2024:BHC-AUG:10847

IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

905 WRIT PETITION NO. 4618 OF 2024

1. Mr. Bhausaheb Natha Rashinkar,
2. Mr. Bharat Namdev Vitnor,
3. Mr. Guruprasad Parshuram Handal,
4. Mr. Nivrutti Chimaji Datir,
5. Mr. Sampat Ravaji Datir,
6. Mr. Bhaskar Baburao Fanase,
7. Mr. Dadasaheb Keruji Chitalkar,
8. Mr. Sadashiv Abaji Argade,
9. Mr. Tukaram Vinayak Misal,
10. Mr. Vilas Bhausaheb Bhand,
11. Mr. Annasaheb Rangnath Bachkar,
12. Mr. Shantilal Annaji Kopnar. **...Petitioners**

VERSUS

1. The Joint Charity Commissioner, Pune,
2. Mr. Pandurang s/o Raghunath Shinde,
3. Mr. Ramkishan s/o Damodar Shinde

...Respondents

...

Advocate for the Petitioner : Mr.P.D.Bachate h/f Mr. Khot A. D.
AGP for Respondents-State : Mrs. P. R. Bharaswadkar
Advocate for Respondent No.3 : Mr. N. L. Jadhav

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CORAM : R. M. JOSHI, J.
Dated : June 12, 2024

PER COURT :-

1. This petition takes exception to order dated 03/04/2024, passed by the Joint Charity Commissioner, Pune below Exhibit 10 in Application No.11/2020 whereby the petitioner's request for causing intervention in the application filed by the respondents under Section 47 of the Maharashtra Public Trusts Act, is rejected.

2. It is the case of the petitioners that they are the life members of the Trust namely 'Punyashlok Ahilyadevi Seva Sangh', which is registered as a public trust under the provisions of the Public Trusts Act. According to the petitioners during the hearing of the change reports, direction was issued to the inspector to conduct an inquiry of the trust and submit report. Accordingly, report dated 01/01/2021 came to be filed before the concerned authority indicating that none of the member has paid Rs.2000/- as a fees to become a member of the trust as contemplated by its constitution. It is his further submission that merely on the ground that the change reports filed by the petitioners have been rejected, the learned Joint Charity Commissioner was not justified in rejecting application for intervention. He further argued that while rejecting the said application and while passing impugned order, the said inspection report ought to have been taken into consideration. According to him, if there is no dispute about the fact that he has paid some membership fees to become a member of the trust, then he becomes interested person. Thus, it is his contention that in the facts of the case, it is within the right of the petitioners to file their

say in respect of the matter wherein the appointment of new trustees is being sought by the respondents.

3. Learned Counsel for respondents vehemently opposed the said contention basically relying upon the provisions of Section 47 of the Act. According to him, the said provision cannot be expanded to the extent of deciding the validity of the membership of any member of the trust. It is his further submission that even if it is accepted for the sake of argument, that the petitioners had looked after the affairs of trust for some period, that itself will not make them a valid member of the trust. In order to support his submission that unless a person is the member, he has no locus to interfere into the affairs of the society or the trust as the case may be, reliance is placed on the Judgment of the Hon'ble Apex Court in case of ***Adv Babasaheb Wasade and Others vs. Manohar Gangadhar Muddeshwar and Others, reported in 2024 SCC OnLine SC 63***, and drew the attention of Court to observations made by the Apex Court at paragraph No.36 : -

> *"In this context, the obvious question that arises is that once the said Members were Employee Members, their categorisation as such was*

> *dependent on them being in service. On retirement, the said signatories would cease to be employees, come out of the category of Employee Members and their membership in the Society could not have continued. Upon superannuation or cessation of their employment, such four signatories could very well have been made members of the Society, but there is no indication on the record that they were made members of the Society by a specific resolution and thereafter continued as members and paid the subscription fee(s). Thus, they could not have continued as members of the Society in the category of Employee Members even upon their superannuation by merely paying the yearly subscription fee thereby blocking the entry of the persons, who were still employees."*

4. Perusal of the record indicates that during the hearing of the change report, the inspector was called upon to submit report in respect of the affairs of the trust. The said report clearly records that on the basis of the membership register of the trust, it is found that none of the person has paid Rs.2000/- to become a member and those who have paid the fees it is either Rs.1000/- or Rs.1001/- only. It is specifically observed therein that from the time of

establishment of the trust there is not a single valid member. Apart from this, there is specific observation made with regard to the petitioners having looked after the affairs of the trust for the period from 1992 to 2018.

5. This Court is faced with the peculiar facts wherein the trust duly registered under the provision of the Maharashtra Pubic Trusts Act, as per the report of the inspector, does not have a single valid member. The learned Counsel for the respondent may be justified to say that scope of the inquiry under Section 47 of the Act cannot be expanded to decide the validity of the membership. However, at the same time the fact cannot be ignored that there is not a single valid member of the society and all those persons who claim membership stand on the same footing including the petitioners. In such peculiar circumstances, it was necessary for the Joint Charity Commissioner to take into consideration the said report before passing the impugned order. Failure to take into account said report and not recording any finding in that regard, has caused serious prejudice to the petitioner. Eventually, it has affected the justifiability of the impugned order.

6. Perusal of the impugned further order indicates that it has been passed only for the reason that the intervenor's change reports are rejected. There is no denial of the fact that the said orders are under challenge and subjudice in an appeal. Thus, it cannot be said that in the proceeding also it is conclusively held that the petitioners are not members of the trust. Apart from this, the Joint Charity Commissioner has also ignored the fact that the petitioners had looked after the affairs of the trust for a substantial period.

7. As a result of above discussion, this Court find it is fit case to set aside the order and remit the matter of back to Joint Charity Commissioner for a decision afresh on the application of the intervenors. Needless to state that the Charity Commissioner should give due weightage to the inspector's report though it is sought to be canvassed by the Counsel for the respondents that the inspector's report is not adjudication of any issue.

8. Hence, petition is allowed. The impugned order is set aside. Application for intervention is remanded back for decision afresh as per law.

9. Learned Counsel for both sides make a statement that the parties will appear before the Joint Charity Commissioner on 18/06/2024, who is requested to decide the application of the intervenors within 15 days from 18/06/2024.

(R. M. JOSHI, J.)

vj gawade/-.