

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

WRIT PETITION NO.8957 OF 2023

Shri. Abhay Ramrao Pawar,
Age: 51 Years, Occu: Agriculture,
R/o: Pimpri raja, Aurangabad

... Petitioner
(Orig. Respondent)

Versus

1) Surendrakumar s/o Chunnilal Bhandari,
Age: 78 Years, Occu: Agriculture,
R/o: Pimpri raja, Aurangabad
Presently residing at
Plot No.74, sector-A,
N-1, CIDCO, Aurangabad.

2) Shikshan Prasarak Mandal, Pimpriraja,
Through its President.

... Respondents
(Respondent No.1
- Orig. Applicant)

...
Mr. Arvind Deshmukh, Advocate h/f Mr. S. V. Natu, Advocate for
Petitioner

Mr. V. S. Kadam, Advocate For Respondent No.1

Mr. N. D. Batule, Advocate For Respondent No.2

...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 21st AUGUST, 2023

PRONOUNCED ON : 14th SEPTEMBER, 2023

ORDER :

1. This petition filed under Article 227 of the Constitution of India, takes exception to the judgment and order dated 20/09/2022, passed by learned Joint Charity Commissioner, Aurangabad, in Appeal No.101/2016, thereby accepting the change report.

2. Respondent No.2 Trust is established in the year 1976, for imparting education and establishment of institutions for social and educational purpose. It's by-laws were approved by the competent authority. At the time of establishment of Trust there were eleven Trustees. One of the Trustees of the Trust, Mr. Jawaharlal Motilal Gandhi, the then Secretary of the Trust, filed Change Report No.1140/2003, under Section 22 of the Maharashtra Public Trusts Act, 1950, (for short 'the said Act') on 15/09/2003, in respect of the meeting dated 08/09/2003. In the said meeting ten new Trustees/Members were selected and the said change was notified by the reporting Trustee. Mr. Ramrao Sakharam Pawar, the then President of the Trust, took objection to the change report filed by Mr. Jawaharlal Motilal Gandhi. In the said inquiry, parties led their respective evidence including evidence of Mr. A. B. Waghmare, Inspector from Charity Commissioner Office, Aurangabad, who was observer in the said meeting. Mr. Ramrao Sakharam Pawar expired on 09/01/2015 and therefore, Vakalatnama of the learned advocate representing him became ineffective. Learned Deputy Charity Commissioner, Aurangabad, rejected the change report on merits by order dated 14/01/2016.

3. Being aggrieved by the said order, the then Secretary Mr. Jawaharlal Motilal Gandhi, filed appeal under Section 70 of the said Act, before learned Joint Charity Commissioner, Aurangabad.

During pendency of the appeal, Mr. Jawaharlal Motilal Gandhi expired and hence, his legal representatives were brought on record. Learned Joint Charity Commissioner, by the impugned judgment and order dated 20/09/2022, allowed the appeal, and quashed and set aside the order dated 14/01/2016, passed by learned Deputy Charity Commissioner in Inquiry No.1140/2023. Hence, the present petition.

4. Heard learned advocate for petitioner, learned advocate for respondent No.1 and learned advocate for respondent No.2. Perused the writ petition memo, annexures thereto, the impugned order and affidavit-in-reply filed by respondent No.1 as well as citations relied upon by the parties.

5. On perusal of record it appears that, Application No.05/2003 was filed by Mr. Ramrao Sakhambar Pawar, before learned Deputy Charity Commissioner, Aurangabad, under Section 41-A of the said Act, which was re-numbered as Application No.1065/2003. On the basis of joint pursis filed by both the parties in the said application, learned Deputy Charity Commissioner, by order dated 06/09/2003, directed that as per notice dated 22/08/2003, meeting of the Trust be conducted on 08/09/2003 at 04:00 p.m. and Mr. A. B. Waghmare, Inspector of P.T.R. of Aurangabad, shall be the observer in the said meeting.

6. Minutes of the said meeting dated 08/09/2003 were

placed on record and as per Subject No.5, ten new Trustees were appointed as per their consent letters. The said meeting was attended by the three Trustees, i.e. Mr. Ramanlal Bhandari, Mr. Surendrakumar Bhandari and Mr. Jawaharlal M. Gandhi and two Trustees namely Ramrao S. Pawar and Mr. Osmanshah Noorshah were absent. Considering clause 2(b) of the Rule and Regulations, which provides that the Board of Trustees shall not be less than three and more than fifteen, and as per clause 2(f), the vacancies can be filled in by the Managing Trustees, by majority. By relying on those provisions, learned Deputy Charity Commissioner has held that, the then reporting Trustee has failed to establish on record that the meeting dated 08/09/2003 was valid as per the by-laws of the Trust.

7. The reporting Trustee/Secretary challenged the said decision by filing Appeal No.101/2016, which is allowed by the learned Joint Charity Commissioner, Aurangabad. It is held that, there is no merit in the objection raised to the meeting dated 08/09/2003 in which 10 Trustees were appointed, on the ground that none of the appointed Trustees was present and no any application was filed by them before the meeting. Learned Joint Charity Commissioner is right in holding that the Rules and Regulations do not require filing of application. On the contrary, as per the rules, vacancies of the Trustees can be filled by the

majority. Admittedly, the vacancies are filled up by the majority in the present case. As per the rules and regulations no eligibility criteria is fixed for appointment of Trustees.

8. Objection raised by the petitioner about not serially conducting business as per the notice, is also devoid of merit. Next objection that, consent of the new Trustees was not obtained, also cannot be accepted for simple reason that the same is not the requirement as per Rules and Regulations of the Trust.

9. It is a matter of record that, the directions given by learned Deputy Charity Commissioner in the order passed in Application No.1065/2013 on the basis of joint pursis filed by Mr. Ramrao Pawar and Mr. Jawaharlal Gandhi, has not been challenged by any of the parties. Both the parties have admitted that the meeting of the Trust would be held on 08/09/2003, in the presence of person deputed by learned Deputy Charity Commissioner and no fresh notice of the meeting is required. Agenda of the meeting shall be the same as mentioned in the notice dated 22/08/2003. Pursuant to the joint pursis, Mr. Waghmare, Inspector, P.T.R., Aurangabad, was deputed as observer of the said Meeting. From the evidence placed on record it is clear that, the meeting was accordingly held and the business was transacted as per the agenda and appointment of Trustees is made as per the Rules and Regulations of the Trust. Since the Trustees are appointed by

majority, no fault can be found with the said procedure. Learned Joint Charity Commissioner has rightly appreciated the evidence placed on record and has allowed the appeal by giving cogent reasons. No case is made out by the petitioner to interfere in the said findings.

10. Locus of the petitioner is rightly questioned by the respondents, on the ground that the petitioner is not Member of the Trust and he is in no way concerned with the said Trust. He was neither party to the Change Report No.1140/2003, nor a party in Appeal No.101/2016 and therefore, the petitioner has no authority to challenge the impugned judgment and order passed by learned Joint Charity Commissioner in Appeal No.101/2016. Petitioner has failed to reply the said objection of the respondents.

11. Learned advocate for petitioner, in support of his submissions, has relied on ***Seema Savale Vs. State of Maharashtra and Another, 2013 (2) Bom.C.R. 267***, wherein the Division Bench of this Court has held that, in the meeting of Corporation, resolutions were passed beyond agenda. In the facts of that case, it is held that since the resolution passed in General Body Meeting in relation to Agenda No.17 was a matter of policy decision, the same could not have been taken up by way of supplementary motion. This decision is rendered in different facts and is not applicable to the facts of the present case.

12. In *Syed Hasan Rasul Numa and Others Vs. Union of India and Others, (1991) 1 SCC 401*, it is held that, minutes of the meeting reflect proceedings of the meeting. In that case, it was admitted that there was no record with regard to disposal of objection in question. The proceedings of the meeting were recorded and maintained, but it was confined only to the listed items in the agenda of the meeting. When the proceedings of the meeting are recorded, one would naturally expect that all that transpired in the meeting should find a place in the minutes of the meeting. In the absence of any such record, the Supreme Court found it difficult to accept the mere allegation of respondents that appellants' objection like any other objection was considered by the authorities.

13. In the present case, there is no dispute about the minutes of the meeting recorded, and therefore, this ruling is of no assistance to the petitioner.

14. In *Pankaj Yashwant Chaudhari and Others Vs. Joint Charity Commissioner, Nashik, 2014 (4) Mh.L.J. 200*, learned Single Judge of this Court has held that, while appointing trustees upliftment and well being of Trust is of paramount consideration and if the appointed trustees are not resident of locality where the Trust is situated and not having social link to the trust or attachment with it, and have never participated in any activity to promote Trust,

learned Joint Charity Commissioner ought not to have appointed such trustees. In that case, no inquiry as contemplated under Section 47 was made. This judgment is not applicable to the facts of the case in hand as the learned Joint Charity Commissioner has observed that in the past also, Trustees from other villages were appointed.

15. In *Shakil Musa Patel and Another Vs. Dilipsing Pratapsing Patil and Others, 2014 (1) Mh.L.J., 960*, learned Single Judge of this Court has held that, if the Trust is a Public Trust and wanted to have large number of members, a public advertisement in leading newspapers should be published inviting applications and in absence of such advertisement, new enrollment of members is completely illegal. In the facts of the case in hand, since by filing joint pursis parties accepted to go ahead with the agenda of the meeting dated 08/09/2003, this judgment is also not helpful to the petitioner.

16. For the aforestated reasons, no illegality or perversity is found in the order impugned in present petition. No jurisdictional error or error of law is committed by the learned Joint Charity Commissioner, Aurangabad, while allowing the appeal. Writ petition being devoid of merit, is dismissed.

(NITIN B. SURYAWANSHI, J.)