

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

WRIT PETITION NO.3296 OF 2020 WITH C.A.W. NOs.1365 OF 2020
AND 1366 OF 2020

Qidwai Education and Cultural Society
Through its Vice President, Asi Nagar,
Teka, Nagpur – 440017.

PETITIONER

- Versus -

1. The State of Maharashtra,
Through its Secretary,
Department of School Education And Sports,
Mantralaya, Mumbai – 32.
2. The Education Officer (Secondary),
Zilla Parishad, Nagpur.

RESPONDENTS

Mr. B.G. Kulkarni, Advocate holding for Mr.Anand Parchure,
Advocate for the Petitioner.

Mr. A.A. Madiwale, Assistant Government Pleader for the
Respondent Nos. 1 and 2.

Mr. S.D. Abhyankar, Advocate for Intervenor in C.A.W. Nos.1365
of 2020 and 1366 of 2020.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 27 APRIL 2022.

JUDGMENT (PER NITIN JAMDAR, J.)

Rule. Rule made returnable forthwith. Learned
Assistant Government Pleader and learned counsel for the
Intervenor waive notice of hearing for the respective parties.

2. This writ petition is filed by an educational institution in the matter of non-grant of approval to the appointment of Principal-Headmaster in terms of the proposal sent by the Petitioner. The Respondent no.2-Education Officer (Secondary) Zilla Parishad, Nagpur by order dated 31 July 2020 and 3 August 2020 has not granted approval to the appointment in terms of proposal submitted. On 1 October 2020 while issuing notice *ad interim* relief in terms of Prayer Clause (c) was granted staying the effect and operation of the impugned order and permitting the Petitioner to forward the salary bills with the signature of a person who was already forwarding the bills to the Education Officer (Secondary).

3. Civil Application (W) No.1365 of 2020 is for intervention. It is stated in the intervention application that during the pendency of the petition, the Education Officer by an order dated 20 October 2020 granted financial and administrative powers as in-charge Headmistress in favour of one Naseem Godil who is not the seniormost teacher. It was contended by the Intervenor that it is the concerned Intervenor who is the proper trustee to represent the Petitioner-Trust. It was also stated that the change report of the Petitioner-Trust is pending before the concerned Charity Authorities.

4. The petition came up on Board after notice being served. From the arguments advanced, it is clear that there was a dispute within the Management of the Petitioner-Trust.

5. Since large number of cases in respect of educational institutions coming up before the Court arise because of the dispute amongst the trustees, the learned counsel for the parties have advanced suggestions on the wider issues as well. The efforts of the learned counsel for addressing the legal issues and the submission as how this litigation has to be curtailed are appreciated.

6. The learned counsel for the parties state that the dispute within the trustees remain unresolved because of the pendency of the change reports in some cases for more than a decade. The learned counsel for the parties submit that if Charity Authorities decide the issue of internal matters between the trustees swiftly, large amount of litigation concerning Educational Institutions coming to this Court would be curtailed. The pending litigation between the trustees of the Educational Institutions, more particularly centering around issues of seniority and approvals, affect the teaching and non-teaching staff. Consequently the education imparted in the grant-in-aid schools gets affected. The State Government should therefore be equally concerned that the

disputes are minimised and/or they are resolved as early as possible when they arise.

7. In the present case a reply affidavit is filed by the Deputy Charity Commissioner, Nagpur wherein it is stated that around 113 Change Reports are pending within his jurisdiction where there is a substantial litigation surrounding the Educational Institutions. Thus more than hundred Educational Institutions are affected because of pendency of the change reports within that jurisdiction of the Deputy Charity Commissioner, Nagpur. The Deputy Charity Commissioner, Nagpur has stated that there is not enough staff and infrastructural support to decide the change reports early. From the list submitted, it appears that some of the change reports are pending for more than a decade.

8. It is not that the State Government is oblivious to the issue of the pendency of the change reports and the consequences flowing from it. Questions were asked regarding the functioning of the Charity Authorities during the Winter Session of the Maharashtra Legislative Assembly regarding pendency of cases and the Hon'ble Chief Minister had assured the House that a committee to look into the issue would be constituted. A Government Resolution was issued on 13 January 2016 constituting the committee to suggest changes in the Maharashtra

Public Trusts Act, 1950 for expeditious disposal of the proceedings before the Charity Authorities.

9. The Committee consisted of a Retired Charity Commissioner, a Retired Deputy Charity Commissioner, a Legal Advisor, a Deputy Secretary and an Assistant Charity Commissioner. The Committee completed drafting necessary amendments to the Act of 1950 and forwarded the same to the Law & Judiciary Department, Mantralaya, Mumbai by a letter dated 12 August 2016 annexing the recommendations. The Committee examined the changes as regards expeditious disposal of the change reports. The Committee noted that under the present scenario change reports remain pending for years and if provisional orders are passed it will enable the trustees to undertake the administrative work and the objects of the Trust can be fulfilled.

10. A bill was introduced in the Maharashtra Legislative Assembly on 11 August 2017 to amend the Maharashtra Public Trusts Act, 1950 which was passed as The Maharashtra Public Trusts (Second Amendment) Act, 2017 (for short, 'the Amending Act of 2017'). As per Clause 4 of the Amending Act of 2017, Section 22 of the Act of 1950 was amended and the Act was brought into force.

11. The Statement of Objects and Reasons of the Amending Act of 2017 are stated thus:-

“The Maharashtra Public Trusts Act (XXIX of 1950) regulates and makes better provisions for the administration of public religious and charitable trusts in the State of Maharashtra. More than 8 Lac trusts have been registered in the State under the said Act.

Though, the said Act contains comprehensive provisions to regulate the trusts, yet, it is noticed that the proceedings under various provisions of the Act remain pending for the inordinately long period and thereby result in hindrances in the advancement of public religious and charitable objects.

2. The State Government is concerned with the huge pendency of cases before the authorities under the Act, especially the change reports, more particularly the uncontested change reports, to make entries in the registers kept under section 17 of the said Act. The Government had, therefore, constituted a committee vide order dated 13th January, 2016 under the Chairmanship of Shri A.J. Dholakiya, Charity Commissioner (Retired), and comprising Shri S.B. Savle, the Charity Commissioner and other officers to propose amendments in the Maharashtra Public Trust Act, to expedite the disposal of the change reports by the Assistant or Deputy Charity Commissioners and also the proceedings before the other authorities under the said Act. The committee gave its report and suggested comprehensive amendments to the said Act.

3.

4. Keeping in view the objectives of expeditious and swift disposal of proceedings by the authorities within the organisation administering the said Act and doing away with multiple authorities or forums and proceedings and further streamlining the proceedings before the authorities under the Act by providing time limits and incorporating enabling provisions, it was found absolutely necessary to amend the provisions of the said Act and introduce, inter alia, the following amendments:

(a)

(b) In the matter of change reports, --

(i) make an enabling provision to allow the extension of period of 90 days in reporting change by adding a proviso to sub-section (1) of section 22;

(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."

(emphasis supplied)

Section 22 as amended by the Amending Act of 2017 reads thus:-

"22. Change

(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 Trust 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) Where the change to be reported under sub-section (1) relates to any immovable property, the trustee shall, along with the report, furnish a memorandum in the prescribed form containing the particulars (including the name and description of the public trust) relating to any change in the immovable property of such public trust, for forwarding it to the Sub-Registrar referred to in sub-section (7) of section 18.

Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorized by him in this behalf.]

(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 enquiry 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 enquiry, if necessary under sub-section (2), or merely after holding an enquiry 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 [***] 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) The Deputy or Assistant Charity Commissioner may, after such detailed and impartial enquiry and following such procedure as may be prescribed, de-register the trust on the following grounds:-

- (a) when its purpose is completely fulfilled; or*
- (b) when its purpose becomes unlawful; or*
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or*
- (d) when the trust, being revocable, is expressly revoked; or*
- (e) when the trustees are found not doing any act for fulfilling object of the trust:*

Provided that, no trust shall be de-registered under clause (e) unless its trustees have committed default in reporting the change under sub-section (1), in submission of the audited accounts as prescribed by sub-section (2) of section 33 or sub-section (1A) of Section 34 or in making any other compliance prescribed by or under this Act for a period of five years from the last date of reporting the change, submission of the accounts or making the compliance, as prescribed by or under this Act or the rules made thereunder, as the case may be.

(3B) The Deputy or Assistant Charity Commissioner may take over the management of properties of the trust de-registered under sub-section (3A) and pass such necessary orders for the

same as he deems fit and may, if he considers it expedient, dispose them of by sale or otherwise and deposit the sale proceeds in the Public Trusts Administration Fund established under section 57.]

[(4) Whenever an entry is amended [or the trust is removed from the register] under sub-section (3), the Deputy or Assistant Charity Commissioner, as the case may be, shall forward the memorandum furnished to him under sub-section (1A), after certifying the amended entry [or the removal of the trust from the register] to the Sub-Registrar referred to in sub-section (7) or section 18, [for the purpose of filing in Book No.1 under section 89 of the Indian Registration Act, 1908, in its application to the State of Maharashtra].”

Therefore, the Amending Act of 2017 provides for the mechanism or provisional acceptance of the change reports.

12. Once an option of the provisional change report is available to the Charity Authorities, there is no reason for not exercising it. Infact this change has been brought about by the Legislation specifically acknowledging that change reports take long time to decide and therefore an interim arrangement of provisional acceptance is necessary.

13. The learned counsel for the parties and the learned Assistant Government Pleader informed us that though the amendment has been brought in the year 2017 it is not given effect fully and provisional orders are not commonly passed. If

that be the position it is something that the Charity Commissioner should look into and consider issuance of circular if necessary so as to implement Section 22 of the Amending Act of 2017 to subserve the Legislative intent.

14. The learned counsel for the parties agree that in the present case also steps regarding provisional order can be taken. As regards the two change reports viz. Change Report Nos.312 of 2019 and 1714 of 2019 in respect of the Petitioner-Trust are pending and one is at the stage of evidence. In the present case since the proceedings are at an advanced stage, the concerned Charity Authorities will consider passing the provisional order in terms of the amended Section 22 so that the parties in respect of the present trust will have the clarity. The Education Officer (Secondary) can pass necessary orders based on the provisional order passed subject to the final orders to be passed in the pending change reports with necessary conditions and riders if required.

15. Accordingly, this writ petition is disposed of by directing the Deputy Charity Commissioner, Nagpur where the change reports as regards the present Petitioner-Trust are pending to pass a provisional order in terms of amended Section 22 of the Act of 1950 within a period of three months from today. Thereupon the Respondent-Education Officer (Secondary) will pass an order on

the proposal of the Petitioner based on the provisional order passed by the Charity Authorities within a period of four weeks thereafter subject to the final outcome of the pending proceedings before the Charity Authorities. The position under the interim order to continue till the Education Officer (Secondary) passes the order as above. The merits of the rival contentions are kept open. Civil Application (W) Nos.1365 of 2020 and 1366 of 2020 also stand disposed of.

16. Copy of the order be sent to the Charity Commissioner, State of Maharashtra to consider if any instructions can be issued to the Charity Authorities to bring to their notice the mechanism available under the Amending Act of 2017.

17. Rule is made absolute in above terms. In the facts of the case, there shall be no order as to costs.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

APTE