

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

WRIT PETITION NO. 7728 OF 2022

1. Dr. Babu s/o Irappa Khadakbhavi,
Age: 60 years, Occu: Service as 'Principal'
College of Engineering, Ambajogai,
Tq. Ambajogai, District Beed.
R/o Morewadi, Ambajogai,
Tq. Ambajogai, District Beed.
 2. Mahavir s/o Bhopalappa Shetti,
Age: 59 years, Occu: Service as 'Principal'
T.B. Girwalkar Polytechnic, Ambajogai,
Tq. Ambajogai, District Beed.
R/o Morewadi, Ambajogai,
Tq. Ambajogai, District Beed.
 3. Santosh s/o Satyanarayan Kosgi,
Age: 48 years, Occu: Service as 'Principal'
D. Pharmacy, Latur
Tq. & District Latur,.
R/o Barshi Road,
Tq. & District Latur.
 4. Yogiraj s/o Dharmraj Swami,
Age: 41 years, Occu: Service as 'Head-Master'
Shri Shambuling Shivacharya Primary School,
Girwalkarnagar, Barshi Road, Latur,
Tq. & District Latur,.
R/o Syamnagar, Latur.
Tq. Purna, Dist. Parbhani.
- .. **Petitioners**

Versus

1. The State of Maharashtra,
Through Charity Commissioner,
Maharashtra State Pune.

2. Deputy Charity Commissioner,
Latur Division, Latur.
3. Manmathappa s/o Pandbappa Lokhande,
Age: 87 years, Occ. Business,
R/o Subhash Chowk, Latur,
Tq. & District Latur.

.. **Respondents**

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Advocate for Petitioners : Mr. N.P. Patil Jamalpurkar
APP for Respondent-State: Mr. S.N. Morampalle
Advocate for R/3 : Mr. V.D. Salunke
.....

CORAM : M.G. SEWLIKAR, J.
RESERVED ON : 29th July, 2022
PRONOUNCED ON : 5th August, 2022

JUDGMENT :-

Rule. Rule made returnable forthwith. With consent of the parties taken up for final hearing at the admission stage.

2. Facts in brief are that Mahatma Basweshwar Education Society, Latur is a public trust. The petitioners are the heads of the institutions i.e. Principal and Head Master being run by the public trust. Respondent is the member of the Mahatma Basweshwar Education Society, Latur (for short the 'said trust').

3. Respondent no.3 has filed change report concerning elections of Governing Council of the said trust alleged to have been held on 5th May, 2019 before respondent no.2 – Deputy Charity Commissioner (DCC). Said change

report bears CR No. 1420/2019 and is pending before the DCC.

4. The petitioners are the Principals and Head Masters of the different institutions being run by the said trust. The said trust is having its constitution which contains rules relating to the eligibility and qualification of the members and powers of the General Body and Governing Council and its elections. As per the rules of the constitution of the said trust, the heads of the institutions are the members of the General Body of the trust. Therefore, they are the members of the General Body. It is also alleged that on plain reading of the rules, it is clear that the heads of the institutions are not only the members of the General Body but also they are *ex-officio* members of the Governing Council.

5. It is alleged by the petitioners that they had filed an application under Section 73(A) of the Maharashtra Public Trust Act (for short 'MPT Act') for allowing them to participate in the inquiry of CR No.1420/2019 as they are *ex-officio* members of the Governing Council and, therefore, they are having interest in the administration of the trust and the institution. This application was filed on 4th July, 2022. Respondent no.3 opposed the said application.

6. The learned Dy. C.C., after hearing both the parties, rejected the

said application. The learned Dy. C.C. held that the petitioners though they are members of the General Body they do not become members of the society. She further held that the petitioners have not explained as to how their impleadment would assist the Charity Commissioner in coming to a just conclusion. She placed reliance on the case of **Satish Vasant Salpekar V/s. Ashwin Ghatate and Anr.** reported in 2018 (2) Mh L.J. 57. This order is impugned in this petition.

7. The respondents filed affidavit in reply. It is contended in the affidavit in reply that the petitioners are trying to protract the proceedings and are not allowing the Dy. C.C. to decide the proceedings finally. The Hon'ble Supreme Court has directed the learned Dy. C.C. to decide the change reports finally preferably within three months and also directed that if any of the parties try to delay the hearing of the matter it will be open to the Dy. C.C. to proceed further with the hearing of all the change reports ex parte after passing a reasoned order. Despite this the said Madhavrao Hanmantrao Patil (Taklikar) filed application for transfer of proceedings from Dy. C.C. which was rejected by this Court vide Writ Petition No.7138/2022. Just to protract the litigation Madhavrao Hanmantrao Patil (Taklikar) filed the present application for intervention. The petitioners are not the members of the trust and they are not eligible and entitled to participate and vote in any election,

particularly in the election of Governing Council. The employees such as head of departments were not included in the voters list nor they participated in the election nor voted in the election. Therefore, they cannot be added as party to this trust. It is further alleged that the order is revisable under Section 70-A of the Maharashtra Public Trust Act and writ petition is not maintainable.

8. I have heard learned counsel Shri N.P. Patil, Jamalpurkar for the petitioners and Shri V.D. Salunke learned counsel for the respondent no.3.

9. Learned counsel Shri Jamalpurkar submitted that impugned order is passed by the Deputy Charity Commissioner because of the bias she entertained against the petitioners. He submitted that election of governing council was held in May-2019 change report before Dy. C.C. in June-2019 vide CR No.1420/2019 presented by respondent no.3. Provisional acceptance was also rejected. This Court confirmed that order. The Dy. C.C. rejected the change report filed by respondent no.3. He submitted that on 4th July, 2021 fresh election of Governing Council were held. On 15th July CR No. 596/2021 was filed by the newly elected secretary. Respondent no.3 preferred appeal before the Joint Charity Commissioner, Mumbai against election dated 4th July, 2021. During pendency of this appeal CR No. 596/21 was filed for accepting change report provisionally. No order was passed by the Deputy Charity Commissioner (DYCC). Therefore, writ petition was filed bearing

no.1420/2021 to accept CR No. 596/21 provisionally. This Court directed Dy. C.C. to accept CR 596/221 provisionally. The Dy. C.C. refused to accept CR No.596/2021 provisionally, therefore, Contempt Petition was filed. The Dy. C.C. had to tender unconditional apology in Court. He submitted that because of this development the Deputy Charity Commissioner entertained grudge against the petitioners.

10. He further submitted that present petitioners are the heads of the institutions. They filed application under Section 73-A of the Maharashtra Public Trust Act to allow them to participate in the inquiry. He submitted that the petitioners being the head of the institutions are the members of the General Body as per the amended constitution of the trust. He submitted that constitution defines executive committee. Executive committee is defined as the executive authorities of the society who will supervise welfare of the society. General Body, Governing Council, Managing Committee for college, School Committee will be the executive authorities. He submitted that general body of the society shall consist of all the members except the honorary members. Head of the institution of the society will be the members of the General Body. He submitted that the functions of the general body are to prepare educational plans to elect the members of the Governing Council of the society. He further submitted that according to the amended constitution

head of each of the institutions run by the society shall be *ex officio* members of the Governing Council. He submitted that this clearly shows that the petitioners are the members of the General Body and the Governing Council. He submitted that respondent no.3 has tendered his evidence and in the cross-examination he has admitted that heads of the institutions will be the members of the society. He further submitted that in the judgment of change report no.1420/2019 the learned Dy. C.C. vide judgment and order dated 25th June, 2021 has held that the meeting called by the elected President and Vice-President dated 13th May, 2019 for nominating the office bearers / members and four members of Governing Council, the heads of the institutions were not called and they were not present and therefore the meeting was held to be illegal. He submitted that the Joint Charity Commissioner also held that heads of the institutions of the society will be members of the General Body. He submitted that despite these provisions and despite the judgment of Dy.C.C. and Joint Charity Commissioner the learned Dy. C.C. rejected the application holding that the petitioners are not the persons interested in the trust. He submitted that this order has been passed with a biased mind. Therefore, it needs to be set aside. He placed reliance on the cases of **Smt. Sugrabi wd/o Abdul Habib Abdul Jabbar and Ors. V/s. Assistant Charity Commissioner, Nagpur and Anr. (Writ Petition No.7286/2019)**, **Suresh Hiralal Shah V/s. Shree Mahavir Swami Digambar Jain** reported in **2001 (3) Mh.LJ**

147, Madhavrao Hanmantrao Patil Taklikar V/s. Heera Hashinath Shelke and Anr. (*Contempt Petition No.203/2022 in Writ Petition 2421/22*), to show that Deputy Charity Commissioner had to tender unconditional apology. He also placed reliance on the case of **Harshal s/o Uddhav Aarvikar V/s. Jagjeet Singh Gurusharan Singh and Anr.** (*Writ Petition No.1905/2017*).

11. Learned counsel for the respondent no.3 submitted that the Hon'ble Supreme Court has directed the learned Dy. C.C. to decide the change report within a period of three months. The petitioners are creating obstacles in the disposal of the change report. He submitted that the writ petition is not maintainable. The petitioners have remedy under Section 70-A of the MPT Act to prefer revision before the Charity Commissioner. He submitted that the application for intervention was filed in the proceeding under Section 22 of the MPT Act. Therefore, the decision is under Section 22 of the MPT Act. He submitted that the decision on this application comes within the definition of finding or order and therefore the writ petition is not maintainable. He submitted that the petitioners are trying to protract the proceedings. They had filed transfer application which was rejected. He submitted that the petitioners are not the voters. The voters list shows that they are not the voters. Just because they are members of the General Body does not mean that they become members as per the constitution of the trust. In terms of

definition of membership the requirements for becoming members are that a person must have paid full subscription amount as per the categories prescribed for membership and whose membership has been approved by the Governing Council and whose name has been duly entered in the register kept for enrollment of the membership. He submitted that there are various categories of members and they do not fall in any of the categories of the members. He submitted that members of General Body and *ex officio* members have no power to vote. In terms of the rules members enrolled as per the previous constitution will have no right to be a member unless he fulfills the requirement as per the new constitution and those members who have fulfilled the requirements as per the new constitution before December-1970 would be the members of the society. Though heads of the institutions shall be *ex officio* members of the Governing Council the rules do not say that they have right of voting. In reply learned counsel for the petitioners submitted that the order is under Section 73-A of the MPT Act. These are separate proceedings. Therefore, these proceedings do not come within the scope of Section 22 of the MPT Act. Therefore, writ petition is the only remedy for the petitioners.

12. I have given thoughtful consideration to the submissions made by both the counsels. So far as maintainability of the petition is concerned, the

petitioners have placed reliance on the case of **Anand Sheshrao Bharose V/s. Vedprakash Patil and others** in Writ Petition No.3788/2021 of this Court. In this petition application for setting aside or staying the provisional acceptance of change report obtained by suppressing various materials facts and circumstances was filed. Learned Assistant Charity Commissioner rejected these applications. Both these orders, one granting provisional approval and the other refusing to recall or stay the order, were challenged. This Court held thus:

“6. On a query being put to the learned Senior Advocates regarding availability of alternate and efficacious remedy, they would submit that this Court has ample powers in exercise of writ jurisdiction to set right any illegality, more so when the impugned order has been passed in violation of the fundamental rights of the petitioners. So far as the provisions of the Act are concerned, they would submit that the impugned order is not a finding and no appeal under Section 70 of the Act would lie. They would also refer to following couple of the decisions of the coordinate benches of this Court:

- (i) Mukesh Nashikrao Tirpude & Anr. Vs. Wamanrao Tatobaji Kombade & Ors.; 2008(4) Mh. L.J. 562*
- (ii) Kashyap Odhavji Thakkar Vs. Chandrakant R. Ganatra and Others; 2019(1) Mh.L.J.102*

7. Per contra, the learned Advocates Mr. N.B. Khandare, Mr. S.V.Adwant and Mr. D.J. Chaudhary, for the respective contesting respondents, would refer to the decision of the Supreme Court in the

case of Assistant Commissioner (CT) LTU, Kakinada and Others Vs. Glaxo Smith Kline Consumer Health Care Limited; 2020 SCC OnLine SC 440 and submit that since the impugned order is an order passed in a substantive proceeding under Section 22 of the Act in the form of a Change Report enquiry, though it does not record a finding so that an appeal under Section 70 would lie, a revision under Section 70A of the Act would certainly be an efficacious remedy available to the petitioners.

8. *The arguments would be better appreciated by re-producing the relevant provisions:*

Sec. 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)

(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 appeals 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)

(3B)

(4)

Sec. 70.

(1) *An appeal against the finding or order of the Deputy or Assistant Charity Commissioner may be filed to the Charity Commissioner in the following cases:—*

- (a) *the finding and order, if any, under section 20;*
- b) *the finding under section 22;*
- (b-1) *the finding under section 22A;*
- (c) *the finding under section 28;*
- (c-1) *the order under section 41C;*
- (c-2) *the order under section 50A;*
- (d) *the order under sub-section (3) of section 54;*
- (d-1) *an order under sub-section (1) of section 79;*
- (e) *an order confirming or amending the record under section 79AA;*

(2)

(3)

70A.

(1) *The Charity Commissioner may in any of the cases mentioned in section 70, either suo motu or on application call for and examine the record and proceedings of such case before any Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to the correctness of any finding or order recorded or passed by the Deputy or Assistant Charity Commissioner and may either annul, reverse, modify or confirm the said finding or order or may direct the Deputy or Assistant Charity Commissioner to make further inquiry or take such additional evidence as he may think necessary or he may himself take such additional evidence:*

Provided that the Charity Commissioner shall not record or pass any orders without giving the party affected thereby an opportunity of being heard.

(2) *Nothing in sub-section (1) shall entitle the Charity Commissioner to call for and examine the record of any case—*

(a) *during the period in which an appeal under section 70 can lie against any finding recorded by the Assistant or Deputy Charity Commissioner in such case, or*

(b) *in which an order has been passed either in an appeal made under section 70.*

9. *As can be appreciated from the scheme of Sections 70 and 70A of the Act, an appeal would lie to the Charity Commissioner against a finding and/or an order of the Deputy Charity Commissioner or Assistant Charity Commissioner passed under Sections 20, 22, etc. of the Act. Since to the extent of an enquiry under Section 22, clause (b) of sub-section (1) of Section 70 requires that there has to be a finding under that provision against which an appeal would lie, certainly no appeal would lie against an interlocutory order as has been observed by this Court in the case of **Mukesh Nashikrao Tirpude & Anr.** (supra).*

10. *However, as the wording of Section 70A is explicit and empowers a Charity Commissioner either suo motu or on an application to call for and examine the record and proceedings of any of the cases mentioned in Section 70, which covers even case or enquiry pending under Section 22, the impugned order having been passed in the nature of an interlocutory order, granting provisional approval under first proviso to sub-section (2) of Section 22, it would be a case squarely covered by Section 70A.*

11. *As can be appreciated from the wordings of Section 70, the Legislature has consciously used the words 'finding' and 'order', wherever it intended that an appeal would lie. Any such distinction in the finding and order is conspicuously absent in Section 70A.*

Meaning thereby that irrespective of the nature of the order, whether it is merely an order or a finding, in a substantive proceeding mentioned in Section 70, the Charity Commissioner has the powers to call for and examine the record and proceedings for the purpose of satisfying himself as to the correctness of any finding or order recorded and/or passed by the Deputy Charity Commissioner or Assistant Charity Commissioner. It is, therefore, abundantly clear that the impugned order having been passed in a case of a Change Report enquiry under Section 22, remedy of revision under Section 70A is indeed an equally efficacious remedy available to the petitioners. Consequently the writ petitions would not be maintainable.”

13. Thus in the case of **Anand Sheshrao Bharose** cited (supra), this Court held that in terms of scheme of Section 70 and 70-A of the MPT Act an appeal would lie to Charity Commissioner against a finding and or an order of Dy. C.C. or A.C.C. passed under Section 20, 22 etc. of the Act. It has further been held that no appeal would lie against the interlocutory order. It is further held that Section 70-A empowers a Charity Commissioner either *suo moto* or on an application to call for and examine the record and proceedings of any of the cases mentioned in Section 7-D which covers even case or inquiry pending under Section 22 and therefore it would be a case squarely covered by Section 70-A. It has, therefore, held that the impugned order having been passed in the case of change report inquiry under Section 22, remedy of revision under Section 70-A is indeed an equally efficacious alternate remedy available to the petitioners.

14. The question is whether application under Section 73-A would be a finding or order under Section 22 of the MPT Act. It is pertinent to note that application under Section 73-A is filed in change report no.1420/2019. The order under Section 73-A is passed in pending proceedings of change report. Therefore, they cannot be said to be an independent proceedings. They become an integral part of the proceeding under Section 22 of the MPT Act. Therefore, revision under Section 70-A would lie against the said order before the Charity Commissioner. Therefore, there being equally efficacious alternate remedy, the writ petition cannot be entertained. No extra ordinary circumstances are brought on record to show that this Court can exercise its jurisdiction under Article 226 of the Constitution of India.

15. Hence, the Writ Petition is dismissed, keeping open the remedy to the petitioners to prefer revision under Section 70-A of the Maharashtra Public Trust Act. The time spent in prosecuting the writ petition may be duly considered by the learned Charity Commissioner under Section 14 of the Limitation Act, 1963 if revision is filed. It is made clear that no opinion is expressed on the merits of the matter and if the revision is preferred the learned Charity Commissioner shall decide the revision on its own merits. Rule is discharged.