

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO.21373 OF 2018

Indian Council of Social Science Research .. Petitioner
Vs.
Joint Charity Commissioner,
Pune Region, Pune & Ors. .. Respondents

Mr.Anil Anturkar, Senior Advocate a/w Mr.Atharva Dandekar and Ms.R. Jain i/by Ms.Rui A. Rodrigues for the petitioner.
Mr.S.H.Kankal, AGP for the respondent no.1.
Mr.Karl Tamboly a/w Mr.Atman Mehta and Ms.Vaishali Shah i/by Haresh Mehta & Co. for the respondent no.2.

CORAM : R.D. DHANUKA, J.
DATE : 16th August 2018

P.C.:

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 25th May 2018 passed by the learned Joint Charity Commissioner, Pune rejecting the Misc. Application No.50 of 2017 filed by the petitioner.

2. It is the case of the petitioner that the respondent no.2 trust is being funded by the petitioner. It is the case of the petitioner that the petitioner has donated about Rs.14 crores to the respondent no.2 trust.

3. Mr.Anturkar, learned senior counsel for the petitioner invited my attention to the Constitution of the respondent no.2 trust and more

particularly clauses 7(2), 7(5) and 7(6) of the Constitution of the respondent no.2 and would submit that the Board of Trustees shall consist of not less than seven and not more than fifteen persons. He submits that under clause 7(5), right of co-option given to the other trustees in view of the vacancies cannot be exercised if there is a resignation of any of the members of the Board but such right can be exercised only if 1/3rd of the Board's members retire every year.

4. It is submitted by the learned senior counsel that since five members of the Board had resigned and not retired under clause 7(5), there was no question of remaining members of the Board exercising their alleged right of co-option under clause 7(5) of the Constitution. He submits that the Board of Trustees became less than seven and thus there was no quorum in terms of clause 7 of the Constitution of the respondent no.2. It is submitted by the learned senior counsel that the said constitution has not been amended till date.

5. In his alternative submission, it is submitted by the learned senior counsel that even if the constitution is amended, such change is not notified under Section 22 of the Maharashtra Public Trusts Act, 1950 (for short "the said Act") and thus the party would be governed by the

constitution of the respondent no.2 annexed at page 50 of the writ petition.

6. It is submitted by the learned senior counsel that the learned Joint Charity Commissioner, Pune has rejected the application filed by the petitioner inter alia praying for appointment of an Administrator mainly on the ground that the application was not maintainable either under Section 41-D (4) or under Section 47 of the said Act. He submits that the learned Joint Charity Commissioner however, has not considered the powers of the Joint Charity Commissioner under Section 69(a) read with Section 3 of the said Act.

7. Learned senior counsel invited my attention to some of the alleged acts of the respondents prejudicial to the interest of the trust. Learned senior counsel for the petitioner submits that thus appointment of an Administrator by the learned Joint Charity Commissioner was clearly warranted in the impugned order dated 25th May 2018.

8. Mr. Tamboly, learned counsel for the respondent no.2, on the other hand, submits that the amendment to the constitution which his client is relying upon has been orally approved under Section 50A of

the said Act. It is submitted that in any event, the respondent no.2 has already filed change reports in the month of August 2017 thereby notifying the appointments already made by the remaining members of the Board by exercising powers under the Constitution of the respondent no.2 in view of the vacancies having arisen. Those change reports are pending. He submits that even if the petitioner could have raised any objection under the said change reports, no such objection has been raised by the petitioner in so far as the proceedings filed before the learned Joint Charity Commissioner under Section 22 of the said Act are concerned.

9. It is submitted by the learned counsel that whether the remaining members of the Board could have exercised their right of co-option and could have appointed the other persons so as to fill up vacancies having arisen or not, such issue can be gone into by the authority while hearing the change report under Section 22 of the said Act filed by his client and not by this Court in this writ petition.

10. Learned counsel for the respondent no.2 strongly disputes the allegations made by the petitioner about the conduct of the remaining members of the Board of the respondent no.2 Trust. He submits that the

issue of locus, if any, raised by the respondent no.2 against the petitioner also can be decided by the authority while hearing the change report under Section 22 of the said Act. He further submits that his client has no objection if the change report filed by the respondent no.2 is expedited.

11. The entire arguments of the petitioner in this petition is based on the premise that the remaining members of the Board of the respondent no.2 could not have co-opted the other persons as the members of Board in view of vacancies having arisen in view of resignation of the five members of the Board. The question as to whether the respondent no.2 is governed by the Constitution of the respondent no.2 annexed to the petition or is governed by the amendment allegedly approved by the learned Joint Charity Commissioner or not can also be the issue decided in the proceedings filed under Section 22 of the said Act.

12. In my view, the issue as to whether the remaining members of the Board could have co-opted the other persons as the members of Board under the unamended provisions of the Constitution or the amended provisions of the Constitution would be an issue which can be

gone into by the learned Joint Charity Commissioner or the other authority empowered to hear the application under Section 22 of the Act. It is not in dispute that the enquiry under Section 22 of the said Act is in the nature of the judicial process. All these issues can be gone into by the authority while deciding those change reports filed under Section 22 of the said Act. This Court cannot go into the issue in this writ petition as to whether the other members of the Board could have co-opted the other persons as members of Board or in view of the pendency of the change reports already filed by the respondent no.2. In view of these circumstances, I am not inclined to interfere with the impugned order passed by the learned Joint Charity Commissioner on 25th May 2018.

13. I therefore pass the following order :-

- (i) The learned Joint Charity Commissioner, Pune Region is directed to hear the change report filed by the respondent no.2 expeditiously.
- (ii) It is made clear that if the change report notifying the changes of the vacancies filled up by the remaining members of the Board are not filed till date, the same shall be filed within one week from today.
- (iii) The petitioner has agreed to raise objections to the said report within two weeks thereafter and serve a copy thereof upon the respondents' advocate simultaneously.

(iv) The issue of locus, if any, raised by the respondent no.2 against the petitioner in raising objection to the change report filed by the respondent no.2 also can be decided by the learned Joint Charity Commissioner expeditiously. If the Joint Charity Commissioner comes to a conclusion that the petitioner has locus to oppose and raise objection to the change report filed by the respondent no.2, the learned Joint Charity Commissioner shall proceed with the said change report on its own merits.

(v) Learned Joint Charity Commissioner shall make an endeavour to dispose of the said change report within six months from the date of first meeting without being influenced by the observations, if any on merit, made in the impugned order dated 25th May 2018.

(vi) It is made clear that this Court has not expressed any views on merits of the matter whether the remaining members of the Board of the respondent no.2 Trust could have co-opted the other persons as members of the Board in view of the vacancies having arisen under any of the provisions of the Constitution of the respondent no.2 Trust or not.

(vii) All contentions of both the parties on merits are kept open.

(viii) Writ petition is disposed of in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.