

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO.8421 OF 2023**

Panchakshari Babayya Swami  
and others

.... Petitioners

Versus

The Deputy Charity Commissioner,  
Latur and others

.... Respondents

.....

Mr. V.D. Gunale, Advocate for the Petitioners

Mr. S.R. Yadav Lonikar, AGP for Respondent Nos.1 and 2

Mr. N.P. Patil Jamalpurkar, Advocate for Respondent Nos.3 and 4

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 17<sup>th</sup> JULY, 2023

**ORDER :**

1. By this petition, filed under Article 227 of the Constitution of India, the order passed by the learned Joint Charity Commissioner, Latur in Appeal No.14 of 2020, thereby appointing Administrator on the Trust is challenged.

2. Learned advocate for the petitioners assailed the impugned order, contending that there is no provision of appointment of Administrator on the Trust under the Maharashtra Public Trust Act, when the caretaker body has declared the election programme in terms of rules and regulations of the said Trust. There is no reason for the Joint charity Commissioner to appoint Administrator on the said

Trust. He further submitted the Administrator, who is Inspector from the office of Deputy Charity Commissioner is interfering in day-to-day affairs of the Trust, and he has exceeded his powers by issue a letter to the Headmaster of a School run by the Trust, to handover the charge of the said School. He, therefore, submits that impugned order is illegal and the same is liable to be quashed and set aside, by relying on the following judgments:

- (i) ***Raghunath Motiram Patil Vs. State of Maharashtra and Ors., 2008 (2) Mh.L.J. 78.***
- (ii) ***Jagatnarayansingh Swarupsingh Chithere and Ors. Vs. Swarupsingh Education Society and Ors., 1980 Mh.L.J. 372.***

3. Learned advocate for respondent Nos. 3 and 4 has supported the order to the extent of Appeal No.14 of 2020 is allowed, by relying on the following decisions:

- (i) ***Berar General Education Society Vs. Jt. Charity Commissioner and anr., 2004 (2) Mh. L.J. 189.***
- (ii) ***Sambappa Trimbakappa Girwalkar Vs. Deputy Charity Commssioner and others* [(Writ Petition No.8593 of 2018 with connected writ petitions (Aurangabad Bench)].**

(iii) **Ajay Vs. Raghunath Dandvate Vs. Basawaraj Lingappa Baghande and ors.** [Writ Petition No.1098 of 2018 (Aurangabad Bench)].

(iv) ***Smt. Vanmala Manoharrao Kamdi and ors. Vs. The Deputy Charity Commissioner*** [Letters Patent Appeal No.226 of 2011 (Nagpur Bench)].

4. Heard the learned advocate for the petitioners, learned advocate for respondent Nos.3 and 4 and the learned Assistant Government Pleader for respondent Nos.1 and 2. Perused the writ petition memo, annexures thereto, impugned order, and the citations relied upon by the learned advocates for the petitioner and respondents.

5. It is a matter of record that, the last validly elected Managing Committee was functioning in the year 2000-2003. Thereafter, all the change reports have been rejected and the said rejection orders have become final. Thus, it is clear that since 2003, there is no legal and valid Managing Committee of the Trust. The *de facto* caretaker body (petitioners) have no powers to call general body meetings and holding elections.

6. Learned Joint Charity Commissioner has recorded a finding of fact that no legal and valid elections are conducted by the Trust since 2003 and *de facto* caretaker body has no power to call general body meetings for holding elections. The conduct of the caretaker body is showing that they are performing acts as they wish without authority and they are performing illegal acts to enroll new members, and they are conducting election process and taking other policy decision and are continuing to act without recognition from the office of Joint Charity Commissioner. In these peculiar facts, the Joint Charity Commissioner is justified in appointing the Inspector from the office of Deputy Charity Commissioner as Administrator on the said Trust. Since the said order is passed taking into consideration the interest of the said Trust on the administrative side, no fault can be found with the said.

7. Learned advocate for the petitioners has placed on record a copy of the letter dated 10/07/2023 (marked as 'X' for identification purposes) addressed to Head Master, Lokmanya Shikshan Sanstha, Panchincholi, Tq. Nilanga, District Latur issued by the Administrator/respondent No.7 directing him to handover the entire charge of the school to him.

Merely because of respondent No.7 is appointed as Administrator on the said Trust, he is not entitled to take charge of the school. The submission of learned advocate for the petitioner that taking over the charge of the school is not within the purview of powers of respondent No.7 is liable to be accepted. It is obvious that respondent No.7 has exceeded his power by issuing such communication.

8. In ***Raghunath Motiram Patil*** (supra), learned Single Judge of this Court held that, there is no minimum or maximum ceiling for issuing directions under Section 41-A of the said Act. The Joint Charity Commissioner is not expected to adjudicate upon a lis. Charity Commissioner is not supposed to adjudicate upon rights of the parties. Powers are not given to the Charity Commissioner to appoint administrator.

9. In ***Jagatnarayansingh Swarupsingh Chithere and Ors.*** (supra), learned Single Judge of this Court held that the Deputy or the Assistant Charity Commissioner enjoined with statutory obligation of holding an inquiry under section 22 of the Act has to proceed therewith judicially. Consequently, it becomes his duty to inquire into not only the factum of the change under consideration but also its and validity.

10. Coming to the peculiar facts in the case in hand that since 2003 onwards there are no valid elections and caretaker body in such situation cannot hold elections, the appointment of Administrator in the present case cannot be faulted with.

11. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to warrant interference in extraordinary writ jurisdiction. Hence, the following order would meet the ends of justice.

**ORDER**

- (I) The Administrator/respondent No.7 shall strictly abide by the directions given in clauses 4 and 5 of the impugned order passed by the learned Joint Charity Commissioner in Appeal No.14 of 2020.
- (II) The Administrator/Respondent No.7 shall not act on the communication dated 10/07/2023.
- (III) Respondent No.7 shall conduct the elections of the said Trust within a period of one month from the date of receipt of writ of this order.

**[ NITIN B. SURYAWANSHI ]**  
**JUDGE**

S.P. Rane