

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. NO. 4997/2019

(MAHABIRPRASAD TEKCHAND AGRAWAL & ANOTHER **VERSUS** GHANSHYAM BAKARAMJI
 BADWAIK & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri A.P. Thakare, counsel for petitioners.
 Shri S.D. Abhyankar, counsel for R-1.
 Shri A.M. Kadukar, A.G.P. for R-2 & 3.

CORAM : A.S. CHANDURKAR, J.

DATE : DECEMBER 13, 2019.

The challenge raised in this writ petition is to the order passed by the learned Joint Charity Commissioner in the proceedings under Section 70 of the Maharashtra Public Trusts Act, 1950 (for short, 'the said Act') thereby allowing the said appeal and setting aside the order passed by the learned Assistant Charity Commissioner accepting the change report in question.

The facts in brief are that it is the case of the petitioners who now represent the reporting trustee that a meeting of the Executive Committee of Puja Shikshan Sanstha, a public charitable trust was held in which resignation tendered by the respondent no.1 on 26.06.1994 came to be accepted. Pursuant to the acceptance of said resignation, Change Report No.59 of 1995 was filed by the reporting trustee. The respondent no.1 filed his objection and denied having tendered his resignation on 26.06.1994. It was his case that he had infact tendered his resignation on 26.06.1989 but the same had not been accepted. The said resignation letter had been misused by the petitioners. In the said change report proceedings the reporting trustee led evidence. No evidence was however led by the Objector and by the order dated 23.03.2015, the learned Assistant Charity

Commissioner accepted the said change report holding it to be legal and valid. The objector being aggrieved by the acceptance of the change report filed an appeal. The learned Joint Charity Commissioner recorded a finding that the resignation in question did not appear to have been tendered on 26.06.1994. The notice that was issued prior to holding of the meeting of the Executive Committee was also not valid having been issued by the Joint Secretary and the said notice was shown to have been sent under Certificate of Posting. On these counts, it was held that the change as reported was not legal and valid. The appeal was accordingly allowed and the change report came to be dismissed. Being aggrieved, the said order is challenged in the present writ petition.

Shri A.P. Thakare, learned counsel for the petitioners submitted that the respondent no.1 having tendered his resignation on 26.06.1994 and he not having disputed his signature thereon, the same was liable to have been accepted by the learned Joint Charity Commissioner. The respondent no.1 did not lead any evidence in the change report proceedings and therefore there was no reason to hold that the change as reported was not legal and valid. The meeting in question that was held on 16.08.1994 was pursuant to a valid notice issued to all the members. In that meeting, five members were present. Merely because the said notice was sent under Certificate of Posting it would not mean that such dispatch of notice was doubtful. Placing reliance on the decision in *Narayan Ganpat Bhoite Versus Smt.Rampyari Suchitram Gupta since deceased through heirs Hariprasad Surajbally Gupta & Others* [2001(3) Mh.L.J. 234] it was submitted that the learned Assistant Charity Commissioner rightly accepted the issuance and service of the notice dated 12.08.1994 convening the said meeting. It was then submitted that in absence of any

pleadings disputing the membership of the petitioner no.2 that aspect has been examined by the learned Joint Charity Commissioner. The Objector did not plead that the petitioner no.2 was a minor when he was shown as a member of the Executive Committee. He had been validly inducted as the Joint Secretary and in absence of any such objection, the learned Joint Charity Commissioner erred in recording a finding against the petitioners in that regard. He placed reliance on the decisions in *Kashi Nath (Dead) through LR's. Versus Jaganath* [(2003) 8 SCC 740], *Virendra Kashinath Ravat & Another Versus Vinayak N. Joshi & Others* [(1999) 1 SCC 47] and *Syndicate Bank & Another Versus Krishna & Others* [1990(1) BC 186] to submit that consideration of said aspect was not warranted. The learned Assistant Charity Commissioner having found the change as reported to be legal and valid, it was not permissible for the learned Joint Charity Commissioner to have reversed that order. The subsequent change reports filed by the petitioners had been accepted and therefore in the light of said aspect this Court ought to take said aspect into consideration and mould the relief accordingly. In that regard, he referred to the decision in *Jagatnarayansingh Swarupsingh Chithere & Others Versus Swarupsingh Education Society & Another* [1980 Mh.L.J. 372] and the judgment dated 22.06.2017 in **Second Appeal No.315 of 2009** [*Ghanshyamdas Sanghidas Panpalia Versus Dr.Rajaram Vithoba Kumbhalkar & Others*]. It was thus submitted that the order passed by the learned Joint Charity Commissioner was liable to be set aside.

On the other hand Shri S.D. Abhyankar, learned counsel for the respondent no.1 supported the impugned order. According to him, the burden to prove that the change as reported was legal and valid was on the reporting trustee. The Objector had

denied having tendered his resignation on 26.06.1994 and it was his case that though such resignation was tendered on 26.06.1989 it was never accepted. This stand was specifically taken in the objections as filed. The learned Joint Charity Commissioner on perusal of the said letter of resignation found that the year 1989 had been changed to 1994. The burden to prove service of the notice dated 12.08.1994 addressed to the respondent no.1 was on the reporting trustee. The notice convening that meeting was issued by the Joint Secretary who had no authority in that regard. That burden was not discharged. Moreover the said notice was sent under Certificate of Posting and the presumption under Section 27 of the Evidence Act, 1872 would not be applicable when such notice is sent under Certificate of Posting. It was further submitted that though the period of almost seven years was granted to the reporting trustees to lead evidence, short time was granted to the Objector and the Objector was precluded from leading evidence. The order passed by the learned Assistant Charity Commission in that regard had been challenged by filing a writ petition but as the change report proceedings were adjudicated said challenge was not entertained on merits. It was clear from the record that proper opportunity to the Objector had not been granted. It was also clear from the deposition of the reporting trustee that the petitioner no.2 was a minor when he was inducted as a Member of the Trust. It was open for the respondent no.1 to take advantage of such admission. It was thus submitted that as the change has not been found to be legal and valid, it was rightly not accepted by the learned Joint Charity Commissioner.

I have heard the learned counsel for the parties at length and with their assistance I have also perused the material placed on record. It is to be borne in mind that in exercise of the

writ jurisdiction it would not be permissible to re-appreciate the entire material on record as an Appellate Court while examining the challenge to the impugned order. The impugned order has been passed in exercise of appellate jurisdiction by the learned Joint Charity Commissioner. The change as reported by the reporting trustee was with regard to the acceptance of the resignation of the respondent no.1 and the post of Secretary being filled in thereafter. It has been found that the notice convening the meeting of the Executive Committee on 16.08.1994 was shown to have been issued on 12.08.1994. That notice was issued by the Joint Secretary when infact under the bye-laws of the Trust such notice was required to be issued by the Secretary. There is no explanation in that regard. Moreover, that notice was sent under Certificate of Posting. The learned Joint Charity Commissioner found that sending such notice under Certificate of Posting did not inspire any confidence and hence did not proceed to accept the same. According to the reporting trustee, the respondent no.1 had tendered his resignation on 26.06.1994. However, according to the Objector the date on the said letter of resignation was 26.06.1989 which was subsequently changed to 1994. The learned Joint Charity Commissioner on perusal of the said letter of resignation at Exhibit 4 noticed that the year 1989 had been scored off and it was substituted by the year 1994. In the cross-examination of the reporting trustee, it was admitted that the date of birth of his son who was shown to have been admitted as a Member of the Trust in 1988 was 11.05.1972. The petitioner no.2 who had also deposed in the said proceedings however admitted that his date of birth was 09.11.1974 and he was enrolled as a Member in the year 1987. It was thus held that as per provisions of the bye-laws the age of a Member ought to be 21 years and the petitioner no.2 when

inducted was below 21 years. He was thereafter shown as the Joint Secretary. It is on account of these factors that the learned Joint Charity Commissioner refused to accept the change as reported to be legal and valid.

It is found that the learned Joint Charity Commissioner has taken into consideration all the material available on record while refusing to accept the change as reported. Though it is true that the Objector did not examine himself, the burden was on the reported trustee to prove that the change in question was legal and valid. On appreciation of the material on record in exercise of appellate jurisdiction it is found that a possible view of the matter has been taken by the learned Joint Charity Commissioner. Though it was urged on behalf of the petitioners that there were no pleadings raising any objection to the membership of the petitioner no.2, the admission in the cross-examination of the reporting trustee about the date of birth of the petitioner no.2 was sufficient to hold that when he was enrolled as a Member in the year 1987 he was a minor. Coupled with the fact that the notices dated 01.07.1994 and 12.08.1994 were required to be issued by the Secretary of the Trust, the same were issued by the Joint Secretary who was not empowered to do so. This fact was also admitted by the reporting trustee in his cross-examination.

It is thus found that in the light of the aforesaid material on record, the change as reported is not found to be legal and valid. It would not be permissible to again re-appreciate the entire material to upset the aforesaid findings recorded in exercise of the appellate jurisdiction. I do not find any jurisdictional error committed by the learned Assistant Charity Commissioner while recording a finding that the change in question was not legal and valid. In these facts therefore the ratio of the decisions relied upon

by the learned counsel for the petitioners do not support his contentions. In that view of the matter, the Writ Petition stands dismissed. No costs.

At this stage, the learned counsel for the petitioners submits that the interim order operating in the writ petition be continued for a period of six weeks. This request is opposed by the learned counsel for the respondent no.1. Considering the fact that the interim order was operating since 12.07.2019 it shall continue to operate for a period of six weeks from today and shall cease to operate automatically thereafter.

Order accordingly.

JUDGE

APTE