



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

Writ Petition (WP) No. 1807 of 2020

Shri Vasant Rao Govindrao Bakal and others

Versus

Shri Viresh Shriramji Ashtankar 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 S.D.Abhyankar, Advocate for the petitioners

Shri M.V.Masodkar, Advocate for the respondent nos. 1
to 11.

Shri U.R.Phasate, AGP for the respondent no.12.

CORAM : ANIL S. KILOR, J.

DATED : 2nd NOVEMBER, 2023.

Heard.

2. The petitioner no.1 who is a reporting trustee filed the change report before the learned Deputy Charity Commissioner saying that some of the trustees have resigned from their posts and new board trustee were inducted in their place.

3. The said change report came to be allowed by the learned Deputy Charity Commissioner vide order dated 19th July, 2011 which was the subject matter of the challenge in appeal under Section 70 of the

Maharashtra Public Trust Act, 1950 before the learned Joint Charity Commissioner, Nagpur.

4. The learned Joint Charity Commissioner allowed the appeal vide impugned order dated 13th November, 2019 and set aside the order passed by the Deputy Charity Commissioner, thereby accepting the change report. Hence, this writ petition.

5. The learned counsel for the petitioners argues that though the respondents asserted that the resignation letters are bogus and the signatures on the said resignation letters are not of them, they never requested for referring their signatures for opinion of handwriting expert.

6. It is further submitted that the learned Joint Charity Commissioner wrongly shifted the burden on the petitioners to prove the signatures of the respondents appeared on the resignation letter and on that ground the order of the Deputy Charity Commissioner came to be reversed.

7. It is further submitted that because of resignation by the Secretary, the Joint Secretary issued the notice and without considering the said fact it has wrongly held that the notice issued by the Joint Secretary is illegal. He, therefore, submits that the impugned order needs to be quashed and set aside.

8. On the other hand, Shri Masodkar, learned counsel for the respondent nos. 1 to 11 supports the case of the learned Joint Charity Commissioner and submits that since the petitioners failed to refer the signature to the handwriting expert, the learned Joint Charity Commissioner has rightly reversed the order of the learned Deputy Charity Commissioner. He further submits that since the notices were not issued by the Secretary, the notices were rightly held as illegal.

9. He further submits that both the Courts below could have compared the signatures on the affidavit filed by the respondent nos. 1 to 11 with the signature on the resignations. However, both the Courts in absence of handwriting expert failed to compare the signatures and no reasons were recorded for not comparing the said signature.

10. In light of rival contentions of the parties, I have perused the record and the impugned order.

11. The issue involved in the present matter is only in respect of genuineness of the resignations of the respondent nos. 1 to 11 as trustees.

12. It has come on record that the respondent nos. 1 to 11 have filed the affidavits denying their signatures. Thus, both the learned Courts below could have compared the signatures on the affidavit with the

signature on the resignation letter, particularly when there is no handwriting experts report on record.

13. No doubt that when the respondent nos. 1 to 11 asserted a fact that the signatures on the resignation letter are not of them, the burden lies on them to prove the said fact.

14. However, even if that is so, the Section 73 of the Indian Evidence Act empowers to compare the signature which both the authorities have failed to do so.

15. As far as the legality of notice issued by the Joint Secretary is concerned, unless it is held that the document namely the resignation letter is bogus and fabricated one, it cannot be said that the notice issued by the Joint Secretary is not valid.

16. In the light of above referred observations, I am of the opinion that the matter needs to be remanded back to the learned Joint Charity Commissioner to decide the same afresh after taking into consideration the above referred observations. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The order dated 13th November, 2019 passed by the Joint Charity Commissioner, Nagpur in Appeal No.31 of 2011 is hereby quashed and set aside;

- iii. The appeal is remanded back to the Joint Charity Commissioner, Nagpur to decide the same afresh after hearing both the parties;
- iv. Both the parties shall appear before the Joint Charity Commissioner, Nagpur on **10th November, 2023** at 11 am;
- v. The Joint Charity Commissioner, Nagpur shall decide the appeal within two months from the date of appearance of the parties.

[ANIL S. KILOR, J.]