

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

WRIT PETITION NO.3228 OF 2016

Dattatraya s/o. Babasaheb Patil,
Age : 42 years, Occ. Agri.,
r/o. Village Anala, Tq. Paranda,
Dist.Osmanabad

..Petitioner

Vs.

The Assistant Charity Commissioner,
Osamanabad and ors.

..Respondents

Mr.P.S.Dighe, Advocate for petitioner
Mr.S.N.Morampalle, AGP for respondent no.1
Mr.M.S.Kulkarni, Advocate for respondent nos.2 to 5
Mr.V.N.Shelke, Advocate for respondent no.6 - absent

CORAM : R.G. AVACHAT, J.

DATE : MARCH 08,2021

ORDER :-

Heard.

2. The challenge in this Writ Petition is to the orders dated 23.06.2011, 20.02.2015 and 10.02.2016 passed by Assistant Charity Commissioner, Osmanabad, below Exhibit-1, Exhibit-91 and Exhibit-98, respectively. By the impugned order dated 23.06.2011, 'no-evidence' order has been passed against

the petitioner herein; while vide order dated 20.02.2015, the application below Exhibit-91 preferred by the petitioner for setting aside the order of 'no-evidence' dated 23.06.2011 was rejected; while vide order dated 10.02.2016, the application below Exhibit-98 moved by the petitioner seeking permission to lead evidence has been rejected.

3. The petitioner is a reporting trustee. He reported change, being Change Report No.88 of 2007, to the Assistant Charity Commissioner. The petitioner was informed that the original papers in the said Change Report have been misplaced. He was, therefore, asked to submit a fresh change report. Accordingly, he submitted Change Report, which was numbered as 4 of 2008. It was a report regarding change in the management of respondent no.6 – Jai Jawan Jai Kisan Shikshan Sanstha. Respondent nos.2 to 5 raised objection to the change report. The petitioner was expected to lead evidence in support of the change report. For many a days, the petitioner did not lead any evidence. Respondent nos.2 to 5, therefore, moved an application seeking order of 'no-

evidence' against the petitioner. On the same day i.e. 23.06.2011, learned Assistant Charity Commissioner passed such order. According to the petitioner, with the said order, the matter was adjourned from time to time for one or the other reason. After having learnt about the order dated 23.06.2011, the petitioner moved an application for setting aside the 'no-evidence' order. Since the said application was unsupported by affidavit, it was filed. The petitioner then filed his affidavit of evidence with a request to take it on record. The petitioner was not allowed to lead the evidence.

4. Learned Assistant Charity Commissioner rejected the application on the ground that the petitioner and his Advocate remained absent to proceed with the enquiry. If such application is allowed at the fag end of the proceedings i.e. when it was kept for final argument of the parties, it would nothing but abuse of process of law. The petitioner was found interested only in protracting hearing of the matter.

5. Mr.Dighe, learned counsel for the petitioner, would submit that the elections to the managing committee of

respondent no.6 – trust, were held on the directions of the High Court in Writ Petition No.7842 of 2006. The concerned enquiry is pertaining to the change reported by the petitioner, as a result of the elections held pursuant to the order of the High Court. Learned Assistant Charity Commissioner ought to have given the petitioner an opportunity to lead evidence in support of the change. He, therefore, urged for allowing the Writ Petition.

6. Learned AGP for respondent no.1 and Mr.Kulkarni, learned counsel for respondent nos.2 to 5 would support the impugned orders. According to learned counsel for respondent nos.2 to 5, the petitioner was grossly negligent. For over years, he did not proceed with the matter. Learned Assistant Charity Commissioner was, therefore, justified in passing the impugned orders.

7. The elections to the management of respondent no.6 were held in 2007 pursuant to the directions of the High Court in Writ Petition No.7842 of 2006. The petitioner is

reporting trustee. He reported change to the office of Assistant Charity Commissioner. Said proceedings was numbered as Change Report No.88 of 2007. Office of the Assistant Charity Commissioner misplaced the papers of the said proceedings. The petitioner was, therefore, called upon to submit the report afresh. Same proceedings was numbered as 4 of 2008. Respondent nos.2 to 5 objected for accepting the change report. It is true that the petitioner did not lead evidence for 2-3 years. Respondent nos.2 to 6 moved an application on 23.06.2011 for passing order of 'no-evidence' against the petitioner. On the same day, learned Assistant Charity Commissioner passed such order. In my view, he ought to have awaited for the say of the petitioner to the said application. Thereafter, learned Assistant Charity Commissioner was said to have been trapped while accepting the bribe. His successor in office ought to have allowed the petitioner to proceed with the matter. He could have imposed heavy cost for permitting the petitioner to lead evidence. Passing of the impugned order is nothing but deciding the matter without observing principle of

natural justice. Learned Assistant Charity Commissioner should have kept in mind the fact that the change report pertains to the elections of the management of respondent no.6, which were held pursuant to the directions given by the High Court in Writ Petition No.7842 of 2006.

7. With a view to give the petitioner an opportunity of hearing, interest of justice demands setting aside of the impugned orders.

8. Hence, the following order :-

(i) Writ Petition is, therefore, allowed in terms of prayer clause (B).

(ii) Learned Assistant Charity Commissioner is requested to decide the Change Report on its own merits, preferably within a period of eight months from the date of receipt of copy of this order.

(iii) The amount of Rs.25,000/- deposited by the petitioner in the office of learned Assistant Charity

Commissioner pursuant to the directions of this Court dated 17.03.2016, be given to साई ग्रामीण पुनर्रचना संस्था, औरंगाबाद, संचलित, "आपली मुले", सातारा परिसर, औरंगाबाद, न्यास नोंदनी क्र.12531 (औ).

(iv) Learned Registrar (Judicial) is requested to ensure compliance of the order regarding payment of Rs.25,000/- (Rupees Twenty Five Thousand) to said institute.

[R.G. AVACHAT, J.]

KBP