

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

28 WRIT PETITION NO. 13983 OF 2023

1. DILIPRAO MOHANRAO JADHAV

2. SHRIDHAR DILIPRAO JADHAV

VERSUS

MADHAVRAO RAMAJI PATIL

...

Advocate for Petitioner : Mr. S.V. Warad

h/f. Mr. Kedar Warad

Advocate for Respondents : Mr. S.N. Janakwade

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 11th DECEMBER, 2023

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard learned counsel for both the sides finally at the admission stage.

2. This petition is directed against an order dated 11.09.2023, passed below Exhibit 2 in Appeal No. 7 of 2023 by learned Joint Charity Commissioner, Aurangabad, rejecting application of the petitioners.

3. The respondent has disputed the membership of the petitioners. It is the case of the petitioners that for the period of 2019 to 2024, Change Report No. 1063 of 2019 was filed by Mr. Ashok Mohanrao Jadhav. The petitioners claim to be the elected members in the Change Report. On 09.05.2022, it was rejected by learned Deputy Charity Commissioner, Nanded. Being aggrieved, appeal No. 23 of 2022 was filed before Joint Charity Commissioner and it is pending. There is no interim order in it. Before the tenure of the outgoing Committee

could expire, an election is alleged to be conducted on 01.01.2023, resulting into Change Report No. 135 of 2023, submitted by the respondent before Deputy Charity Commissioner, Nanded.

4. It is the case of the petitioners that they filed Caveat on 10.08.2022, and wanted to contest Change Report No. 135 of 2023. Learned Deputy Charity Commissioner heard Change Report No. 135 of 2023 and finally decided it on the same day, approved the Change Report. The grievance of the petitioners are that despite Caveat, they were not heard, there was no issuance of notice to the outgoing Trustees AND violation of the principles of the natural justice.

5. Being aggrieved by order dated 13.02.2023, petitioners carried Appeal before Joint Charity Commissioner bearing Appeal No. 07 of 2023 along with application for stay at Exhibit 2. Ad-interim order was passed on 27.03.2023. By order dated 11.09.2023, application Exhibit 2 was rejected. Against this, the present petition is filed.

6. Learned counsel for the petitioners has invited my attention to roznama which is at page no. 59 to demonstrate that the manner in which the matter proceeded before the Deputy Charity Commissioner. According to him, there was an undisputed haste. When the matter was pending in Appeal No. 23 of 2022, the earlier tenure was yet to be expired, there was no reason to conduct any elections. Change Report No. 135 of 2023 should not have been entertained.

7. Learned counsel seeks reliance upon judgment rendered in *Jagatnarayansing Swarupsingh Chithere and others Versus Swarupsingh Education Society and another*, **1980 Bom CR 837**.

8. The petitioners' submissions are opposed by the respondents. An affidavit-in-reply is also on record to contest the petition. Learned counsel for respondent has pointed out that Change Report bearing no. 135 of 2023 filed on 20.01.2023. My attention is invited to Exhibit R-1. According to him, learned Commissioner is justified in holding that the Caveat filed by the petitioner was expired. The Change Report which was filed on 20.01.2023 was heard and decided on 13.02.2023. He would submit that the petitioners are neither members nor office bearers of the Trust in question. Therefore, they had no locus to challenge. He relied upon the judgment dated 09.05.2022, passed in enquiry report no. 1063 of 2019. By referring to paragraph no.18.

9. It is submitted that the petitioners are held to be illegally enrolled members. He has also invited my attention to judgment dated 13.05.2023, to paragraph no. 7 to point out that all the stake holders were present and consented for the Change Report. He submits that the grievance is misplaced. Learned Commissioner has rightly rejected application. There is no perversity or patent illegality.

10. The petitioner has placed on record roznama at Exhibit F which is not disputed. It reflects only one date i.e. 13.02.2023. All the

proceedings in Change Report No. 135 of 2023, took place in a day. Roznama does not reflect date 20.01.2023 as a filing date of Change Report. Though Exhibit R-1 shows an acknowledgment of 20.01.2023, the roznama should have reflected the said date. *Prima facie*, this Court has reservations to accept that on 13.02.2023, matter was heard and concluded finally, but it was filed on 20.01.2023.

11. It reveals that Caveat was filed on 10.08.2022. There was every reason for the learned Deputy Charity Commissioner to know that somebody was to contest the Change Report. Although, the outgoing Trustees consented for the Change Report, a precaution should have been taken to hear the petitioners or notices should have been issued.

12. Learned counsel for the respondent vehemently challenged the *locus standi* of the petitioners. Whether the petitioners are lawfully enrolled members or whether there are elected members of Change Report No. 1063 of 2019 would be the matter of enquiry requiring full fledged trial. The reasons assigned by learned Joint Charity Commissioner that the Caveat had expired and there was a consent by the outgoing Trustees are unsustainable at this stage. *Prima facie*, I am of the view that the petitioners have made out a strong case of violation of principles of natural justice. Commencing proceedings and concluding it in a day is apparently shocking and incomprehensible.

13. The grievance of the learned counsel for the petitioners is that the respondent and the persons are shown to be elected in Change

Report No. 135 of 2023 are likely to take policy decisions or undertake the process of recruitment seems to be probable. I hold that a, *prima facie*, case is made out to grant stay to the judgment and order passed by Deputy Charity Commissioner in Change Report No. 135 of 2023. I, therefore, pass following order :

ORDER

- i. The impugned order dated 11.09.2023 passed by Joint Charity Commissioner below Exhibit 2 in Appeal No. 07 of 2023 is quashed and set aside.
- ii. Application Exhibit 2 in Appeal No. 07 of 2023 stands allowed.
- iii. Learned Joint Charity Commissioner is requested to decide the Appeal expeditiously.
- iv. Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]