

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11440 OF 2019

MIRZA RAHAMATULLAH BAIG S/O. PEER BAIG AND OTHERS
VERSUS
ASSISTANT CHARITY COMMISSIONER, NANDED DIVISION,
NANDED, DIST: NANDED AND OTHERS

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Advocate for Petitioners :
Mr. R. R. Mantri & Mr. R. R. Kakani
AGP for Respondents No. 1 & 7 : Mr. S. B. Yawalkar
Advocate for Respondent No. 2 to 6 :
D. J. Choudhari

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WRIT PETITION NO. 7001 OF 2019

ABDUL BASIT S/O. ABDUL ALI AND OTHERS
VERSUS
ASSISTANT CHARITY COMMISSIONER, NANDED DIVISION,
NANDED, DIST: NANDED AND OTHERS

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Advocate for Petitioners :
Mr. R. R. Mantri h/f. Mr. R. R. Sancheti
AGP for Respondents No. 1 & 7 : Mr. S. B. Yawalkar
Advocate for Respondent No. 2, 4 to 6 :
D. J. Choudhari
Advocate for Respondent No. 3 :
Mrs. Supriya L. Pansambal

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CORAM: S. V. GANGAPURWALA &
ANIL S. KILOR, JJ.

RESERVED FOR ORDERS ON : 16.10.2019

ORDER PRONOUNCED ON : 08.11.2019

ORDER:

1. Both these writ petitions are based on similar set of facts and involve common question, as such are decided together.

2. In writ petition no. 11440 of 2019, the petitioners seek declaration that the list Exhibit-31 in Change Report No. 422 of 1997 is against the object and interest of the public Trust. In writ petition no. 7001 of 2019, the petitioners challenge the order passed by the learned Assistant Charity Commissioner in Inquiry No. 223 of 2019 dated 03.05.2019, purportedly passed U/Sec. 41A of the Maharashtra Public Trusts Act, 1950.

3. In Inquiry No. 223 of 2019, the learned Assistant Charity Commissioner – 2, Nanded region under order dated 03.05.2019 appointed Inspector of the office in-charge of the Ardhapur taluka as Returning Officer to hold the elections of the Executive Committee of the Trust for the period 2019 to 2022 in the general body meeting of the

Trust. It further held that the list of members at Exhibit-31 in Inquiry No. 422 of 1997 only shall be eligible to vote as members of the Trust.

4. Mr. Mantri, learned counsel for the petitioners submits that the impugned orders passed by the learned Assistant Charity Commissioner directing conduct of elections is beyond his jurisdiction U/Sec. 41A of the Maharashtra public Trusts Act, 1950. Under Section 41A, the learned Assistant Charity Commissioner could not have decided about the validity of members. To buttress his submission, the learned counsel relies on the judgment of the learned Single Judge of this Court in case of **Shakil Musa Patel and another Vs. Dilipsing Pratapsing Patil and others** reported in 2014 (1) Mh. L. J. 960. He further relies on the judgment of the learned Single Judge of this Court in case of **Shahid Javed Maniyar and others Vs. Sagir Munirkhan Sarguroh (Dr.) and others** reported in 2014 (6) Bom.C.R. 126 and submits that the learned Assistant Charity Commissioner could not have given directions

restricting the member of Trust to list Exhibit-31. He could not enter into adjudicatory process as the powers U/Sec. 41A of the Maharashtra Public Trusts Act, 1950 are administrative in nature. Reliance is also placed on the judgment of the learned Single Judge in case of **Lahudas Sambhaji Karad Vs. State of Maharashtra and others** reported in 1993 (2) Mh. L. J. 1056. The learned counsel also relies on the judgment of the learned Single Judge of this Court in case of **Jagatnarayansingh Swarupsingh Chithere and others Vs. Swarupsingh Education Society and another** reported in 1980 Bom.C.R. 837.

5. Mr. Mantri, the learned counsel further submits that, Exhibit-31 in Inquiry No. 422 of 1997 cannot be said to be the valid list of members in as much as Inquiry No. 422 of 1997 is not decided on merits. The petitioners had challenged the order passed in Inquiry No. 422 of 1997 before the higher Court and before this Court by filing First Appeal No. 612 of 1997. This Court disposed of the First Appeal No. 612 of 1997 on

the ground that by passage of time the order in Inquiry No. 422 of 1997 has turned infructuous. It was never decided on merits. The other members whose appeals are pending against the order rejecting their change reports are also valid members, they are also required to be considered. The dictum upon the membership is subjudice before the appellate authority. All these aspects are not considered. The learned Assistant Charity Commissioner has acted arbitrarily and in total breach of the law laid down by this Court. Under Section 41A of the Maharashtra Public Trusts Act, the learned Assistant Charity Commissioner could not have exercised jurisdiction to decide the right to vote or membership. Respondent no. 1 has virtually substituted the bye-laws of the Trust and deprived the members of their right. The impugned order in Inquiry No. 223 of 2019, passed U/Sec. 41A is without individual notices to the petitioners. On this count also, the order requires to be set aside.

6. Mr. Mantri, the learned counsel further submits that petitioner no. 1 pointed out to the learned Assistant Charity Commissioner that in Change Report No. 311 of 1987 the name of the petitioner was depicted as Elected Executive Member. The copies of the resolution and change report were also placed before the learned Assistant Charity Commissioner, however on 05.07.2019 he rejected the said application. The petitioners no. 2 to 4 are also the members of the respondent society. In Change Report No. 328 of 1986 their names were shown as members of the society. The said aspect is also not considered by the learned Assistant Charity Commissioner. Petitioner no. 5 is also the member of the society. His name is depicted in the Change Report No. 59 of 1987 as Vice President. The petitioners 6 to 8 are members of the Trust as were introduced on 04.01.2000. They have also filed an application bearing Inquiry No. 764 of 2019 seeking similar directions. However, the said aspect is also not considered and the application is rejected. The

petitioner no. 9 had been inducted as member on 04.01.2000. He also made an application to the learned Assistant Charity Commissioner which was rejected. The learned counsel submits that learned Assistant Charity Commissioner recorded finding that petitioners 1 to 6 are the members of the Trust and their names are appearing in various change reports filed since the year - 1987. In case of the petitioner no. 1, the learned Assistant Charity Commissioner gave a positive finding that his name in Inquiry No. 5 of 1987 is shown as elected body member. The same is the case of the petitioners no. 2 to 4. Finding is recorded by the learned Assistant Charity Commissioner in Change Report No. 328 of 1986 that the names of these persons are shown as members of the Trust. In Inquiry No. 422 of 1997, the learned Assistant Charity Commissioner never adjudicated the issue of membership of those depicted in Exhibit-31. Those persons shown in Exhibit-31 are close relatives of the respondent no. 2 and most of them do not reside at Nanded but reside at

Andhra Pradesh. Several persons of Exhibit-31 in change report No. 422 of 1997 are dead. It was pointed out to the learned Assistant Charity Commissioner that appeals are pending in respect of subsequent change reports. The same ought to have been considered. The learned Assistant Charity Commissioner illegally directed that only those persons whose names appear in Exhibit-31 in Change Report 422 of 1997 shall be eligible to vote at elections.

7. Mr. Mantri, the learned counsel further submits that the public Trust is 100% grant in aid urdu school and public money is involved. The public Trust cannot be converted into the private Trust, more particularly when it is receiving huge money by way of grants. The list of members at Exhibit-31 in Inquiry No. 422 of 1997 needs to be scrutinized. No elections can be held on the basis of the disputed list of members. The subsequent change reports on the basis of list Exhibit-31 in Inquiry No. 422 of 1997 are rejected.

8. Mr. Chaudhari, learned counsel for respondents no. 2 to 6 submits that the directions are issued to hold the elections of the Trust by appointing Election Officer from the office of the learned Assistant Charity Commissioner, Nanded as the term of the elected body of the Trust was over. All change reports from the year 20002 to 2018 submitted by the petitioners as well as the respondents are rejected, and as such the learned Assistant Charity Commissioner issued direction to hold the elections as per Inquiry No. 422 of 1997 accepted by the learned Assistant Charity Commissioner under order dated 09.06.2004. The petitioners have not raised any objection to Inquiry No. 396 of 1994 and 422 of 1997 wherein their names were also appearing as the members of the Trust. After 33 years they have come before this Court for the first time claiming to be the members of the Trust. Petitioner no. 9 in Writ Petition No. 11440 of 2019 is behind the curtain who has managed to file these petitions. The observations are made in Change Report No. 4

of 2012 that the petitioners were not possessing original record, since 1998 to 2008 and it was with the respondent no. 2 and therefore the record prepared by the reporting Trustee in Charge Report No. 4 of 2012 is forged by overwriting and using whitener contrary to the original record. The petitioners are raising objection to list Exhibit-31 in Enquiry No. 422 of 1997 after more than 20 years. The order is rightly passed and the same can be considered U/Sec. 41A of the Maharashtra Public Trusts Act, 1950 by the learned Assistant Charity Commissioner.

9. Mr. Chaudhari, the learned counsel further submits that in an inquiry U/Sec. 22 of the Maharashtra Public Trusts Act, 1950 issuance of notice to affected persons is not necessary. He relies on the judgment of the learned Single Judge of this Court in case of **Sandeep Ram Meghe and others Vs. Pundlikrao Balaji Gohad (Dead) and others** reported in 2013 (4) Mh. L. J. 703.

10. Mr. Yawalkar, learned Additional Government

Pleader relying on the judgment of the learned Single Judge of this Court in case of **Prabhakar Waktuji Sapate Vs. Narayan Baburao Dhakate and others** reported in 2016 (4) Mh. L. J. 866 contends that Assistant Charity Commissioner U/Sec. 41A of the Maharashtra Public Trusts Act, 1950 can direct holding of fresh elections to the executive committee of the society in the interest of the society.

11. We have considered the submissions canvassed by the learned counsel for the respective parties, so also, the learned Assistant Government Pleader.

12. There is no dispute that Change Report bearing no. 422 of 1997 is allowed by the learned Assistant Charity Commissioner. The application filed by the petitioners before the District Court and subsequent appeal before this Court stands disposed of. The order in Change Report No. 422 of 1997 is intact. In the said Change Report, list Exhibit-31 is the list of members of the society. The said list does not appear to have been set aside in any further proceeding.

13. The *prima donna* question would be whether this Court would exercise its writ jurisdiction under Article 226 of the Constitution of India in the present matter wherein directions are given by the learned Assistant Charity Commissioner to hold the elections considering the members in list Exhibit-31 in Change Report No. 422 of 1997.

14. It needs to be considered that Change Report No. 422 of 1997 is the last change report accepted by the learned Assistant Charity Commissioner. Each and every change report, thereafter filed by either petitioners or respondents have been rejected by the learned Assistant Charity Commissioner.

15. For the better administration of the Trust election under the supervision of an independent officer is necessary and precisely the same has been adjudicated by the learned Assistant Charity Commissioner. At the first instance it does not appear that the petitioners had taken objection to the order of the learned Assistant Charity Commissioner directing elections. The petitioners

basic objection before the learned Assistant Charity Commissioner by filing separate enquiry applications was to the list of membership and the same has been negatived.

16. As observed above, all the change report proceedings filed after Change Report No. 422 of 1997 are rejected. The membership claim pursuant to the various change reports are rejected. The appeals against the same are pending. In view of that today it cannot be said that those persons who claimed to be members of the Trust and their change reports rejected are the valid members of the Trust. This Court for the first time in the writ jurisdiction would not embark upon the investigation as to the validity of membership, more particularly, when the same is subjudice before the appellate authorities. The same would be beyond the purview of the consideration in the writ jurisdiction of this Court.

17. It would appear that the administration without the elected body would be in shambles.

There has to be an elected body. The right of membership claimed by the petitioners is a subject matter of consideration and subjudice before the appellate authority upon rejection of their change report. As on the date it cannot be said with certainty that the petitioners are the legitimate members of the Trust.

18. It will not be possible for this Court in its writ jurisdiction under Article 226 of the Constitution of India to determine the legitimacy and validity of the membership. The claim of the petitioners *vis-a-vis* their membership is subjudice before the competent Court. As far as list Exhibit-31 is concerned, challenge to the same came to be disposed of. There was no finding given by this Court that the members shown in the list Exhibit-31 of Change Report No. 422 of 1997 are not the legitimate members. In absence of the said finding, it would be inappropriate for this Court to make any comment upon the same.

19. The management of the Trust has to be in the

hands of the legitimate members of the Trust nor the Trust can be governed by two or more parallel managements. Each and every change report filed after Change Report No. 422 of 1997 is rejected. The last change report accepted is Change Report No. 422 of 1997. In such a scenario, the Assistant Charity Commissioner has taken a prudent view to direct holding of elections of the Trust. The said directions were need of the hour.

20. Even otherwise, the change report has to be filed before the Assistant Charity Commissioner after the elections are over as contemplated U/Sec. 22 of the Maharashtra Public Trust Act, 1950.

21. The objections can be taken to the change report proceedings by the persons entitled to take objections with regard to each and every aspect of the matter and at that time the Assistant Charity Commissioner can make scrutiny of all the aspects for which the objections are raised in accordance with Section 22 of the Maharashtra Public Trusts Act, 1950.

22. Considering the above and that holding of election was the need of the hour, we refrain from exercising our jurisdiction under Article 226 of the Constitution of India.

23. With the aforesaid observations, writ petitions stand disposed of. No costs.

[ANIL S. KILOR, J.]

[S. V. GANGAPURWALA, J.]

24. At this stage, the learned counsel for the petitioners seeks continuation of interim orders for a period of six (06) weeks from today. The learned counsel for the respondents opposes said request.

25. The elections are already held. Only declaration of results has remained. We have observed that, it would be open for the aggrieved persons to take up the proceedings as per the provisions of the Maharashtra Public Trusts Act, 1950. In view of that, we do not feel it appropriate to continue the interim order.

[ANIL S. KILOR, J.]

[S. V. GANGAPURWALA, J.]