

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13850 OF 2019

Sameer Kiran @ Raghoba Bhopi
Age : 33 years, Occu : Agri. & Pujari,
R/o Mahur, Tq. Mahur,
Dist. Nanded

.. Petitioner

Versus

- 1] The Joint Charity Commissioner,
Aurangabad Region, Aurangabad
- 2] Shree Renuka Devi Sansthan,
Mahur, Tq. Mahur, Dist. Nanded
Through Ex-Officio President /
The Principal District Judge,
District Court, Nanded
- 3] Ex-Officio President /
Principal District Judge,
Nanded, Tq. & Dist. Nanded
- 4] The Sub-Divisional Magistrate,
Kinwat, Tq. Kinwat, Dist. Nanded /
Ex-Officio Secretary
- 5] The Tahsildar, Mahur,
Tq. Mahur, Dist. Nanded /
Ex-Officio Treasurer
- 6] Deepak A. Dholakia
Age : 59 years, Occu : Service
as Principal District Judge, Nanded
Tq. And Dist. Nanded
- 7] Abhinav Sanjay Goyal,
Age : 30 years, Occu : Service,
as Sub-Divisional Magistrate,
Kinwat, Tq. Kinwat,
Dist. Nanded
- 8] Siddheshwar Suresh Warangaonkar,
Age : 45 years, Occu : Service,
as Tahsildar, Mahur, Tq. Mahur,
Dist. Nanded

9] The Sub-Divisional Police Officer,
Kinwat (now Mahur),
Dist. Nanded /
Ex-Officio Vice President

10] Vinayak S/o Narayan Phandade
Age : 54 years, Occu : Agri.,

11] Chandrakant S/o Baburao Bhopi
Age : 57 years, Occu : Agri.,

12] Sanjay S/o Rambhau Kannav
Age : 48 years, Occu : Business,

13] Ashish S/o Gunvantrao Joshi
Age : 48 years, Occu : Agri.,

14] Balaji S/o Dadaji Jagat,
Age : 67 years, Occu : Agri.,

15] Durgadas S/o Devidas Bhopi
Age : 42 years, Occu : Agri.,

16] Arvind S/o Nana Deo,
Age : 53 years, Occu : Agri.,

Nos. 10 to 16 All R/o Mahur,
Tq. Mahur, Dist. Nanded

.. Respondents

**WITH
WRIT PETITION NO. 14312 OF 2019**

Shripad Bhargavram Bhopi,
Age 42 years, Occu : Pujari & Agri.,
R/o Bramhan Galli, Mahur,
Tq. Mahur, Dist. Nanded

.. Petitioner

Versus

1] Ex-Officio President,
District & Sessions Judge, Nanded
Renuka Devi Sansthan, Mahur,
A Trust registered under the Provisions
of the Bombay Public Trusts Act, having
Registration No. A-2185 (Nanded)

2] Ex-officio Vice President,
Renuka Devi Sansthan,
Sub Divisional Police Officer,
Mahur, Renuka Devi Sansthan
Mahur, Tq. Mahur, Dist. Nanded

- 3] Ex-officio Secretary,
Renuka Devi Sansthan,
Sub Divisional Magistrate,
Kinwat, Tq. Kinwat, Dist. Nanded
- 4] The Treasurer, Renukadevi Sansthan,
Ex-officio Tahsildar,
Mahur, Tq. Mahur,
Dist. Nanded
- 5] Vinayak Narayan Phandade,
Age 54 years, Occu : Pujari and Agri.,
Member of the Renuka Devi Sansthan
Mahur, Tq. Mahur, Dist. Nanded
R/o Bramhan Galli, Mahur,
Tq. Mahur, Dist. Nanded
- 6] Chandrakant Baburao Bhopi,
Age 57 years, Occu : Pujari & Agri.,
Member of the Renuka Devi Sansthan
R/o Bramhan Galli Mahur,
Tq. Mahur, Dist. Nanded
- 7] Sanjay Rambhau Kannav,
Age 48 years, Occu : Pujari & Agri.,
Member of the Renuka Devi Sansthan
R/o Bramhan Galli, Mahur
Tq. Mahur, Dist. Nanded
- 8] Ashish Gunvantrao Joshi,
Age 48 years, Occu : Pujari & Agri.,
Member of the Renuka Devi Sansthan
R/o Bramhan Galli, Mahur,
Tq. Mahur, Dist. Nanded
- 9] Balaji Dadaji Jagat,
Age : 67 years, Occu : Pujari & Agri.,
Member of the Renuka Devi Sansthan
R/o Bramhan Galli, Mahur,
Tq. Mahur, Dist. Nanded
- 10] Durgadas Devidas Bhopi
Age 42 years, Occu : Pujari & Agri.,
Member of the Renuka Devi Sansthan
R/o Bramhan Galli, Mahur,
Tq. Mahur, Dist. Nanded

11] Arvind Nana Deo
Age 53 years,
Occu : Pujari & Agri.,
Member of the Renuka Devi Sansthan
R/o Bramhan Galli, Mahur,
Tq. Mahur, Dist. Nanded

12] Bhavanidas Renukadas Bhopi
Age 42 years, Occu : Pujari & Agri.,
R/o Bramhan Galli, Mahur, Tq. Mahur,
Dist. Nanded

13] Samir Kiran @ Raghoba Bhopi
Age years, Occu : Pujari & Agri.,
R/o Bramhan Galli, Mahur,
Tq. Mahur, Dist. Nanded

14] The Joint Charity Commissioner,
Aurangabad Region, Aurangabad
District Aurangabad

.. Respondents

...
Mr. R.N. Dhorde, Senior Advocate i/b. Mr. V.R. Dhorde, Advocate for
petitioner (WP/13850/2019)

Mr. Amol Gandhi, Advocate for petitioner (WP/14312/2019)

Mr. V.J. Dixit, Senior Advocate i/b. Mr. L.V. Sangit, Advocate for respondent
no. 11 (WP/13850/2019) and for respondent no. 6 in WP 14312 of 2019

Mr. S.B. Yawalkar, AGP for the respondent - State in both writ petitions

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

**RESERVED ON : 13 FEBRUARY 2023
PRONOUNCED ON : 27 FEBRUARY 2023**

ORDER (MANGESH S. PATIL, J.) :

Heard both sides.

2. Though the petitions have been filed by two individuals
separately, they are impugning the selfsame order passed by the

learned Joint Charity Commissioner - respondent no. 1, Aurangabad in Miscellaneous Application no. 1003 of 2019 dated 16-10-2019 in the matter of Shree Renuka Devi Sansthan, Mahur (hereinafter referred to as "**the Trust**"), Taluka - Mahur, District – Nanded, PTR no. A-2185 (Nanded) which is registered as a public trust under the provisions of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as the "**P.T. Act**") thereby accepting the report submitted by the four ex-officio trustees out of 11 trustees, recommending re-appointment of four trustees and replacing the present petitioners and one more viz. Bhavanidas Renukadas Bhopi by some other individuals who are the respondent Nos. 14 to 16 in writ petition no. 13850 of 2019 and respondent nos. 9 to 11 in writ petition no. 14312 of 2019.

3. Though there is a checkered history and long standing litigation, it would suffice for the present to refer to few of the facts as are necessary for decision on these writ petitions. A scheme for the trust was finalized by the Joint Charity Commissioner by his order dated 14-07-2014 and appointed first board of trustees comprising of 11 members for the first term of 5 years which came to an end on 14-07-2019. The first board of trustees was as under :-

- "1] Principal District Judge, District Court, Nanded-Ex-Officio Chairman/President of the Trust.*
- 2] Sub Divisional Police Officer, Kinwat – Ex-Officio Vice Chairman/Vice President*
- 3] Sub-Divisional Magistrate, Kinwat – Ex-Officio Secretary of the Trust*

- 4] *Tahsildar, Tahsil Office, Mahur – Ex-Officio Treasurer of the Trust.*
- 5] *Bhavanidas Renukadas Bhopi – Member,*
- 6] *Vinayak Narayan Fandade – Member,*
- 7] *Chandrakant Baburao Bhopi – Member,*
- 8] *Sameer S/o Kiran @ Raghoba Bhopi – Member,*
- 9] *Shripad Bhargavram Bhopi – Member,*
- 10] *Sanjay Rambhau Kannav – Member,*
- 11] *Ashish Gunwantrao Joshi - Member”*

Clause 13 of the scheme approved by the learned Joint Charity Commissioner provides that except the ex-officio trustees the tenure of the rest of the members of the first board of trustees would be 5 years. After the tenure of the members from serial no. 5 to 11 coming to an end, the ex-officio members of the board from serial no. 1 to 4 would submit a report to the Joint Charity Commissioner regarding appointment of new members and based on that the Joint Charity Commissioner would appoint the members or permit continuation of the old members.

4. Pursuant to clause 13 of the scheme, the first four ex-officio trustees submitted a report to the Joint Charity Commissioner, Aurangabad dated 30-08-2019 which was registered as Miscellaneous Application no. 1003 of 2019. The ex-officio members in their report gave reasons for continuation of some of the members from the first board of trustees and also reasons for deleting the present two petitioners and few other individuals as well as replacing them by new members names of who were also suggested.

5. Based on such report, by the impugned order, the learned Joint Charity Commissioner accepted it and granted approval to whatever was suggested by the ex-officio members while constituting the new board of trustees.

6. We have extensively heard the learned Senior Advocate Mr. Dhorde, learned Senior Advocate Mr. Dixit, Mr. Gandhi and the learned AGP Mr. Yawalkar and perused the papers.

7. At the outset, it is necessary to note that admittedly, though the learned Joint Charity Commissioner has finalized a scheme for the trust under section 50A, the scheme is still at an amorphous stage inasmuch as, it is under challenge which is presently pending before this Court. Admittedly, operation of the scheme has not been stayed. We are not sure when that matter is to reach finality. In the circumstances, irrespective of deficiencies or otherwise in the scheme, it will have to be given effect to the extent it is legally possible.

8. The first board of trustees were appointed by virtue of the scheme by the learned Joint Charity Commissioner while deciding that proceeding on 14-07-2014. As per the scheme, the Principal District Judge, Nanded is the ex-Officio Chairman/President and there are three other Government servants who are ex-officio members of the board of trustees and obviously being the ex-officio posts, they would continue to be the permanent trustees. The tenure of the rest of the

trustees is of 5 years. As per clause 13 of the scheme, either they can be continued or replaced in the manner as provided therein. The four ex-officio members are expected to submit a report to the learned Joint Charity Commissioner regarding continuation / replacement of the rest of the members at the end of the tenure of 5 years and on the basis of such report, the learned Joint Charity Commissioner would make appointments of those rest of the trustees from serial no. 5 to 11.

9. As can be appreciated, it is this clause which is the subject matter of the dispute. As we have observed earlier, as of now, the legality or otherwise of this clause being the subject matter of a separate proceeding, for the time being it will have to be implemented to the extent it is possible in law.

Without intending to embark upon its appropriateness we think it appropriate to record the observation, as according to us, it goes to the root of the present matters. If this clause 13 is carefully looked into, the appointment of all these seven trustees is to be made on the recommendation of the four ex-officio trustees. The scheme nowhere provides as to what would be the parameters to be taken into consideration by these four ex-officio members while recommending the names. That apart, it further expects these recommendations to be submitted to the learned Joint Charity Commissioner in the form of report and on the basis of that report, the learned Joint Charity Commissioner is to take a further decision regarding appointment of

these seven trustees. Obviously, this would constitute a change in the board of trustees which would further be required to be submitted to the Assistant Charity Commissioner or the Deputy Charity Commissioner in view of the mandatory provision contained in section 22 of the P.T. Act. Any decision of the Assistant Charity Commissioner or the Deputy Charity Commissioner under section 22 is susceptible to a further challenge and such challenge lies before the learned Joint Charity Commissioner under section 70 as an appeal.

If the change in the board of trustees is to take place with the approval to be granted by the Joint Charity Commissioner as per this clause 13 of the scheme, it would certainly be obnoxious that a challenge to the change report pursuant to the approval granted by the Joint Charity Commissioner would reach to him in the form of an appeal under section 70. If the change is to take place with the approval of that authority which ultimately is an appellate authority to consider its legality and validity, certainly to our mind, at least this clause in this scheme would not be workable.

10. Be that as it may, as we have made it clear, since the operation of the scheme has not been stayed, attempt will have to be made to implement it to the extent possible. The fact remains that this clause will have to be interpreted bearing in mind the afore-mentioned state-of-affairs and the legal framework.

A careful reading of the clause would clearly indicate that though the report recommending appointment of seven trustees in the board of trustees submitted by the four ex-officio trustees is to be submitted to the Joint Charity Commissioner, to our mind use of the word "निर्णय" (decision) and further use of the language to mean that the learned Joint Charity Commissioner would decide regarding appointment of new members or may permit continuation of the old members, makes it abundantly clear that though he is obliged to consider the report, it is not binding on him. It is expected that he would take a conscious decision independently while considering the report regarding appointment of all the trustees be they old ones or the new ones. He is not under any obligation to approve and accept the report as it is as if he is acting on administrative side.

Pertinently, clause 13, in the last line also specifically mentions that on the decision of the learned Joint Charity Commissioner, names of the trustees will be taken on the public trust register in schedule I. Bearing in mind the scheme of the P.T. Act, register in Schedule-I is a permanent register wherein *inter alia* names of the trustees are recorded giving it a sanctity.

11. As is mentioned herein-above, being a change as contemplated under section 22, it is only on the basis of an order to be passed by the Deputy or the Assistant Charity Commissioner that such a change in

the board of trustees is incorporated in the PTR register in schedule-I. This clause therefore will have to be interpreted to mean that since it dispenses an enquiry under section 22, it becomes imperative for the learned Joint Charity Commissioner to examine independently legality and appropriateness of the appointment of these seven trustees after receipt of the report from the four ex-officio trustees. It is only in this form that, for the time being, clause 13 of the scheme would be workable.

12. The impugned order passed by the learned Joint Charity Commissioner is clearly based on the report submitted by the four ex-officio trustees without undertaking any exercise to objectively consider the case of each individual be it first trustees who were recommended to be continued or the trustees like the petitioners who are sought to be replaced. He has merely accepted the recommendations as if he had no power to objectively examine all the aspects including the eligibility of each of these seven individuals and the alleged misconduct of the petitioners.

13. It is necessary to note that the report submitted by the four ex-officio trustees to the Joint Charity Commissioner makes reference to several circumstances and makes an attempt to justify its recommendation to continue some of the trustees and to replace the petitioners. It was, therefore, expected of the learned Joint Charity

Commissioner to have examined these circumstances in an objective manner that too by providing an opportunity to all of them to either subscribe to or to challenge the report. Several serious allegations have been imputed to the petitioners and it would be clearly a case of lack of the principles of natural justice not to permit the petitioners regarding whose conduct serious aspersions have been levelled in this report, to question the allegations.

14. The report was received by the learned Joint Charity Commissioner on 16-10-2019. Even before that, the petitioner in writ petition no. 13850 of 2022 had submitted an application with the office of the Joint Charity Commissioner on 03-09-2019 specifically mentioning that in view of the scheme, the four ex-officio trustees were likely to submit the report since the tenure of the first board of trustees had come to an end on 14-07-2019 and soliciting a copy of that report if and when it was to be received by that office. Besides even on the date on which the impugned order was passed i.e. 16-10-2019, that petitioner had once again specifically requested in writing that he should be extended an opportunity to address on the report received on 30-08-2019 by the office of the learned Joint Charity Commissioner. But by passing a separate order on 16-10-2019, simply by referring to clause 13, and oblivious of the exact purport of that clause 13 and the legal position discussed herein-above, the learned Joint Charity Commissioner refused the permission to the petitioner of being heard.

15. It is thus quite clear that the learned Joint Charity Commissioner had not interpreted clause 13 in the manner it ought to have been in the peculiar facts and circumstances. Without resorting to some enquiry that by following the principles of natural justice of extending an opportunity of being heard to the persons who were the members of the first board of trustees who had completed the tenure of 5 years without there being any proceeding against them under section 41(1) of the P.T. Act, has accepted the conclusions in the report as it is regarding their misconduct.

16. It is trite that a person cannot be condemned unheard. If serious allegations were the basis to deprive the petitioners an opportunity of continuation as the members of the board of trustees, the learned Joint Charity Commissioner ought to have given an opportunity to them to meet these lopsided allegations levelled by four ex-officio trustees who themselves have had no opportunity to undertake any enquiry or investigation and had never resorted to any.

17. The upshot of the above discussion, the impugned order passed by the learned Joint Charity Commissioner is clearly arbitrary, capricious and illegal.

18. We allow the writ petitions partly, quash and set aside the impugned order and remand the matter back to the learned Joint

Charity Commissioner who shall undertake a fresh enquiry by extending an opportunity to the petitioners and other trustees who were members of the first board of trustees of being heard and in the light of the above discussion. Till the time he takes such decision, the first board of trustees shall continue to function.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

19. Learned advocate Mr. Sangit for some of the respondents seeks stay to the operation of the present judgment and order to enable his clients to approach the Supreme Court on the ground that the order has already been implemented.

20. For the reasons recorded herein-above, and the view taken by us, when the order of the learned Joint Charity Commissioner is being set aside, the request is rejected.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/