



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

WRIT PETITION NO. 1460 OF 2023

(GANGADHAR VISHWESHWAR NAKADE & OTH..VS.. JT. CHARITY COMMISSIONER, NAGPUR & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri B.G.Kulkarni, Advocate for Petitioners.
Shri N.R.Patil, A.G.P. for Respondent Nos. 1 and 3.
Shri S.D.Abhyankar, Advocate for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : SEPTEMBER 08, 2023.

1. Heard.
2. The order dated 09/02/2023 passed below on Exh.8, the application raising preliminary objection to tenability of the appeal filed against the acceptance of change report, by the respondent No.2 on the ground that, he has no locus, came to be disposed of observing that it will be considered at the time of final decision of the appeal.
3. Before touching to the merits of the matter, certain facts need to be considered, which are as follows:
4. The respondent No.2 was working as Teacher in a College run by the petitioner-Trust and on his suspension, certain proceedings were filed by the respondent No.2 which went up to the Supreme Court, where the issue was settled after the judicial

pronouncement and accordingly all the monetary benefits which the respondent No.2 was entitled, were paid to the respondent No.2.

5. Thereafter, in the pending change report proceeding, the respondent No.2 tried to intervene as a beneficiary, which came to be rejected. Thereupon, Writ Petition No.3617 of 2022 was filed by the respondent No.2 on 13/06/2022 before this Court. The challenge was also raised to the acceptance of the change report.

6. This Court, vide order dated 4th July 2022 disposed of the writ petition keeping all the points raised in the said writ petition open and permitted the respondent No.2 to agitate the same in appropriately instituted challenges.

7. Thereafter, the respondent No.2 filed an appeal under Section 70 of the Maharashtra Public Trust Act, 1950 (hereinafter referred to as “the Act of 1950”) bearing No. 31 of 2022.

8. The petitioners raised a preliminary objection to the tenability of the said appeal at the behest of the respondent No.2.

9. It is the case of the petitioners that, the respondent No.2 cannot be termed as ‘person having

interest in the trust' or as 'beneficiary'.

10. The Joint Charity Commissioner vide impugned order dated 09/02/2023, instead of deciding the said preliminary objection on merit, has observed that it would be decided along with the appeal when the appeal will be heard on merit. Hence, this petition.

11. Shri Kulkarni, learned counsel for the petitioners points out the By-laws of the Trust, more particularly By-law No.1, and submits that by misinterpreting the same the respondent No.2 is claiming himself as beneficiary. He, therefore, submits that it is necessary to decide the preliminary objection first, so that there should be a clarity about the locus of the respondent No.2 and if the Charity Commissioner holds in favour of the petitioners, there is no question of deciding the appeal on merits.

12. On the other hand, Shri Abhyankar, learned counsel for the respondent No.2 submits that he is not only relying upon the By-law No.1 but also on By-law No.6 and Section 2(2A) of the Act of 1950 to show that he is a beneficiary.

13. After considering the above referred facts and the By-laws, through which the respondent No.2 is claiming to be the 'beneficiary', I am of the opinion that it would be appropriate to decide the preliminary objection

raised by the petitioners in respect of the locus of the respondent No.2 and tenability of appeal at the behest of the respondent No.2 first as it goes to the root of the matter. It is so because, if the Charity Commissioner holds in favour of the petitioners, there is no need to decide the appeal on merits.

14. In the circumstances, I pass the following order:

- i) The Writ Petition is **partly allowed**.
- ii) The impugned order dated 09/02/2023 passed below Exh.8 by Joint Charity Commissioner, Nagpur in Appeal No.31 of 2022 is hereby quashed and set aside and thereby it is directed that the Joint Charity Commissioner, Nagpur to decide the preliminary objection Exh.8 before deciding the appeal.
- iii) The Joint Charity Commissioner, Nagpur shall decide the preliminary objection, on its own merits, after hearing both the parties, within three months from today.
- iv) All the points are kept open.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE

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