

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 8742 OF 2016

Ankush M. Mukhekar and ors.	.. Petitioners
vs.	
Balasaheb N. Jadhav and ors.	.. Respondents

Mr. A.V. Anturkar, Sr. Advocate a/w. Mr. Tanaji Mhatugade for the Petitioners.
Mr. Balasaheb R. Deshmukh for Respondent Nos.1,2,4 to 7 & 11 to 16 and 18 to 24.
Mr. Dilip Bodake for Respondent Nos. 24(2), 24(3), 24(6), 24(7), 24(9) and 24(10).

**WITH
CIVIL APPLICATION (ST) No. 12465 of 2016**

Ramakant S. Darekar	.. Intervener
In the matter between	
Ankush M. Mukhekar and ors.	.. Petitioners
vs.	
Balasaheb N. Jadhav and ors.	.. Respondents

Mr. V.N. Walawalkar i/b Mr. G.D. Shinde for Intervener.

**CORAM : M. S. SONAK, J.
DATE : 16 JUNE 2016.**

P.C. :-

1] Mr. A.V. Anturkar, learned senior advocate for the petitioners, seeks leave to delete the respondents viz., respondent Nos.3, 8, 9, 10, 17 and respondent Nos.24.1, 24.4, 24.5, 24.8, 24.11 to 24.24. According to Mr. Anturkar their presence is not necessary for deciding the present petition. Leave is granted. Amendment to be carried out forthwith.

2] Rule. With the express consent of and at the request of all the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 8 March 2016 made by the Joint Charity Commissioner, Pune Region, Pune directing the appointment of Smt. R.P. Mukkawar, Assistant Charity Commissioner (4), Pune (Asst. Charity Commissioner) as an Administrator of Janata Shikshan Sanstha, Dapodi, Pune (said Trust) to look after the administration of the said Trust.

4] Mr. Anturkar, learned senior advocate appearing for the petitioners, has submitted that the petitioners are in fact in *de facto* management of said Trust. He submitted that in pursuance to the election held on 24 April 2011, the petitioners were duly elected and this position has been accepted in Change Report No. 939 of 2011, which was disposed of on 21 April 2012. Mr. Anturkar submitted that in the order dated 21 April 2012 , whilst accepting the change report, the Asst. Charity Commissioner imposed several conditions, including *inter alia* conditions not to hold elections until the constitution of Trust is amended in a particular manner. Aggrieved by the imposition of such conditions, the petitioners instituted an

appeal before the Joint Charity Commissioner, which appeal has since been allowed by the order dated 25 March 2013. As against the said decision, it was pointed out that an appeal has been instituted before the District Court, which is pending. There is no interim relief granted in this appeal.

5] Mr. Anturkar submitted that the impugned order has been made on basis of Miscellaneous Application No. 12 of 2016 instituted by some of the respondents herein before the Joint Charity Commissioner. In the said miscellaneous application, the only reliefs applied for, were directions to hold election and a restraint upon respondent Nos.1.1 and respondent No.2 in the matter of undertaking any policy decision or decisions affecting the finances of the said Trust. Mr. Anturkar pointed out that the petitioners were not even impleaded as parties in this miscellaneous application. He submitted that such application was made on 22 February 2016 and the same has been disposed of hurriedly on 8 March 2016. The final relief granted is for appointment of Administrator when in fact, this was not even the prayer in the miscellaneous application. Mr. Anturkar submitted that the petitioners upon realising that such proceedings have been instituted, on 8 March 2016 themselves

applied for impleadment. He submitted that no order has been made on the application for impleadment, instead the impugned order came to be made appointing Administrator. He submits that this is in total breach of principle of natural justice and fair play.

6] Mr. Anturkar submitted that this is not at all clear as to under which provisions the impugned order has been made. In any case, he submitted that the impugned order is liable to be interfered with on the grounds that it is in gross violation of principle of natural justice and fair play. He submitted that there is considerable deficit in the decision making process and this is by itself, sufficient ground for interference with the impugned order.

7] Mr. Dilip Bodake, learned counsel for some of the respondents, who had been impleaded in Miscellaneous Application No. 12 of 2016 and who claimed to be in management of the said Trust on the basis of elections held in 2012-2013, has submitted the appointment of Administrator, in the facts and circumstances of the present case, is legal and proper. He submitted that the term of the office bearers is only one year and therefore, the petitioners cannot claim to be continuing in management of the said Trust on the basis of election

held in the year 2011. Mr. Bodake submitted that in the facts and circumstances of the present case, if any directions were to be given either to the petitioners or the parties whom he represents to hold the election, it is possible that the elections would not be free and fair. In these circumstances, Mr. Bodake has submitted that the Joint Charity Commissioner was right in appointing an Administrator and directing such Administrator to hold election.

8] Mr. Balasaheb Deshmukh, learned counsel for some of the respondents, who were in fact the applicants in Miscellaneous Application No.12 of 2016 defended the impugned order, more or less by adopting the submissions made by the Mr. Bodake. Mr. Deshmukh submitted that there was no failure to comply with the principles of natural justice, as, there was no necessity to implead the petitioners in the said miscellaneous application. He submitted that the petitioners cannot claim to be in the management of the said Trust, on the basis of elections held in the year 2011, since, their term has expired. Without prejudice, Mr. Deshmukh submitted that in case this Court finds that the petitioners were necessary parties, the impugned order may be set aside and the matter

remanded to the Joint Charity Commissioner for deciding the matter afresh.

9] Mr. Vikram Walavalkar, learned counsel represents the intervener in Civil Application (St.) No. 12465 of 2016. The intervention application is formally allowed and the applicant is permitted to intervene in this petition. The petitioners to carry out amendment in this regard forthwith.

10] Mr. Walavalkar, learned counsel for the intervener, submitted that the intervener had also instituted an intervention application in Miscellaneous Application No. 12 of 2016. However, he submitted that even such intervention application was not considered by the Joint Charity Commissioner before making the impugned order. Mr. Walavalkar submitted that despite this being position, the intervener supports the impugned order, since, this is a correct order made, in the facts and circumstances of the present case. Mr. Walavalkar placed reliance upon the decision of this Court in case of *Nathmal K. Goenka and anr. Vs. Asst. Charity Commissioner, Akola _ 1994 Mh.L.J. 303*, to submit that a similar order was made in similar circumstances by this Court. Mr. Walavalkar also relied upon the

decision of the Hon'ble Supreme Court in case of *Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and ors. - (2015) 8 SCC 519*, to submit that even if the petitioners were to be impleaded as respondents in the miscellaneous proceedings before the Joint Charity Commissioner, the same would have made no difference to the final conclusion recorded in the impugned order. He therefore, submitted that this Court should not interfere with the impugned order, particularly with regard to the directions for holding of early election to the Governing Council of the said Trust.

11] The rival contentions now fall for determination.

12] At the outset, it is to be noted that the reliefs granted by the Joint Charity Commissioner in the impugned order are far in excess of the reliefs claimed by the applicants in Miscellaneous Application No. 12 of 2016. The only relief claimed for in the said miscellaneous application was that the election be held expeditiously and further, respondent No.1.1 and respondent No.2 to the said miscellaneous application be restrained from taking any policy decisions or decision affecting the finances of the said Trust. In the event, mere

directions were to be issued for holding elections expeditiously, the petitioners, through learned senior advocate Mr. Anturkar, stated that they would have no objection of whatsoever nature to themselves hold the same. In fact, it is submitted that the petitioners are ready and willing to expeditiously hold elections and it is even possible for them to complete the election process within some reasonable period, which could always be determined by this Court.

13] The record and even the impugned order notes that there are two groups, who claim to be the members of the Governing Council of the said Trust. The Change Report, on the basis of elections held in the year 2011 have attained the finality, at least insofar as identification of the members of the Governing Council are concerned. The matter pending before the District Court concerns validity or otherwise of the conditions imposed by the Assistant Charity Commissioner whilst accepting the Change Report vide order dated 21 April 2012. There is no interim relief granted by the District Court. The constitution of the Trust also provides that the existing members of the Government Council will continue, until fresh elections are held and the new members take effective charge. No doubt, it is contended by Mr. Bodake and Mr. Deshmukh that

fresh elections were held in the year 2012 and in pursuance thereof, it is the respondents, represented by Mr. Bodake, who are in the Governing Council. This position is disputed by Mr. Anturkar. However, there is no dispute that the said respondents represented by Mr. Bodake have lodged a Change Report before the Assistant Charity Commissioner and at least as yet the same has not been accepted. In fact, the petitioners and others, who were elected in the year 2011 have filed their objections, and the same are pending adjudication. In these circumstances, the minimum that was expected from the applicants in Miscellaneous Application No. 12 of 2016, was the impleadment of the petitioners and other members as respondents. The Joint Charity Commissioner was also not at all justified in making the impugned order in the absence of the petitioners and such members.

14] The impugned order itself notes that there are two groups, who claim to be in the management of the said Trust. The impugned order itself states that the salaries of the staff are being drawn on the basis of signatures of one Jaysingh J. Jagtap and Yeshwant Zope. Incidentally both these persons were elected in the year 2011. Shri. Yeshwant Zope is one of the petitioners in this petition. Shri. Jaysing

Jagtap, it appears, was also elected in the year 2011. These two persons, seem to have fallen apart and are therefore, in the two groups which claim to be in the management of the Trust. According to Mr. Anturkar the said two persons signed the cheques towards salaries for the staff, on the basis of their election to the Governing Council held in 2011. On this basis, Mr. Anturkar has submitted that it is quite clear that the members of the Governing Council continue to be those elected in the year 2011. According to Mr. Bodake and Mr. Deshmukh, Yeshwant Zope was never elected in 2012 and therefore, was not impleaded as a respondent in miscellaneous application in which the impugned order has been made. The impugned order, however, specifically records that the salaries for the staff are being drawn on the basis of signature of Yeshwant Zope as well. For all these reasons, it was absolutely necessary that Mr. Yeshwant Zope as also the other members, who were elected to the Governing Council in the year 2011 were required to be impeladed as parties in the Miscellaneous Application No. 12 of 2016. The impugned order, virtually has the effect of removing such persons from the Governing Council of the said Trust, even without they being impleaded as parties in the miscellaneous application. This constitutes breach of principles of natural justice and fair play.

15] The manner in which the Miscellaneous Application No. 12 of 2016 was taken out and pursued, creates a doubt as to whether there was some collusion between the applicants in the said miscellaneous application and the respondents impleaded in the said miscellaneous application. The contention of Mr. Anturkar that the applicants and the respondents to the miscellaneous application wanted to wrest the management of the said Trust to themselves by the institution of such proceedings, cannot be completely ruled out. Though ofcourse, it is not possible to render any categorical finding with regard to the same. Suffice to note, however, that the impleadment of the petitioners and other members of the Governing Council was necessary in the facts and circumstances of the present case and the impugned order which has been made behind their back cannot be said to have been fairly made. Further, the applicants to the miscellaneous application cannot be said to be ignorant of the status of the petitioners *qua* the management of the said Trust. Assuming that there was dispute between the two groups, it was not for the applicants in Miscellaneous Application No. 12 of 2016 to decide or presume that the group now represented by Mr. Bodake was the legitimate management or the Governing Council. The applicants ought to have impleaded the members of both the groups

and applied for a direction for holding elections expeditiously, if that was the only objective of the applicants.

16] The respondents whom Mr. Bodake represents had, in fact, opposed the grant of reliefs in Miscellaneous Application No. 12 of 2016. However, curiously, now that such reliefs have been granted, the very respondents have been defending the impugned order. All this, to a certain extent supports the apprehensions expressed by Mr. Anturkar that the entire objective of instituting Miscellaneous Application No. 12 of 2016 was to wrest the management from the petitioners, without even impleading the petitioners as parties to the said miscellaneous application. Whatever the objective or motive of the parties, on basis of material on record, the Joint Charity Commissioner should not have made the impugned order, without insisting upon the impleadment of the petitioners. The impugned order is vitiated for non-compliance with the principles of natural justice.

17] As noted earlier, the petitioners had in fact applied for impleadment in the Miscellaneous Application No. 12 of 2016. The application had been filed on 22 February 2016 and the first

returnable date was 29 February 2016. On the said date, presumably the respondents represented by Mr. Bodake, filed their reply. The matter was then posted on 8 March 2016. On this date, the petitioners applied for impleadment. No orders were made on the said application. Instead, on the same date, the Joint Charity Commissioner proceeded to make the impugned order. Considering the facts and circumstances, there does appear to be substance in the contention of Mr. Anturkar that the impugned order was made in a tearing hurry, thereby rendering the decision making process, a complete casualty.

18] The issue as to whether the petitioners legitimately continue to be in the Governing Council legitimately or not, could not have been decided in their absence. In any case, the applicants and the respondents to the Miscellaneous Application No.12 of 2016, had no rights to determine this issue by themselves or to proceed on the basis of their own presumptions in the matter. Mr. Bodake and Mr. Deshmukh, time and again stressed upon the provisions in the constitution of the Trust to the effect that the term of the Governing Council members shall be one year. No doubt, the term of the Governing Council members is one year as per the constitution.

However, the constitution also provides that the members of the Governing Council will continue in office until replaced by other validly elected members. Admittedly, the Change Report submitted by the respondents whom Mr. Bodake represents, has not yet been accepted. In contrast, the Change Report submitted by and on behalf of the petitioners has been accepted and has attained finality, at least in so far as the issue of identity of the office bearers is concerned. In any case, even the respondents whom Mr. Bodake represents claim to have been elected in the year 2012. Even their term has then expired in the year 2013. In such circumstances, it is not understood as to how Mr. Bodake can claim and Mr. Deshmukh can support the claim of such respondents constituting Governing Council. Mr. Anturkar also pointed out that the order dated 21 April 2012, made by the Assistant Charity Commissioner whilst accepting the Change Report had imposed several conditions. One of the conditions was restraint in a matter of holding elections until the constitution is amended. The conditions were ultimately set aside only 25 March 2013. If this be the position, it is not understood as to how the elections were held in 2012. All this is stated not for the purposes of deciding the rival claims, but only for emphasizing the fact, the petitioners were necessary parties to the miscellaneous application

and the impugned order, which has been made behind their back warrants interference.

19] Mr. Deshmukh, without prejudice made a submission that if the impugned order is to be set aside on the grounds of failure of natural justice, then, the matter may be remanded to the Joint Charity Commissioner for fresh decision. Ordinarily, such a submission could have been accepted. However, if such a course is adopted, in all probabilities, the elections to the Governing Council, which are over due, will be further delayed. In fact, the main relief applied for by the applicants in Miscellaneous Application No. 12 of 2016 was for directions to hold elections expeditiously and in the meanwhile to restrain the respondents from taking any major policy decisions or decision affecting the finances of the said Trust. If the matter is once again remanded to the Joint Charity Commissioner in all probabilities the matter will be prolonged and the interests of the members, in the matter of having early elections will be frustrated. Instead therefore, it will be appropriate to direct the members of the Governing Council to hold elections as expeditiously as possible and in a time bound manner. Further, the restraints can be imposed upon the members of the Governing Council, in the matter of their

functioning, pending the elections. In fact, Mr. Anturkar agreed to several conditions and stated that the members of the Governing Council, including the two groups will take all steps to hold elections as expeditiously as possible.

20] The decision in case of *Nathmal Goenka (supra)*, is distinguishable . The appointment of Adminsitrator in the said case, was on the basis of peculiar facts and circumstances. Moreover, all parties affected, were duly heard before such decision was arrived at. Accordingly, the said decision is of no assistance in the context of the facts and circumstances of the present case.

21] The decision in the case of *Dharmpal Satyapal (supra)*, is also not applicable to the facts and circumstances of the present case. In this case, orders adverse to the interests of the petitioners have been made behind their back. The impugned order virtually has the effect of either accepting that the petitioners or other members elected in 2011 are not in the Governing Council or removing them from the Governing Council, without afford of any opportunity of hearing to them. The non-impleadment of the petitioners and the impleadment of only some of the respondents,

now represented by Mr. Bodake, appears to be deliberate. If, as indicated in the prayer clause of the Miscellaneous Application No. 12 of 2016, the applicants therein were only desirous of early elections, nothing prevented them from impleading both the group members as parties, rather than attempt to confer legitimacy only about the group of members allegedly elected in the year 2012. The applicants were aware that the Change Report on the basis of elections of 2011 has attained finality, at least insofar as identity of the members is concerned. The Change Report on the basis of elections of 2012, is yet to be accepted. In such circumstances, it cannot be said that the afford of opportunity of hearing to the petitioners might have been a useless formality. The decision in case of *Dharampal Satyapal (supra)*, is an authority for the proposition that the principles of natural justice are flexible and the Court will not insist upon compliance, where no prejudice has occasioned or where compliance might be a useless formality. In the present case, the petitioners have been seriously prejudiced. Further, if the petitioners were to be impleaded, they could have pointed out the basis upon which they continue to be the members of the Governing Council. The constitution does provide that the members of the Governing Council continue until replaced by validly elected

members for the next term. In the present case, in 2012, at least *prima facie*, there was a restraint upon holding elections. This is not the occasion to decide such matters. However, suffice to note that this is not a situation where compliance with principles of natural justice might have been a useless formality.

22] In *Aligarh Muslim University Vs. Mansoor Ali Khan* -(2000) 7 SCC 529, the Hon'ble Apex Court has held that the “*useless formality*” theory is an exception. The applicability of this theory depends upon the facts of a particular case. Where on the basis of admitted or indisputable facts, only one conclusion can be reached, the Court may not insist upon compliance with natural justice. Further, care must be taken, wherever the Court is justifying a denial of natural justice, that its decision is not described as a “*preconceived view*” or one in substitution of the view of the authority who would have considered the explanation.

23] In *Prakash Sinha Vs. State of Bihar* – 2009 (14) SCC 690, the Hon'ble Apex Court did not approve the adoption of “*useless formality theory*” , when, the *nomenclature* of the appellant employee was changed and such change would have had far

reaching consequences upon his service career. The Hon'ble Apex Court ruled that whenever the action of a statutory authority results in civil consequences for the person against whom the action is directed, duty to act fairly can be presumed and in such a case the authority must give proper opportunity of hearing to the affected persons.

24] In this case, there is nothing wrong if the rival groups claim for opportunity to govern the affairs of the Trust. Such differences and dissents are essential tenets of an effective democratic process. However, the authorities who are enjoined to oversee the functioning of the Trusts, are not expected to take any sides or to make any orders without afford of opportunity of hearing to the persons who are likely to be affected by such orders.

25] For all the aforesaid reasons, the impugned order appointing the Administrator is set aside. In this case, not only was such order hurriedly made behind the back of the petitioners, but further the Administrator is stated to have hurriedly taken over charge as well. Now that the impugned order is set aside, the Administrator shall forthwith restore the charge to the petitioners and other members

reflected in the order dated 21 April 2012 made by the Assistant Charity Commissioner.

26] The aforesaid relief is granted not merely because the impugned order is unsustainable, but also because the petitioners through their learned senior advocate Mr. Anturkar have made the following statements, which are accepted as statements to the Court.

(a) That the petitioners and other members will hold elections to the Governing Council of the Trust as expeditiously as possible and in any case within a period of forty five days from today;

(b) The petitioners and other members will have no objection of whatsoever nature to the elections being supervised by the Joint Charity Commissioner or any Officer deputed by him ;

(c) The petitioners and other members will not take any major policy decisions or decisions involving the finances to the said Trust. This, however, will not preclude the petitioners and other members from dealing with routine matters like payment

of salaries to the staff etc., on the same basis as is continued before the passing of the impugned order;

(d) The petitioners and other members will under no circumstance alter the *status quo* in the sense that no new members will be enrolled nor any members existing on the rules will be deleted;

27] Mr. Bodake and Mr. Deshmukh have expressed apprehensions that the petitioners and other members may effect transfers and promotions of the employee members with a view to pressure or lure them to vote for them. Mr. Anturkar, learned senior advocate for the petitioners, has stated that such apprehension is misplaced and in any case on the basis of instructions from the petitioners and other members, who are present in the Court, Mr. Antrukar states that nothing of this sort will take place and that the elections will be held in free and fair manner. Accordingly, the apprehensions expressed need not subsist. In any case, the Joint Charity Commissioner is directed to supervise the conduct of the elections either himself or through some Officer which he may depute in order to ensure that

not only the elections process is completed within forty five days, but further the same is free and fair.

28] The impugned order dated 8 March 2016 is set aside. The Administrator to forthwith handover the charge to the petitioners and other members reflected in the order dated 21 April 2012 made by the Assistant Charity Commissioner. The petitioners and such other members, consistent with their own undertaking, are directed to hold elections to the Governing Council of the said Trust as expeditiously as possible and to complete the election process within forty five days from today. The Joint Charity Commissioner of any Officer deputed by him to supervise the conduct of such elections and to further ensure that the election process will be completed within forty five days. The petitioners and other members are directed not to take any major policy decisions or decisions involving finances of the said Trust. Only, routine matters like payment of staff etc., may be attended to, on the same basis as continued prior to making of the impugned order. The petitioners and other members to maintain *status quo* with regard to enrollment of new members or deletion of any existing members.

29] Rule is accordingly, made absolute to the aforesaid extent. There shall however, be no order as to costs.

30] Mr. Bodake, learned counsel for some of the respondents, seeks a stay on the direction, which requires the Administrator to hand over the charge forthwith to the petitioners and other members reflected in the order dated 21 April 2012. At this stage, if any stay is granted to this direction, the election process which is required to be completed within forty five days will be delayed. Since, it is important that the election process is to be completed within forty five days from today, the prayer for stay is refused.

31] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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