

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

WRIT PETITION NO. 11141 OF 2022

Banjara Shikshan Prasarak Mandal
Balsur through its Secretary
Gulabdas Nandu Chavan .. Petitioner

Versus

Mukinda Nandu Chavan and others .. Respondents

Shri V. D. Sapkal, Senior Advocate i/by Shri Sandip R. Sapkal,
Advocate for the Petitioner.

Shri S. S. Thombre, Advocate for the Respondent Nos. 1 to 7.

**CORAM : SANDEEP V. MARNE, J.
DATE : 14TH NOVEMBER, 2022.**

FINAL ORDER :

. Rule. Rule is made returnable forthwith. With the consent of the ld. counsels for the parties, Rule is taken up for final hearing.

2. By this petition, Petitioner assails order dated 13th October, 2022 passed below Exhibit 52 by the Joint Charity Commissioner, Latur in Revision No. 46 of 2022 as well as order dated 10th August, 2022 passed by the Assistant Charity Commissioner, Osmanabad below Exhibit 06 in Enquiry No. 131 of 2022. By order dated 10th August, 2022, the Assistant Charity Commissioner has proceeded to exercise powers under sub section 2 of Section 22 of the Maharashtra Public Trust Act, 1950 (for short "Act of 1950") and has provisionally accepted the

change reported by the respondents for the year 2021-2024 in Enquiry No. 131 of 2022.

3. Several change reports submitted by the contesting parties for various periods are already pending before the Assistant Charity Commissioner, Osmanabad bearing Change Report No. 299 of 2015, C. R. No. 253 of 2018, C. R. No. 254 of 2018, C. R. No. 202 of 2021, C. R. No. 203 of 2021, C. R. No. 223 of 2021, C. R. No. 3531 of 2017, C. R. No. 129 of 2022 and C. R. No. 131 of 2022. So far the issue of provisional acceptance of change is concerned, Petitioner had also reported change on 17.08.2021 for the period 2020-2023 and the Assistant Charity Commissioner did not exercise powers U/Sec. 22(2) of the Act of 1950, but selectively exercised those powers in the change report filed by the respondents on 17.03.2022. Mr. Sapkal, the learned senior Advocate for the petitioner would object to the order passed by the A. C. C. on the ground that there is complete non application of mind and non recording of the reasons while passing the impugned order. Mr. Sapkal, would further submit that an appropriate interim arrangement was already made by the A. C. C. by order dated 13.03.2018 by appointing an Inspector from his office as well as Head Master of Residential School to operate the bank accounts. He would therefore submit that there was no necessity for the A. C. C. to provisionally accept the change U/Sec. 22(2) of the Act of 1950. Mr. Sapkal would further question the time at which the provisional change is accepted. Referring to provisions of Section 22(2) of the Act of 1950, Mr. Sapkal would contend that the order of provisional acceptance is

passed beyond the period of 15 days as mandated under the Act of 1950. He would submit that the change was reported on 17.02.2022, the application for provisional acceptance was made on 19.05.2022 and the impugned order is passed by the A. C. C. on 10.08.2022. Mr. Sapkal would therefore submit that even though an objection to the provisional change has indeed been filed by the petitioner before the A. C. C. on 13.09.2022, since the order accepting provisional change was patently illegal, the petitioner rightly filed revision before the Joint Charity Commissioner, without waiting for an order of the A.C.C. on his objections. However, the Joint Charity Commissioner was pleased to dismiss the revision petition filed by the petitioner directing that the pending change reports be decided within a period of three months.

4. Per contra, Mr. Thombre the learned counsel appearing for respondents would question the maintainability of the petition contending that under the third Proviso to Sub Section 2 of Section 22 of the Act of 1950, the A. C. C. is required to hold an enquiry into the objection to the provisional change and decide the same within a period of three months from the date of filing of objection. Mr. Thombre would contend that since the objection has been filed on 13.09.2022, the petitioner ought to have waited for decision on the objection. Neither the objections are decided, nor period of three months has expired from 13.09.2022. Mr. Thombre, would therefore submit that the petition is not maintainable. Mr. Thombre would further submit that special provision has been introduced in the form of Sub Section 2 of

Section 22 of the Act of 1950, where final decision on change report takes a long time and this Court in **Qidwai Education and Cultural Society Vs. The State of Maharashtra and another in Writ Petition No. 3296 of 2020 decided on 27th April, 2022** has adversely commented upon the Assistant/Deputy Charity Commissioners not passing orders for provisional acceptance of change in such situations. He would therefore submit that the Assistant Charity Commissioner has rightly exercised powers under Sub Section 2 of Section 22 of the Act of 1950 for provisional acceptance of the change. Mr. Thombre would further submit that all the pending change reports have been otherwise directed to be decided within a period of three months by the Joint Charity Commissioner. Therefore finality to the disputes between the parties would be achieved shortly and this Court should therefore not interfere in the matter at this stage.

5. Having heard learned counsel for the parties, it is clear that several change reports for reporting changes right from the year 2014 onwards are pending before the A. C. C. Osmanabad. On account of pendency of rival change reports, it had become challenging to operate the affairs of the trust. The provision for provisional acceptance of change has been specially introduced in the Maharashtra Public Trust Act, 1950 by way of Amending Act 2017 with effect from 11th August, 2017 to take care of situations where decisions on change reports are being delayed. Following three Provisos came to be added in Sub Section 2 of Section 22:

“ 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.”;

6. Thus the scheme of amended section 22(2) is that where the change relates to names of trustees, the Assistant/Deputy Charity Commissioner can pass an order provisionally accepting the change within 15 working days and invite objections to such provisional change. Objections, if received are to be decided within a period of 3 months. If no objections are received, the order of provisional change becomes final and an entry thereof is to be made in the register. The Bill for Maharashtra Public Trusts (Second Amendment) Act 2017, includes following Statement of Objects and Reasons for inserting the three Provisos to Section 22(2):

(ii) to promote swift disposal and arrest the pendency of the change reports under section 22, certain provisos are proposed to be added to sub-section (2) to

mandate the decision on the change reports within the stipulated period, and also provide for a mechanism for provisional acceptance of change reports and attach finality to the orders of provisional acceptance of change in uncontested matters.

Thus, a provision for provisional acceptance of change relating to names of trustees has specifically been made considering the fact that final disposal of change reports relating to change of names of trustees takes unduly long time.

7. In the present case, however, the circumstances are slightly different. True it is that the disputes about names of trustees have been pending between the rival parties since 2014. In such a situation, some interim arrangement was warranted so as to manage the affairs of the trust till final decision of the pending change reports. Considering this position, the A.C.C. has already passed order dated 13.03.2018 appointing an Inspector from his office along with the Head Master of the Residential school to operate the bank accounts. Thus the objective behind accepting provisional change during the pendency of an enquiry into change reports is already fulfilled.

8. Coming to the propriety of passing of the impugned order by the A. C. C., it is seen that he had before him two change reports filed by the rival parties. Petitioner had filed a change report on 17.08.2021 reporting change for the period 2020-2023. If A. C. C. was of the opinion that provisional change was required to be accepted for managing affairs of the trust, he could

have passed an order of provisional acceptance of change under Sub Section 2 of Section 22 of the Act of 1950 on change report being filed by Petitioner on 17.08.2022. Thereafter, change report was filed by the respondents on 17.03.2022 reporting change for the period 2021-2024. For unconceivable reasons, the A.C.C. selectively proceeded to pass an order of provisional acceptance of change reported by Respondents alone. Mr. Thombre would seek to attribute this conduct of the A.C.C. to filing of an application by Respondents alone seeking provisional acceptance of change and non-filing of any such application by Petitioner. The scheme of Section 22(2) is such that no application is required to be filed by any party for provisional acceptance of change. Therefore the contention of Mr. Thombre deserves to be rejected.

9. Next issue is about the time limit within which an order provisionally acceptance change could have been passed. The first Proviso to Sub Section 2 of Section 22 of the Act of 1950, provides for passing of an order accepting provisional change within a period of 15 working days. The Respondents' change report was filed on 17.03.2022. The order provisionally accepting change has been passed by the ACC on 10.08.2022. However, considering orders passed by this Court in **Qidwai Education and Cultural Society** (supra) as well as in **Madhav Hanmantrao Patil – Taklikar Vs. Deputy Charity Commissioner, Latur**, Writ Petition No. 2421 of 2022 decided on 14th March, 2022, it is difficult to arrive at a concrete conclusion that the order of accepting provisional change cannot be passed beyond the

prescribed period of fifteen working days from the date of filing of the change report. In both the cases, this Court appears to have directed concerned A. C. C./Deputy C. C. to pass an order of acceptance of provisional change beyond the period of 15 days. Considering the facts of this case, it is not necessary to decide this issue and the same is left open.

10. Coming to the objection raised by Mr. Thombre to maintainability of the Petition, I find that the objection is raised as the A.C.C. is yet to decide the Petitioner's objections under the Third Proviso to Sub Section (2) of Section 22. The objection is filed by the Petitioner on 13-09-2022 and the same is yet to be decided. Third Proviso to Section 22(2) prescribes time limit of 3 months for decision of such objection. Ordinarily therefore this court would have been loath in entertaining the present petition. However there are peculiar facts and the matter has already travelled to Joint C.C. who has directed decision on the Change Reports within 3 months by holding day to day hearings. In such a situation, whether this court would be justified in directing the A.C.C. to first decide the objections to provisional acceptance of change thereby delaying the final decision of change reports is the question. The answer to the question is obviously in the negative. Also, the A. C. C. has selectively decided to pass an order of provisional acceptance of change only in respect of change report filed by the respondents alone without considering pendency of change report filed by the petitioner on 17.08.2021. In my opinion, such selective approach adopted by the A. C. C. is yet another reason why this Court would be justified

ininterfering in the matter. I therefore proceed to reject the objection raised by Mr. Thombre that unless objection raised by the petitioner on 13.09.2022 under the Third proviso to Sub Section 2 of Section 22 of the Act of 1950 is decided, the present petition is not maintainable.

11. In the present case, the matter has traveled to the Joint C. C. against the order of provisional acceptance passed by the A. C. C. The Joint C. C. has already directed the A. C. C. to decide all the pending change reports finally within a period of three months by conducting hearing on day today basis. There is already provisional arrangement made by way of order dated 13.03.2018 appointing an Inspector from the office of the A. C. C. and Head Master of the residential school to operate the bank accounts of the trust. In these circumstances, I am of the view that the present petition can conveniently be disposed of by setting aside the orders passed by the Assistant Charity Commissioner, Osmanabad as well as the Joint Charity Commissioner, Latur while maintaining the direction of the Joint C. C. to decide all the change reports finally within a period of three months from today. I accordingly proceed to pass following order.

ORDER

A. The order passed by the Assistant Charity Commissioner, Osmanabad dated 10.08.2022 in Enquiry No. 131 of 2022 as well as order passed by the Joint Charity Commissioner, Latur on 13.10.2022 in Revision No. 46 of 2022 to the extent of rejection of Revision are set aside.

- B. However, the directions issued by the Joint Charity Commissioner Latur to decide the pending change reports bearing Change Report No. 299 of 2015, C. R. No. 253 of 2018, C. R. No. 254 of 2018, C. R. No. 202 of 2021, C. R. No. 203 of 2021, C. R. No. 223 of 2021, C. R. No. 3531 of 2017, C. R. No. 129 of 2022 and 131 of 2022 vide clause Nos. 2 and 3 of the operative order dated 13.10.2022 are maintained and the A. C. C. Osmanabad is directed to decide the abovesaid Change Reports within a period of three (03) months from today by conducting the trial on day today basis. Parties to cooperate for final decision of Change Reports within stipulated time and not to seek unnecessary adjournments.
- C. Interim arrangement made by order dated 13.03.2018 passed by the A. C. C. shall continue to operate till final decision of the change reports by the A. C. C.
- D. With these observations and directions, the writ petition is partly allowed. There shall be no order as to costs. Rules made partly absolute.

[SANDEEP V. MARNE, J.]