

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

Misc. Civil Application No. 451 of 2022

in

Writ Petition No. 1413 of 2022

Sudhir Abhiman Ramteke and others

Versus

Joint Charity Commissioner, Nagpur 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 R.M.Bhangde, Advocate for the applicants.

Shri K.L.Dharmadhikari, AGP for the non-applicant
nos. 1 and 2.

Shri A.C.Dharmadhikari, Advocate with

Shri A.P.Thakare, Advocate for the respondent nos. 3 to
6.

Shri Shyam Ahiokar, Advocate for the respondent no.7.

CORAM : ANIL S. KILOR, J.

DATED : 21st FEBRUARY, 2023.

Heard.

2. The instant application is being filed on the ground that the settled legal position which covers the issue involved in the instant matter, namely, whether the trustees were served with the show cause notice or not by the Assistant Charity Commissioner before framing scheme under Section 50A of the Maharashtra Public Trust Act, 1950 (in short referred as 'Trust Act,

1950')? was not brought to the notice of this Court, leading to severe injury and prejudice to the applicants.

3. It is the case of the applicant that educational society by name Pragatik Shikshan Sanstha, Desiganj, Dist. Gadchiroli / Respondent no.6 was established originally by seven persons as are stated in Schedule-I of the said Trust. Recorded Trustees of Trust Respondent no.6 records following names as Trustees:

1. Shri Vilas Baburao Muttemwar – President
2. Shri Kamlesh Vithobaji Uke - Working President
3. Shri Sadanand Shantilal Pinjarkar - Vice President
4. Shri Devaji Govind Chachane - Secretary
5. Shri Purushottam Marotrao Naktode – Joint Secretary
6. Shri Sabja Ali Gulam Ali Lalani - Treasurer
7. Shri Sudhakar Murlidhar Bhandarkar - Member

4. The said society failed to file change report for inclusion of properties of Trust and other change report in respect of election and also failed to file yearly audit report and so also failed to file list of members of Trust as provided under the Societies Registration Act, 1860 and also constitution of the Trust and as such proceedings for deregistration of Trust was started on the file of respondent no.4 under the provisions of

Section 22(3)(A) of the Bombay Public Trusts Act, 1950.

5. That said proceedings were registered and numbered as Suo moto proceedings no. 417 of 2017.

6. The Trust is registered on 14/10/1982 and change report and audited statements were filed only up to March, 1987.

7. A common notification dated 03/11/2017 was issued for de-registration of several defunct Trusts including respondent no.6. The newspaper publication was made in that regard in newspaper "Lokmat" on 07/11/2017.

8. As no objections were received in time, respondent No. 6 Trust was deemed to be deregistered.

9. After getting knowledge of the proceedings of de-registration of respondent no.6 Trust, the petitioners thought it fit to apply for framing of the scheme and also for direction to merge the assets of defunct Trust namely Pragatik Shikshan Sanstha/Respondent no.6 into the assets of the petitioners Trust i.e. Gramin Vikas Shikshan Sanstha, Churmura, petitioner no.10 herein, and therefore filed an application under Section 50(A) of the Maharashtra Public Trusts Act, 1950, which came to be registered as Inquiry Application No. 5261/2017.

10. One of the then alive Trustee of respondent no.6 Trust, Shri Sudhakar Murlidhar Bhandarkar appeared initially within the time limited for filing objection but he failed to file objection within time. That however later on he filed reply dated 06/02/2018 through advocate but same was without any affidavit. Said Shri Bhandarkar is no longer alive and has expired.

11. Therefore notice is issued under Section 50(A)(1) which relates to the merger of assets of said erstwhile respondent no.6 Trust into Trust by name Gramin Vikas Shikshan Sanstha/Petitioner no.10.

12. Except respondent no.3, none of the other Trustee of respondent no.6 Trust have filed any proceedings challenging the order of merger of assets of said respondent no.6 Trust into the petitioner no.10 Trust i.e. Gramin Vikas Shikshan Sanstha.

13. After order of amalgamation and framing scheme, Assistant Charity Commissioner appointed Election Officer to conduct election of amalgamated Trust, Petitioner no.10 and accordingly the Election Officer issued notices to all members including respondent no.3 as well as other members.

14. That, after election, a change report in pursuance to said elections was filed before Respondent no.2. Said change report was allowed by the respondent

no.2 by order dated 08/03/2018 passed in inquiry case no.114/2018.

15. The newly reconstituted Trust started running and administering the assets of erstwhile respondent no.6 Trust including one of the schools run by said Sanstha by name Pragatik Girls High School Desaiganj. The Education Officer, Gadchiroli, by his order dated 20/03/2018, informed the President of the Petitioner No. 10 and headmistress of the above school that the said school will now be run by Petitioner No.10 Trust.

16. Some of the staff members of said school filed writ petition no. 7106 of 2018 challenging the order of respondent no.2 mentioned. However, said writ petition was dismissed by this Court vide order 08/07/2019.

17. In the meanwhile, name of the said school was changed from Pragatik Girls High School, Desaiganj, Wadsa to Licit High School, Desaiganj, by order dated 10/06/2019 passed by Deputy Director of Education, Nagpur Division, Nagpur.

18. Respondent nos. 3 to 5 by joining said Pragatik Shikshan Sanstha, an applicant no.4, filed three revision applications before the learned Joint Charity Commissioner, Nagpur, challenging the order dated

08/03/2018 passed by respondent no.2 in change report inquiry case no. 114/2018.

19. Two other revision applications bearing revision application no. 142/2018 and 143/2018 were filed by the respondent nos. 3 to 6 against common order passed in suo moto enquiry case no. 417/2018 and in inquiry case no. 5261 of 2017.

20. The petitioners have filed common reply dated 28/06/2019 in the proceedings before respondent no.1.

21. Respondent no.1 has passed common order in revision application case no. 142/2019 and 143/2019 thereby granting stay to the orders dated 08/03/2019 passed in suo moto inquiry case no. 417/2017 and in inquiry case no. 5261/2017.

22. Petitioners have filed writ petition no. 6201/2019 before this Court and this Court by order dated 29/06/2021 directed respondent no.1 to decide matter within a period of two months from date of communication of said order.

23. In pursuance to said order, learned Charity Commissioner passed two separate orders i.e. common judgment in revision application no. 142/2019 and in revision application no. 143/2019 dated 02/09/2021,

being aggrieved by orders the present writ petition was filed before this Court.

24. This Court by the order dated 5th July, 2022 which is sought to be reviewed by observing that this Court is of the opinion that no interference is warranted in the impugned orders passed by the Joint Charity Commissioner expedited the proceeding before the Assistant Charity Commissioner by directing the Assistant Charity Commissioner to dispose of Suo Motu Inquiry No. 417 of 2017, Inquiry Application No. 5261 of 2017 and Change Report Inquiry No. 114 of 2018, as expeditiously as possible and in any case within a period of six months.

25. The grounds on which the writ petition was dismissed was the reasons recorded by the Joint Charity Commissioner that recorded trustees of the said trust i.e. Pragtik Shikshan Sanstha, Desaiganj was not put to notice when such proceedings were undertaken, which had a serious impact on the very existence of the said Pragtik Shikshan Sanstha, Desaiganj. Thus, having found that persons interested were not put to notice and the entire trust stood amalgamated with the Gramin Vikas Shikshan Sanstha, Churmura.

26. In the above referred backdrop, Shri Bhangde, learned counsel for the applicants submitis

that the notices were issued to all the trustees and were dispatched by registered Post Acknowledgment. The notices were sent on the addresses available with the office of Assistant Charity Commissioner. It is submitted that if there is any change in address of recorded trustee, it is a bounden duty to inform the same to the Charity Commissioner. It is therefore submitted that addresses on which notices were sent were the addresses on the Memorandum of Association and Schedule-1 of the Pragatik Shikshan Sanstha, Desaijanj. He therefore submits that the findings recorded as regards service of notice, were contrary to the record and this fact was not pointed out to this Court.

27. It is further pointed out that the Assistant Charity Commissioner had also published notice of inquiry in the daily newspaper 'Tarun Bharat' on 6th December, 2017 and therefore it is submitted that it cannot be said that the service of notice was not made on the recorded trustee or the person interested in the trust.

28. It is further pointed out that after framing of the scheme, elections were held by the Election Officer appointed by the office of Assistant Charity Commissioner and again notices were sent on

18.02.2018 to all the trustees. It is therefore submitted that procedure prescribed under the Act has been followed and thereby the principle of nature justice by giving opportunity to the trustees, is complied with. Thus, on these grounds, the learned counsel for the applicant is seeking review of the order dated 5th July, 2022.

29. On the other hand, Shri Dharmadhikari, learned counsel for the respondent nos. 3 to 5 has drawn attention of this Court to the provision of Section 50-A of the Trust Act, 1950 to show that there is no compliance of Section 50-A by not publishing a note in the official gazette which is the pre-requirement of Section 50-A of the Trust Act, 1950. It is submitted that there is no document filed by the applicant on record to show the said compliance.

30. It is further pointed out that there is no dispute that the school run by Pragati Shikshan Sanstha, Desaijanj, was not closed at any point of time but it was running and therefore it cannot be said that the Trust was not functioning. He therefore submits that in the given circumstances, the direction by this Court to expedite the pending proceeding and dispose of the same within six months, is in the interest of justice and no prejudice would be caused to any party.

31. Accordingly he submits that the considering the scope of review which is not by way of appeal and have to be strictly to the scope and ambit of Order XLVII Rule 1 of the Code of Civil Procedure, the present application needs to be dismissed.

32. Shri Ahirkar, learned counsel for the respondent no.7 supports the case of the applicant.

33. In reply, Shri Bhangde, learned counsel for the applicant submits that the grounds as regards gazette notification was never raised. He submits that as the notices were served upon the recorded trustees, the sufficient and reasonable opportunity was given to the recorded trustee and therefore the point of non publication of note in official gazette will not help the respondents. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of Phagwara Improvement Trust Vs. State of Punjab and others¹.

34. From the perusal of the record, it is evident that this Court after reaching to the conclusion that the findings recorded by the Assistant Charity Commissioner that the recorded trustees were not put to the notice when the trust was deregistered and amalgamation was taken and it had a serious impact on

1 1991 Supp(2) SCC 753

the very existence of the Pragtik Shikshan Sanstha, Desaiganj.

35. Admittedly, in this case school run by Pragtik Shikshan Sanstha, Desaiganj is in existence and it was never closed even after de-registration of trust.

36. In the circumstances, it is necessary to find out whether there is compliance of Section 50-A in this case as regards the service of the notice to the recorded trustee. Section 50A of the Trust Act, 1950, which read thus:

50A. Power of Charity Commissioner to frame, amalgamate or modify schemes.

(1) Notwithstanding anything contained in section 50, where the [Assistant or Deputy Charity Commissioner] has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the [Assistant or Deputy Charity Commissioner] may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

(2) Where the [Assistant or Deputy Charity Commissioner] is of opinion that in the interest of the proper management or administration, two

or more public trusts may amalgamated by framing a common scheme for the same, he may, after -

(a) publishing a note in the Official Gazette [and also if necessary in any newspaper which in the opinion of the [Assistant or Deputy Charity Commissioner] is best calculated to bring to the notice of persons likely to be interested in the trust] with a wide circulation in the region in which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard,

frame a common scheme for the same.

(3) The [Assistant or Deputy Charity Commissioner] may, at any time, after hearing the trustees, modify the scheme framed by him under sub-section (1) or sub-section (2).

[(4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the Charity Commissioner under section 70, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under section 50.]]

37. From reading Section 50A(2)(a) of the Trust Act, 1950, it is evident that where the Assistant or Deputy Charity Commissioner is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after publishing a note in the official gazette and also if necessary to publish in any newspaper which in the opinion of the Assistant or Deputy Charity

Commissioner is best calculated to bring to the notice of persons likely to be interested in the trust, with a wide circulation in the region in which the trust is registered, and giving the trustees of such trusts and all other interested persons due opportunity to be heard and frame a common scheme for the same.

38. In this case, the compliance of publishing a note in the official gazette is not pointed out.

39. The language of Section 50A(2)(a) of the Trust Act, 1950 shows that the publication of note in newspaper is at the discretion of the Assistant or Deputy Charity Commissioner but publication of note in the official gazette is obligatory.

40. In the present matter there is nothing on record to show such compliance. No doubt that it seems that this point was not argued. However, this point goes to the root of the matter it is the duty of the Court to look into it whether there is any compliance of the same, whether it is raised or not raised by any party to the proceedings.

41. As far as the submission of the learned counsel for the applicant that the notices were issued through post on the address mentioned in Schedule-I, even if it is held that such notices were served, it cannot

be said that it is a complete compliance of Section 50A(2)(a) of the Trust Act, 1950.

42. In the circumstances, I do not find any error committed by this Court in passing order dated 5th July, 2022 and expediting the proceeding before the Assistant Charity Commissioner by directing the Assistant Charity Commissioner to dispose of Suo Motu Inquiry No. 417 of 2017, Inquiry Application No. 5261 of 2017 and Change Report Inquiry No. 114 of 2018, as expeditiously as possible and in any case within a period of six months. As such as there is no merit in the present application, the application is rejected.

[ANIL S. KILOR, J.]

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