

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11598 OF 2015

MANIK ONKAR KHAIRNAR
VERSUS
ASSISTANT CHARITY COMMISSIONER, DHULE AND ANOTHER

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Advocate for the petitioner : Mr. S. P. Brahme
AGP for respondent No. 1 : Mr. B. A. Shinde
Advocate for respondent No. 2 : Mr. M. S. Deshmukh
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CORAM : V. K. JADHAV, J.

Date of reservation of : 21.01.2016

Order

Date of pronouncement : 28.01.2016
of Order

ORDER:-

1. By consent, heard finally.
2. Petitioner has challenged the order dated 06.07.2015 passed by learned Assistant Charity Commissioner-1, Dhule directing thereby the composite hearing of application for condonation of delay and the proceedings under Section 22 of the Maharashtra Public Trusts Act, 1950 and further challenged the order dated 21.09.2015 rejecting the application for giving preference to the hearing of application for condonation of delay.
3. Brief facts giving rise to the present writ petition are as under :

'Shri Dhangai Vidhayak Karya Mandal, Mhasadi' is a public trust (hereinafter referred to as the trust) registered under Bombay Public Trusts Act. This trust runs three aided schools. As per bye-law, tenure of the managing committee is of three years. In the general body meeting dated 27.07.2004, election for managing committee for the period from 2004 to 2009 was conducted. Accordingly, change report to that effect was submitted by one Mr. Sudhakar Deore on 17.01.2004 before the Assistant Charity Commissioner. There was delay in presenting the said change report. Thus, an application for condonation of delay was also submitted. However, the said application for condonation of delay was misplaced. Since respondent No. 2 has objected the said change report by filing his say at Exh.4, petitioner has submitted application Exh.8 seeking permission of learned Assistant Charity Commissioner to file separate application for condonation of delay. Furthermore, on 13.12.2010, the application for condonation of delay Exh.9 also came to be submitted by the petitioner before learned Assistant Charity Commissioner. Learned Assistant Charity Commissioner, by order dated 06.07.2015, has posted the matter for composite hearing on the application for condonation of delay and the change report. Petitioner had submitted an application on 07.09.2015 at Exh. 17 requesting therein to give preference to the hearing of application for condonation of delay. The said application

was also objected by respondent No.2. By order dated 21.09.2015, learned Assistant Charity Commissioner rejected the said application Exh.17. Hence this Writ Petition.

4. Learned counsel for the petitioner submits that learned Assistant Charity Commissioner has no jurisdiction to entertain and conduct hearing of change report unless and until delay is condoned.

5. Learned counsel for respondent No. 2 submits that the change report is in respect of election of the managing committee for the period from 2004 to 2009. The said change report was filed on 17.01.2006 and the application for condonation of delay came to be filed on 13.12.2010. Tenure of the managing committee expired in the year 2009 itself. Learned counsel thus, submits that learned Assistant Charity Commissioner has, therefore, rightly kept the application for condonation of delay for hearing along with hearing of the change report.

6. Admittedly, there is delay in submitting change report. The petitioner has also submitted an application for condonation of delay belatedly. It is almost a settled position that a change report basically is an application, and thus, Section 5 of the Limitation Act must apply.

7. In the case of ***Madanrao s/o Nanasaheb Chavan vs. State of Maharashtra and others***, reported in ***2002 (4) Mh.L.J. 872***, it is held that an application for condonation of delay in filing change report is different from an application for condonation of delay in filing an appeal. The persons who have ceased to be trustees cannot say that they are continuing to be trustees because new body has not filed the change report in time. Past trustees cannot claim extension of their tenure/term on account of failure of a newly elected body to file the change report in time. In the light of said observations, the court held that the delay in filing of a change report should, therefore, be condoned as a matter of course, unless there are special reasons not to do so.

8. In the case in hand, the trial court has observed that though change report for recording change of the managing committee said to have been elected in the general body meeting dated 27.07.2004 was filed in the year 2006, tenure of the managing committee is expired in the year 2009 and the application for condonation of delay was filed on 13.12.2010. The petitioner has filed another application at Exh.8 before learned Assistant Charity Commissioner, seeking permission to file an application for condonation of delay, which was not filed along with the change report.

9. In the light of above, there is no point in deciding the application for condonation of delay at such a belated stage separately. In the peculiar facts and circumstances of the case, learned Assistant Charity Commissioner has rightly taken a view of composite hearing of the application for condonation of delay and the change report inquiry application. Thus, no interference is called for in the impugned order. Writ Petition is hereby dismissed. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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