

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

927 WRIT PETITION NO. 9974 OF 2014

**MD. BAHAUDDIN MD. AHMEDODDIN
VERSUS
MEHMOOD KHAN MAULA KHAN PATHAN**

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**Advocate for Petitioner : Mr. R. R. Mantri h/for Mr.
Sancheti Rahul R.**

**AGP for the respondent State: Mr. S. N. Kendre
Advocate for Respondent : Mr. Kiran M. Nigarkar**

CORAM : V. K. JADHAV, J.

DATE : 27th January, 2016

PER COURT :

1. Heard finally with the consent of the parties at admission stage.

2. The petitioner, original reporting trustee has filed application at Exh. 71, requesting therein to the Assistant Charity Commissioner to frame issues Exh. A to E as detailed in the application. The learned Assistant Charity Commissioner, vide its impugned order dated 01.10.2013 in Enquiry No. 46/2011, rejected the said application Exh. 71 mainly on the ground that inquiry under section 22 of the Maharashtra Public Trusts Act, 1950 is having limited application to the extent of occurred change is legal or valid as per bye-laws of the trust. The learned Assistant Charity Commissioner, while

rejecting the application at Exh. 71, has also observed that in the proceedings there is no objection raised by the non applicant in respect of the direction by the authority.

3. Learned counsel for the petitioner submits that the Hon'ble Division Bench of this Court, in Writ Petition No. 2689/2011 and connected matter, while considering the objections raised by the petitioner therein, to the effect that the Assistant Charity Commissioner cannot issue direction to enroll members, it is observed and accordingly directed that it would be open for the petitioner therein to question the jurisdiction of the Assistant Charity Commissioner/ Charity Commissioner and particularly to direct enrollment of members and their admission in the trust in question. The learned counsel further submits that in para 11 of the said order 05.02.2014, it is made clear that all contentions in relation to such matters and on merits, of both the sides are kept open and they can raise the same before an appropriate forum at an appropriate stage. The learned counsel submits that in Inquiry No. 46/2011, non applicant, by giving reference to the earlier orders passed by the Assistant Charity

Commissioner, Nanded, contended that the Assistant Charity Commissioner Nanded in Inquiry No.1138/2010 and 1093/2010 directed to enroll 150 members and the same is not complied by the petitioner/ reporting trustee in this case. The learned counsel submits that in the light of the said objection raised, the petitioner/reporting trustee has filed application Exh. 71 for framing issues (A) to (E) which are as follows:

- A) Whether the Asstt. Charity Commissioner can direct the trustees to enroll the members.
- B) Whether the Asstt. Charity Commissioner can direct the trustees to enroll Particular Number of Trustees in the Trust.
- C) Whether the Asstt. Charity Commissioner can give direction which is running counter to the Bye-Laws of the Trust.
- D) Whether the Change occurred is as per Bye-laws of the Trust.
- E) Whether the change occurred is legal and valid.

4. The learned counsel for the petitioner further submits that even though such objection is raised by the respondent/original non applicant, the learned Asstt. Charity Commissioner, in the impugned order, has observed that no such objection is raised by the non applicant in

respect of the directions issued by the Authority.

5. At this stage, the learned counsel for the respondent/non applicant, on instructions, makes a statement that the respondent would withdraw their statement /objection made in para 2 of their say at Exh. 74. The learned counsel for the respondent original non applicant, on instructions, further makes statement that even this point would not be raised during the course of the enquiry of pending Change Report No. 46/2011.

6. In view of this, very purpose of filing the application at Exh. 71 would be frustrated. The learned Asstt. Charity Commissioner, in para 4 of the impugned order, has observed that inquiry under section 22 is having limited application to the extent of occurred change is legal or valid as per bye laws of the trust. So far as direction given by the Division Bench of this court while disposing of Writ petition No. 2689/2011 and connected matters, it is open for the petitioner to raise the said point before an appropriate forum at an appropriate stage.

7. In the light of above, writ petition is disposed of.

8. Learned Assistant Charity Commissioner shall decide the pending Change Report No.46/2011 as expeditiously as possible.

(V. K. JADHAV, J.)

JPC