

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

WRIT PETITION NO. 4259 OF 2018

Ramakant S/o Shankarrao Sherkar and others

vs.

The Joint Charity Commissioner, Amravati Region and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A. J. Gilda, Advocate for petitioners.
Ms. S. S. Jachak, AGP for respondent No.1.
Mr. S. S. Sanyal, Advocate for respondent Nos.2 and 3.

CORAM : MANISH PITALE J.

DATE : 01/07/2022

By this writ petition, the petitioners have challenged order dated 05/05/2018, passed by the Joint Charity Commissioner, Amravati, whereby an application for condonation of delay filed by the contesting respondent Nos.2 and 3 was allowed, subject to cost of Rs.2000/-.

2. According to the petitioners, the said respondents failed to demonstrate sufficient cause for condonation of delay of about 450 days and that therefore, the impugned order deserves interference.

3. The respondent Nos.2 and 3 filed appeal before the Joint Charity Commissioner, in order to challenge an order dated 16/05/2016, passed by the Assistant Charity Commissioner, Amravati, whereby change report No.227/2014 was accepted by the said Authority. The said appeal was filed along with the aforesaid application for condonation of delay of about 450 days. In the application for condonation of delay, the respondent Nos.2 and 3 stated that they had sought intervention in the change report proceedings, which were pending before the Assistant Charity Commissioner, but, by order dated 04/05/2016, their application for intervention was rejected, primarily on the ground that their membership in the trust itself had been cancelled by a Resolution dated 12/02/2015.

4. The respondent Nos.2 and 3 filed Writ Petition No.4148 of 2017 to challenge the order dated 04/05/2016, passed by the Assistant Charity Commissioner, and on 11/07/2017 while issuing notice, this Court granted stay of the said order dated 04/05/2016. Subsequently, the writ petition was dismissed as infructuous on 10/10/2017 and this Court clarified that the issues raised in the petition were not adverted to and that liberty was granted for raising challenges in appropriate proceedings, if so advised.

5. It is an admitted position that in the meanwhile on 16/05/2016, the change report proceeding was disposed of by the same being accepted. According to the respondent Nos.2 and 3, they were constrained to file the appeal to challenge the change report proceedings being accepted by the order dated 16/05/2016. The said respondents stated the aforesaid facts in the application for condonation of delay and claimed that they had demonstrated sufficient cause for condonation of delay.

6. The said application was opposed. But, by the impugned order, the Joint Charity Commissioner accepted the contentions raised on behalf of respondents Nos.2 and 3 and the application for condonation of delay was allowed.

7. This Court issued notice in present writ petition on 17/07/2018 and granted interim stay of further proceedings in the appeal preferred by respondent Nos.2 and 3, before the Joint Charity Commissioner. On notices being served, the respondents appeared through counsel.

8. Mr. A.J. Gilda, learned counsel appearing for the petitioners vehemently submitted that in the present case, respondent Nos.2 and 3 had been

negligent in challenging the order dated 04/05/2016 and it took them about 10 months to file Writ Petition No.4148 of 2017, to challenge the said order, by which time the change report proceeding itself had been disposed of on 16/05/2016. It was submitted that interim order was obtained without apprising this Court about the fact that the change report proceedings had been disposed of.

9. It is further submitted that eventually, on 10/10/2017, the writ petition stood dismissed as infructuous with liberty as noted above. It was submitted that the very fact that the respondent Nos.2 and 3 chose to file the petition to challenge order dated 04/05/2016, passed by the Assistant Charity Commissioner, after about 10 months, demonstrated that they were never sincere about raising any challenge to the said order and that in any case such challenge had been rendered meaningless for the reason that the order dated 04/05/2016, had merged into the final order dated 16/05/2016, whereby the change report was accepted by the Assistant Charity Commissioner. On this basis, it was submitted that the Joint Charity Commissioner reached perverse findings in paragraph 15 of the impugned order, while holding that sufficient cause had been demonstrated for condonation of delay.

10. Reliance was placed on judgment of the Hon'ble Supreme Court in the case of ***Majji Sannemma alias Sanyasirao Vs. Reddy Sridevi and others 2021 SCC OnLine SC 1260***, wherein the Supreme Court reversed the order passed by the High Court condoning huge delay of 1011 days.

11. On the other hand, Mr. S. S. Sanyal, learned counsel appearing for the contesting respondent Nos.2 and 3 submitted that since the Joint Charity Commissioner had condoned delay on the basis of appreciation of the material on record and having recorded the findings that sufficient cause was demonstrated, this Court ought not to interfere with the impugned order. It is submitted that the allegations of negligence and falsehood made against the respondent Nos.2 and 3 are not justified. It was submitted that the whole purpose of the petitioners challenging the impugned order is to avoid a contest and merits. It was sought to be highlighted as to the manner in which the respondent Nos.2 and 3 were kept out of the affairs of the trust allegedly illegally by the petitioners and that considering the controversy raised in the appeal before the Joint Charity Commissioner, delay having been condoned, this Court ought to allow the controversy between the parties to be settled on merits.

12. Ms. Sangita Jachak, learned AGP appeared on behalf of respondent No.1.

13. Heard learned counsel for the rival parties in the backdrop of the material placed on record. It is settled position that once delay is condoned by a Court or Authority below, this Court while exercising writ jurisdiction would be rather slow in interfering with such an order. This Court would be prompted to interfere with the order condoning delay, if it is brought to the notice of this Court that there has been palpable falsehood or suppression of facts or a complete misreading of the material on record on the part of the Court or authority below, while condoning delay.

14. In the present case, the principal contention raised on behalf of the petitioners is that respondent Nos.2 and 3 delayed challenging order dated 04/05/2016 passed by the Assistant Charity Commissioner whereby their application for intervention was rejected. It was further alleged that the said respondents deliberately did not bring to the notice of this Court, on 11/07/2017, that the change report had been already accepted on 16/05/2016 by the Assistant Charity Commissioner and that the main proceeding itself had been disposed of. In other words,

it is alleged that the respondent Nos. 2 and 3 obtained interim order passed in Writ Petition No.4148 of 2017 on 11/07/2017, by misleading this Court.

15. It is further alleged that since the respondent Nos.2 and 3 delayed challenging the order dated 04/05/2016 and they did not bring to the notice of this Court in Writ Petition No.4148 of 2017 that the change report proceeding itself had been disposed of on 16/05/2016, the Joint Charity Commissioner, ought not to have exercised discretion in favour of the said respondents for condoning delay.

16. This Court has perused the interim order dated 11/07/2017 passed in Writ Petition No.4148 of 2017 and more importantly, the order dated 10/10/2017, passed by this Court in the aforesaid writ petition, whereby the petition was dismissed as infructuous. It is significant that in the said order, this Court nowhere reached a finding that either respondent Nos.2 and 3 had misled this Court or that there was any suppression on their part. The petition was simply dismissed as infructuous, taking note of the fact that the change report proceeding was disposed of on 16/05/2016, by accepting the change report. It is even more significant that despite dismissing the writ

petition as infructuous, this Court clarified that the issues raised by respondent Nos.2 and 3 in the said writ petition were not adverted to and that liberty was reserved for raising challenge in appropriate proceedings. Therefore, the serious allegations made against respondent Nos.2 and 3 are not borne out from the record.

17. In this backdrop, when the impugned order passed by the Joint Charity Commissioner is perused, this Court finds that the conclusion rendered in paragraph 15 can neither be said to be perverse nor unreasonable. Therefore, the contentions raised on behalf of the petitioner deserve to be rejected.

18. Insofar as reliance on judgment of the Hon'ble Supreme Court in the case of *Majji Sannemma* (supra) is concerned, the Supreme Court held that a Court would help those who are vigilant and not those who slumber over their rights. There can be no quarrel with the said proposition, but the same would not apply in the facts of the present case.

19. Even otherwise, delay having been condoned by the Joint Charity Commissioner, there ought to be reason for this Court to interfere such an

order. With the delay being condoned, all that will happen before the Joint Charity Commissioner is a contest on merits between the parties. The petitioners cannot be said to have been put to any prejudice, only because an opportunity is afforded to respondent Nos.2 and 3 to raise their contentions on merits before the Joint Charity Commissioner. The respondents had nothing to gain by delaying the challenge before the Joint Charity Commissioner.

20. In the facts and circumstances of the present case, this Court is convinced that no interference is warranted in the impugned order.

21. Accordingly, the writ petition is dismissed.

22. The Joint Charity Commissioner shall proceed to decide the appeal on merits, in accordance with law.

23. This Court has not made any comment on the merits of the matter.

JUDGE