

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.8619 OF 2018

Dhananjay Balwant Pande, Hanuman Mandir, Dharampeth, Nagpur

-vs-

Mukesh Mahavirprasad Khare, Hanuman Mandir Lane-2, Dharampeth, Nagpur and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. D. Abhyankar, Advocate for petitioner.
Shri Amol Bhise, Advocate for respondent No.1.
Shri A. Balpande, Assistant Government Pleader for
respondent No.2.

CORAM : A.S.CHANDURKAR, J.

DATE : July 08, 2019

An order passed by the learned Joint Charity Commissioner condoning delay in filing Change Report proceedings by the respondent No.1 is under challenge.

2. Shri S. D. Abhyankar, learned counsel for the petitioner submitted in view of the order passed under Section 41-D of the Maharashtra Public Trusts Act, 1950 (for short, the said Act), two Trustees came to be removed with a direction to fill in those vacancies and filing a Change Report. Though the said order was passed on 02/07/2015 the election in question was conducted only on 24/01/2016 and the Change Report in that regard was filed on 06/08/2016 with a delay of almost 300 days. According to him in the application for condonation of delay no sufficient

cause was shown by the respondent No.1. Similarly, though the petitioner relied upon various decisions while opposing the prayer for condonation of delay the same had not been considered by the learned Deputy Charity Commissioner. He placed reliance on the decision in Writ Petition No.6078 of 2015 (*Andeo Vithoba Dongre and anr. vs. The Deputy Charity Commissioner and anr.*) decided on 10/02/2017 and submitted that the impugned order was liable to be set aside.

3. Shri A. Bhise, learned counsel for the respondent No.1 supported the impugned order. According to him two Trustees who were removed by order dated 02/07/2015 had filed an appeal and Writ Petition No.5354 of 2015 in that regard was also pending. Since the respondent No.1 was awaiting the outcome of those proceedings, the delay was caused.

4. On hearing the learned counsel for the parties it is seen that the order directing removal of two Trustees and thereafter the direction to fill in the vacancies was given on 02/07/2015. The Trustees removed had challenged that order and the challenge in that regard is stated to be pending. Though it is submitted by the learned counsel for the petitioner that the said order passed under Section 41-D of the said Act was not stayed, the fact remains that the Trustees removed had challenged the said order. It is to be noted that the proceedings pertain to the report with

regard to change that is alleged to have taken place. The learned Deputy Charity Commissioner while condoning the delay has imposed costs of Rs.1000/- on the respondent No.1. Considering the facts that have come on record especially in view of challenge to the order dated 02/07/2015, it cannot be said that the learned Authority committed an error in condoning the delay. The ratio of the decision relied upon by the learned counsel for the petitioner indicates sufficient cause being required to be shown in such regard. In the facts of the case as the order dated 02/07/2015 was subjected to challenge at the instance of other Trustees, it cannot be said that the delay caused was deliberate.

5. In that view of the matter by permitting the parties to contest the proceedings on merits, the Writ Petition stands dismissed with no order as to costs.

It is however clarified that the impugned order would not cause prejudice to the rights of the petitioner while pursuing the proceedings under Section 47-A of the said Act.

JUDGE