

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

Writ Petition No. 4885 of 2018
Chandrashekhar Maraskolhe & Anr. Vs. Devidas Tikhat and Anr.

WITH

Writ Petition No. 1055 of 2019
Chandrashekhar Maraskolhe and Anr. Vs. Devidas Tikhat and Anr.

WITH

Writ Petition No. 1058 of 2019
Chandrashekhar Maraskolhe and Anr. Vs. Devidas Tikhat and Anr.

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

Court's or Judge's orders

In all the petitions -

Mr. S.D. Chande, Advocate for the petitioners
Mr. A.J. Gilda, Advocate for the respondent No.1.
Mrs. Mrunal Naik, AGP for the respondent No.2.

CORAM : MANISH PITALE, J.

DATED : FEBRUARY 13, 2020

By these three writ petitions, the petitioners have challenged common judgment and order dated 10th January 2018, passed by the Joint Charity Commissioner, Nagpur, whereby appeals filed by the respondent No.1 in these writ petitions stood allowed. The orders passed by the Assistant Charity Commissioner on Change Report Enquiry Nos. 371/1999, 1100/1999 and 335/2005, were quashed and set aside and all Change Reports were remanded to the Assistant Charity Commissioner for deciding afresh.

2. The Assistant Charity Commissioner had passed separate orders on 15/10/2016, in the said Change Reports, which were made subject matter of challenge in the said appeals before the Joint Charity Commissioner. Sequence of events in the present case clearly indicate that decision in Change Report Enquiry No.371/1999, has a direct bearing on the fate of subsequent Change Report Enquiry Nos.1100/1999 and 335/2005, which pertained to elections held in the years 1999 and 2005, pursuant to notices for such elections issued by the respondent No.1. The question that falls for consideration in the subsequent Change Reports is, as to whether the respondent No.1 herein had any authority to issue such notices for holding elections of the concerned Sanstha i.e. “Adiwasi Yuva Nagarik Jankalyan Gramin Vikas Bahu-Uddeshiya Sanstha, Umrer, District Nagpur”.

3. By order dated 15/10/2016, the Assistant Charity Commissioner, rejected the Change Report Enquiry No.371/1999 on the basis of material available on record. The backdrop of the said order is that it was a second round before the said authority pursuant to order passed by this Court in the year 2002. On the basis of oral and documentary evidence and material on record, by order dated 15/10/2016, the Assistant Charity Commissioner, rejected the Change Report bearing No.371/1999. The respondent No.1 was

aggrieved by the said order passed by the Assistant Charity Commissioner and accordingly, appeal was filed before the Joint Charity Commissioner. As noted above, on the same date, i.e. on 15/10/2016, the Assistant Charity Commissioner passed separate orders in Change Report Enquiry Nos.1100/1999 and 335/2005, rejecting said Change Reports. Since the respondent No.1 was aggrieved by the same, appeals were also filed challenging the said orders passed by the Assistant Charity Commissioner.

4. The Joint Charity Commissioner, by common impugned judgment and order allowed the appeals and as noted above, remanded the matters back to the Assistant Charity Commissioner for decision afresh.

5. The present writ petitions are filed challenging the said common judgment and order. The learned counsel appearing for the petitioners in these writ petitions submitted that while remanding the matter in so far as Change Report Enquiry No. 371/1999, the Joint Charity Commissioner had committed serious error by recording that objectors had not entered the witness box. Attention was invited to to the evidence of such objectors recorded before the Assistant Charity Commissioner, including their cross-examination and it was submitted that the observations made by the Joint Charity Commissioner

were not sustainable. It was further submitted that the Joint Charity Commissioner was not justified in holding that since the parties had created confusion and mess as regards their stand before the Assistant Charity Commissioner, a fresh enquiry was warranted. On this basis, it was submitted that order of remand in Change Report Enquiry No. 371/1999, was not justified. It was further submitted that the contentions of the parties in subsequent Change Report Enquiry Nos.1100/1999 and 335/2005, were not considered by the Joint Charity Commissioner as it was found that these Change Reports were contingent upon the decision in Change Report Enquiry No.371/1999 and on this basis, the matters were remanded in so far as the subsequent Change Reports were also concerned. On this basis, it was submitted that the impugned judgment and orders were not sustainable on the basis of material available on record of the Joint Charity Commissioner.

6. On the other hand, the learned counsel appearing for the contesting respondent No.1 submitted that a perusal of nature of evidence of the objectors before the Assistant Charity Commissioner demonstrated that there was utter confusion as regards their stated stand before the said authority and the manner in which their evidence was recorded. On this basis, it was submitted that the order of remand passed by the Joint Charity Commissioner was justified as

regards Change Report Enquiry No. 371/1999. It was pointed that, in any case, at least in so far as Change Report Enquiry No.335/2005 is concerned, admittedly, there was no evidence recorded before the Assistant Charity Commissioner and, therefore, order of remand in so far as the said Change report was concerned was clearly justified. It was submitted that since the impugned order was a common order of remand, it would be in the interest of justice that the impugned judgment and orders were not interfered with and the writ petitions may be dismissed.

7. The learned AGP has appeared on behalf of formal respondent No.2 in these writ petitions.

8. Since the impugned judgment and order is an order of remand and there cannot be two opinions about the fact that the most crucial change report proceedings is the said Change Report Enquiry No. 371/1999, it needs to be appreciated as to what promoted the Joint Charity Commissioner in the impugned judgment and order to direct that fresh enquiry be conducted by the Assistant Charity Commissioner upon remand of the proceedings. The reasoning in the impugned judgment and order is found in paragraph No.11, which reads as follows :

“11. On perusal of the contents of all appeals, change reports in question and submissions made by learned counsel appearing on behalf of rival parties, it is seen that change report Inquiry

No.371/1999 was filed by the original Reporting Trustee Shri Gopalrao Maraskholhe for reporting the deletion of 8 members of old managing committee and addition of 7 members of new managing committee in pursuance of resolution passed in the meeting held on 20.12.1998 along with consent letter of incoming trustees, no-objection letter of outgoing trustees, copy of notice dated 2.12.1998 and copy of minutes of meeting dated 20.12.1998. In support of his change report, he examined himself on 1.12.1999 Exh.34 by entering into witness box before the lower authority.

It is seen that the Respondents / objectors Pundlik Madavi, Chandrashekhar Maraskhole, Sarla Maraskolhe, Kanaiya Madavi filed an affidavit in support of change report in question at Exh.11 to Exh.14. It is also seen that the objectors Pundlik Madavi, Chandrashekhar Maraskolhe and Sarla Maraskolhe did not file counter affidavit to the affidavits which were filed in support of change report in question.

It is also seen that after remand the matter to the lower authority by the order of Hon'ble High Court of Judicature at Bombay, Nagpur Bench Nagpur dated 7.6.2002 for fresh inquiry, the original Reporting Trustee Gopalrao Maraskolhe raised objection to the proceeding of change reports with hands of Devidas Thikhat on 19.6.2015. It is seen that though the original Reporting Trustee raised objection against the change report in question, but he did not enter into the witness box in support of his contention. It is also seen that the objectors Pundlik Madavi, Chandrashekhar Maraskolhe and Sarla Maraskolhe did not enter into witness box as opponent in change report in question nor offered

themselves to be cross-examined by the other side. It is also seen that in change report Inquiry No. 1100/1999, Respondent No.2 / original objector, Manjulabai Uikey did not enter into witness box to prove her objection. I find much substance in the contention raised by the learned counsel appearing on behalf of the appellant who relied on the judgment given in case Martand Vs. Radhabai (A.I.R. 1931 Bombay 97), wherein, the Hon'ble Supreme Court held that it is the boundant duty of party personally knowing the facts and circumstances, must give evidence on his own behalf and submit to cross-examination and his non-appearance as witness would be the strongest possible circumstance which will go to discredit the truth of his case. This ratio is squarely applicable to the present case. After considering all material on record i.e. oral as well as documentary adduced by the parties, I find that both the parties created mess and confusion while dealing with change reports in hand. I have already discussed above that in what manner both the parties i.e. original reporting trustee and respondents / original objectors frequently changed their position about the legally and validity of change report in question. In view of conflicting evidence given on behalf of original reporting Trustee and on behalf of objectors, it has become difficult to conclude as to what contesting party intended to seek decision in impugned change reports. It is seen that original Reporting trustee Gopalrao Maraskolhe himself changed the position by first giving evidence in support of change report No.371/99 and after remand the matter to the lower authority fresh inquiry by the Hon'ble High Court vide order dated 7.6.2002, he totally changed his position by raising objection to the change report proceeding in question at Exh.102

that the change reported in impugned change report is illegal. I find that the lower authority was expected to seek clarification from the contesting parties why they changed their position frequently creating total mess and confusion in the proceeding. After going through the order passed by the lower authority in change report inquiry No. 371/1999, I find that there is absolutely no proper reasoning given by the lower authority for rejecting the change report without seeking any proper explanation from the parties concerned. The record shows that original Reporting Trustee Gopalrao Maraskholhe stated on oath that the change report filed by him is legal. It is also seen that substituted Reporting Trustee Devidas Thikhat gave his evidence on affidavit and by entering into witness box that the change report filed by the original Reporting Trustee Gopalrao Maraskholhe is legal and correct. Three objectors filed pursis on 7.4.2016 at Exh.115 that the evidence of objectors recorded earlier be read as their evidence. It is also seen that the deposition sheet of these three objectors namely Chandrashekhar Maraskholhe, Sarla Maraskholhe and Pundlik Madavi show that they were examined by Reporting Trustee. However, the facts are not clear as whether Reporting Trustee has examined the objectors as his own witness or objectors gave their independent evidence. This fact should have been cleared by the objectors in the pursis itself. The record further shows that while recording the evidence of objector Chandrashekhar J. Maraskholhe, the name of counsel is Adv. Shri Thengre who is counsel for Reporting Trustee from the record, while Adv. Shri Shambharkar is the counsel for objectors. The evidence of objector Sarla Maraskholhe shows that her examination-in-chief was conducted by counsel Shri Thengre and cross-examination

was conducted by learned counsel Shri Shambharkar for objectors. Similarly, the evidence of objector Pundlik Vithobaji Madavi shows that his examination-in-chief was conducted by Adv. Shri Thengre and cross-examination by Adv. Shambharkar appearing on behalf of objectors. This position is also very confusing. There is absolutely no clarification of this position in the order passed by the lower authority. I find that considering the mess and the confusion are created by the parties in the proceeding, the lower authority should have conducted denovo inquiry by giving full opportunity to both parties for leading their evidence properly. It is unfortunate that the circumstance in this case against require denovo inquiry in view of the fact that mess and confusion are created by the parties and in absence of clarification from the parties by the lower authority in the proceeding, it is necessary and justify to remand the matter to lower authority for fresh inquiry.”

9. According to the Joint Charity Commissioner, the parties had created confusion and mess, due to the manner in which they had shifted their stands, as also the manner in which the evidence of the parties was recorded. A particular observation of the Joint Charity Commissioner in above quoted paragraph to the effect that the objector never entered the witness box is not borne out by the record at all. As regards the purported confusion and mess created by the parties, the Assistant Charity Commissioner, despite such confusion and mess allegedly created by the parties, had come to specific findings while rejecting the Change Report Enquiry No.371/1999.

Since the oral and documentary evidence led by the parties was filed on record before the Joint Charity Commissioner, there was no reason for the said authority to have held that it was not possible to arrive at conclusion as to whether the findings rendered by the Assistant Charity Commissioner were justified or not. All that the Joint Charity Commissioner as an appellate authority was required to consider was to examine the findings rendered by the Assistant Charity Commissioner in order dated 15/10/2016, pertaining to Change Report Enquiry No. 371/1999, on the basis of evidence and material on record. The reasoning given for remanding proceedings in so far as Change Report Enquiry No. 371/1999, is concerned is found not to be sustainable by this Court. Therefore, to that extent the impugned judgment and order is not sustainable.

10. As regards subsequent Change Report Enquiry Nos.1100/1999 and 335/2005, pertaining to elections held in the years 1999 and 2005, the Joint Charity Commissioner has not given any findings at all. The said authorities proceeded on the basis that since fate of the said subsequent change report enquiries depend upon decision in the earlier Change Report Enquiry No.371/1999, the matters were required to be remanded in so far as subsequent change reports were concerned. Therefore, there is no finding either way by the Joint Charity Commissioner regarding the basis for

remanding the proceedings in subsequent change report of the years 1999 and 2005.

11. In this situation, this Court is of the opinion that the approach adopted by the Joint Charity Commissioner, while passing common impugned judgment and order was not in consonance with law. Consequently, the impugned judgment and order deserves to be interfered with. But, at the same time, it needs to be appreciated that the Joint Charity Commissioner as an Appellate Authority needs to decide appeals filed by the respondent No.1 on merits and, therefore, the present writ petitions can only be partly allowed.

12. In view of above, the writ petitions are disposed of in the following manner :

A) Writ Petition Nos.4885/2018, 1055/2019 and 1058/2019, are partly allowed.

B) The impugned common judgment and order passed by the Joint Charity Commissioner dated 10th January 2018, is quashed and set aside.

C) The appeals filed by the respondent No.1 bearing Nos.14/2017, 15/2017 and 16/2017, are now to be decided afresh by the Joint Charity Commissioner.

D) Since the record of these appeals is still with the office of the Joint Charity Commissioner at Nagpur, the appeals can be decided expeditiously and in any

case within a period of six months from today.

E) The Joint Charity Commissioner is expected to decide the appeals by taking into consideration the evidence and material available on record, without being influenced by any observations made by this Court in the present order.

13. The writ petitions are disposed of in above terms.

JUDGE

MP Deshpande