner, Nashik Region, Nashik in Appeal No.49 of

2020 is set aside and the Order passed by the Deputy Charity Commissioner, Nashik Region, Nashik dated 17 March 2020 in Change Report No.3440 of 2017 is upheld.

ii) The Deputy Charity Commissioner's Order shall however not entail removal/expulsion of membership of 176 members.

ii) It is clarified that the present order shall not *ipso facto* affect correctness of the fresh elections conducted on 08 May 2022, result whereof is declared on 11 May 2022. The Change Report filed in pursuance of said elections shall be independently decided without being influenced by the observations made in this order.

iii) It would be open to the Petitioners to adopt such legal remedies, as available in law, in respect of fresh elections/Change Report.

17. With the above directions, Writ Petition is disposed of. There shall be no orders as to costs.

SANDEEP V. MARNE, J.

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