

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1173 OF 2021

Manmatappa Pandubappa Lokhande ...Petitioner

versus

The Deputy Charity Commissioner and others ...Respondents

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Mr. R. N. Dhorde, senior counsel i/b Mr. V. R. Dhorde with Mr. P.S. Dighe,
advocate for the petitioner
Mr. S. B. Pulkundwar, A.G.P. for respondent No.1
Mr. S. V. Nattu, advocate for respondent No.2.
Mr. V. G. Kodale, advocate for respondent No.3
Mr. R. S. Deshmukh, senior counsel i/b Mr. V.G. Kodale, advocate for
respondent No.4.

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CORAM : V. K. JADHAV, J.
DATED : 24th FEBRUARY, 2021

PER COURT:-

1. By consent, heard finally at admission stage.
2. The petitioner is original reporting trustee in Change Report inquiry No. 1420 of 2019, which was initially filed before the Assistant Charity Commissioner, Latur and is now transferred to respondent No.1 Deputy Charity Commissioner, Beed. Respondent Nos. 2 to 4 have filed objection to the Change Report inquiry No. 1420 of 2019.
3. By way of present writ petition, the petitioner is challenging the legality and validity of the common impugned order dated 04.01.2021 passed by the learned Deputy Charity Commissioner, Beed below

Exh.15 and 21, thereby rejecting the application Exh.15 seeking provisional acceptance of the change report. Hence, this writ petition.

4. The change report pertains to the Trust viz. Mahatma Basweshwar Shikshan Sanstha, Latur having registration (PTR) No. F-52, registered under the provisions of Maharashtra Public Trust Act, 1950 (for short "the Trust Act") as well as the Societies Registration Act, 1860. The said Trust runs various schools and colleges at Latur as well as at Ambejogai. By order dated 22.02.2018, the Charity Commissioner, State of Maharashtra dissolved all the bodies of the Trust claiming to be elected and had filed various change reports before the Assistant Charity Commissioner, Latur. Learned Charity Commissioner, State of Maharashtra has further appointed the temporary committee and directed to hold the elections through the office of the Deputy Charity Commissioner, Latur. Accordingly, the Deputy Charity Commissioner, Latur had conducted the elections and the change report inquiry No. 5548 of 2018 was submitted before the Assistant Charity Commissioner-3, Latur. By order dated 18.08.2018, the Assistant Charity Commissioner-3, Latur has provisionally accepted the said change report bearing inquiry No. 5548 of 2018 by which the managing committee of the trust was elected. However, the group headed by respondent No.2 had approached to this Court by filing writ petition No. 8593 of 2018 challenging the order passed by the learned Assistant Charity Commissioner, Latur thereby provisionally accepting the change

report inquiry No. 5548 of 2018. By order dated 22.02.2019 this Court (Coram: Ravindra V. Ghuge, J.) has disposed of the said writ petition alongwith connected writ petitions with certain directions as detailed in para 34 of the said order.

5. Being aggrieved by the said judgment and order dated 22.02.2019 passed by this Court in writ petition No. 8593 of 2018, the respondent No.2 herein had filed Special Leave to Appeal (Civil) 8089-8090/2019 before the Supreme Court. By order dated 29.03.2019, the Supreme Court has dismissed the said S.L.P. observing that the order passed by the High Court is eminently just.

6. In pursuance to the directions issued by this Court in the order dated 22.02.2019 passed in writ petition No. 8593 of 2018, the Joint Charity Commissioner, Latur appointed the Assistant Charity Commissioner, Beed as an election officer/Returning officer. The election programme was published on 16.04.2019. Pursuant to the said election programme, the elections claim to have been conducted on 05.05.2019 and the Election Officer has published the list of elected members on 05.05.2019 itself. The learned Joint Charity Commissioner, Latur, who had taken over the administration of the trust pursuant to the directions issued by this Court in the aforesaid writ petition, handed over the charge to the newly elected managing committee by handing over the banks of account, cheque books and other relevant documents on 07.05.2019. Further pursuant to the

said elections held on 05.05.2019, the petitioner has reported the said change on 20.05.2019, which was registered as change report inquiry No. 1420 of 2019.

7. Mr. Dhorde, learned senior counsel for the petitioner submits that respondent No.2 and his group members are creating hurdles in the working of the trust with malafide intention. The same is evident from the act of respondents, as they have sent through post on 08.05.2019 and 13.05.2019 respectively, the objections to the office of the Assistant Charity Commissioner, Latur for the proposed change. The said objections were taken on record after registration of the change report inquiry No. 1420 of 2019. Furthermore, after filing of the said change report, respondent No.2 herein, who has lost the elections, with malafide intention to prolong the provisional acceptance of the change report, filed an application for transfer of the change report inquiry No. 1420 of 2019 pending in the file of Assistant Charity Commissioner, Latur to any other Assistant Charity Commissioner in the region. Learned senior counsel submits that respondent No.2 has filed an application Exh.13 stating therein that the transfer application is pending, no orders to be passed in the proceeding. Moreover, the petitioner has also filed an application Exh.15 under Section 22 of the Trust Act for provisional acceptance of the change report and for looking after the administration of the Trust. The learned in-charge Joint Charity Commissioner, Latur by order dated 27.08.2019 allowed the application Exh.14 filed in the

said transfer petition and stayed further proceedings of the change report No. 1420 of 2019 pending before the Deputy Charity Commissioner, Latur till the final disposal of the transfer application. Further, the learned Joint Charity Commissioner, Latur by its judgment and order dated 23.10.2019 allowed the application 145 of 2019 filed by respondent No.2 for transfer of change report and transferred the said change report inquiry from the Deputy Charity Commissioner, Latur to the Deputy Charity Commissioner, Beed.

8. Mr. Dhorde, learned senior counsel for the petitioner submits that being aggrieved and dissatisfied with the order date 23.10.2019 passed by the Joint Charity Commissioner, the petitioner has approached to this Court by filing writ petition No. 15157 of 2019. This Court by order dated 16.12.2019 has granted stay to the order passed by the Joint Charity Commissioner, Latur transferring the change report inquiry from Deputy Charity Commissioner, Latur to the Deputy Charity Commissioner, Beed. By order dated 14.12.2020 this Court has dismissed the said writ petition No. 15157 of 2019 by confirming the order of transfer of the proceeding from the office of Deputy Charity Commissioner, Latur to the office to Deputy Charity Commissioner, Beed.

9. Mr. Dhorde, learned senior counsel for the petitioner submits that the petitioner had therefore, requested the Deputy Charity Commissioner, Beed for deciding the application below Exh.15. By

order dated 04.01.2021 the Deputy Charity Commissioner, Beed rejected the application Exh.15.

10. Mr. Dhorde, learned senior counsel for the petitioner submits that the record would indicate that the new managing committee is looking after the day to day affairs of the trust and administration of the schools and colleges as on today. Learned senior counsel submits that the election was conducted in terms of the direction given by this Court under the supervision of the Charity authorities. Learned senior counsel submits that once the managing committee has been elected by following due process of law and the change has been reported, in terms of the provisions of Section 22(1) of the Trust Act, the Deputy Charity Commissioner, Beed should have provisionally accepted the change. The same is also necessary for day to day affairs and administration of the Trust. Learned senior counsel submits that since the date of election and taking over the charge, the bank accounts are being operated under the signatures of newly elected members, Secretary and Principal of the college. However, due to rejection of the application seeking provisional acceptance of the change report, respondent Nos. 2 to 4 are creating hurdles in the smooth administration of the trust.

11. Mr. Dhorde, learned senior counsel for the petitioner submits that respondent No.1 Deputy Charity Commissioner, Beed has failed to consider the objects to the amendment to Section 22 of the Trust

Act inserting the provisional acceptance of the change report during pendency of inquiry. Learned Deputy Charity Commissioner, Beed has erroneously observed that the present petitioner has not prosecuted the said change report inquiry diligently and kept it pending for 19 to 20 months. Learned senior counsel submits that respondent No.2 had filed transfer application No. 145 of 2019 before the Joint Charity Commissioner for transfer of the change report inquiry No. 1420 of 2019 with some oblique motive. However, while deciding the application Exh.15 the Deputy Charity Commissioner, Beed has not considered this material aspect of the case. Respondent No.1 authority has erred in holding that as the provisional acceptance of change report is not decided within 15 working days on its filing and the same therefore, now cannot be considered.

12. Mr. Dhorde, learned senior counsel for the petitioner submits that in the identical set of fact, this Court by order dated 23.01.2020 in writ petition No. 11633 of 2019 alongwith connected writ petitions granted Rule with specific direction by way of interim relief that the newly elected managing committee to manage and administer the day to day affairs of the petitioner-Trust with certain conditions till disposal of the writ petition. Learned senior counsel submits that as per the judicial propriety the same order should be passed in this writ petition.

Learned senior counsel for the petitioner, in order to substantiate his submissions, placed reliance on the following judgments:-

- I) Bir Bajrang Kumar vs. State of Bihar and others, reported in AIR 1987 SC 1345;
- ii) Real Estate Agencies vs. State of Goa and others, reported in (2012) 12 SCC 170.

13. Mr. Deshmukh, learned senior counsel for respondent No.4 submits that admittedly application Exh.15 seeking provisional acceptance of change report could not be decided within 15 working days in terms of the provisions of section 22 of the Trust Act. It was beyond the control of authority concern to decide the said application Exh.15. Furthermore, it is apparent from the record that the petitioner herein was not interested in prosecuting the said application for a long period. Learned senior counsel submits that by no stretch of imagination, it can be said that respondent No.2 with some oblique motive has filed transfer petition to prolong the hearing of change report inquiry No. 1420 of 2019. Learned senior counsel submits that the Joint Charity Commissioner, Latur has allowed the said transfer petition filed by respondent No.2 and the said order was confirmed by this Court by order dated 14.12.2020 in writ petition No. 15157 of 2019. Learned senior counsel submits that it is also evident from the record that even the transfer of the said change report inquiry No.

1420 of 2019 from the Deputy Charity Commissioner, Latur to the Deputy Charity Commissioner, Beed, the petitioner and his counsel remained absent continuously and thereafter due to outbreak of COVID-19 pandemic situation, application Exh.15 could not be heard for a long period. Learned senior counsel submits that respondent Nos. 2 to 4 have submitted their objections to the said application, as the change said to have been caused without adhering to the direction given by this Court by order dated 22.02.2019 in the writ petition No. 8593 of 2018 and there is blatant violation of the provisions of law.

14. Mr. Deshmukh, learned senior counsel for the respondent No.4 submits that the said objection petitions came to be taken on record after registration of change report inquiry No. 1420 of 2019. Learned senior counsel submits that there is total period of 1 year, 7 months and 4 days after filing of the change report inquiry No. 1420 of 2019 and out of which because of filing of the transfer petition etc. the period of 4 months and 20 days was consumed by the respondent Nos. 2 to 4, however, for long period of 1 year and almost 2 months, the petitioner remained inactive for not only prosecuting his application Exh.15 but also the change report. Learned senior counsel has invited my attention towards various proceedings initiated by the petitioner. However, the same is not relevant for the present discussion. Learned senior counsel has also pointed out that recently the Joint Charity Commissioner, Latur has

suo moto directed inquiry under Section 41-D of the Trust Act against the petitioner and the elected trustees. The Deputy Charity Commissioner, Beed has thus rightly rejected application Exh.15 with further directions in terms of clause 3 of the operative part of the order to all the parties to take necessary steps for the progress of the change report and to decide the same on merits within 90 days. All parties are directed to note that no adjournment will be granted except the circumstances beyond their control. Learned senior counsel Mr. Deshmukh submits that the said period of 90 days is yet not over and in terms of the order impugned, the Deputy Charity Commissioner, Beed may be directed to dispose of the change report inquiry No. 1420 of 2019 within remainder period. The writ petition may be dismissed.

15. I have also heard learned counsel appearing for the respondent No. 2 and respondent No.3, who adopted the submissions advanced by Mr. R. S. Deshmukh, learned senior counsel appearing for respondent No.4. I have also heard the learned A.G.P. for respondent No.1.

16. I have carefully considered the submissions advanced by learned senior counsel/counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the petition, annexures thereto and reply filed by the concerned respondents.

17. There is chequered history of this trust. However, recently this Court (Coram: Ravindra V. Ghuge, J.) by order dated 22.02.2019 has dealt with writ petition No. 8593 of 2018 alongwith bunch of writ petitions, pertaining to this trust and in para 34 of the said order has issued directions to the Joint Charity Commissioner, Latur, which reads as under:-

“34. Considering the above, I am issuing the following directions to the Joint Charity Commissioner, Latur :-

[a] The Jt. Charity Commissioner shall take charge of the trust forthwith.

[b] The said authority shall issue a notice to be served upon the existing members including the 40 members and excluding the 21 members, indicating that the members would be at liberty to apply for patron membership in between 01/03/2019 till 15/03/2019.

[c] The said authority would scrutinize the applications in between 16/03/2019 till 30/03/2019 as per the eligibility under the amended Constitution of 1994.

[d] The list of patron members would therefore be declared on 01/04/2019 alongwith the valid voters' list.

[e] The said authority shall then proceed to hold the elections to all the posts of the Trust in accordance with the Constitution and the bye-laws by deputing a competent person(s) not below the rank of Assistant Charity Commissioner for conducting such elections.

[f] After the new governing council is elected, the 21 devotee members are permitted to approach the governing council for considering their membership applications filed earlier on the basis of the amounts that they have deposited. Needless to state, this is an option which these 21 members may ignore if they intend to pursue the litigation pertaining to the amendment of 2011 and their induction as devotee members, before the appropriate Forum.”

18. The Hon'ble Supreme Court by order dated 29.03.2019 in Special Leave to Appeal (Civil) No. 8089-8090 of 2019 has also confirmed the order dated 22.02.2019 passed by this Hon'ble Court in writ petition No. 8593 of 2018.

19. Pursuant to the said directions, the election was conducted and the results of the election was pronounced on 05.05.2019. It further appears that before submission of the change report for recording the said change, respondent Nos. 2 to 4 have raised objection on 13.05.2019, raising various issues therein. It further appears that the said change report was registered on 20.05.2019 as change report inquiry No. 1420 of 2019. On 27.05.2019, respondent No.2 herein filed an application No. 145 of 2019 before the Joint Charity Commissioner, Latur Region, Latur for transfer of the proceeding of change report No. 1420 of 2019 pending before the learned Assistant Charity Commissioner, Latur to any other competent authority in the region. Respondent No.2 has made

specific allegation against the Charity authorities about bias mind etc. It appears that the learned Deputy Charity Commissioner, was the Election officer for the elections of the said Trust in the year 2018 and the change report inquiry No. 1420 of 2019 was also pending before the said authority for the subsequent elections took place as per the order of this Court by setting aside the earlier election conducted by the Deputy Charity Commissioner as election Officer. It further appears that in the meanwhile, during pendency of the said transfer petition No. 145 of 2019, the petitioner herein had filed an application before the Charity Commissioner, State of Maharashtra for transfer of petition No. 145 of 2019 pending before the Joint Charity Commissioner, Latur. By order dated 23.10.2019 the Joint Charity Commissioner, Latur Region, Latur has allowed the said transfer application No. 145 of 2019 and thereby withdrawn the change report inquiry No. 1420 of 2019 pending in the file of learned Deputy Charity Commissioner, Latur and transferred it to the Deputy Charity Commissioner, Beed with consequential directions for sending the record and proceeding to the Deputy Charity Commissioner, Beed.

20. It further appears that being aggrieved by the same, the petitioner herein has preferred writ petition No. 15157 of 2019 and by order dated 16.12.2019 this Court has stayed the effect of the said transfer order dated 23.10.2019 with specific direction that the proceeding so transferred to the Deputy Charity Commissioner, Beed

shall be adjourned. Finally, by order dated 14.12.2020, this Court (Coram: Mangesh S. Patil, J.) has dismissed the writ petition No. 15157 of 2019 by confirming the order passed by the Joint Charity Commissioner, Latur.

21. So far as application Exh.15 is concern, the same was filed by the petitioner on 31.05.2019 for provisional acceptance of change report No. 1420 of 2019. It may not be relevant to consider the rival claims of both the parties as to who has delayed the hearing of the said application Exh.15, however, it appears that practically, due to the orders passed by the Charity authorities in the pending transfer petition No. 145 of 2019 so also in the writ petition challenging the said order of transfer, the Deputy Charity Commissioner, Beed could not hear the said application Exh.15 and pass effective orders on it. It further appears that after a long gap of more than a year there is no propriety in accepting the change report provisionally. In view of the same, I find no error in the impugned order passed by the Deputy Charity Commissioner, Beed. The learned Deputy Charity Commissioner, Beed has further taken care by directing the parties to co-operate the authority in deciding the change report within a period of 90 days as per the mandate of amended provisions of Section 22 of the Trust Act.

22. Learned senior counsel Mr. Dhorde, has referred to the order passed by this court on 23.01.2020 in writ petition No. 11633 of 2019

pertaining to Shardopasak Shikshan Sanstha, Aurad Shahajani. By order dated 08.07.2019, while disposing of writ petition No. 7377 of 2019 pertaining to the said Shardopasak Shikshan Sanstha and others, this court (Coram: Ravindra V. Ghuge, J.) has observed that the Deputy Charity Commissioner, Latur has disposed of the application Exh.2 filed by the petitioner under Section 22 of the Maharashtra Public Trust Act, 1950 by concluding that no order can be passed on said application until all the litigating sides are heard. By considering the consensus of the parties, for hearing on application Exh.2 afresh by the Deputy Charity Commissioner, Latur the petition came to be disposed of with some directions. The Deputy Charity Commissioner, Latur was directed to consider the contentions of the parties and pass order on merits of the application. Despite the said directions given by this court, as detailed above, the learned Deputy Charity Commissioner, Latur has passed a cryptic order, which is impugned in writ petition No. 11633 of 2019. In view of the same, by order dated 23.01.2020 this Court in the said writ petition No. 11633 of 2019 has granted Rule with certain direction empowering the managing committee to look after the day to day affairs of the petitioner trust with certain conditions.

23. Learned senior counsel Mr. Dhorde has placed reliance on the judgment of Supreme Court in the case of ***Bir Bajrang Kumar (supra)*** wherein the Supreme court has held that when two writ petitions involving identical point, one admitted but other dismissed

by the same High Court, gives rise to clear the possibility of contradictory judgments being rendered by the High Court in same case.

24. In the given set of facts, which are beyond the control of the parties so also the Charity authorities to pass an appropriate order about provisional acceptance of the change report, it would be just and appropriate if the change report inquiry proceeding No. 1420 of 20129 are to be disposed of at the earliest.

25. Learned senior counsel Mr. Dhorde has also placed reliance on the judgment of Supreme Court in the case of **Real Estate Agencies (supra)** wherein the Supreme court in para 15 has made the following observations:-

“15. The aforesaid detailed recital of the facts projected by the parties had become necessary as the order of the High Court assailed in the present SLP does not contain any reference to the relevant circumstances in which the High Court had passed the impugned order or the reasons why the petitioner was relegated to the remedy of initiating a civil action. Time and again this Court has emphasized that such a course of action by a Court cannot lead to a legally acceptable conclusion inasmuch as the manner of reaching the decision and the reasons therefor are sacrosanct to the judicial process. However, we do not wish to dilate the aforesaid aspect of the matter any further in view of the clear and consistent insistence of this Court on the aforesaid fundamental requirement.”

26. Learned senior counsel Mr. Dhorde, for the petitioner has failed to explain as to how the observations in para 15, as quoted above, are relevant for the present discussion.

27. It is informed by the counsel appearing for the parties that college at Ambejogai is only unaided college and other colleges run by the Trust are aided schools/colleges. In view of the same, the previous arrangement about releasing of salary of the staff, lecturers etc. would be continued including the direction given by the Division Bench of this Court authorizing the Principal of the said unaided college to make the payment of salary to staff members and the faculties.

28. In view of above discussion, I am of the considered opinion that now the change report inquiry No. 1420 of 2019 is to be disposed of finally. The learned Deputy Charity Commissioner, Beed has directed the parties to co-operate the authority to dispose of the main proceeding within a stipulated period of 90 days as per the mandate of amended provisions of Section 22 of the Trust Act. However, out of the said period of 90 days, certain period is elapsed in pursuing the present litigation. However, still remainder period of 45 days is available to the learned Deputy Charity Commissioner, Beed to decide the said change report inquiry No. 1420 of 2019. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby dismissed.
- II. The impugned order dated 04.01.2021 passed by respondent No.1 Deputy Charity Commissioner, Beed below Exh.15 and 21 in change report Inquiry No. 1420 of 2019 stands confirmed with the following directions;-
 - a) The parties shall appear before the Deputy Charity Commissioner, Beed on 10.03.2021.
 - b) The learned Deputy Charity Commissioner, Beed shall decide the change report inquiry No. 1420 of 2019 during remainder period in terms of clauses Nos. 3 and 4 of its order dated 4.1.2021 below Exh.15 and 21 in change report inquiry No. 1420 of 2019 by day to day hearing, if possible.
 - c) The parties shall co-operate to the learned Deputy Charity Commissioner, Beed in disposing of the change report inquiry No. 1420 of 2019 within the time specified above.
- III. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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