

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 328 OF 2007

- | | | |
|---|---|---|
| 1 | Shantappa s/o Chandrappa Warkale
age 70 years, occ. Agril
r/o Omerga, Dist. Osmanabad | } Deleted vide
} Court's order
} dated 07.01.2016 |
| 2 | Mrs. Pushpa w/o Murlidharrao Kulkarni
Muglikar, age 67 years,
occ. Household
r/o Omerga, Dist. Osmanabad | |
| 3 | Murlidhar s/o Shriniwasrao Kulkarni
age 70 years, occ. Agril.
r/o Omerga
Dist. Osmanabad | |
| 4 | Manikrao s/o manoharrao Deshpande
age 75 years, occ. Agril
r/o Gujoti
Tq. Omerga, Dist. Osmanabad. | Petitioners |

Versus

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| 1 | Assistant Charity Commissioner
Osmanabad | |
| 2 | Dr. Chandrakant s/o Rangnathrao Mahajan
age 65 years, occ. Practice
r/o Omerga, Dist. Osmanabad | |
| 3 | Ashok Govndrao Joshi
age 55 years, occ. Bond Writer
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| 4 | Sadashiv s/o Girjappa Katke
age 62 years, occ. Pensioner
r/o Omerga, Dist. Osmanabad | |
| 5 | “Shri Rashtriya Shikshan Prasarak Sanstha”
Omerga, Tq. Omerga Dist. Osmanabad
Through the respondent no. 1. | Respondents |

Mr.Swapnil Tawshikar, advocate for the petitioners
 Mr. S.R. Yadav Lonikar, AGP for respondent no. 1.
 Mr. S.R. Choukidar, advocate for respondents no. 2 to 4.

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CORAM : S.B.SHUKRE, J.
DATE : 7th MARCH, 2017

ORAL JUDGMENT :

1 Heard Shri Bhadekar, learned Counsel for petitioners in all petitions except in W.P. No.328/2007, Shri Tawashikar, learned Counsel for the petitioners in W.P.No.328/2007, learned A.G.P. for respondent No.1 and Mr.Choukidar, learned Counsel for Respondents No.2 to 5.

2 These writ petitions challenge the eight Change Reports filed on 21.12.2005 along with delay condonation applications in each of the Change Reports with the delay ranging from two years to thirty years. Since they pertain to the change in the Constitution of the Trust – Respondent No.5, occurred from time to time during this period of thirty years, these writ petitions are being disposed of by this common judgment.

3 At the outset, Shri Choukidar, learned Counsel for respondents No.2 to 5 takes an exception to the maintainability of the writ petitions on the ground that a remedy of an appeal under Section 70(1)(b) of the Bombay Public Trusts Act, 1950 (for short, “the said Act”) is available, placing reliance upon the cases of (i) **Rajendra Somaji Waghade Vs. Digamber Bahuddeshiya Apant Kalyan Shikshan Sanstha & another**, reported in 2008(6) Bom.C.R. 88; (ii) **Rajkumar Pundlikrao Zape & others Vs. Shantaram Amrutrao Waghmare & others**, reported in 2008 (6) Bom.C.R. 81; (iii) **Doma Vithu Ramteke Vs. Assistant Charity Commissioner & another**, reported in 2002 (5) Bom.C.R. 40; (iv) **Madanrao Nanasaheb Chavan Vs. State of Maharashtra & others**, reported in 2003 (1) Bom.C.R. 447; and (v) **Ashok Balaji Ratan Vs. Nagpur Improvement Trust, Nagpur**, reported in 2004

(6) Bom.C.R. 861.

4 He also submits that there is a question of prejudice involved in these writ petitions and the petitioners have not demonstrated as to what prejudice has been caused to them by the impugned order passed in each of these Change Reports.

5 However, learned Counsel for the petitioners differs. According to him, these petitions are maintainable inasmuch as, the impugned orders, having been passed without hearing the petitioners, are violative of principles of natural justice and, therefore, same could be challenged by invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Placing reliance upon the judgment of this Court in the case of **Marutirao Vishwanath Bagal & others Vs. Dinkar Kashinath More & others**, reported in AIR 2005 Bom 52, in particular, he submits that granting of an opportunity of hearing to the outgoing trustees, in such matters, is necessary. He also submits that if any delay occurs in filing of the Change Reports, to be filed within 90 days from the occurrence of the change, same must be explained and cannot be condoned unless sufficient cause is shown. For this submission, he places reliance upon **Baburao Chavan Sahakari Sakhar Karkhana Ltd. Vs. Uttam Dattaram Jagdamba and others** (Writ Petition No.5533 of 2016, decided on 25.01.2017) and **B.J.Wahane & another Vs. Kamlesh Gangaram Kanoje**, reported in 1997 (3) ALL MR 303.

6 The order, which has been impugned in all these petitions, has been passed on 31.01.2006 and it is a stereotype

order, which reads thus:

“Delay is condoned on payment of cost of Rs.100/- to PTA fund.”

7 The delay has been condoned on payment of cost of Rs.100/- to PTA fund. It is significant to note that after the Change Reports along with delay condonation applications were filed on 21.12.2005, the learned Assistant Charity Commissioner issued notice to the petitioners on 25.01.2006 and the notice indicated date of appearance of the petitioners as 07.02.2006. When the petitioners appeared before the Assistant Charity Commissioner on the given date, to their surprise, they found that delay condonation applications were already allowed on 31.01.2006 and the Change Reports were registered for inquiry as per law.

8 It would be clear from above that the impugned orders passed on each of the delay condonation application are the orders which have been passed without hearing the petitioners. They are clearly violative of principles of natural justice and, therefore, these petitions, which invokes extraordinary jurisdiction of this Court under Article 227 of the Constitution, would be maintainable and I rely upon the case of **Marutirao** (*supra*) in this regard. No doubt, in the cases relied upon by the learned Counsel for respondents no.2 to 5, a view has been taken that an order passed on delay condonation application is appealable under Section 70(1)(b) of the said Act, I would say, with due respect, it would not cover the cases where there is a violation of principles of natural justice, as is the case here.

9 There is one more reason why I find that these

petitions are maintainable and it is that the delay condonation applications have been allowed by a completely non speaking order. It does not take into consideration the paramount factor which governs discretion of the Court under Section 5 of the Limitation Act. This factor is of demonstration of sufficiency of cause of the applicant seeking condonation of delay. It is well settled law that a judicial finding must reflect application of mind to the facts of the case and law applicable to them and the decision must be supported by reasons. Any order, which is unreasoned and which does not reflect application of mind, is arbitrary and violative of Articles 14 and 21 of the Constitution. Therefore, on this count also, I find that these petitions are maintainable.

10 Having stated the reasons why these writ petitions are maintainable, I would also find, for the same reasons as well, the impugned order passed on 8 delay condonation applications, cannot stand the scrutiny of law. These orders need to be quashed and set aside and all the applications need to be remanded back to Respondent No.1 for considering them afresh in accordance with law. However, liberty, in the interest of justice, could be granted to respondents no.2 to 5 to file additional affidavit in support of the applications for condonation of delay.

11 As regards the other cases cited by Shri Tawshikar, learned Counsel for petitioner in Writ Petition No.328/2007 are concerned, I find that they could be of assistance of petitioners before the learned Assistant Charity Commissioner when the learned Assistant Charity Commissioner would be hearing the applications for condonation of delay.

12 Learned Counsel for respondents no.2 to 5 has also placed reliance upon the case of **Chembur Trombay Education Society & others Vs. D.K.Marathe & others**, reported in 2002 (3) Bom.C.R. 161, to support his argument that the change takes effect from the date of resolution and not from its approval. I would say, with due respect, this would also be of assistance to respondents no.2 to 5 at the time of consideration of Change Reports on merits, if occasion arises.

13 In view of above, these writ petitions deserve to be allowed.

14 Writ Petitions are allowed. The impugned orders dated 31.01.2006, passed on 8 condonation of delay applications are quashed and set aside. All these applications are remanded back to the Assistant Charity Commissioner for their consideration afresh in accordance with law. One opportunity for filing of additional affidavit to support the delay condonation applications shall be given and further opportunity for filing of reply and additional reply shall also be granted to the petitioners. The applications shall be disposed of within one month from the date of appearance of the parties. The parties are directed to appear before the Assistant Charity Commissioner on 29th March, 2017.

15 Rule is made absolute in above terms. No costs.

S.B.SHUKRE
JUDGE