

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7408 OF 2022

1] Umesh S/o. Ramkrushna Solunke,
Age – 42 years, Occu. Business,
R/o. Marwad, Tq. Amalner,
District : Jalgaon

2] Sahebrao S/o. Chindha Patil,
Age – 51, Occu. Agril,
R/o. At. Ektas, Post. Shapur,
Tq. Amalner, District : Jalgaon

.. Petitioners

Versus

1] The State of Maharashtra,
Through its Secretary,
Social Justice Department,
Mantralaya, Mumbai .. **[DELETED]**

2] The Deputy Charity Commissioner,
Jalgaon, Tq. & Dist. Jalgaon

3] The Khandesh Education Society,
Amalner, Tq. Amalner, Dist. Jalgaon,
Through its Secretary,
Arun Babulal Jain,
Age – Major, Occu. Business,
R/o. Amalner, Tq. Amalner,
District : Jalgaon

4] The Khandesh Education Society,
Amalner, Tq. Amalner, Dist. Jalgaon
Through its President,
Anil Madhukar Patil (Kadam),
Age – Major, Occu. Business,
R/o. Amalner, Tq. Amalner,
District : Jalgaon

.. Respondents

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Advocate for petitioners : Mr. V.V. Deshmukh
AGP for the respondent – State : Mr. S.B. Yawalkar
Respondent no. 1 deleted as per Court's order dated 19-07-2022
Advocate for the respondents nos. 3 and 4 : Mr. S.P. Brahme

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**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 9 JANUARY 2023
PRONOUNCED ON : 13 JANUARY 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

We have heard both the sides.

2. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is being disposed of finally at the stage of admission.

3. The petitioners who are the members of the respondents nos. 3 and 4 - Education Society registered as a public trust under the Maharashtra Public Trusts Act, 1950 (**Act**) are questioning the legality and validity of the order passed by the Deputy Charity Commissioner, Jalgaon in a proceeding under section 41-A of the Act whereby they were seeking a direction for better administration of the trust for holding fresh elections to be held in accordance with the approved rules of elections of the trust.

4. The basic bone of contention of Mr. Deshmukh learned advocate appearing on behalf of the petitioners is that a general body of the trust had resolved to modify the rules of elections in a meeting held on 10-03-2019 *inter alia* modifying rule 22-A which provided a

particular manner of voting should be undertaken at the election for electing managing committee. He would submit that change report no. 734 of 2019 was pending. It was partly allowed except the modification in rule 22-A. One Gokul Bhika Patil had approached this Court in writ petition no. 296 of 2022 raising an objection to the conduct of elections and this Court had passed the following order on 11 February 2022 :-

"10. Considering now the further steps of elections are being conducted, we pass the following order :-

ORDER

(i) The voting scheduled on 13th February, 2022 may be held, however, the results of the elections shall not be declared unless the orders are passed on Change Application No.734/2019 by the office of the Deputy Charity Commissioner, Jalgaon.

(ii) The Deputy Charity Commissioner, Jalgaon shall endeavour to decide the said Change Application no. 734/2019 within one month.

(iii) The petitioner and respondent nos. 2 and 3 shall appear before the office of the Deputy Charity Commissioner, Jalgaon on 17th February, 2022.

(iv) The further steps in the elections may be conducted in tune with the orders that may be passed in Change Application No.734/2019.

(v) Needless to state, we have not observed anything on merits of the amendment of the bye-laws. It is for the office of the Deputy Charity Commissioner to take decision on its own merits.

(vi) The writ petition is disposed of. No costs.

(vii) Authenticated copy be given."

The learned advocate would submit that in spite of such a direction, the elections have been held ignoring the fact that rule 22-A was not approved of and the election is *void ab initio*. He would submit that even if the petitioners can raise this dispute in a change report to be filed pursuant to such election when the election has been held in the

afore-mentioned facts and circumstances, the circumstances would go to the root of the validity of the election and the learned Deputy Charity Commissioner ought to have issued directions in the light of the enabling provision contained in section 41-A of the Act directing a fresh election for the better administration.

5. Mr. Deshmukh would rely upon decisions of this Court in the matter of ***Sthanakwasi Jain Sangh, Shrirampur V. Deepak Hukumchand Duggad; AIR Online 2020 Bom 2013*** and the decision of the learned Single Judge of Gujarat High Court in the matter of ***Rashmikanth Chhaganbhai Patel V. Joint Charity Commissioner, Vadodara and others; AIR 2006 GUJARAT 9.***

6. Per contra, Mr. Brahme would submit that already this Court had an occasion to consider the peculiar facts and circumstances in a writ petition filed by one Kalyan Sahebrao Patil bearing writ petition no. 6711 of 2022 decided on 22-11-2022. The earlier decision in writ petition no. 296 of 2022 dated 11-02-2022 (supra) was also brought to the notice of this Court. He would point out that when admittedly the decision in the change application no. 734 of 2019 discarding clause 22-A is a subject matter of the statutory appeal before the Joint Charity Commissioner, this Court had dismissed that petition and the same course should be followed even in the matter in hand.

7. Going by the scheme of the Act and particularly in respect of change which is required to be reported under section 22, it is trite that change relates back to the date it has actually occurred. Section 22 requires it to be reported to the charity office and its legality and validity is to be examined by the Charity Commissioner. Admittedly, by passing a resolution in the general body, the election rules were sought to be modified and change was reported in change application no. 734 of 2019. Rest of the modifications were approved except rule 22-A.

It is, therefore, quite clear that so long as refusal of approval to modification in rule 22-A does not reach finality, its operation cannot be said to have been suspended when a statutory appeal is pending before the Joint Charity Commissioner. Even if it is assumed that the elections have been held as if modified rule 22-A is in place, its consequences and the validity of the consequential change would depend upon the fate of that appeal.

At this juncture when the appeal is pending before the Joint Charity Commissioner, one cannot conclude that rule 22-A has no place. The change has already occurred in view of passing of resolution by the general body to have that rule. It is only after it was reported to the office of the charity commissioner that the change has been accepted except a modification to rule 22-A. If the appeal is

allowed, certainly such modification would be in place and the elections if at all those have been held by giving effect to such modification would operate from the date of its occurrence and could not be questioned on that ground.

8. Suffice for the purpose to refer to the decisions of the learned Single Judge of this Court in the matter of ***Chembur Trombay Education Society and others V. D.K. Marathe and others; 2002 (3) Bom.C.R. 161***. In paragraph no. 11, it has been concluded that a resolution of a general body is sufficient to ignite the change in the amendment to the constitution of the society irrespective of the fact that the change report is pending consideration before the Charity Commissioner under section 22. If such is the position in law, when admittedly, a statutory appeal to the extent of refusal of the Deputy Charity Commissioner to modify rule 22-A is pending, the change cannot be ignored when it has been admittedly approved by the general body.

9. As far as the order of this Court in writ petition no. 296 of 2022 is concerned, the consequences of the order would be to the effect that the elections would be subject to the final outcome of the decision in change application no. 734 of 2019.

10. In view of above, no interference can be caused in the view taken by the Deputy Charity Commissioner in refusing to issue any directions for holding the elections ignoring modification in section 22-A.

11. The writ petition is dismissed.

12. Hearing of the appeal against the order passed in change application no. 734 of 2019 is expedited.

13. Rule is discharged.

[S.G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/