

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2552 OF 2020

Chandrashekhar Manmathappa Chavanda
and others Petitioners

Versus

The State of Maharashtra
and others Respondents

.....

Mr. Vivek Dhage, Advocate for the Petitioners
Mr. Mohit Shah, Advocate for Respondent Nos.3 to 5 and 7 to 15
Mr. N.P. Patil Jamalpurkar, Advocate for Respondent Nos.18, 20, and 22
Mr. S.R. Yadav Lonikar, AGP for Respondent No.1

WITH

WRIT PETITION NO.2555 OF 2020

Chandrashekhar Manmathappa Chavanda
and others Petitioners

Versus

The State of Maharashtra
and others Respondents

.....

Mr. Vivek Dhage, Advocate for the Petitioners
Mr. N.P. Patil Jamalpurkar, Advocate for Respondent Nos.4 TO 25, 28 TO
38 and 40 to 54
Mr. S.R. Yadav Lonikar, AGP for Respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 12th JULY, 2023

PRONOUNCED ON : 25th August, 2023

ORDER :

1. Similar questions on facts and law are involved in these two petitions, therefore, they were heard together and are being decided by this common order.

2. Writ petition No.2552 of 2020 is filed for following reliefs:

“(B) The order dated 26.03.2019 passed by this Hon’ble Court in Writ Peittion No.1098/2018 with Civil Application No.4126 2019 may kindly be modified and order dated 26.03.2019 passed by this Hon’ble Court in Writ Petition No.10982018 with Civil Application No.4126/2019 may kindly be recalled and Change Report bearing Inquiry no.1481/2019 filed before the Assistant Charity Commissioner, Latur, after above said order dated 26.03.2019, may kindly be quashed;

(C) Permission may kindly be granted to the elected trustees in Change Report Bearing Inquiry No.2181/2018, to discharge the duites as trustees in view of order dated 07/03/2019 passed by the Assistant Charity Commissioner, Latur Region, Latur in Change Report Bearing Inquiry No.2181/2018;

(D) By issuing Writ of Mandamus or order or any other Writ in the nature of writ of Manadamus, the respondents and specifically respondent Nos.18 to 38, those who are shown as elected trustees in Change Report bearing Inquiry No.1481/2019, may kindly be directed not to take any policy decision till further orders.”

3. Writ petition No.2555 of 2020 is filed for following reliefs:

- “(B) The order dated 26.03.2019 passed by this Hon’ble Court in Writ Peittion No.3855/2018 with Civil Application No.4127 2019 may kindly be modified and order dated 26.03.2019 passed by this Hon’ble Court in Writ Petition No.3855/2018 with Civil Application No.4127/2019 may kindly be recalled and Change Report bearing Inquiry no.1481/2019 filed before the Assistant Charity Commissioner, Latur, after above said order dated 26.03.2019, may kindly be quashed;*
- (C) Permission may kindly be granted to the elected trustees in Change Report Bearing Inquiry No.2181/2018, to discharge the duites as trustees in view of order dated 07/03/2019 passed by the Assistant Charity Commissioner, Latur Region, Latur in Change Report Bearing Inquiry No.2181/2018;*
- (D) By issuing Writ of Mandamus or order or any other Writ in the nature of writ of Manadamus, the respondents and specifically respondent Nos.4, 8, 6, 47, 31, 4, 49, 9, 42, 20, 22, 7, 35, 15, 30, 50, 24, 28, 54, 51 and 11, those who are shown as elected trustees in Change Report bearing Inquiry No.1481/2019, may kindly be directed not to take any policy decision till further orders.”*

4. It is the contention of the petitioner that, respondent No.2 – reporting trustee filed Change Report Inquiry No.564 of 2008 under Section 22 of the Maharashtra Public Trust Act, in

respect of the Trust, namely, Maharashtra Education Society, Udgir (for short, "the Trust") contending that, the Trust has taken five members in its Managing Committee. Two members of the Managing Committee of the Trust, including the treasurer have expired, therefore, reporting trustee intends to record the change relating to the Trust. Some members objected to the Change Report. The petitioners were not party in the said proceeding. By order dated 16/04/2015, the change report was partly accepted to the extent of deleting the names of deceased members of Managing Committee. In the judgment, learned Deputy Charity Commissioner held that, 51 persons shown to have been made members of the said Trust, in the general body meeting dated 25/12/2006 are not legal and valid members.

5. By filing Appeal No.25 of 2015, the judgment of the learned Joint Charity Commissioner was challenged by respondent No.2. The same judgment is challenged by another group of 45 members by filing Appeal No.44 of 2015. The learned Joint Charity Commissioner, by judgment and order dated 25/010/2017, partly allowed both appeals in following terms;

" आदेश

- (१) अपील अंशतः मंजूर करण्यात येत आहे.
- (२) धर्मादाय उप आयुक्त, लातूर यांचा चौकशी क्र.५६४/२००८ मधील दि. १६/०४/२०१५ रोजीच्या न्यायनिर्णयातील मुद्दा क्र.१ वरील ५१ सभासद कायदेशीर नाहीत असा नोंदविलेला निष्कर्ष रद्द करण्यात येत आहे.
- (३) सदर न्यायनिर्णयातील मुद्दा क्र. २ मध्ये नमुद २१ व्यक्ती कायदेशीर सभासद नाहीत हा निष्कर्ष मुळ हरकतदार क्र.६ ते १८ (परिच्छेद क्र.३५ मध्ये नमुद केलेले) यांचे बाबतीत रद्द करण्यात येत आहे.
- (४) सदर न्यायनिर्णयातील मुद्दा क्र.२ मध्ये नमुद २१ व्यक्तींपैकी पं प्रस्तुत प्रकरणात पक्षकार नाहीत त्यांच्या सभासदत्वाबाबतचा मुद्दा खुला ठेवण्यात येत आहे.
- (५) बदल अर्ज कायदेशीर नाही हा निष्कर्ष कायम करण्यात येत आहे परंतु नवीन घेतलेल्या ५ कार्यकारीणी सभासदांना सन २००६ ते २००९ या कालावधीसाठी *de-facto* विश्वस्त समजण्यात येत आहे.
- (६) या न्यायनिर्णयाची मुळ प्रत अपील क्र. २५/२०१५ मध्ये ठेवण्यात यावी व सत्य प्रत अपील क्र.४४/२०१५ मध्ये ठेवण्यात यावी.
- (७) अपील क्र. २५/२०१५ अपील क्र.४४/२०१५ व बदल अर्ज क्र.५६४/२००८ या प्रकरणांची मुळ सचिका धर्मादाय सह आयुक्त कार्यालय, लातूर यांचेकडे त्वरीत पाठविण्यात यावी."

6. Respondent No.2, who belongs to Dandavate group, challenged clause No. (3) of the above judgment by filing Writ Petition No.1098 of 2018.

7. Other group, i.e. Tondare group in the Trust challenged clause Nos.(2) and (5) of the above judgment by filing Writ Petition No.3855 of 2018.

8. This Court, by recording consensus between the parties, disposed of Writ Petition Nos.1098 and 3855 of 2018 by order dated 26/03/2019, on following terms.

"(a) The learned Deputy Charity Commissioner had passed an order on 16/04/2015 in Change Report Enquiry Proceeding No. 564/2008, by which, the membership of 51 members of the Dandavate Group and 21 members of the Tondare Group, was held to be invalid. The change report was partly accepted only to the extent of permitting the deletion of the deceased members, namely, Gurbasappa Budheappa Naubadhe and Gunwantrao Patil Malkapurkar.

(b) As per the last order passed by the learned Joint Charity Commissioner dated 25/10/2017 in Appeal Nos. 25/2015 and 44/2015, 51 members, said to be belonging to the Dandavate Group and 13 members, said to be belonging to the Prakash Sharnappa Tondare Group, are held to be valid voters. Therefore, these two

petitions, filed for challenging the validity of the 51 and 13 members of the rival groups, can be disposed off.

(c) Consequent to the last order passed by the learned Joint Charity Commissioner dated 25/10/2017, the membership of 51 members and 13 out of the 21 members, has been validated.

(d) 8 members of the Tondare group, have suffered invalidation of their membership by the order dated 6/04/2015, and they did not choose to approach the learned Joint Charity Commissioner by preferring an appeal. Hence, issue as regards these 8 invalidated members, is untouched by the learned Joint Charity Commissioner. These 8 persons have, therefore, suffered an order of invalidation and are yet to challenge that order before the learned Joint Charity Commissioner.

(e) There are 6 founder members surviving.

(f) From the above list of 51 members group, two members, namely Adv. Chandrakant L. Mahajan and Mrs. K. P. Pensalwar have passed away leaving 49 valid members in the Dandavate Group.

(g) All the parties are agreeable to permit 49 members from the Dandavate Group, 13 members from the Tondare Group and 6 founder members, to participate in an election to be held under the supervision of the learned Joint Charity Commissioner within a period of 6 months from today.

4. *The learned Advocates now submit, on instructions, that in view of the above consensus, both the groups would agree to accept the membership of 49 persons from the Dandavate group and 13 persons from the Tondare group, as valid members and this petition can, therefore, be disposed off.*

5. *In view of the above, the following order is passed by consent:-*

(a) *The membership of the 49 persons belonging to the Dandavate Group along with the two members, late Adv. Chandrakant L. Mahajan and Mrs. K. P.Pensalwar, shall be deemed to be valid members.*

(b) *13 members of the Tondare Group are deemed to be valid members.*

(c) *Both these Petitions, therefore, stand disposed off.*

(d) *The issue of those 8 persons, whose membership has been invalidated by the order dated 16/04/2015, will not be permitted to be the voters in the ensuing elections. However, their grievance against the order dated 16/04/2015 is left open, "if" and "as is" permissible in law.*

(e) *The print out copy of this order taken from the official website of the Bombay High Court, would be submitted before the learned Joint Charity Commissioner, Latur, on 01/04/2019.*

(f) After a copy of this order is placed before the learned Joint Charity Commissioner, Latur, on 01/04/2019, he shall follow the due process of law for conducting the elections to the Maharashtra Education Society, Udgir, Taluka Udgir, District Latur.

(g) The learned Joint Charity Commissioner shall himself or through a senior responsible officer, not below the rank of the learned Deputy Charity Commissioner, Latur, shall hold the elections by publishing the election programme and shall declare the results of the said elections in accordance with the election programme.

(h) The learned Joint Charity Commissioner shall ensure that the elections are completed within 6 weeks from 01/04/2019 and by excluding the date of the general elections in the Latur Region.

(i) The pending Civil Applications do not survive and stand disposed off.

(j) Consequent to this order, the order dated 07/03/2019 passed in CR No. 2181/2018 shall lose its efficacy. 6. Needless to state, after the results of the elections for the new executive committee are declared, they shall forthwith take charge of the trust.

7. Any committee, that is in charge of the trust today on account of any orders passed by competent authorities, shall refrain from taking any policy decision, from causing new recruitment and from withdrawing amount

in excess of Rs.25,000/-, except expenses required for the day to day administration of the trust.”

9. Petitioners in Writ Petition No.2552 of 2020 submit that the parties before the High Court agreed to permit 49 members from Dandavate group, 13 members from Tondare group and 6 founder members to participate in elections to be held under the supervision of learned Joint Charity Commissioner. It is the case of the petitioners that, 13 members out of 21 members from Tondare Group are held to be valid members. Those 13 members and the present 8 petitioners were added as members of the Trust in one and the same meeting dated 25/12/2006. Even 51 members of Dandavate group are added as members in the same meeting dated 25/12/2006. Therefore, the petitioners could not be held to be invalid members. It is further contention of the petitioner that while passing the order in writ petition No.1098 of 2018 with civil application No.4126 of 2019, the petitioners are trustees in view of the order dated 07/03/2019 passed by the learned Assistant Charity Commissioner in Change Report Inquiry No.2181 of 2018. The petitioners further claimed that elections of the Managing Committee dated 21/05/2019, held pursuant to the order passed by this Court, are without

participation of the petitioners. According to them, petitioners were neither party to both writ petitions nor in Inquiry No.564 of 2008, and so also in Appeal Nos.25 of 2015 and 44 of 2015. At the time of deciding the writ petitions, it was not brought to the notice of this Court that petitioners were elected as trustees in the election of the Managing Committee held on 11/02/2018. The petitioners are ousted from the Trust by both the groups i.e. Dandavate group and Tondare group, without giving them opportunity of hearing. At the time of inviting order on consensus, both the groups have played fraud on the Court. Therefore, the impugned order passed in writ petitions is liable to be quashed and set aside. In support of the petition, learned advocate for the petitioners relied on *Ramchandra Ganpat Shinde Vs. State of Maharashtra, 1993 DGLS (sc) 616* and *Marutirao Vishwanath Bagal and ors. Vs. Dinkar Kashinath More and ors., 2004 (4) Mh.L.H. 982*.

10. Heard the learned learned advocates for the parties at length. Perused the memo of writ petition, annexures thereto, reply affidavits, and the citations relied upon by the parties.

11. Learned advocate for the petitioners fairly submitted that pursuant to the directions issued by this Court, elections

were held in the year 2019, wherein the petitioners were not allowed to participate and the term of the said elected Managing Committee is also over, and thereafter, subsequent elections were held. By relying on *Marutirao Vishwanath Bagal* (supra), learned advocate for the petitioners submits that, if the case of fraud and forgery is made out and even if term of Managing Committee expired, the petition is liable to be entertained.

12. Learned advocate for the respondents, on the other hand, strenuously opposed the argument and supported the orders passed in both the writ petitions. He submits that in writ petition No.1098 of 2018, only clause (3) of the order passed by the Joint Charity Commissioner was challenged and in writ petition No.3855 of 2018, clauses (2) and (5) were challenged. He submits that, admittedly, the petitioners belong to Tondare group and 13 members of Tondare group were prosecuting the matter before this Court. He submits that no written terms of consensus were filed on record. By pointing out the order passed in review petition No.69 of 2019 in writ petition No. 1098 of 2018 and review petition No.70 of 2019 in writ petition No.3855 of 2018 filed by the petitioners, he submits that review petitions were disposed of with liberty to

the petitioners to prefer an appeal before the learned Joint Charity Commissioner for challenging the order dated 16/04/2015 to their extent. Accordingly, the petitioners preferred appeal No.1002 of 2019 under Section 70 of the Maharashtra Public Trust Act. The appeal was partly allowed by order dated 08/01/2020 and order passed in Change Report Inquiry No.564 of 2008 dated 16/04/2015 to the extent of the appellants/petitioners was set aside. He submits that after passing of the said order, the petitioners have filed present writ petitions on 04/02/2020. Therefore, the arguments of present petitions are not sustainable, as the review applications filed by the petitioners were disposed of at the instance of the petitioners. Since the present petitioners elected the remedy of filing appeal, the present petitions could not be said to be maintainable. According to him, writ petitions under Article 226 of the Constitution of India cannot be maintainable for modification of order passed in writ petition filed under Article 227 of the Constitution of India. He further submits that pursuant to the orders passed by this Court, first elections were held in the year 2019 for electing the Managing Committee and subsequent elections were held on 12/06/2022. He, therefore, submits that there is no merit in

the writ petitions and the writ petitions are liable to be dismissed.

13. By relying on reply affidavit filed by Prakash Tondare, learned advocate for respondent Nos.3 to 5 and 7 to 15 submits that, only consensus arrived between Dandavate group and Tondare group is that, Tondare group will accept the membership of 51 members of Dandavate group, and membership of 21 members of Tondare group would be accepted by the Dandavate group. He, therefore, submits that there was incorrect representation to this Court in respect of consensus of other terms of compromise.

14. Indisputably, in the Trust there are two groups, one led by Dandavate and other led by Tondare. Admittedly, the petitioners belong to Tondare group. It is a matter of record that at the time of deciding Change Report Inquiry No.564 of 2008, the learned Deputy Charity Commissioner has held that 51 members, who were inducted by passing resolution in the meeting dated 25/12/2010, are not legal and valid members of the Trust, so also, alleged 5 new members, who are from the list of 51 members since are held to be illegal members, they cannot occupy the place in the managing committee of

the Trust. The petitioners claim to be managing committee members of the said Trust, at that point of time.

15. Admittedly, when Dandavate and Todare group challenged the findings of the learned Deputy Charity Commissioner by filing Appeal Nos.25 and 44 of 2015, the petitioners, for the reasons best known to them, have failed to challenge the finding in respect of invalidation of their membership. The learned Joint Charity Commissioner in the common order passed in both these appeals, has rightly held that the issue of validity of membership can only be decided in respect of the appellants/the persons who have challenged the said finding. Therefore, in clause (4) of the operative order passed in appeal, he kept the issue of validity of membership of the petitioners open.

16. It is a matter of record that the decision of the learned Joint Charity Commissioner in Appeal No.25 of 2015 is challenged by Dandavate group by filing Writ Petition No.1098 of 2018, and Tondare group challenged the decision in Appeal No.44 of 2015 by filing Writ Petition No.3855 of 2018.

17. Admittedly, writ petition Nos.1098 of 2018 and 3855 of 2018, were filed under Article 227 of the Constitution of India, thereby challenging the clauses in the orders passed by the learned Joint Charity Commissioner in appeals filed under Section 70 of the Maharashtra Public Trust Act. In both these petitions, order on consensus is passed by this Court on 26/03/2018. In both these petitions, the group leader Prakash Tondare and Dandavate group arrived at a consensus, and accordingly the order is passed.

It is pertinent to note that, in clause (d) of the order passed by this Court, the interest of the petitioners is taken care of by observing, "*However, their grievance against the order dated 16/04/2015, is left open, "if" and "as is" permissible in law*". In view of these facts, there is no merit in the contentions of the petitioners that the order of consensus was obtained by playing fraud on this Court. Particularly, in view of the fact that, their group leader Prakash Tondare is party to the order has arrived at consensus with Dandavate group, and the interest of the petitioners was not taken care of by him.

18. It is a matter of record that Review Petition No.70 of 2019 in Writ Petition No.3855 of 2018 and Review Petition No.69 of 2018 were filed by the petitioners, and the same were disposed of with liberty to approach learned Joint Charity Commissioner for assailing the order invalidating their membership. Accordingly, the petitioners filed Appeal No.1002 of 2019 under Section 70 of the Maharashtra Public Trusts Act, 1970 on 07/06/2019. By order dated 08/01/2020, learned Joint Charity Commissioner has rejected the prayer of the petitioners for declaring them as legal and valid members. The petitioners having elected statutory remedy and having failed in that, have filed these petitions as if they are seeking review of the orders passed on consensus in both the writ petitions by praying to recall the said order.

19. Learned advocate for the respondent has relied on ***Ram Kishan Fauji Vs. State of Maharashtra and others, (2017) 5 Supreme Court Cases 533*** to contend that, this Court has exercised powers under Article 227 of the Constitution of India while passing the order on consensus in writ petition Nos.1098 of 2018 and 3855 of 2018 and the said order cannot be recalled by exercising powers under 226 of the Constitution of India. He is right in contending so.

20. Admittedly, after the order passed by this Court in writ petition Nos.1098 of 2018 and 3855 of 2018, two elections have been held, and the petitioners have not participated in the said elections. In this view of the matter also, the petitioners are not entitled for any relief.

21. In *Marutirao Vishwanath Bagal and ors. Vs. Dinkar Kashinath More* (supra), the learned Single Judge of this Court has held that, in the Change Report proceeding as regard elections of new trustees of the Managing Committee of Public Trust, the case was made out by the outgoing trustees of fraud and forgery committed by new trustees in the Change Report. Therefore, it cannot be said that the issue involved is merely academic because the term of the Managing Committee had expired, and by considering the matter on merits, this Court issued certain directions. Such are not the facts of the present case. The petitioners herein have suffered the order of invalidation of their membership, which the petitioners failed to challenge initially. Though the said order was challenged by the petitioners subsequently, their challenge is negated by the Appellate Court.

22. For the aforestated reasons, no merit is found in the challenge raised by the petitioners and the petitioners are not entitled for the prayers made in these petitions. No case is made out by the petitioners to warrant exercise of extraordinary writ jurisdiction. Writ petitions being devoid of merit, are dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane