

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2259 OF 2019

Saraswati Shikshan Sanstha
Through its Reporting Trustee
Janardan Vitthalrao Gade

...Petitioner

Versus

Vikas Ramchandra Dubbe & Ors.

...Respondents

Mr. A.D. Khot, Advocate for the petitioner.

Mr. H.F. Pawar, Advocate for the respondents No. 1 to 3.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th SEPTEMBER, 2022

ORDER :

1. Challenge in this petition is to the order passed by the Deputy Charity Commissioner, Beed, below Exhibit-27 in Change Report Application No. 428/2012.

2. Admittedly, said change report is filed for reporting a change that President of the trust has expired and in his place Vice President is elected by executive committee of the trust, on said change, inquiry is numbered as Inquiry No. 1194/2009. In the said inquiry application Exhibit-21 and 27 were filed. By filing application Exhibit-21 it was claimed that respondents are valid

members of the trust and also they are members of the executive committee and the change report Application No. 2499/2011 filed by them is pending. If inquiry C.R. No. 428/2012 is allowed, it will directly affect the respondent, hence, they may be permitted to intervene.

3. By application Exhibit-27 filed under section 73 of Bombay Public Trust Act, 1950 (for short 'said Act') respondents claimed that due to death of the trustee of the trust it was unanimously decided on 14.7.2002 to take new members. Accordingly, membership was given to Vikasrao Dubbe, Chainsukh Jaju, Vijayprakash Totala, Gopinath Shinde, Shivprasad Mundada, Shivaji Deshmukh, Anil Tandale, Omprakash Maniyar, Vijaykuma Menkudale and Vijayprasad Awasti. The membership of these persons was confirmed on 16.08.2002. Accordingly, they have deposited membership fees. In Inquiry No. 384/2007, applicants/respondents have been accepted as members. Accordingly, they are members and well wisher of the Trust. The change report in Inquiry No. 1194/2009 is filed without informing the respondents and therefore they may be permitted to intervene in the said inquiry.

4. After hearing the parties, by the impugned order Application Exhibit-27 filed by respondents is allowed. Hence, the present petition.

5. Heard the learned advocate for the petitioner and learned advocate for the respondents.

6. The learned advocate for the petitioner assailed the impugned order submitting that without there being any document on record showing respondents are member of the trust, the Deputy Charity Commissioner has erroneously allowed the intervention of the respondents. By relying on unreported decision in People's Education Society & Others Vs. Shri. Mansingh S. Moray & Others [First Appeal No. 1249 of 2012], he submits that, nothing is placed on record that respondents are persons having interest in the public trust. The bonafides and genuineness of the intervention of the respondents are not properly ascertained by the Deputy Charity Commissioner and therefore, the impugned order allowing the intervention application of the respondents is liable to be quashed and set aside.

7. The learned advocate for the respondents on the other hand, supported the impugned order.

8. I have heard the learned advocate for the petitioner and learned advocate for respondents at length. Perused the memo of writ petition, grounds raised therein, documents submitted along with petition and judgment relied upon by the learned advocate for the petitioner.

9. In the impugned order it is observed that respondents were allowed to intervene in Inquiry No. 7/2005, by allowing application Exhibit-10 filed under section 73A of the said Act. The respondents along with other members and then president of the trust (since deceased) filed Appeal No. 79/2009 and the same is pending. The order framing scheme of the trust was challenged by Appeal No. 62/2009 filed by Vikas Dubbe, Shivprasad Mundada and others. Same was dismissed in default and for its restoration delay condonation application No. 34/2017 is filed, which is pending. The Deputy Charity Commissioner therefore has held that since long respondents are participating in the matter concerning the trust and their proceedings are pending. For deciding the inquiry application on merit it is

necessary to allow the respondents to intervene in the present inquiry. Therefore, intervention application filed by the respondents is allowed.

10. Taking into consideration the fact that since long the respondents are participating in the proceedings of the said trust, and earlier also they were allowed to intervene in the matter, Deputy Charity Commissioner is justified in permitting the respondents to intervene by allowing application Exhibit-27. No prejudice is likely to be caused to the petitioner if intervention application of the respondents is allowed. Since, the Deputy Charity Commissioner has held that participation of the respondents is necessary for deciding the matter on merit, the impugned order is required to be sustained.

11. In People's Education Society (supra), the learned Single Judge has held that "*the Authorities considering such application under Section 73A of the said Act cannot mechanically, without application of mind to the aforesaid provisions of the Act and merely for the sake of asking, permit any person claiming to have an interest in such trust, to participate in proceedings. The expression "person having*

interest in the public trust” represents the persons having bonafide and genuine interest in public trust as against an interest with an ulterior motive or malafide intention. The Authority is, therefore, required to consider the contents of any such application, if made and the bonafides in claiming participation. If required, the Authority may ask the party concerned to enter the witness box and be subject to the cross-examination so as to establish his bonafides and the status as a “person having interest in the public trust”. The recording of finding that the person is or is not having such bonafide interest in the public trust, is a sine qua non for permitting intervention in the matter. Otherwise, the very object in introducing the provision of Section 73A of the said Act shall frustrate, resulting misuse of the provision. No doubt, the definition is inclusive, but it cannot be said that the person acting against the interest of such public trust or has no interest in the public trust or having hostile interest or has no connection with such public trust, can be permitted to participate in the proceedings without establishing the bonafides and testing his case on the touchstone of the provision of Section 73A read with Section 2(10) of the said Act.”

12. Such are not the facts of the present case. As is already noted above, the respondents have been participating in the proceedings in respect of trust, filed at earlier point of time. Previously, also their intervention was allowed. In that view of the matter, this citation will not assist the petitioner. There is no illegality or perversity in the order impugned in the present petition. The writ petition is dismissed. No costs.

[NITIN B. SURYAWANSHI, J.]