

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

WRIT PETITION NO.1756 OF 2019

Jayprakash Shikshan Prasarak
Mandal and ors.

... Petitioners

V/s.

Ganpati Balu Charapale and ors.

... Respondents

Mr.Venkatesh A.Shastry for the Petitioners.

Mr.Prashant Bhavake for Respondent Nos.1 to 7.

CORAM : UJJAL BHUYAN, J.

DATE : OCTOBER 10, 2019.

P.C.:-

1. Heard Mr. Venkatesh A. Shastri, learned counsel for the petitioners and Mr. Prashant Bhavake, learned counsel for respondent Nos.1 to 7.

2. This matter was heard on 3rd October, 2018 and today is fixed for delivery of order. Accordingly, order is dictated in the open court.

3. Challenge made in this petition filed under Article 227 of the Constitution of India is to the validity of the judgment and order dated 31st October, 2018 passed by the learned Joint Charity Commissioner, Kolhapur Division, Kolhapur in Appeal No.57 of 2018.

4. Case of the petitioners as projected in the writ petition is that petitioner No.1-Jayprakash Shikshan Prasarak Mandal is a Charitable Trust registered under the provisions of Maharashtra Public Trust Act, 1950 ("1950 Act" hereinafter).

5. Certain changes occurred in the management of petitioner No.1 ("the Trust" hereinafter), following which Change Report was filed before the Assistant Charity Commissioner by petitioner No.3.

6. It is stated that initially there were 61 members of the Trust (one being twice reported; thus the figure was erroneously referred to as 62). Over a period of time several of the members were disqualified resulting in

cancellation of their membership. At the time of conducting election for the period 2013-16, there were only 44 number of members.

7. Meeting for holding election was scheduled on 15th August, 2013, for which notice dated 1st August, 2013 was issued. All the 44 members were served by hand, as they live in the vicinity. After the Annual General Meeting was held on 15th August, 2013, the Change Report was submitted being Change Report No.471 of 2014.

8. The Change Report was objected to by the respondents before the Assistant Charity commissioner. After hearing the matter, Assistant Charity Commissioner-2, Kolhapur Region, Kolhapur passed order dated 6th April, 2018 accepting the aforesaid Change Report holding that change in the management of the Trust was legal and valid.

9. Aggrieved by the aforesaid order dated 6th April, 2018, respondents preferred appeal before the Joint Charity Commissioner, Kolhapur. Learned Joint Charity Commissioner after hearing the matter passed the impugned judgment and order dated 31st October, 2018, whereby the appeal preferred by the respondents was allowed and the order passed by the Assistant Charity Commissioner dated 6th April, 2018 was set aside.

10. Petitioners have contended that following such judgment and order passed by the learned Joint Charity Commissioner respondents have started interfering with the affairs of the Trust, more particularly in the administration of the educational institutions, which are run by the Trust; even threatening the school headmaster not to carry out any instructions or directions issued by the petitioners.

11. Aggrieved by the aforesaid, present petition has been filed.

12. Petitioners have filed an additional affidavit narrating the sequence of events including resolutions adopted in the Annual General Meetings held on 15th August, 2013 and onwards to state that membership of respondents in the Trust were cancelled which resolutions were never challenged by the respondents.

13. Respondents in their affidavit have stated that respondent No.1 is the founder President, respondent No.2 is founder Vice-president and respondent No.7 is founder Secretary of petitioner No.1-Trust. Barring petitioner No.2 other petitioners i.e. petitioner Nos.3 to 12 are not even members of petitioner No.1-Trust. The resolutions as well as the Change Reports submitted by the petitioners after each Annual General Meeting were rejected either by the Assistant Charity Commissioner or by the Deputy Charity Commissioner and on appeal such rejection orders were upheld by the Joint Charity Commissioner justifying those orders. Respondents have contended that Assistant Charity Commissioner had accepted Change Report No.471 of 2014 straight away

without conducting any inquiry as per provisions of Section 22 of the 1950 Act. Therefore, that order was rightly set-aside in appeal by the learned Joint Charity Commissioner. It is further contended that pursuant to the impugned order, names of the petitioners have been removed from the register and thus the said order has already been executed.

14. Submissions made by learned counsel for the parties are on pleaded lines. Therefore, a detailed reference to the same is considered not necessary. However, the submissions so made have been duly considered.

15. From a perusal of the impugned order dated 31st October, 2018, English translation of which has been submitted by learned counsel for the respondents, it is seen that learned Joint Charity Commissioner noted that since establishment of petitioner No.1-Trust in the year 1985, no elections were held till the year 1996. Though elections were held thereafter, the Change Reports submitted pursuant thereto were all rejected. Details

have been mentioned why and in what manner the Change Reports were rejected. Learned Joint Charity Commissioner further noted that after rejection of the Change Reports petitioners were declared as De-facto Trustees. Regarding acceptance of Change Report No. 471 of 2014, it is stated that notice of Annual General Meeting was issued to only 44 members, though disqualification of other members was rejected by the authority. In the related Annual General Meeting only 25 of the members were present in which petitioners Nos.2 to 12 came to be elected. Learned Joint Charity Commissioner also referred to the constitution of petitioner No.1-Trust and observed that Annual General Meeting can be conducted only with the majority of the members. Since disqualification of the members were not accepted, it is obvious that the Annual General Meeting was attended by less than majority. That apart, the constitution provided for minimum 5 days notice before holding Annual General Meeting, but it was noted that the notice was served and Annual General Meeting was held on the same date i.e. on 15th August, 2013. In such

circumstances, finding of the Assistant Charity Commissioner declaring the petitioners as De-facto Trustees was held to be not justified. Accordingly, the Change Report was rejected.

16. The Maharashtra Public Trust Act, 1950 earlier known as Bombay Public Trust Act, 1950 (already referred to as “the 1950 Act”) is an act to regulate and to make better provisions for the administration of public religious and charitable trusts in the State of Maharashtra (earlier Bombay).

17. Appointment of Charity Commissioner is dealt with in Section 3 and that of Joint Charity Commissioner in Section 3A. Appointment of Deputy Charity Commissioner and Assistant Charity Commissioner are dealt with in Section 5.

18. While Section 2(13) defines Public Trust, Section 8 mandates registration of such Public Trust, in respect of which it shall be the duty of the Deputy Charity

Commissioner or Assistant Charity Commissioner under Section 17 to keep and maintain such books, registers etc..

19. Section 22 is relevant. It deals with change occurring in entries recorded in the register maintained under Section 17. As per Sub-section (1), where any such change occurs, the Trustees shall within 90 days report such change or proposed change to the Deputy or Assistant Charity Commissioner in the prescribed format which period may be extended by the aforesaid two authorities on satisfaction of sufficient cause. Sub-section (2) provides that for the purpose of verifying the correctness of the entries in the register maintained under Section 17 or for ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may hold an inquiry in the prescribed manner. As per sub-section (3), the Deputy or Assistant Charity Commissioner after receiving report under sub-section (1) or after holding inquiry under sub-section (2)

shall record a finding with reasons as to the change which had occurred. Such finding is however appellable to the Charity Commissioner.

20. A careful analysis of Section 22 would reveal that any change occurring in the entries recorded in the register of a Public Trust shall be reported to the Deputy or Assistant Charity Commissioner within the specified period which is however extendable. To ascertain or verify the correctness of the entries made, the Deputy or Assistant Charity Commissioner may hold inquiry in the prescribed manner. Upon receipt of report or upon holding such inquiry if the Deputy or Assistant Charity Commissioner is satisfied regarding the correctness of the entries, he may record a finding to that effect by giving reasons which order is however appellable to the Charity Commissioner.

21. In sub-section (2) the expression “may” is used *vis-a-vis* holding of inquiry by the Deputy or Assistant Charity Commissioner. Ordinarily, the expression “may”

would convey that intention of the provision is directory, but it is also true that the expression “may” do not necessarily imply a directory character in all situations. It may also mean or convey an obligatory requirement considering the circumstances in which the expression appears.

22. In the present case, in so far holding of inquiry to verify correctness of the entries in the register maintained under section 17 is concerned, in my understanding, having regard to the broad requirement of Section 22 and the objective of the act, such a provision has to be read as obligatory in nature. This is more so because of use of the expression “shall” in sub-section (3) of Section 22 which mandates the Deputy or Assistant Charity Commissioner to record a finding with reasons as to the change which had occurred. Without holding inquiry, recording of finding with reasons may not be possible. Therefore, when a Change Report is submitted, the Deputy or Assistant Charity Commissioner is required to hold an inquiry to verify the correctness

of the entries. However, the manner, extent or details of such inquiry would depend upon the facts and circumstances of each case. But one thing is certain and that is, inquiry is required to be held and failure to hold such an inquiry would vitiate the approval granted to any Change Report.

23. Adverting to the impugned order, it is quite evident that learned Joint Charity Commissioner ought to have remanded the matter back to the primary authority i.e. Assistant Charity Commissioner to hold an inquiry *vis-a-vis* Change Report No.471 of 2014 as the Assistant Charity Commissioner had approved the Change Report without holding any inquiry which had vitiated the approval granted. This has rendered both the orders legally and factually untenable. There are various factual aspects relating to the Change Report which may not be gone into by this court in a proceeding under Article 227 of the Constitution of India as those can only be gone into by the primary authority. In such circumstances, court is of the view that the

matter is required to be remanded back to the primary authority i.e. Assistant Charity Commissioner for holding an inquiry in terms of Section 22 (2) of the 1950 Act and thereafter, to pass a fresh order in accordance with law after giving due opportunity of hearing to both the sides.

24. Consequently and in the light of the above, impugned order dated 31st October, 2018 of the learned Joint Charity Commissioner as well as the order dated 6th April, 2018 of the Assistant Charity Commissioner-2, Kolhapur Region, Kolhapur are set aside. Matter is remanded back to the Assistant Charity Commissioner for holding inquiry in terms of Section 22(2) of the 1950 Act and after giving due opportunity of hearing to both the sides, to pass a fresh order in accordance with law within a period of 4 months from the date of receipt of an authenticated copy of this order.

25. Writ Petition is accordingly disposed of.

(UJJAL BHUYAN, J.)