

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

WRIT PETITION NO. 15157 OF 2019

Manmatppa s/o Pandubappa Lokhande
Age 86 years, Occ : Business,
R/o Subhash Chowk, Latur.

..PETITIONER
[Ori.Res.No.1]

VERSUS

1] Shri Sambhappa Trimbakappa Girwalkar
Age 86 years, Occu : Agri,
R/o Shivchaya, Mitra Nagar, Latur,
Tq. and Dist.latur.

2] The Assistant Charity Commissioner
Latur.

3] The Deputy Charity Commissioner
Latur.

4] The In-charge Joint Charity Commissioner
Latur.

..RESPONDENTS

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Mr. R.N.Dhorde, Senior Advocate i/b V.R.Dhorde, Advocate for petitioner.
Mr. R.S.Deshmukh, Senior Advocate i/b Mr.S.V.Natu for respondent no.1.
Mr. S.N.Morampalle, A.G.P. for Respondent State.

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CORAM : MANGESH S. PATIL, J.
DATE : 14.12.2020

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2] The petitioner who is respondent no.1 in Transfer Application No.145/2019 before the respondent no.4 Joint Charity Commissioner is impugning the order passed by the latter, allowing the application of the respondent no.1 preferred under Rule 36(iii) of the Re-framed Maharashtra Public Trust Act, 1951 and directing the Change Report Enquiry No.1420/2019 filed under Section 22 of the Maharashtra Public Trust Act pending on the file of the learned Deputy Charity Commissioner, Latur to the learned Deputy Charity Commissioner, Beed for disposal in accordance with law.

3] The learned Senior advocate Mr.R.N.Dhorde submits that a Change Report filed before the appropriate forum having the jurisdiction has been directed to be transferred to a different place without there being cogent and sufficient reasons. Even if the matter was to be transferred from that particular Officer it could have been transferred to several other Officers stationed and posted at Latur. No reason is assigned by the learned Joint Charity Commissioner respondent no.4 as to why instead of transferring the matter to some other Officer at Latur it should be transferred to Beed. The order therefore is illegal for this reason alone.

4] The learned Senior advocate Mr.Dhorde would then submit that the learned Joint Charity Commissioner has passed the impugned order in haste and without giving any opportunity to the petitioner to contest the proceeding. He would submit that the respondent no.4 Joint Charity Commissioner was predetermined to allow the transfer of the Enquiry. An

erroneous observation touching the facts has also been made in the impugned order. It was the Assistant Charity Commissioner who had conducted the elections on 5/5/2019 but erroneously the learned Joint Charity Commissioner has observed that it was held by the Deputy Charity Commissioner at Latur. He would then submit that since in the election the faction of which the petitioner is a member has been elected and the Change Report has been filed wherein the order has been passed for provisionally accepting the Change Report, with an ulterior motive to protract its final decision, the respondent no.1 had applied for transfer of the Enquiry.

5] The learned Senior advocate Mr.Dhorde would then submit that in another proceeding the petitioner had filed a Transfer Petition seeking transfer of one Enquiry pending on the file of the respondent no.4 to some other Joint Charity Commissioner. Since that proceeding was pending before the Charity Commissioner at Mumbai, the learned Joint Charity Commissioner was requested to defer decision on the present Transfer Application. In disregard to such request the impugned order has been passed which smacks of impropriety. Mr.R.N.Dhorde, therefore submits that the impugned order having been passed in a haste, without there being any ground for transfer that too to a different place is grossly erroneous and may be quashed and set aside.

6] The learned Senior advocate Mr.Deshmukh for respondent no.1 at the outset submits that there is no violation of principles of natural justice in passing the impugned order. An opportunity was extended to the petitioner who filed his Written Statement. Arguments of his learned advocate were also heard by learned Joint Charity Commissioner before passing the impugned

order and therefore it cannot be said that the order was passed in undesirable haste.

7] So far as propriety of transferring the Enquiry to the Officer at Beed is concerned, the learned Senior advocate Mr.Deshmukh would point out that in the Transfer Petition filed by the respondent no.1 no such request was made to transfer the Enquiry to Beed. Therefore, he cannot comment on that aspect.

8] As far as merits are concerned, he would submit that though the petitioner had sought for transfer of a proceeding from the respondent no.4 Joint Charity Commissioner which was pending before the Charity Commissioner, Mumbai, it was a different Enquiry. No such a request was made in respect of the present Enquiry and the Transfer Petition that was being entertained by the respondent no.4.

9] The learned Senior advocate Mr.Deshmukh would then submit that the respondent no.1 was genuinely having some apprehension in respect of the impartiality of concerned Assistant Charity Commissioner and the basis was not illfounded. When earlier, a Change Report No.5548/2018 was filed by the petitioner, it was provisionally accepted by the concerned Assistant Charity Commissioner within a day without issuing any notice to the respondent no.1. It is further submitted that in Writ Petition No.8593/2018 pending before this Court a serious dispute was raised as regards the manner in which the election pertaining to the earlier Change Report. In spite of being aware about such a serious challenge to the earlier Change Report, the learned Assistant Charity Commissioner ought not to have provisionally accepted the Change Report filed by the petitioner. This conduct on the part of the learned Assistant

Charity Commissioner was sufficient to create doubt in the mind of the respondent no.1 about ability of the learned Assistant Charity Commissioner to decide the Change Report in a fair manner. He would lastly submit that since the Enquiry would now be held by a different Officer at Beed, no prejudice is likely to be caused to the petitioner and the petition be dismissed.

10] I have carefully gone through the papers. It is a matter of record that the contesting parties are at logger-heads and embroiled in bitter fight for holding reins of a Charitable Trust engaged in education.

11] Be that as it may, suffice to note that the respondent no.1 was entertaining an apprehension that the enquiry into the Change Report filed by the petitioner is not likely to be decided impartially. To substantiate his such apprehension, it was pointed out that though the contesting parties were before this Court in Writ Petition No.8593/2018 and fighting tooth and nail and the Change Report was filed pursuant to a direction passed therein for holding election to be conducted by appointing an Assistant Charity Commissioner, still the learned Assistant Charity Commissioner provisionally accepted the Change Report ex parte and it is thereafter that he directed a notice to the respondent no.1. As can be seen, the learned Assistant Charity Commissioner was aware about seriousness of a contest between the rival parties. It is not a matter of illegality or otherwise but certainly it was a matter of propriety. If the Officer concerned was aware about the serious dispute going on between the parties, even if the law permits him under Section 22A of the Maharashtra Public Trust Act, he should have taken care to let the respondent no.1 to appear and contest it. His failure to adopt such a course has given rise to a doubt in the mind of the respondent as to if the self-

same Officer would decide the Enquiry in a fair manner. Obviously, transfer of a proceeding is a serious matter as it has a tendency to create a doubt about the ability of an Officer to decide the proceeding judiciously. This circumstance is indicative of the fact that there was a genuine reason for the respondent no.1 to entertain a doubt. If such is the state of affair, one cannot take exception to the order passed by the learned Joint Charity Commissioner in transferring the matter.

12] It is pertinent to note that though the petitioner is now making a grievance that the impugned order has been passed in a haste, an opportunity was extended to him to file his Written Statement or to make submissions. Both of which he did. Therefore, it cannot be said that the matter was decided hurriedly by the respondent no.4 Joint Charity Commissioner.

13] Pertinently, though the petitioner has filed a proceeding for transfer of a matter pending before the respondent no.4 Joint Charity Commissioner to a different Officer and which is pending before the Charity Commissioner, Mumbai, no such grievance was ever made as far as the present Transfer Petition is concerned. Therefore, when the petitioner has availed of the opportunity of filing Written Statement opposing the request for transfer of the Enquiry and even was extended an opportunity of being heard through his advocate, when he has taken a chance before learned Joint Charity Commissioner to get decided the Petition, he cannot now be heard for not getting any opportunity of being heard. The submissions of his learned advocate on this count are not tenable.

14] As far as transfer of the proceeding to an Officer at Beed is concerned,

true it is that the learned Joint Charity Commissioner has not spelt out any reason in the impugned order in this regard. However, since the office of the Assistant Charity Commissioner and Deputy Charity Commissioner, Beed come under Latur region, perhaps it seems that the learned Joint Charity Commissioner has chosen to transfer the Enquiry from Latur to Beed.

15] Though there is no specific reference it also appears that since the election regarding which the Change Report has been filed has been conducted through an Assistant Charity Commissioner from Latur perhaps without expressing it in so many words, the learned Joint Charity Commissioner seems to have thought it fit to transfer the Enquiry to Beed to avoid any further dispute of a similar kind. Taking into account all the above facts and circumstances, in my considered view, when the impugned order takes a plausible view of the matter, this Court cannot intervene in exercise of writ jurisdiction.

16] The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.]

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