

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 4169 OF 2019

Sabirullahkhan Habibkhan Patel & Anr. -- Petitioners

Vs.

Dy. Charity Commissioner, Akola & Others -- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J.J. Chandurkar, Advocate for Petitioners
Mr. H.D. Dubey, AGP for Respondent No.1
Mr. A.R. Deshpande, Advocate & Mr. Z.Z. Haq, Advocate
for Respondent Nos.2 and 3

CORAM : MANISH PITALE, J.

DATE : 26th APRIL, 2022

CIVIL APPLICATION (CAW) NO. 691/2020

This is an application seeking substitution of the name of petitioner No.1. This Court finds that since the petitioner No.2 is the reporting trustee in the pending change report before the Assistant Charity Commissioner, there is no necessity to pass any orders in the present application and it is disposed of, as such.

WRIT PETITION NO. 4169 OF 2019

By this writ petition, the petitioners, of whom petitioner No.2 is the reporting trustee, have challenged three orders passed by the Deputy Charity Commissioner, Akola.

These orders are passed in the change report submitted by petitioner No.2 as a reporting trustee. The Deputy Charity Commissioner was in the process of considering and deciding the aforesaid change report in the backdrop of order dated 10/08/2018, passed by the Division Bench of this Court in Writ Petition No. 2157 of 2018 (Abdul Washiq Abdul Latif Vs. Assistant Charity Commissioner and ors.), whereby the writ petition was disposed of by directing the authorities under the Maharashtra Public Trust Act, 1950, to decide the pending change reports within four months from the date of the order. As is usually found in such cases, a number of change reports are pending before the Deputy Charity Commissioner and there is an ongoing conflict within the trustees of the said trust.

2. In the pending change report bearing enquiry No.605/1996, the reporting trustee and witnesses in support of the change report submitted their affidavits-in-evidence before the Deputy Charity Commissioner. At this stage, the objectors i.e. respondent Nos.2 to 4 herein filed application at Exh.57 for permission to cross-examine the reporting trustee and his witnesses. This application was opposed on behalf of the petitioners. By the impugned order dated 25/04/2019, the said application at Exh.57 was partly allowed and permission was granted to the contesting respondents to cross-examine the reporting trustee and his witnesses on the point of membership only.

3. Thereafter, it appears that the reporting trustee and his witnesses did not appear before the Deputy Charity Commissioner on few dates. As a consequence, the Deputy Charity Commissioner passed the impugned order dated 27/05/2019, recording the fact that the reporting trustee and his witnesses remained absent despite several opportunities and hence, no evidence order was passed against them, fixing the matter for evidence of the contesting respondents as objectors.

4. Thereafter, it appears that the petitioners moved application for adjournment of the proceedings before the Deputy Charity Commissioner so as to approach this Court, but, the said application was also dismissed by impugned order dated 27/05/2019.

5. Mr. J.J. Chandurkar, learned counsel appearing for the petitioners, submitted that the reasoning in the order dated 25/04/2019, given by the Deputy Charity Commissioner in the backdrop of the amendment to Section 73 of the aforesaid Act by insertion of the proviso w.e.f. 10/10/2017, was erroneous and self-contradictory. It was submitted that, therefore, the impugned order dated 25/04/2019, deserved to be set aside. Insofar as the impugned order dated 27/05/2019, of no evidence order passed against the petitioners was concerned, it was

submitted that the petitioners would suffer grave prejudice. As regards the impugned order dated 27/05/2019, refusing to grant time to the petitioners to approach this Court, it was submitted that the challenge against that order was rendered meaningless because the petitioners indeed approached this Court by way of the present petition and on 21/06/2019, while issuing notice this Court granted ad-interim stay of further proceedings to the said enquiry into the change report.

6. On the other hand, Mr. A.R. Deshpande along with Mr. Z.Z. Haq, learned counsel appearing for the contesting respondents submitted that they have instructions to state that the contesting respondents would have no objection for setting aside the said impugned order dated 27/05/2019, whereby no evidence order was passed against the petitioners, provided that the permission granted to the said respondents by order dated 25/04/2019 for cross-examining the reporting trustee and his witnesses on the point of membership only was not interfered with.

7. At this stage, the learned counsel appearing for the petitioners submitted that if that be so, even the petitioners ought to be permitted to cross-examine the witnesses, who may be examined by the contesting respondents in the proceedings before the Deputy Charity Commissioner.

8. This Court is convinced that in the light of the aforesaid submissions made on behalf of the rival parties, there is no necessity to go into the question of the applicability of amendment to Section 73 of the aforesaid Act in the present case, which concerns an enquiry into a change report submitted prior to the amendment was brought into force. In the facts and circumstances of the present case, this Court is convinced that order dated 25/04/2019, passed by the Deputy Charity Commissioner, permitting cross-examination of the reporting trustee and his witnesses on the point of membership only, does not deserve interference and hence, to that extent the writ petition deserves to be dismissed.

9. At the same time, the impugned order dated 27/05/2019, passed by the Deputy Charity Commissioner, directing no evidence order against the petitioners appears to be inappropriate in the facts and circumstances of the case. Perhaps the said order came to be passed due to anxiety on the part of the Deputy Charity Commissioner to adhere to the time line indicated by the Division Bench of this Court in the aforesaid order dated 10/08/2018. The reporting trustee and his witnesses have already submitted their affidavits-in-evidence before the Deputy Charity Commissioner and permission being granted to the contesting respondents to cross-examine them on the point of membership, shows that

there was no necessity to pass the aforesaid no evidence order. It would unnecessarily lead to complications. Therefore, said order deserves to be set aside and to that extent the writ petition deserves to be granted.

10. Insofar as the impugned order dated 27/5/2019 is concerned, even according to the petitioners the challenge regarding the said order is rendered meaningless in view of the subsequent events in the matter.

11. In view of the above, the writ petition is disposed of by confirming the order dated 25/04/2019, passed by the Deputy Charity Commissioner on Exh.57. At the same time, the writ petition is partly allowed by setting aside the impugned order dated 27/05/2019, whereby no evidence order was passed against the petitioners. It is clarified that after the contesting respondents cross-examine the reporting trustee and his witnesses, at the stage when the contesting respondents may examine witnesses in support of their stand, the petitioners would certainly be granted an opportunity to cross-examine such witnesses.

12. The Deputy Charity Commissioner is directed to expeditiously dispose of the said proceedings and in any case within a period of three months from today.

13. The parties are directed to co-operate with the Deputy Charity Commissioner for disposal of the aforesaid proceedings within the aforesaid period of time.

14. It is brought to the notice of this Court that while issuing notice, interim order was granted on the prayer made on behalf of the petitioners and they were directed to deposit a sum of Rs.10,000/- in the Registry of this Court to show their bonafides. It is undisputed that the said amount of Rs.10,000/- was indeed deposited by the petitioners. In view of the disposal of the writ petition, the Registry is directed to transfer the said amount of Rs.10,000/- with interest accrued, if any, to the High Court Legal Services Sub Committee, Nagpur.

JUDGE