

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

WRIT PETITION NO. 5364 OF 2021

Sureshchandra Rajnarayan Dixit and others -- Petitioners

Vs.

Smt. Kiran Rajkumar Bajpai and 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.B. Gandhi, Advocate for Petitioners

Mr. A.R. Deshpande, Advocate for Respondent No.1

CORAM : MANISH PITALE, J.

DATE : 09th JUNE, 2022

By this writ petition, the petitioners have challenged order dated 14/09/2021, passed by the Court of District Judge-2, Akola, (hereinafter referred to as "District Court"), whereby judgment and order passed by the Joint Charity Commissioner in revision has been set aside and the parties have been directed to have the issue of induction of 12 members in the Trust adjudicated before the Assistant Charity Commissioner in the pending change report, concerning election conducted in the year 2017. The Trust is called the Rashtriya Vidya Niketan, Akola.

2. While narrating the facts of the present case, Mr. Gandhi, learned counsel appearing for the petitioners, first invited attention of this Court to order dated 20/12/2011, passed by the Assistant Charity Commissioner in Change Report Inquiry No.636/2011, concerning an election of the Trust that took place

in the year 2011. It is recorded in the said order that all concerned parties agreed to the election of the new Executive Committee and since there was no objection from any quarter, the change report was accepted.

3. It appears that thereafter, the respondent No.1 filed revision petition No.7/2013, before the Joint Charity Commissioner, Amravati under the provisions of the Maharashtra Public Trusts Act, 1950, challenging the aforesaid order passed by the Assistant Charity Commissioner, whereby the change report was accepted. One of the issues seriously raised in the said proceeding was that 12 members had been inducted in the Trust illegally, prior to the aforesaid change report of the year 2011 being accepted by the Assistant Charity Commissioner. It was claimed that the respondent No.1 and others were misled on that aspect of the matter. The Joint Charity Commissioner considered the aforesaid issue raised on behalf of respondent No.1, along with other issues and by judgment and order dated 31/08/2016, held that no case was made out for interference and accordingly, dismissed the revision petition.

4. Aggrieved by the same, the respondent No.1 filed application under Section 72 of the aforesaid Act before the District Court, which has been disposed of by the impugned order. The District Court found that since the Assistant Charity Commissioner had passed the aforesaid order dated 20/12/2011, accepting the change report as no objection was raised at that time, the issue of alleged illegal induction of 12 members was not tested and hence, there was no opportunity to lead evidence for

either party in that regard. It was further observed that in terms of the settled position of law that the aforesaid aspect regarding induction of members of the Trust had to be decided in change report proceedings under Section 22 of the said Act, it was necessary that the said aspect be examined in accordance with law. It was then observed that the parties had no occasion to lead evidence on the said aspect of the matter, despite the fact that certain documents were indeed placed on record before the Joint Charity Commissioner by the petitioners. It was found that in the meanwhile, in the year 2017, election had taken place and change report Inquiry No.534/2017, was already pending before the Assistant Charity Commissioner. In this backdrop, the District Court by the impugned order set aside the order of the Joint Charity Commissioner and directed that the issue regarding induction of 12 members in the Trust be adjudicated by the Assistant Charity Commissioner in the pending change report Inquiry No.534/2017. The petitioners are aggrieved by the said order.

5. Mr. Gandhi, learned counsel appearing for the petitioners submitted that there was no occasion for the District Court to issue the aforesaid directions in the impugned order, for the reason that no objection was raised on behalf of the respondent No.1 or any other party when the order dated 20/12/2011, was passed by the Assistant Charity Commissioner, accepting the change report submitted in the year 2011. It was submitted that the aforesaid 12 members were inducted before the said order was passed by the Assistant Charity Commissioner and since the respondent No.1 and others had consented to the said order, it

could not lie in their mouth to now contend that the induction of 12 members could be challenged in subsequent proceedings. By relying upon the order passed by the Joint Charity Commissioner, the learned counsel for the petitioner submitted that all the aspects of the matter were considered threadbare and on the basis of resolution, notice and other such documents, the Joint Charity Commissioner found that the contentions raised on behalf of the respondent No.1 that some ante-dated entries were made, could not be accepted. On this basis, the revision application was dismissed and according to the petitioners, the District Court ought to have considered the merits of the matter on the basis of the material appreciated by the Joint Charity Commissioner, instead of setting aside the order of the Joint Charity Commissioner and directing that the issue be decided in the subsequent change report proceedings initiated in the year 2017. It was submitted that the said issue was sought to be reopened and reiterated by respondent No.1, which could not be permitted.

6. On the other hand, Mr. Deshpande, learned counsel appearing for respondent No.1 submitted that the District Court was justified in issuing the aforesaid direction. There was no occasion to test the induction of the aforesaid 12 members and the same was required to be tested in accordance with law, at some stage or the other. By inviting attention of this Court to the orders passed in writ petition filed during pendency of the proceedings before the District Court, it was submitted that even this Court had recorded that the aforesaid issue regarding validity of induction of 12 members in the Trust was open and therefore, it could not lie in the mouth of the petitioners that the District

Court could not have sent the aforesaid issue for adjudication in the change report proceedings initiated in the year 2017. It was submitted that there was no reason why the petitioners were shying away from determination of the said issue, which has a material bearing on the affairs of the Trust.

7. This Court has considered the contentions raised on behalf of the rival parties in the light of material placed on record. The question of validity of induction of 12 members in the Trust is an issue which has not being decided on merits till date. The petitioners are not justified in saying that merely because the order dated 20/12/2011, was passed by the Assistant Charity Commissioner in Change Report Inquiry No.636/2011, on the basis of consent given by the respondent No.1 also, the issue regarding validity of induction of the members could never be raised. In the challenge raised in the revision petition filed before the Joint Charity Commissioner, the respondent No.1 squarely raised the aforesaid issue and it was contended that the respondent No.1 and others were misled on the aforesaid aspect of the matter about induction of 12 members when the change report proceedings were undertaken in the year 2011. When such an issue was squarely raised before the Joint Charity Commissioner, it was a situation, wherein opportunity could have been given to the parties either before the Joint Charity Commissioner or by remanding the matter to the Assistant Charity Commissioner for a proper opportunity to the parties to lead evidence on the aforesaid aspect of the matter. Instead, the Joint Charity Commissioner found that there were certain documents placed on record by the petitioner, which negated the

allegations of ante-dated entries in the context of the induction of the 12 members.

8. The District Court in paragraph No.34 of the impugned order has correctly observed that the opportunity to lead evidence on the said aspect of the matter was not afforded to the parties at any stage and that induction of the 12 new members in the Trust did go to the root of the matter.

9. In the meanwhile, subsequent election of the year 2017, took place, in the context of which change report Inquiry No.534/2017, was filed under Section 22 of the said Act and which is admittedly pending. In such a situation, it cannot be said that the District Court committed any error in holding that the said issue ought to be adjudicated before the Assistant Charity Commissioner in the pending change report proceedings of the year 2017. In that regard, the District Court cannot be said to have committed an error in setting aside the order of the Joint Charity Commissioner, while directing that the said issue be adjudicated in the pending change report proceedings of the year 2017. This Court is of the opinion that the aforesaid issue regarding alleged illegal induction of the members ought to be decided under Section 22 of the said Act by the Assistant Charity Commissioner, in terms of the settled position of law. No prejudice is caused to the petitioners by such direction, because if their contention regarding the induction being legal is correct, it would meet with the stamp of approval of the Assistant Charity Commissioner in the pending change report proceedings.

10. In view of the above, this Court finds that there is no merit in the present writ petition and accordingly, it is dismissed.

11. In the impugned order dated 14/09/2021, the District Court had directed the Assistant Charity Commissioner to complete the proceedings within six months from the date of the order. But, it appears that this Court had granted stay of the impugned order, by order dated 24/02/2022. In that view of the matter, it is directed that the Assistant Charity Commissioner shall now complete the proceedings within four months from today.

JUDGE