

ssp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2893 OF 2019**

Ashok Talwatkar

...Petitioner

VS.

Vinayak Madhav Pradhan & Ors.

...Respondents

Mr.Shrihari Aney, Senior Advocate a/w Mr.Susheel Mahadeshwar
i/b Ranjana Todankar for the petitioner

Mr.S.M.Katkar for respondent Nos.10 and 11.

Mr.S.D.Rupwate with Mr.Manoj Jadhav for respondent Nos.1,2
and 4

Mr.Nitesh Bhutekar for respondent Nos.5 and 6

Ms Uma Palsuledesai, AGP for respondent No.13

Ms Anita Murgude for respondent Nos.7,8 and 9.

**CORAM : DAMA SHESHADRI NAIDU, J.
DATE : NOVEMBER 21, 2019.**

ShubhaS.
Pathak
Digitally signed by
ShubhaS. Pathak
DN: cn=ShubhaS. Pathak,
email=shubha@pathak.in,
c=IN, o=ShubhaS. Pathak

P. C. :

The petitioner is a member of the People's Education Society, a Public Trust established by none other than Dr. Babasaheb Ambedkar. It was established in 1945. The Society is said to have functioned without a hitch until 2002. Thereafter, the members have, it seems, put their interests ahead of the Society's.

2. On 21st May 2007, the respondents 1 to 4 and 9, along with another person who is no more, were elected to the Governing Body. Thereafter, on 10th September 2007, they filed the Change Report No.3213. In November 2011, the petitioner and the 8th respondent were also elected. They too filed a change report. Ironically, the respondents 1 to 4 and 9 were part of the Governing Body that elected the petitioner and the eighth respondent. As it turns out, now the petitioner plays the Frankenstein, so to say.

3. But the Change Report, dated 10th September 2007, filed by the respondents 1, 4 to 9 was rejected by the Deputy Charity Commissioner. Aggrieved, those respondents filed the statutory Appeal No.3 of 2013 before the Joint Charity Commissioner, Mumbai, that is the 13th respondent. They invoked Section 70 of the Maharashtra Public Trust Act, 1950.

4. There are ten appellants and six respondents to the Appeal. Incidentally, the petitioner is also one of the appellants. In the pending appeal, the petitioner, a co-appellant, filed an application to place on record additional documentary evidence. For that, it seems, he has invoked sub-section (3) of Section 70 of the Act. On the merits, the Appellate Authority rejected the application, through order dated 14th August 2019. It is Exhibit-

M.

5. Then, aggrieved, the petitioner has filed this petition, invoking Article 226 of the Constitution of India. As is evident, it is a writ of *certiorari* besides being a writ of *mandamus* for a direction. The relief sought reads:

“(a) This Hon’ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction *for quashing and setting aside the impugned order dated 14th August 2019* passed by the Joint Charity Commissioner-II, Maharashtra State, Mumbai on Exh.42 in Appeal No.3 of 2013 (Exh.M);

(b) this Hon’ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Joint Charity Commissioner-II, Maharashtra State, Mumbai to permit the petitioner to lead additional evidence in terms of the Application for leading additional evidences (Exh.42) dated 30.1.2019;

(c) Pending hearing and final disposal of this petition, this Hon’ble Court may be pleased to stay the proceedings in Appeal No.3 of 2013 pending before the Joint Charity Commissioner-II, Maharashtra State, Mumbai;

(d) For ad-interim and interim reliefs in terms of prayer clause(c) as above;

(e) For costs of this Petition;

(f) For such further and other reliefs as the nature and circumstances of the case may require.”

Submissions:

Petitioner:

6. Shri Shrihari Aney, the learned Senior Counsel for the petitioner, submits that the petitioner wanted to bring on record vital later developments. So, the appellate

authority ought to have accepted the petitioner's application on that count. To elaborate, Shri Aney submits that it is never too late to bring on record any later developments if they affect the merits of the matter.

7. In this context, Shri Aney has drawn my attention to the Judgment of this Court in *People's Education Society v. Mansing S. Moray*¹. As Shri Aney has pointed out, this judgment, too, incidentally concerns the same Society. And in that case the Society was represented by its Deputy Chairman—that is, the person who is one of the respondents here and whose entry now the petitioner opposes. According to the learned Senior Counsel, the case before this Court stands squarely covered by that judgment. He has, therefore, urged this Court to allow the writ petition.

8. Shri Aney also submits that the additional evidence concerns the conduct of the respondents 1 to 4 and amply demonstrates how they are disentitled to be the members of the Society.

Respondents:

9. In response, Shri Rupwate, the learned counsel for respondents 1, 2, and 4, submits that the petitioner has no

¹ 2015 (6) Bom.C.R.786

locus to oppose the respondents' claim to be the office bearers for he himself is a co-appellant. He also contends that neither the petitioner nor any other member of the Society can set up an entirely different case in appeal and try to block the respondents' entry into the Society. In this context, Shri Rupwate has pointed out that as the petitioner is co-appellant, he could not—and must not—take a contrary stand to what he has pleaded in the appeal. He has also argued that the petitioner's legitimacy as a member of the Society depends on the respondents' standing in the Society, because they have elected him.

10. Shri Rupwate has also contended that the petitioner's approach under Article 226 is misconceived; instead, it should have been, if ever permissible, under Article 227 of the Constitution.

Reply:

11. In reply, Shri Aney, the learned Senior Counsel, submits that the petitioner has every *locus* as he is interested in the Society's welfare. He has also maintained that the petitioner's being a co-appellant hardly matters because he only intends to bring on record the later developments.

12. Heard Shri Shrihari Aney, the learned Senior Counsel for the petitioner; Shri Rupwate for the respondents 1, 2, and 4; Shri Bhutekar for the respondents 5 and 6; Ms. Murgude for the respondents 7, 8, and 9; and Shri Katkar for the respondents 10 and 11.

Discussion:

13. The issue lies in a narrow compass. Indisputably, the petitioner invoked Article 226 of the Constitution of India. Statutorily speaking, once a final order is passed, Section 70 of the Act provides for a first appeal on a substantial question of law. At an interlocutory stage, in a statutory appeal, the Joint Charity Commissioner, Mumbai, passed an order. And that order is challenged before this Court under Article 226 of the Constitution of India. What could have been an appropriate remedy for the petitioner was the question raised.

14. Instead, keeping aside the technical niceties, I reckon this writ petition may be considered on the merits.

15. If there are plaintiffs, they must have a unity of cause of action; they cannot have conflict among themselves. That is why this Court has developed a time-honoured practice not allowing each or groups of plaintiffs

to engage a different counsel. So should be the practice with the appellants, too. Of course, the defendants or the respondents can be a motley group with, even, conflicting interests. So each can engage a lawyer of his or her choice.

16. Here, the appellants have come together and filed the appeal, challenging the Deputy Charity Commissioner's order rejecting the Change report. According to all of them, the order is wrong and unsustainable: the respondent Nos.1 to 4 and 9 ought to have been accepted as members of the Governing Body.

17. Later much water has flowed. Disputes arose amongst the members and dissensions spread. Some appellants, now, oppose the very appeal they have filed—but they still remain the appellants, anyway. And the petitioner, one of the appellants, has gone one step ahead; he wanted to bring on record material that destroys the appeal, that negates his own solemn stand in the judicial proceedings.

18. In that event, I reckon, he ought to transpose himself as a respondent and, if possible, wriggle out of his previous pleadings, and then bring on record the material he now desires to rely on. In one word, the course of action

the petitioner has adopted is legally impermissible.

19. Even otherwise, a quasi-judicial appellate authority, with no inherent powers bestowed—as is the case with a civil court under Section 151 of CPC—can only examine the correctness of a primary authority’s decision. That examination is only on limited grounds. Plainly put, it can only examine the correctness of the impugned decision based on the material the primary authority initially considered. An order must sustain itself on the reasons it contains; fresh reasons cannot be supplied in the form of additional defence *lis pendens*.

20. Here, the primary authority has rejected the change report on a few grounds. The appellants, including the petitioner, have assailed those grounds. Now, the developments pending the appeal are said to have an impact on the appeal. And those developments—that is, later events—have the protentional, according to the petitioner, to destroy the appeal. Paradoxically, the petitioner is a co-appellant and still remains so.

21. Now, I may refer to the judgment the petitioner has relied on. A learned Single Judge of this Court in *Mansing S. Moray* has allowed the appellate forum to receive additional evidence. According to the petitioner, the power under Section 70 of the Act is wider than that under

Order 41 Rule 7 of CPC. There is no quarrel about that proposition of law.

22. Here, the Appellate Authority has exercised jurisdiction and has given reason for refusing to take additional evidence. This Court either under Article 226 or under Article 227 of the Constitution, exercising its revisional or supervisory jurisdiction, can only correct jurisdictional errors. And it will not, however, dilute the discretion exercised by a competent judicial forum on the mere premise that its view may better accord with the case. It is not a case of relative merits of personal views; it is a matter of error of law or perversity of adjudication. Neither is present here.

23. In these circumstances, I refuse to interfere with the impugned order. Writ Petition is dismissed with costs.

The petitioner is directed to pay costs of Rs.10,000/- (Rupees ten thousand only) to the Maharashtra Legal Services Authority in three weeks after the order is uploaded.

[DAMA SHESHADRI NAIDU, J.]