

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8888 OF 2017

JAMNER TALUKA EDUCATION SOCIETY JAMNER THROUGH ITS
SECRETARY S M DHARIWAL
VERSUS
NARAYAN DEVCHAND MAHAJAN AND ANOTHER

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Advocate for the Petitioner : Shri Deshmukh Sachin S.
Advocate for Respondent 1 : Shri V.D.Salunke
AGP for Respondent 2 : Shri S.R.Yadav

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th December, 2019

Per Court:

1 This matter has been heard extensively and as the arguments in rebuttal were being considered, I have stumbled across peculiar facts of this matter, which in my view, would indicate that the petitioner (Suresh Manohar Dhariwal) had hoodwinked the High Court by filing this writ petition.

2 It is an admitted position that the change report bearing no.590/2000 has been filed by the reporting trustee by name Abaji Nana Patil on 28.02.1999. Admittedly, he is the reporting trustee and there are 13 names in the columns mentioned as "Ferfarache Swarup" (Description

of Change), "June Swarup" (Old Description) and "Navin Swarup" (New Description). The term "June Swarup" means the outgoing trustees and the term "Navin Swarup" means newly elected incoming trustees. The column "Ferfarache Karan" means the reason for submitting the change report and it was mentioned as "annual elections to the posts of trustees".

3 Respondent no.1, represented by Shri Salunke, learned advocate, is at serial no.2 as an outgoing trustee and also as an incoming trustee and he is shown as the Secretary of the Trust. The person, who has filed this petition, Suresh Manohar Dhariwal is at serial no.10 as an outgoing trustee and also as an incoming trustee and his status is shown as a member.

4 In the entire submissions canvassed before me by the petitioner, it is contended that respondent no.1 was a party to the application exhibit 18 filed under Section 73-A of the Maharashtra Public Trusts Act seeking leave to raise certain objections and the said application has been rejected by the learned Assistant Charity Commissioner, Jalgaon vide order dated 30.03.2013. Writ Petition No.8253/2015 challenging the said order has been dismissed in default. Therefore, exhibit 19, which has been filed for submitting objections, could not have been allowed by the impugned order.

6 Having heard the extensive submissions of the learned advocates, I have no hesitation in concluding that respondent no.1 had

indeed filed exhibit 18 as I see his signature below the prayer clause. I also see his signature below the affidavit, which mentions his name Narayan Devchand Chaudhari. As such, the rejection of exhibit 18 would be an issue to be considered if exhibit 19 is to be entertained. By the impugned order, the learned Deputy Charity Commissioner, Jalgaon has come to the conclusion that respondent no.1 had not filed exhibit 18 and therefore, the impugned order permitting him to submit his objections, is passed.

7 It was strenuously submitted by the learned advocate for the petitioner, on instructions, that though the name of respondent no.1 is shown as a secretary at serial no.2 in the change report document tendered on 28.02.1999, he cannot put forth any objection on behalf of the Trust or in his personal capacity since the reporting trustee alone is to conduct the change report enquiry proceedings. In short, the reporting trustee alone will espouse the cause of the Trust in the change report enquiry and he would defend and sue on behalf of the Trust, in connection thereof.

8 With the above submissions, Shri Salunke retorted by stating that if the above analogy is made applicable to respondent no.1, the same analogy will have to be applied to the signatory to this writ petition Shri Suresh Dhariwal. The petitioner (Shri Suresh Dhariwal), therefore, cannot represent the Trust, since only the reporting trustee can represent the

Trust in litigation.

9 The learned advocate for the petitioner has quickly taken instructions and informs that Shri Suresh Dhariwal is the reporting trustee in view of the subsequent change reports filed. Shri Salunke counters the said arguments by placing the photostat copy of the change report enquiry case papers bearing no.590/2000, which are taken on record and marked as "X" collectively for identification. I find from "Ferfar Arjacha Namuna" (Format of Change Application) that it contains an affidavit signed by Abaji Nana Patil as the reporting trustee. He is the Chairperson of the Trust, whose name is found at serial no.1 in the outgoing trustees as well as incoming trustees columns. The affidavit also mentions that he is the President of the Trust as on 28.02.1999 and is the reporting trustee. In my view, any change made subsequently without the change report being amended with the leave of the competent authority, would amount to an unsustainable submission.

10 This Court is made to believe by Shri Suresh Dhariwal that he is representing the Trust. Actually the reporting trustee, who is the Chairperson of the Trust, would have to represent the Trust, unless he is replaced. The memo of the writ petition also does not indicate that today Shri Suresh Dhariwal is the President of the Trust or he is the reporting trustee, who is in charge of conducting legal matters on behalf of the Trust keeping in view that the change report is of the year 1999 and is a 20

years old story. The statement is made in paragraph 1 of the petition that the petitioner is one of the reporting trustee and is the Secretary of the Trust today. It is contended that there are two change reports for the elections held in 2016-2017 bearing nos.1403/2016 and 1491/2016. One report is submitted by one group represented by Shri Suresh Dhariwal and another change report is submitted by another group represented by respondent no.1.

11 Considering the above, I find that there are two groups insofar as the present situation is concerned. These two factions claim to be leading the Trust. This writ petition, at the behest of one faction in such disputed circumstances, cannot be entertained.

12 In view of the above, this Writ Petition is dismissed.

13 Needless to state, the change report Enquiry No.590/2000 shall be decided within a time frame mandated by this Court. All contentions and grounds of the litigating sides are kept open.

14 Though I was inclined to impose costs on Shri Suresh Dhariwal, I am not passing the said order since there appears to be a dispute as regards the trustees when this writ petition was filed in 2017 and there are more than one reporting trustee and Shri Suresh Dhariwal claims to be one of such reporting trustee.

15 Since the time frame granted by the learned Division Bench in an earlier petition has expired, it is hereby directed that the learned

Deputy Charity Commissioner, Jalgaon shall conclude the proceedings on or before 31.01.2020. It is clarified that there will be no extension of time and the authority would be at liberty to reject adjournment applications, if they are found to be based on unreasonable grounds. As the proceedings are 20 years old, the same would be conducted on day to day basis.

kps

(RAVINDRA V. GHUGE, J.)