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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10174 OF 2019

Hameedullah Khan Hafizullah Khan

PETITIONER

VERSUS

Hussain Rahim Khan (Died) and Others

RESPONDENTS

.....

Mr. G. R. Syed, Advocate for the petitioner

Mr. V.D. Salunke, Advocate for respondents No.2, 4, 7, 10 & 13

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 21st SEPTEMBER, 2023

ORDER :

1. This petition, filed under Article 226 and 227 of the Constitution of India, challenges order dated 24th January, 2019, passed by learned Joint Charity Commission, Aurangabad Region, Aurangabad in Miscellaneous Civil Application No. 12 of 2013.

2. Petitioner filed the said application seeking restoration of appeal No. 27 of 2012, which was dismissed in default on 18th May, 2013.

3. Indira Gandhi Girls Education Society, Parbhani is a registered Trust. Tenure of Managing Committee of the Trust is of three years. Respondents filed Change Report No. 591 of 2008 for the period from 2008 to 2011. Petitioner is from rival group, which has filed Change Report No. 1072 of 2008, for the same period. Learned Assistant Charity Commissioner accepted Change Report No.591 of 2008 on 7th September, 2012. Petitioner challenged the said order by filing appeal No. 27 of 2012 before learned Joint Charity Commissioner. Appeal filed by the petitioner was dismissed for want of prosecution, on 18th May, 2013. Petitioner made application for restoration of appeal on 14th June, 2013. The appeal was restored, by order dated 24th September, 2013.

4. Restoration order was challenged by respondents, by preferring Writ Petition No. 8805 of 2013, on the ground that the restoration order was passed without giving hearing to them. This Court allowed the writ petition, by order dated 17th January, 2014 and remanded the matter back to the authority for fresh consideration on merits.

5. After remand of the matter, allegation was made by respondents that restoration application has been tampered by

removing its first page and two new pages are inserted. Inquiry was directed into said allegation. Petitioner then preferred Writ Petition No. 7277 of 2015 for direction to the authority to expedite hearing of the application. This Court dismissed the writ petition, by imposing costs of Rs.5000/-, considering the fact that it was brought to the notice of this Court that two pages of the application tendered by petitioner were replaced without leave of the Court. Cost was not deposited within stipulated time and after seeking extension of time, ultimately cost was deposited on 6th October, 2017.

6. The authority dismissed the application for delay condonation filed by the petitioner, observing that the petitioner has not come before the authority with clean hands and in inquiry it is revealed that it is petitioner who has tampered with the pages of restoration application, which is revealed during the course of inquiry. By relying on decision in "**Jagatnarayansingh Swarupsingh Chithere and Others V/s Swarupsingh Education Society and Another**" 1980 Mh.L.J. 372, the authority has held that in view of subsequent elections held, nothing remains to be decided in the appeal. It is further observed that petitioner can get membership decided in subsequent change report, which is admittedly pending before learned Assistant Charity

Commissioner.

7. Learned advocate for petitioner has assailed the impugned order stating that the authority has ignored the fact that he is expelled from membership of the Trust and he is entitled to agitate his substantial right in the appeal. The impugned order passed by Assistant Charity Commissioner is erroneous and, therefore, his appeal is required to be decided on merits. He further submits that for the period from 2008 to 2011, total three change reports were filed, i.e. Change Report No. 1072 of 2008, filed by petitioner, Change Report No. 1452 of 2008 and Change Report No.591 of 2008, which is decided. He submits that the learned Assistant Charity Commissioner has committed an error in not deciding all the three change reports at the same time. The remaining two change reports are still pending for decision and on this ground also decision of the learned Assistant Charity Commissioner is unsustainable. He submits that on this ground also the appeal filed by petitioner is required to be decided on merits. By the impugned order, fair opportunity to contest the matter on merit is denied to the petitioner, hence the impugned order is liable to be quashed and set aside.

8. Learned advocate for respondents, on the other hand, supported the impugned order, by relying on affidavit in reply

filed by respondents. In addition to the Decision in "**Jagatnarayansing**" (*supra*), he relied on a decision of learned Single Judge of this Court in Second Appeal No. 113 of 2008, in which decision of "**Jagatnarayansingh**" (*supra*) is followed.

9. Finding recorded by learned Joint Charity Commissioner that petitioner has not come before him with clean hands, is supported by the inquiry conducted into allegation of tampering of pages by petitioner. On the basis of inquiry report and documents, a specific finding is recorded by the learned Assistant Charity Commissioner that it is petitioner, who has tampered two pages of the restoration application Exhibit-1.

10. In "**Jagatnarayansingh**" (*supra*) learned Single Judge of this Court has held that if period of Managing Committee is expired there remains no propriety in deciding legality of change report.

11. In the case in hand, it is admitted position on record that period of the so called managing committee, mentioned in Change Report No. 591 of 2008 is over long back. Thereafter three more elections were held and change reports of two elections are accepted and the third Change Report is pending. There is substance in the submission of respondents that in

Change Report No.591 of 2008, petitioner was neither incoming or outgoing trustee. It is further a matter of record that Change Report No.1072 of 2009 filed by petitioner is still pending for consideration before learned Assistant Charity Commissioner along with Change Report No.1452 of 2008. Petitioner can agitate his rights in said Change Report inquiry.

12. There is no merit in the submission of petitioner that he is expelled from membership of the Trust. Petitioner failed to substantiate this argument by pointing out any document on record.

13. In view of finding recorded by learned Joint Charity Commissioner, that petitioner has failed to make out a case for restoration and petitioner has not come before the authority with clean hands and in the light of decision in "**Jagatnarayansingh**" (*supra*) and order passed by learned Single Judge of this Court in Second Appeal No.113 of 2008, order passed by learned Joint Charity Commissioner rejecting application filed by petitioner, cannot be faulted with. There is no illegality or perversity in the order impugned in present writ petition. No case is made out by petitioner to exercise extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

14. Considering the fact that Change Reports No. 1072 of 2008 and 1452 of 20089 are pending since 2008, learned Assistant Charity Commissioner shall decide the same within six months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE

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