

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.80 OF 2020

Maharashtra Amateur Athletic Association and Ors.	...	Petitioners
versus		
State of Maharashtra and Ors.	...	Respondents

WITH
WRIT PETITION NO.121 OF 2020

Thane District Amateur Athletic Association	...	Petitioner
versus		
The State of Maharashtra and Ors.	...	Respondents

WITH
WRIT PETITION NO.122 OF 2020

Sangli District Amateur Athletic Association	...	Petitioner
versus		
The State of Maharashtra and Ors.	...	Respondents

WITH
WRIT PETITION NO.384 OF 2020

Raigad District Athletics Association	...	Petitioner
versus		
The State of Maharashtra and Ors.	...	Respondents

WITH
WRIT PETITION (ST) NO.449 OF 2020

Pune District Amateur Athletic Association	...	Petitioner
versus		
The State of Maharashtra and Ors.	...	Respondents

WITH
INTERIM APPLICATION NO.01 OF 2020
IN
WRIT PETITION (ST) NO.449 OF 2020

Shri Nilakhanth Ambadas Gurav ... Applicant

In the matter Between :-

Pune District Amateur Athletic Association ... Petitioner

versus

The State of Maharashtra and Ors. ... Respondents

WITH

WRIT PETITION (ST) NO.533 OF 2020

Nashik District Athletic Association ... Petitioner

versus

The State of Maharashtra and Ors. ... Respondents

Mr.Rajesh Datar with Mr.Manish Kelkar
and Akshay Kandarkar for the Petitioner
in WP/80/2020.

Mr.Pralhad D. Paranjape for the Petitioner
in WP/121/2020, WP/122/2020,
WP/384/2020, WPST/449/2020 and
WPST/533/2020.

Mr.Vaibhav Sugdare-'A' Panel Counsel
with Mr.Y.D. Patil-AGP for Respondent
Nos.1 and 2 (State) in all the Writ
Petitions.

Mr.T.D.Deshmukh for Respondent Nos.4
and 6 in WP/80/2020.

Mr.Dilip Bodake for Respondent Nos.5, 7
and 8 in WP/80/2020.

**CORAM :- S. C. DHARMADHIKARI &
R.I.CHAGLA, JJ.**

DATE :- JANUARY 24, 2020

P.C. :-

1. After hearing both sides and perusing the petitions and annexures thereto, affidavits filed on record so also the ad-interim order, we are of the firm opinion that this is no way of deciding a change report.

2. It is clear that the Maharashtra Amateur Athletic Association, Pune is the Trust concerned. The persons claiming to be the trustees of this Trust filed the report and that is styled as a change report. On that, the Deputy Charity Commissioner was obliged to hold an inquiry. That inquiry should have resulted in a conclusive finding on the legality and validity of the change. What the Deputy Charity Commissioner has, on purported request of parties, taken on record is the report of change, the objections thereto and an application under Section 41A of the Maharashtra Public Trusts Act, 1950 seeking a direction to hold election. Thus, the orders which are impugned in these petitions are passed on 22nd August, 2019. In passing them, one finds that the inquiry report has been kept aside and miscellaneous applications and objections to the change report, though on record, the Deputy Charity Commissioner purported to invoke his powers under Section 41A of the Maharashtra Public Trusts Act, 1950. He passed an order and which order says that the change report is rejected. However, the persons reporting the change shall act as *de facto* trustees. In other words, they are caretaker trustees, according to the Deputy Charity Commissioner. Thereafter, he proceeds to appoint an inspector working in the office, Smt.Ragini Khadake as the Returning Officer. The Returning Officer was directed to hold election as per the

Constitution of the Trust. The Returning Officer was directed to complete the process of election within three months. The *de facto* trustees were directed to go on with day-to-day affairs, but were not allowed to take any policy decision. Thereafter, they have to abide by the results of the election. There are ancillary directions issued.

3. We do not think that even with consent of all parties, the inquiry into the change and the proceedings in that behalf could have been concluded in this manner. The Deputy Charity Commissioner, in the peculiar facts and circumstances, was obliged to hold an inquiry in terms of Section 22. Section 22 reads as under:-

22. (1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

Provided that, the Deputy or Assistant Charity Commissioner may extend the period of ninety days for reporting the change on being satisfied that there was a sufficient cause for not reporting the change within the stipulated period subject to payment of costs by the reporting trustee, which shall be credited to the Public Trust Administration Fund.

(1A) Where the change to be reported under sub-section (1) relates to any immovable property, the trustee shall,

along with the report, furnish a memorandum in the prescribed form containing the particulars (including the name and description of the public trust) relating to any change in the immovable property of such public trust, for forwarding it to the Sub-Registrar referred to in sub-section (7) of section 18.

Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf.

(2) For the purpose of verifying the correctness of the entries in the register kept under section 17 or 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.

Provided that, in the case of change in the names and addresses of the trustees and the managers or the mode of succession to the office of the trusteeship and managership, the Deputy or Assistant Charity Commissioner may pass order provisionally accepting the change within period of fifteen working days and issue a notice inviting objections to such change within thirty days from the date of publication of such notice;

Provided further that, if no objections are received within the said period of thirty days, the order accepting the change provisionally under the first proviso shall become final and entry thereof shall be taken in the register kept under section 17 in the prescribed manner;

Provided also that, if objections are received within the said period of thirty days, the Deputy or Assistant Charity Commissioner may hold an enquiry in the prescribed manner and record a finding, as provided by sub-section (3) of this section, within three months from the date of filing objections.

(3) If the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a report under sub-section (1) and holding an inquiry, if necessary under sub-section (2), or merely after holding an inquiry under the said sub-section (2), is satisfied that a change has occurred in any of the entries recorded in the register kept under section 17 in regard to a particular public trust, or that the trust should be removed from the register by reason of the change, resulting in both

the office of the administration of the trust and the whole of the trust property ceasing to be situated in the State, he shall record a finding with the reasons therefor to that effect, and if he is not so satisfied, he shall record a finding with reasons therefor accordingly. Any such finding shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall amend or delete the entries in the said register in accordance with the finding which requires an amendment or deletion of entries and if appeal or applications were made against such finding, in accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made subject to any further amendment on occurrence of a change or any cancellation of entries, shall be final and conclusive.

(3A) The Deputy or Assistant Charity Commissioner may, after such detailed and impartial inquiry and following such procedure as may be prescribed, de-register the trust on the following grounds :-

- (a) when its purpose is completely fulfilled; or
- (b) when its purpose becomes unlawful; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked; or
- (e) when the trustees are found not doing any act for fulfilling object of the trust:

Provided that, no trust shall be de-registered under clause (e) unless its trustees have committed default in reporting the change under sub-section (1), in submission of the audited accounts as prescribed by sub-section (2) of section 33 or sub-section (1A) of section 34 or in making any other compliance prescribed by or under this Act for a period of five years from the last date of reporting the change, submission of the accounts or making the compliance, as prescribed by or under this Act or the rules made thereunder, as the case may be.

(3B) The Deputy or Assistant Charity Commissioner may take over the management of properties of the trust

de-registered under sub-section (3A) and pass such necessary orders for the same as he deems fit and may, if he considers it expedient, dispose them of by sale or otherwise and deposit the sale proceeds in the Public Trusts Administration Fund established under section 57.

(4) Whenever an entry is amended or the trust is removed from the register under sub-section (3), the Deputy or Assistant Charity Commissioner, as the case may be, shall forward the memorandum furnished to him under sub-section (1A), after certifying the amended entry or the removal of the trust from the register to the Sub-Registrar referred to in sub-section (7) of section 18, for the purpose of filing in Book No.I under section 89 of the Indian Registration Act, 1908, in its application to the State of Maharashtra.”

4. A perusal of Section 22 leaves us in no manner of doubt that the Deputy Charity Commissioner ought to make the necessary inquiry. What sub-section (1) of Section 22 says is that where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Then, there is an amendment by which sub-section (1A) is added. Sub-section (2) says in clearest terms that for the purpose of verifying the correctness of the entries in the register kept under section 17 or 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. The proviso takes care of the objections that may be received and thereafter, sub-sections (3) and (3A) follow. In fact, sub-sections (3A) and (3B) were inserted by the Maharashtra Act No.9 of 2016 with some purpose. It was found prior to such amendment that despite the other sub-sections being clear, the Deputy Charity Commissioners were not performing their duties. The reports of change were pending and for decades together. Once the Charity Commissioner has to exercise powers and in terms of sub-sections 3 and 3A, we do not think that the change report could have been decided in a perfunctory manner, much less by consent of parties. The parties to such proceedings may not desire elaborate inquiry. They may not want a detailed procedure to be gone through, but, surely, the Charity Commissioner/Deputy Charity Commissioner cannot assist them by suggesting short-cuts or by suggesting methods, which create further complications and result in nothing, but endless litigation. The Deputy Charity Commissioner would be well advised not to take recourse to such short-cuts for he has caused complications by his directions and a Division Bench of this Court had to take up these matters out of turn.

5. We, therefore, quash and set aside all the orders passed on these applications made before the Deputy Charity Commissioner. We direct him to proceed with the inquiry in terms of Section 22 and conclude it as expeditiously as possible and, in any event, by 30th April, 2020.

6. The writ petitions stand disposed of accordingly. There would be no order as to costs.

7. In the light of the disposal of the writ petitions, interim application No.1 of 2020 in Writ Petition (St) No.449 of 2020 does not survive and stands disposed of accordingly.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)