



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.1265 of 2020

**NAJUKRAO VITTHALRAO WAGURWAGH AND OTHERS
VS
DADARAO GONDUJI JAMNIK AND OTHERS**

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Atharva Manohar, Advocate for the Petitioner/s
Ms Payal Bawankule, AGP for the Respondent No.6/State

**CORAM : ANIL S. KILOR, J.
DATED : 18.12.2023**

1. Heard.
2. In this petition, the judgment and order dated 28.11.2019 passed by the learned Joint Charity Commissioner, Amravati, allowing the appeal and thereby, setting aside the judgment and order dated 25.04.2019 passed by the Deputy Charity Commissioner, Akola in Change Report No.129 of 2019, is under challenge.
3. After going through the record, it is evident that the learned Joint Charity Commissioner, Amravati has held that there is no evidence produced on record to show that the respondent Nos.5 and 6 (presently Petitioner Nos.3 and 4) had given donation and made the payment of the entry fee and therefore, it is not possible to hold that the respondent Nos.5 and 6 (Petitioner Nos.3 and 4) were legally inducted as the life members of the trust.

4. The learned Joint Charity Commissioner has further held that notices were not served upon the respondent Nos.3 and 4 (presently the respondent Nos.4 and 5) and procedure as regards issuance of notice was also not followed.

5. The record further shows that while accepting the Change Report No.129 of 2019, the learned Deputy Charity Commissioner has recorded the finding that the matter was uncontested and in absence of any objection to the Change Report, it was accepted vide order dated 25.04.2019.

6. Since the Change Report No.129 of 2019 was not contested by anyone or it was not objected by anyone, the learned Deputy Charity Commissioner had no occasion to look into the validity of service of notice or even to find out whether the respondent Nos.5 and 6 (Petitioner Nos.3 and 4) were legally inducted or not. Therefore, the reporting trustees could not get opportunity to lead any evidence in respect of the points on which the learned Joint Charity Commissioner reversed the order of the learned Deputy Charity Commissioner.

7. In the appeal, the learned Joint Charity Commissioner has ignored the above referred fact and instead of remanding the matter back to the learned Deputy Charity Commissioner, Akola by giving an opportunity to both the parties to establish and prove their respective cases, set aside the Change Report by allowing the appeal.

8. In the circumstances I am of the opinion that the matter needs to be remanded back to the learned Deputy Charity

Commissioner, Akola so as to enable the parties to lead evidence or to produce sufficient documentary evidence in respect of their respective claims. Accordingly, I pass the following order:

- (i) The writ petition is partly **allowed**.
- (ii) The judgment and order dated 28.11.2019 passed by Joint Charity Commissioner, Amravati in Appeal No.74 of 2019, is hereby quashed and set aside.
- (iii) The Change Report Inquiry No.129 of 2019 is restored back to the file of learned Deputy Charity Commissioner, Akola to decide the same afresh, after giving sufficient opportunity to the parties to lead evidence or to produce necessary documents, if any, on record.

Accordingly, the writ petition is disposed of in the above terms. No order as to costs.

[ANIL S. KILOR, J.]