

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

WRIT PETITION (WP) NO.4307 OF 2018

- 1) Dr. Ganesh Deokaranji Boob, Aged about 75 years, Occ. Doctor, R/o Opp. Sahakar Bhavan, Morshi Road, Amravati, Tq. Dist. Amravati **(Dead)**

Dr. Govind Balprasadaji Lahoti, Aged about 59 years, Occ. Doctor, R/o Camp Amravati, Tq. Dist. Amravati.

Amendment
carried out as per
Court's Order dt.
10.02.2023

.... Petitioner(s)

// VERSUS //

- 1) The Joint Charity Commissioner, Amravati Region, Amravati.
- 2) Pawankumar Mohanlal Bang, Aged Adult, r/o Sakkarsath, Amravati, Tq. and Dist. Amravati.

... Respondent(s)

AND

WRIT PETITION (WP) NO.3913 OF 2018

- 1) Dr. Ganesh Deokaranji Boob, Aged about 75 years, Occ. Doctor, R/o Opp. Sahakar Bhavan, Morshi Road, Amravati, Tq. Dist. Amravati **(Dead)**

Dr. Govind Balprasadaji Lahoti, Aged about 59 years, Occ. Doctor, R/o Camp Amravati, Tq. Dist. Amravati.

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- 1) The Joint Charity Commissioner, Amravati Region, Amravati.

- 2) Pawankumar Mohanlal Bang, Aged Adult, r/o Sakkarsath, Amravati, Tq. and Dist. Amravati.

... Respondent(s)

AND

WRIT PETITION (WP) NO.4308 OF 2018

- 1) Dr. Ganesh Deokaranji Boob,
Aged about 75 years, Occ. Doctor, R/o Opp. Sahakar Bhavan, Morshi Road, Amravati, Tq. Dist. Amravati **(Dead)**

Dr. Govind Balprasadaji Lahoti, Aged about 59 years, Occ. Doctor, R/o Camp Amravati, Tq. Dist. Amravati.

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.... Petitioner(s)

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- 1) The Joint Charity Commissioner, Amravati Region, Amravati.
- 2) Pawankumar Mohanlal Bang,
Aged Adult, r/o Sakkarsath, Amravati, Tq. and Dist. Amravati.

... Respondent(s)

AND

WRIT PETITION (WP) NO.4827 OF 2018

- 1) Dr. Ganesh Deokaranji Boob,
Aged about 75 years, Occ. Doctor, R/o Opp. Sahakar Bhavan, Morshi Road, Amravati, Tq. Dist. Amravati **(Dead)**

Dr. Govind Balprasadaji Lahoti, Aged about 59 years, Occ. Doctor, R/o Camp Amravati, Tq. Dist. Amravati.

Amendment
carried out as per
Court's Order dt.
10.02.2023

.... Petitioner(s)

// VERSUS //

- 1) The Joint Charity Commissioner,

Amravati Region, Amravati.

- 2) Pawankumar Mohanlal Bang,
Aged Adult, r/o Sakarsath, Amravati,
Tq. and Dist. Amravati.

... Respondent(s)

AND

WRIT PETITION (WP) NO.4828 OF 2018

- 1) Dr. Ganesh Deokaranji Boob,
Aged about 75 years, Occ. Doctor, R/o
Opp. Sahakar Bhavan, Morshi Road,
Amravati, Tq. Dist. Amravati (**Dead**)

Dr. Govind Balprasadaji Lahoti,
Aged about 59 years, Occ. Doctor, R/o
Camp Amravati, Tq. Dist. Amravati.

Amendment
carried out as per
Court's Order dt.
10.02.2023

.... Petitioner(s)

// VERSUS //

- 1) The Joint Charity Commissioner,
Amravati Region, Amravati.
- 2) Pawankumar Mohanlal Bang, Aged
Adult, r/o Sakarsath, Amravati, Tq.
and Dist. Amravati.

... Respondent(s)

Shri A.J. Gilda, Advocate for the Petitioner/s
Shri H.D. Dubey, AGP for the Respondent No.1/State

CORAM : ANIL S. KILOR, J.
DATED : 20.07.2023

ORAL JUDGMENT :

1. Heard the learned counsel for the petitioner and the learned AGP for the respondent No.1/State. None appears for the respondent No.2, though served.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent by the parties.
3. The present petition arises out of the impugned judgment and order dated 15.01.2018 passed by the Joint Charity Commissioner, Amravati, allowing the application moved by the respondent No.2 for condonation of delay in filing the proceeding under Section 70 of the Maharashtra Public Trusts Act, 1950.
4. The petitioner is the Secretary of the trust, namely Shri Ganeshdas Rathi Chatralaya, Amravati. Initially one change report bearing No.757 of 1998 was filed, the same was objected by Mohanlal Nandlal Bang, the father of the respondent No.2 as nominee of Radhakishan Rathi, a member of the trust in 'Sanrakshak' category. After the death of Mohanlal Bang, the respondent No.2 was substituted as an objector as Radhakisan Rathi appointed him as nominee. The said change report was

accepted on 19.01.2009 and therefore, the respondent No.2 preferred an appeal against the said acceptance of change report. In the meanwhile the change report bearing inquiry No.602 of 2001, 524 of 2004, 435 of 2007, 577 of 2010 and 995 of 2013 came to be filed in respect of the subsequent elections. Subsequently, all the change reports were accepted vide judgment dated 28.04.2016. The respondent No.2 filed objection in the change report No.602 of 2001 and 524 of 2004.

5. It is the case of respondent No. 2 that, he has no knowledge about the acceptance of those change reports and after the new elections were held, he got knowledge about the same and accordingly, the delay was caused.

6. The petitioner after appearing in the said proceeding under Section 70 of the Trust Act filed his reply at Exh.9 and raised a preliminary objection to the maintainability of the appeal and to the application for condonation of delay on various grounds, including the ground that all the trustees are not made party to the appeal as well as to the application for condonation of delay and

therefore, both the appeal and the application for condonation of delay, are not maintainable for non-joinder of necessary party.

7. The learned Joint Charity Commissioner, Amravati while rejecting the said preliminary objection, has held that in the proceedings under Section 22 or under Section 70 of the Trust Act, co-trustees are not the necessary party, as they are representing by reported trustees. The learned Joint Charity Commissioner after rejecting the said preliminary objection proceeded further and decided the application on merit and allowed the same vide judgment and order dated 15.01.2018. The same is the subject matter in the present writ petition.

8. From the above referred facts and the preliminary objection raised by the petitioner before the learned Joint Charity Commissioner, it is evident that the whole controversy revolves around a question, whether all the trustees are necessary party to the appeal filed under Section 70 of the Trust Act challenging the acceptance of change report ?

9. The learned counsel for the petitioner argues that since the proceeding under Section 22 of the Trust Act is of a judicial character and the inquiry is being a judicial scrutiny, it cannot be a mere factual process or one purely formal in nature.

10. It is submitted that the minimal requirement of a judicial inquiry and a judicial process is compliance with the principles of natural justice, though these principles are not embodied in Rules.

11. He further submits that the application for condonation of delay and the appeal filed under Section 70 of the Trust Act, without making all the trustees as party, ought to have been rejected by the learned Joint Charity Commissioner, on the ground of non-joinder of necessary party. In support of his submission, he has placed reliance on the judgments of the Co-ordinate Bench of this Court in the cases of *Vithalrao ... Vs. ... Motiram* reported in 2010(1) Mh.L. J. 977, *Sunil Madhukarrao Sapkal Vs. The Joint Charity Commissioner, Amravati and others* in Writ Petition No.5444 of 2015 decided on 29.07.2016 and *Vithoba Babaji Ghodke Vs. Balkrishna Ganesh Bhalerao* reported in 1965 SCC OnLine Bom 146.

12. On the other hand, the learned AGP supports the judgment and order passed by the learned Joint Charity Commissioner.

13. Considering the controversy involved in the present matter, at this stage, it would be appropriate to refer to Section 22 and Section 70 of the Trust Act, which are as follows:

“22. Change.

(1) Where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, or where any change is desired in such entries in the interest of the administration of such public trust, report such change or proposed change to the Deputy or Assistant Charity Commissioner in charge of the Public Trusts Registration Office where the register is kept. Such report shall be made in the prescribed form.

(1A) ...

(2) ...

(3) ...

(3A) ...

(3B) ...

(4) ...

“70. Appeals from findings of Deputy or Assistant Charity Commissioner.

(1) An appeal against the finding or order of the Deputy or Assistant Charity Commissioner may be filed to the Charity Commissioner in the following cases :—

(a) the finding and order, if any, under section 20 ;

(b) the finding under section 22 ;

(b-1) the findings under section 22A;

(c) the findings under section 28 ;

(c-1) the order under section 41 C;]

(c-2) the order under section 50A;

(d) the order under sub-section (3) of section 54 ;

(d-1) an order under sub-section (1) of section 79;
(e) an order confirming or amending the record under section 79AA.
(2) ...
(3) ...”

14. Section 22 of the Trust Act, contemplates an inquiry in the reported change in any of the entries reported under Section 17 of the Trust Act.

15. Whereas, under Section 70 of the Trust Act, an appeal is provided against such order passed under Section 22 of the Trust Act.

16. However, sub-section (3) of Section 70 of the Trust Act, shows that the learned Joint Charity Commissioner may, after hearing the appellant or any person appearing on his behalf for reasons to be recorded in writing either annul, reverse, modify or confirm the finding or the order appealed against or he may direct the Deputy or Assistant Charity Commissioner to make further inquiry or to take such additional evidence as he may think necessary or he may himself take such additional evidence.

17. Thus, sub-section (3) of section 70 of the Trust Act does not contemplate any requirement of giving any opportunity of being heard to the other side, except appellant or any person appearing on his behalf.

18. The Hon'ble Supreme Court of India in the case of *SBI v. Rajesh Agrawal* reported in **(2023)6 SCC 1**, has held thus:

“36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo judex in causa sua, which means that no person should be a judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favor interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.

[...]

41. In State of Orissa v. Dr (Miss) Binapani Dei, a two-judge bench of this Court held that every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard. This Court further held that an

administrative action which involves civil consequences must be made consistent with the rules of natural justice: (AIR p. 1271 9)

“9. ... The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.”

42. In [Maneka Gandhi v. Union of India](#), a seven-judge bench of this court held that any person prejudicially affected by a decision of the authority entailing civil consequences must be given an opportunity of being heard. This has been reiterated in a catena of decisions of this Court. ”

19. The Division Bench of this Court in the case of *Jagatnarayansingh Vs. Swarupsingh Edu. Society* reported in **1980 Mh.L.J. 373**, has held thus:

“7. Under section 72(1) of the Act, any person aggrieved by the decision of the Charity Commissioner, inter alia, under section 70, may apply to the Court to set aside the said decision. And under sub-section (4) of section 72, an appeal lies to the High Court against the decision of the Court in proceedings under section 72 as if such decision was a decree from which an appeal ordinarily lies. Also relevant to note is that the provisions of the Code of Civil Procedure are made applicable albeit only to some extent vide

section 73 or only at certain stages vide section 76. Equally pertinent to note is that under Rule 7 of the Rules under the Act, inquiries under or for purposes of section 22, :

".....shall be held, as far as possible, in the Greater Bombay Region in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Courts Act, 1882 and else where under the Provincial Small Cause Courts Act, 1887."

8. Therefore, though prima facie it appears to be a mere change, the scheme of the Act contemplates qua the change under consideration an inquiry of a Judicial character with an appeal therefrom to the Charity Commissioner and a further application under section 72 to the District Judge and yet another appeal therefrom to the High Court against which appellate judgment of the High Court, a still further appeal may, in a given case, lie under the letters patent. Such being the Judicial scrutiny and the extensive gamut of the inquiry under section 22 of the Act, it is obvious that this inquiry can not be a mere factual process or one purely formal in nature. Investigation into the legality and validity of the change is implicit. The inquiry is a judicial process pertaining the character of judicial adjudication. An elemental perquisites or the minimal requirement of a judicial inquiry and a judicial process is compliance with the principles of natural justice. These principles, though not embodies rules, constitute none the less an important facet and pivot of the judicial process. Inquiry behind the back of an aggrieved party is best avoided lest it stands vitiated. One affected must be noticed and heard. Basic lacuna in that respect may well render the inquiry and/or the order therein almost non est at least qua the aggrieved absent party left unheard and, therefore, unheeded."

20. In the judgment of Co-ordinate Bench of this Court in the case of *Sunil Madhukarrao Sapkal* (supra) has held that, if the order passed in change report was to be challenged, all the parties who were likely to be affected by setting aside the said order are necessary party. In their absence, proceeding either for condonation of delay or on merit could not have been considered.

21. Thus, it is evident from the above observations that the inquiry under Section 22 of the Trust Act is of a judicial character and for such inquiry an elemental pre-requisite or minimal requirement of a judicial inquiry and a judicial process is compliance with the principles of natural justice. It is further observed that, these principles though not embodies rules, constitute none-the-less an important facet and pivot of the judicial process.

22. It is important to note that, in case of any change occurred in any entry recorded under Section 17 of the Trust Act, the reporting trustee requires to apply under Section 22 of the Trust Act for such change in a format given under Rule 13 of the Maharashtra Public Trusts Rules (in short 'the Rules under the Trust Act').

23. Rule 13 of the Rules under of Trust Act, stipulates that any change or proposed change in any of the particulars recorded in the Register of Public Trust shall, under sub-section (1) of section 22, be reported to the Deputy Charity Commissioner or Assistant Charity Commissioner by the trustee of the trust concerned in the form of Schedule (III).

24. The Schedule III given under the Rules of the Trust Act, prescribes a format for reporting of changes that have occurred or are desired in the particulars record in the Register of Public Trust by the reporting trustee.

25. Hence, when any change is reported under Section 22 of the Trust Act, it has to be reported by reporting trustee alone as i.e. the requirement of the Trust Act and the Rules under the Trust Act.

26. However, after reporting such change by the reporting trustee if the change is accepted and the names of the trustee or trustees is/ are recorded under Section 17 of the Trust Act, any adverse order setting aside such change in the appeal under Sections 70 or 72 of the Trust Act will be prejudicial to the interest of such trustee or trustees and adversely affect their rights. A party to whose prejudice an order is intended to be passed is entitled to hearing. In the circumstances, even though Section 70 of the Trust Act does not speak about grant of hearing to the such trustees, such trustees are entitled to a hearing.

27. In the present matter, though the specific objection was raised by the petitioner to the application for condonation of delay as well as to the appeal filed under Section 70 of the Trust Act, on the ground that the appeal as well as application need to be rejected for non-joinder of necessary party, the learned Joint Charity Commissioner rejected the said objection by recording erroneous findings that under Section 22 of the Trust Act and Section 70 of the Trust Act, there is no requirement to hear the trustees or join them as party.

28. In the circumstances, I am of the opinion that as the necessary parties were not made to the proceeding under Section 70 of the Trust Act as well as to the application for condonation of delay, both the proceedings vitiate on the ground of non-joinder of necessary party. Accordingly, I pass the following order:

(i) The writ petition is **allowed**.

(ii) The common judgment and order dated 15.01.2018 passed by Joint Charity Commissioner, Amravati Region, Amravati in Misc. Application Nos.22, 23, 24, 25 and 26 of 2017, is hereby quashed and set aside and the five applications for condonation of delay are hereby rejected.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]