

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 353 OF 2017**

**People's Education Society & Anr
Vs.**

..Petitioners

Shri Mansing S. Moray & Ors.

..Respondents

Mr. P. K. Dhakephalkar Senior Advocate a/w Mr. B. K. Barve, Mr Sandeep Barve, Ms Archana Lad, Ms Sheetal Tanpure and Mr. Preshit Bagul i/b B. K. Barve & Co. for the Petitioners

Mr. Prakash Ambedkar a/w Mr. S.D. Rankhambe for the Respondent No.1

Mr. Amit Borkar i/b Ms Kranti Hiwrale for the Respondent No.2

Mr. S. D. Rayrikar AGP for the Respondent Nos.3 & 4

CORAM : R. M. SAVANT, J.

DATE : 13th FEBRUARY, 2017

P.C.

1 The order dated 21-11-2016 passed by the Learned Joint Charity Commissioner, Mumbai region, Mumbai, rejecting the application Exhibit 9 filed by the Petitioners is taken exception to by way of the above Petition.

2 The genesis of the impugned order lies in filing of Change Report No.888 of 2003 and the decision rendered thereon. The said Change Report was filed by reporting trustee Mr. S. S. Rege by which he reported the election of one Shri Gangurde and Shri Pantawane to be the trustees of the Petitioner No.1 trust in the meeting which was held on 20-12-2002, the said Change Report was filed on 28-2-2003. The Change Report underwent two remands both by the Learned Single Judges of this Court. The first remand was by

virtue of the consent terms filed by the parties in First Appeal No.39 of 2010 on 4-2-2010 and the second remand was as a consequence of the judgment and order dated 10-8-2015 passed in First Appeal No.1249 of 2012. It is on the second remand that the Deputy Charity Commissioner by his order dated 3-9-2016 accepted the Change Report in respect of Shri Pantawane and rejected the Change Report in respect of Shri Gangurde for the reasons mentioned in the said judgment and order and especially having regard to the report of Justice Lentin in respect of the excess marks granted to about 76 students. The said report it seems was submitted pursuant to the orders passed by this Court in a Writ Petition.

3 Aggrieved by the said order dated 3-9-2016 passed by the Deputy Charity Commissioner, the Petitioners carried the matter by way of an Appeal under Section 72 of the Bombay Public Trusts Act (for short the said Act) to the Learned Joint Charity Commissioner, Mumbai Region, Mumbai. In the said Appeal the Petitioners filed an application for interim stay being application Exhibit 9. The said application was replied to on behalf of the Respondents. As indicated above the Learned Joint Charity Commissioner by the impugned order dated 21-11-2016 has rejected the application for stay. The scope of the Appeal being restricted to the appointment of Shri Gangurde as a trustee of the Petitioner No.1 trust, the Learned Joint Charity Commissioner has made certain observations qua Shri Gangurde on the basis of the contents of the

Justice Lentin's report.

3 The Learned Senior Counsel appearing for the Petitioners Mr. P. K. Dhakephalkar would submit that all along during the course of the proceedings pursuant to the two remands, there was an order of status-quo which was in operation. The Learned Senior Counsel sought to draw this courts attention to the various orders passed by the Learned Single Judges of this Court as well as the order passed by the Apex Court whilst dealing with the SLPs filed by the parties. It was also the submission of the Learned Senior Counsel that the observations made by the Learned Joint Charity Commissioner based on Justice Lentin's report were erroneous. The Learned Senior Counsel would question the efficacy of the report as a piece of evidence, to draw a conclusion of moral turpitude against Shri Gangurde. The Learned Senior Counsel sought to draw this courts attention to the judgments of the Apex Court. One of the judgment being in the matter of **State Bank of India Vs. National Housing Bank and ors.**¹, especially paragraph 53 thereof. It was therefore the submission of the Learned Senior Counsel that the order of status-quo should be continued.

4 Per contra the Learned Counsel Mr. Ambedkar appearing on behalf of the Respondent No.1 and the Learned Counsel Mr. Borkar appearing for the Respondent No.2 would support the impugned orders. It was the

¹ (2013)16 Supreme Court Cases 538

submission of both the Learned Counsel Mr. Ambedkar and Mr. Borkar that since the Appeal is to be taken up for hearing tomorrow i.e. 14-2-2017, the authority i.e. the Learned Joint Charity Commissioner may be directed to dispose of the Appeal within a particular time frame and therefore there is no necessity to pass any interim order. The Learned Counsel would also submit that since on account of the Change Report being decided against the Petitioners vis-a-vis Shri Gangurde, such an interim order cannot be passed.

5 Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, the above Writ Petition has been filed challenging the order dated 21-11-2016 passed by the Learned Joint Charity Commissioner refusing interim reliefs. The Learned Counsel are ad-idem that the Appeal is to come up for hearing before the Learned Joint Charity Commissioner on 14-2-2017, in my view therefore it is not necessary to enter into the contentions urged by the Learned Senior Counsel as regards the efficacy of Justice Lentin's report. It is before the Appellate Authority that it would be open for the Petitioners to urge the contentions that have been urged before this Court. Since the substantive order rejecting the Change Report No.888 of 2003 has been passed by the Deputy Charity Commissioner, it would be contingent upon the result of the Appeal that the claim of Shri Gangurde to be a trustee of the Petitioner No.1 trust, would depend. In my view therefore, it would be just and proper if the following directions are

issued:

(i) The Appeal filed by the Petitioners before the Learned Joint Charity Commissioner against the order dated 3-9-2016 passed by the Deputy Charity Commissioner is directed to hear and decide latest by 31-3-2017.

(ii) The impugned order dated 21-11-2016 is not interfered with.

(iii) It would be contingent upon the result of the Appeal that the claim of the Petitioners qua Shri Gangurde to be a trustee of the Petitioner No.1 trust would depend.

(iv) All the contentions of the parties are kept open for being urged before the Appellate Authority i.e. the Learned Joint Charity Commissioner would hear and decide the Appeal on its own merits, uninfluenced by any observations made in the impugned order.

6 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]