

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13403 OF 2018

Rameshwarji s/o Bankatlalji Chitlange & Anr.
VERSUS

PETITIONER

The State of Maharashtra and Others

RESPONDENTS

Mr. S.S. Rathi, Advocate for the petitioner.

Mr. P.N. Kalani, Advocate for respondent No. 4.

Mr. S.W. Munde, AGP for respondent - State

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE: 27th SEPTEMBER, 2022

ORDER :

1. This petition challenges the order dated 28.09.2018 passed by learned Joint Charity Commissioner, Latur in Appeal No. 118/2015.

2. Dispute relates to the election of educational trust namely Rajasthani Seva Samaj, Beed, which is registered under the Societies Registration Act, 1860 as well as Bombay Public Trust Act, 1950. The main object of the trust is to provide better and quality education to the needy and poor students in Marathwada region. The petitioner No. 1 claims to be a former member of the said trust.

3. Bye-laws of the trust were amended in the year 2001 by Change Report No. 14/2001 and since then affairs of the trust

are managed as per the amended bye-laws. There were 157 members of the said trust as per Change Report No. 14/2001. As per this change, petitioner No. 1 is a President of the trust and petitioner No. 2 is a member of executive body.

4. Change reports of the said trust filed after the year 2010 were rejected holding that the elections are not conducted as per the amended bye-laws. One of the member of the Trust namely Govind Mundada filed application under section 41-a of Bombay Public Trust Act, 1950, seeking direction to conduct election of the trust. Since no directions were issued by the Assistant Charity Commissioner, Writ Petition No. 1618/2010 was filed in this Court. This Court by order dated 12.03.2010 directed the Assistant Charity Commissioner to conduct elections of new executive committee, as per the bye-laws of the trust. In terms of directions, the Assistant Charity Commissioner appointed election officer for conducting election of the trust.

5. It is the case of the petitioners that respondent No. 4 filed Change Report No. 542/2010 by preparing false and fabricated record of the meeting dated 14.03.2010, showing that election of executive committee of 11 persons was conducted. According to the petitioners, the petitioners earlier body was of

21 members. The petitioners further contended that respondent No. 4 has not conducted elections as per the bye-laws of the trust and many illegalities were committed in the process of election of the trust. The petitioners, therefore, objected the change report filed by respondent No. 4 raising various grounds including that no notice of the said meeting was sent and served on all the members of the trust. The Petitioner No. 1 was not called in the said meeting. No notice was issued to him, some notices were issued on wrong address of the trustees and members. There is no record to show that the members of the trust were duly served with intimation of meeting dated 14.03.2010. As per the bye-laws, meeting has to be presided over by the President of the trust and President was not present for the meeting dated 14.03.2010. Signatures in the proceeding book of the said meeting are forged and bogus, etc. In support of change report, respondent No. 4 filed his evidence affidavit and he has given vital admissions. The Assistant Charity Commissioner rejected the Change Report No. 542/2010 by order dated 21.10.2015.

6. Respondent No. 4 challenged the decision by filing appeal No. 118/2015 before the Joint Charity Commissioner,

Latur, who has allowed the appeal. Said decision is impugned in the present petition.

7. Heard the learned advocate for the petitioners, learned advocate for respondent No. 4 and learned Assistant Government Pleader for respondent/State.

8. The learned advocate for the petitioners assailed the impugned order raising various grounds. According to him, the appellate authority ignored the vital admissions given by respondent No. 4 before the Assistant Charity Commissioner, which goes to show that the election was not conducted as per the bye-laws of the trust. Notices of the meeting dated 14.03.2010 were not served on the members and trustees including the President (Petitioner No. 1). He therefore submits that the impugned order passed by the Assistant Charity Commissioner is contrary to the evidence on record and is passed without recording proper reasons. Findings recorded in the impugned order are perverse. There was no occasion for Joint Charity Commissioner to interfere in the well reasoned order of the Assistant Charity Commissioner. According to him, the evidence is not properly appreciated by the Joint Charity Commissioner, while allowing the appeal. The impugned order is

passed without waiting for the record of the Assistant Charity Commissioner. He therefore, submits that the impugned order is liable to be quashed and set aside by allowing the writ petition.

9. Per contra, the learned advocate for respondent No. 4 supports the impugned order. By relying on Jagatnarayansingh Swarupsingh Chithere and others Vs. Swarupsingh Education Society and Another, 1980 Mh.L.J. 372, he submits that in view of subsequent elections which have taken place nothing remains in the petition. He therefore submits that the writ petition being merit less is liable to be dismissed.

10. The learned Assistant Government Pleader supports the impugned order.

11. Heard the learned advocate for the petitioners, learned advocate for respondent No. 4 and learned Assistant Government Pleader for State at length. Perused the grounds raised in the writ petition, annexures thereto and reply filed by respondent no. 4.

12. It is a matter of record that on the basis of election

held on 14.03.2010 executive committee was elected, which functioned for three years and their term was over in the year 2013. It is further clear from the record that for the subsequent years i.e. 2010-2013, 2013-2016, 2016-2019 and 2019-2022 executive committee was elected.

13. In view of aforesaid, challenge raised in the present petition rendered merely academic.

14. In *Jagatnarayasnsingh Chithere* (supra), the learned Single Judge of this Court has held:

"11. With all these findings in favour of the appellants, I am constrained to nevertheless dismiss the appeal in view subsequent developments, Court can not ignore relevant subsequent developments occurring during the pendency of appeal and must in the ends of justice mould its order in the light thereof. In this context, I may refer to Civil Application No. 2498 of 1979 by respondent No. 1. Factual averments therein are not contested. Undisputed position, therefore is that the term of the Managing Committee elected in February 1974 has already expired in February 1979 and a new Managing Committee has also been elected in March 1979. This new Committee has also already taken charge. Mr. Nashikkar the learned Advocate for respondent No. 1 trust, makes a statement before this Court that the old Managing Committee elected in February

1974 had neither sold nor purchased any immovable property nor had it taken any such major policy decision so as to adversely effect the interest of the public trust. The said Managing Committee had only carried on routine administration. Mr. Chandurkar the learned Advocate for the appellants has not invited my attention to any such act by the erstwhile Managing Committee which can be said to be against the interests of the trust. Moreover, there are many in-built provisions in the Act itself and the Rules thereunder operating as safety valve for protection of public trusts. Control of the Charity Commissioner is also there all throughout. In these circumstances, remand to inquiry into the theoretical legality or otherwise of the 1974 elections already superseded by the 1979 elections become academic.

12. This is not say or hold that the impugned order of the learned District Judge is necessarily good and valid. But subsequent developments have rendered it unnecessary to go into that question. Question in the abstract or questions academic are normally not decided by courts. _ _ _ _"

15. In the light of above observations, and in view of subsequent events, the challenge raised in this petition is rendered merely academic.

16. Apart from above, the Joint Charity Commissioner after going through original record of the trust has recorded a

finding that out of 157 members of the trust, 23 members have died and 134 valid existing members were served with notice of meeting dated 14.03.2010. It is held that the meeting dated 14.03.2010 was a special general body meeting called by the governing committee for election of new executive committee. It is further held that in the said meeting new executive committee was elected unanimously by majority and proceedings of said meeting are signed by Petitioner No. 1. It is further held that except petitioners none of the members have objected about non service of notice on them. So also except petitioners no member has challenged the validity of notice dated 06.03.2010 and meeting dated 14.03.2010. The Joint Charity Commissioner is justified in recording these findings on the basis of record. There is no factual or legal error in the order impugned in the present petition.

17. No case is made out by the petitioners to interfere in the order impugned in the present petition in extra ordinary writ jurisdiction. The writ petition being devoid of merit is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]