



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7949 OF 2024

Bapurao Shankar Rathod
aged 59 years, occ. Agriculture
& President of Gunai Shikshan Prasarak Mandal
Kawalkhed,, Tq Udgir, Dist. Latur
R/o Kawalkhed, Tq. Udgir
Dist. Latur.

.. Petitioner

versus

1. The Joint Charity Commissioner
Latur Region, Latur.
2. The Deputy Charity Commissioner
Latur Region, Latur.
3. Balasaheb s/o Narayan Rathod
aged 39 years, occ. Agriculture
r/o Kawalkhed, Tq. Udgir
Dist. Latur.
4. Sow. Jhoti Bapurao Rathod
aged 50 years, occ. Household
R/o Kawalkhed, Tq. Udgir
Dist. Latur.
5. Amit S/O Bapurao Rathod,
aged 26 years, occ. Agriculture
R/o Kawalkhed, Tq. Udgir
Dist. Latur.
6. Vijay s/o Shankarrao Rathod
aged 48 years, occ. Service,
R/o Kawalkhed, Tq. Udgir
Dist. Latur.
7. Digambar s/o Shankarrao Rathod
aged 62 years, occ. Agriculture

R/o Kawalkhed, Tq. Udgir
Dist. Latur.

8. Prakash s/o Tukaram Rathod
aged 57 years, occ. Service
R/o Kawalkhed, Tq. Udgir
Dist. Latur.
9. Gulab s/o Shankarrao Rathod
aged 50 years, occ. Agriculture
R/o Kawalkhed, Tq. Udgir
Dist. Latur.
10. Shobha Vijay Rathod
aged 41 years, occ. Household
R/o Kawalkhed, Tq. Udgir
Dist. Latur.
11. Rohit s/o Bapurao Rathod
aged 20 years, occ. Education
R/o Kawalkhed, Tq. Udgir
Dist. Latur.

.. Respondents

Mr. N. P. Patil Jamalpurkar, Advocate for the Petitioner.
Mr. S. B. Pulkundwar, AGP for the State.
Mr. M. S. Deshmukh, Advocate for Respondent No. 5.
Mr. V. D. Gunale, Advocate for Respondent No. 3.

CORAM : R. M. JOSHI, J.

RESERVED ON: 30th JULY, 2024.

PRONOUNCED ON : 2nd AUGUST, 2024

JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. By consent of parties, heard finally at admission stage.

3. This Petition takes exception to the judgment and order dated 08.07.2024 passed by the Joint Charity Commissioner, Latur (for short 'Jt.CC) in Revision No. 15/2024 whereby order passed in Change Report No. 335/2023, accepting change report provisionally under Section 22(2) of Maharashtra Public Trust Act (for short 'the Act') is set aside.

4. Petitioner claims himself to be the founder member and President of trust namely Gunai Shikshan Prasarak Mandal registered under the Act as well as Societies Registration Act. It is claimed that as the tenure of five years of the managing committee of the trust was coming to an end in the month of May, 2024, a general body meeting of the trust was held on 27.05.2022 wherein election of the managing committee was done for the period from 2022-2027. Petitioner claims to be elected as President and Respondent Nos. 4 to 11 being office bearers of the trust. Pursuant to the said election, the newly elected executive committee took over charge of the management of the trust and they started looking after its day to day affairs. Petitioner filed Change Report bearing No. 335/2023 with the Deputy Charity Commissioner (for short "Dy.C.C.") on

12.04.2023 under Section 22 of the Act. He also filed an application before the Dy. C.C. under the provisions of Section 22(2) of the Act with a prayer to accept Change Report No. 335/2023 provisionally. By order dated 30.01.2023, said report was accepted provisionally.

5. Respondent No. 3, being aggrieved by the said order filed Revision Application bearing No. 15/2024 before the Jt. CC. Latur. Prior thereto, this Respondent filed application for recalling order dated 30.10.2023 before the Dy. C.C. The Jt. C.C. by passing impugned order dated 08.07.2024, allowed the revision and set aside the order passed by the Dy. C.C. dated 30.10.2023 whereby Change Report No. 335/2023 was provisionally accepted.

6. Learned counsel for the Petitioner and Respondent No. 5 submitted that the revision application filed by Respondent No. 3 against the order passed by the Dy. C.C. is not maintainable for the reason that the application for recalling of the order dated 30.10.2023 passed in Change Report No. 335/2023 is pending before the said authority. It is argued that during the pendency of said application, revision could not have been entertained. It is also claimed that revision has been filed by suppressing said material fact

from the revisional authority. Learned counsel for Respondent No. 5 in response to the judgment cited by Respondent No. 3 of this court in case of Anand Sheshrao Bharose vs Rahul Vedprakash Patil and others, in **Writ Petition No. 3788/2021**, submitted that this judgment is set aside by Hon'ble Supreme Court. On merit of the order passed by the revisional authority, it is contended that the observations made by him for allowing the application are not sustainable. It is submitted that the scheme of Section 22(2) of the Act introduced by way of amendment to the Act does not contemplate hearing of objections at the stage of provisional acceptance of the change report. It is their contention that only Change Report bearing No. 335/2023 filed by the Petitioner was moved for provisional acceptance. No such prayer was made in Change Report No. 330/2023 filed by Respondent No. 3. It is their submission that there is no bar created by relevant provision from accepting one change report provisionally even in case of pendency of multiple change reports for the same period. Learned counsel for Petitioner submits that Respondent No. 3 is not member of the Trust and in order dated 07.04.2011 passed by the Dy. C.C. in the change report enquiry No. 251/2010 resolution dated 08.05.2010 by which Respondent No. 3 was admitted as member is not accepted. Thus, it

is their contention that Revision ought to have been entertained by Jt.C.C. On these amongst other submissions, impugned order is sought to be set aside.

7. Learned counsel for Respondent No. 3 opposed the said submission by making several allegations against the Petitioner and other Respondents of their involvement in the alleged activities which are not in the interest of the trust. It is his submission that change report filed by this Respondent is first in time and inspite of the objection raised by him to the Change Report No. 335/2023 filed by Petitioner, the Dy. C.C. has accepted said report provisionally without affording any opportunity of hearing to this Respondent. He further argues that even membership of Respondent No. 3 was accepted in the same meeting in which he was made member of Trust and as such, there is no substance in the contention of Petitioner that Respondent No. 3 is not a valid member of the trust. It is his further submission that there is no finding recorded by any competent authority under the Act holding that Respondent No. 3 is not valid member of the trust. He has also raised objection with regard to the manner in which the order was passed by the Dy. C.C.. It is his submission that application under Section 22 of the Act was filed on

30.10.2023 and order passed by the Dy. C.C. indicates that the said application was kept for hearing. However, surprisingly order came to be passed on the same day accepting change report provisionally. To support submission that Revision is maintainable, reliance is placed on judgment of this Court in case of Anand Bharose (supra)

8. At the outset, this Court desires to deal with issue of objection raised to the Revision filed by Respondent No. 3 against order passed by Dy.C.C. accepting change provisionally, when an application is filed for recalling of order before same authority. It is also contended that there is suppression of facts from Revisional Authority. Though now this objection is raised, but nothing is pointed out to this Court that any objection was raised about tenability of Revision on these grounds. Apart from this, there is no dispute about the fact that a remedy of Revision would be available against the order passed by Dy.C.C., challenged under Section 70A of the Act before Jt.C.C. Even in case of Anand vs. Rahul Vedprakash Patil and others, **Appeal No. 4868/2022 (Spl. Leave Petition (C) No.20248/2021)**, Hon'ble Supreme Court has not held that Revision would not be maintainable but since parties were contesting number of change reports before High Court, in the interest of justice, matter

is directed to be decided by High Court. For these reasons, there is no substance in the challenge to maintainability of Revision.

9. Before advertng to factual matrix, it would be relevant to take into consideration provisions of Section 22 of the Act which read thus :

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.

[Provided that, the Deputy or Assistant Charity Commissioner may extend the period of ninety days for reporting the change on being satisfied that there was a sufficient cause for not reporting the change within the stipulated period subject to payment of costs by the reporting trustee, which shall be credited to the Public Trust Administration Fund.]

[(1A) Where the change to be reported under sub-section (1) relates to any immovable property, the trustee shall, along with the report, furnish a memorandum in the prescribed form containing the particulars (including the name and description of the public trust) relating to any change in the immovable property of such public trust, for forwarding it to the Sub-Registrar referred to in sub-section (7) of section 18.

Such memorandum shall be signed and verified in the prescribed manner by the trustee or his agent specially authorised by him in this behalf.]

(2) For the purpose of verifying the correctness of the entries in the register kept under section 17 or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy or Assistant Charity Commissioner may [hold an inquiry in the prescribed manner.]

It is thus clear that original Section 22 of the Act did not provide for provisional acceptance of change report and enquiry in the manner prescribed was mandatory before accepting change. This provision went through amendment with introduction of provisos to sub-section 2 by Amendment Act LV of 2017, which reads thus :-

[Provided that, in the case of change in the names and addresses of the trustees and the managers or the mode of succession to the office of the trusteeship and managership, the Deputy or Assistant Charity Commissioner may pass order provisionally accepting the change within period of fifteen working days and issue a notice inviting objections to such change within thirty days from the date of publication of such notice :

Provided further that, if no objections are received within the said period of thirty days, the order accepting the change provisionally under the first proviso shall become final and entry thereof shall be taken in the register kept under section 17 in the prescribed manner.

Provided also that, if objections are received within the said period of thirty days, the Deputy or Assistant Charity Commissioner may hold an enquiry in the prescribed manner and record a finding, as provided by sub-section (3) of this section, within three months from the date of filing objections.]

(3) If the Deputy or Assistant Charity Commissioner, as the case may be, after receiving a report under sub-section (1) and holding an inquiry, if necessary under sub-section (2), or merely after holding an enquiry under the said sub-section (2), is satisfied that a change has

occurred in any of the entries recorded in the register kept under section 17 in regard to a particular public trust, [or that the trust should be removed from the register by reason of the change, resulting in both the office of the administration of the trust and the whole of the trust property ceasing to be situated in the State], he shall record a finding with the reasons therefor [to that effect; and if he is not so satisfied, he shall record a finding with reasons therefor accordingly.] [Any such finding] shall be appealable to the Charity Commissioner. The Deputy or Assistant Charity Commissioner shall [amend or delete the entries] in the said register [in accordance with the finding which requires an amendment or deletion of entries] and if appeals [* *] were made against such finding, in accordance with the final decision of the competent authority provided by this Act. The amendments in the entries so made [subject to any further amendment on occurrence of a change or any cancellation of entries, shall] be final and conclusive.*

[(3A) The Deputy or Assistant Charity Commissioner may, after such detailed and impartial inquiry and following such procedure as may be prescribed, de-register the trust on the following grounds :-

- (a) when its purpose is completely fulfilled; or*
- (b) when its purpose becomes unlawful; or*

- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or*
- (d) when the trust, being revocable, is expressly revoked; or*
- (e) when the trustees are found not doing any act for fulfilling object of the trust:*

Provided that, no trust shall be de-registered under clause (c) unless its trustees have committed default in reporting the change under sub-section (1), in submission of the audited accounts as prescribed by sub-section (2) of section 33 or sub-section (1A) of section 34 or in making any other compliance prescribed by or under this Act for a period of five years from the last date of reporting the change, submission of the accounts or making compliance, as prescribed by or under this Act or the rules made thereunder, as the case may be.

(3B) The Deputy or Assistant Charity Commissioner may take over the management of properties of the trust de-registered under sub-section (3A) and pass such necessary orders for the same as he deems fit and may, if he considers it expedient, dispose them of by sale or otherwise and deposit the sale proceeds in the Public Trusts Administration Fund established under section 57.]

[(4) Whenever an entry is amended [or the trust is removed from the register] under sub-section (3), the Deputy or Assistant Charity Commissioner, as the case may be, shall forward the memorandum furnished to him under sub-section (1A), after certifying the amended entry [or the removal of the trust from the register] to the Sub-Registrar referred to in sub-section (7) or section 18, [for the purpose of filing in Book No. 1 under section 89 of the Indian Registration Act, 1908, in its application to the State of Maharashtra].

10. A bare perusal of the above provisions clearly indicate that Section 22 is a complete scheme, for determination of change report. Original Section 22 contemplates an enquiry before acceptance of the report in prescribed manner. With amendment by addition of three provisos to sub-section 2, power is given to Dy.C.C./Assistant C.C. to accept change provisionally within 15 working days. Once a change is accepted provisionally, notice is mandatorily required to be issued inviting objections to such change within 30 days. Two contingencies are taken into account for adopting further procedure. In case no objection is recorded within 30 days, order accepting change provisionally becomes final and entry thereof shall be taken in register kept under Section 17 in

manner prescribed therein. In the second situation, where objections are received within 30 days, an enquiry is required to be held in the prescribed manner and findings are to be recorded, as provided by sub-section 3, within 3 months.

11. From the nature of the amendment, intention of legislature is clear to expedite the decision of acceptance/rejection of change. First proviso does not state literally requirement of an enquiry before accepting change provisionally. However, at the same time, it does not make it mandatory for Dy.C.C./Assistant C.C. to accept the report provisionally, as the language of this provision is that it may pass order provisionally accepting the change.

12. Even by keeping in mind legislative intent behind introducing amendment of expeditious acceptance of change and allowing management of trust by elected managing committee and though no enquiry is contemplated before accepting change report provisionally, such order cannot be passed in ignorance of material already placed on record before the Dy.C.C./Assistant C.C. It cannot be countenanced that objection if any already raised need not be considered. May be till final acceptance of change, it is provisionally

accepted, however, implication thereof is that the person whose change is accepted so would become entitled to manage affairs of the trust. At this stage, it would be apposite to refer to the judgment of this Court in case of Jagatnarayan Swarupsingh vs Swarup Singh Education Society and another, **1980 Mh. L.J. 372** wherein in Paragraph No. 8 it is observed as under :-

“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 grant 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.

13. With introduction of proviso, the character of proceedings does not get changed. Since it is not intended that in any circumstance change needs to be accepted provisionally, such acceptance requires application of judicious mind. Needless to say that it remains a judicial process and that minimum requirement of adherence of principles of natural justice is mandatory. When it is contemplated by second proviso that objection can be raised to the change and it is required to be decided expeditiously, there is no gain saying that when there is such objection to change on record, it can be ignored and same objection to be considered after acceptance of change provisionally. This could never be intention of the statute.

14. In considered view of this Court, the amended provision needs to be considered not textually but contextually. In the event there is no objection raised to the change report filed within 15 days or where there is no other change report for the period covered by the change report in question is pending for adjudication, in that case, it

would be open for the Dy.C.C./Assistant C.C. to pass order provisionally accepting change and for doing so full fledged enquiry may not be required to be conducted at that stage, but opportunity of hearing could be given to the Applicant seeking change, if necessary. The situation however would be altogether different if there is already an objection raised to the change report before acceptance of the same provisionally or there is pendency of another change report for the same period. In such situation, it would be obligatory on the part of Assistant C.C./Dy. C.C. to consider the factum of pendency of another report and to give opportunity of hearing to such objector to grant of change provisionally. There is no logic to differ this exercise post acceptance of change provisionally. Adopting such procedure will not only give opportunity of hearing to the aggrieved party in adherence of principles of natural justice but it will make the decision transparent and more accountable.

15. Reverting back to the facts of instant case, it is not in dispute that Change Report No. 300/2023 is filed by Respondent No. 3 for the same period for which Petitioner has filed Change Report No. 335/2023. It is also seen from the order passed by the Dy. C.C.

that in both enquiries, the other side has raised objection for grant of change report. Order passed by Dy.C.C. indicates that this authority had knowledge of these facts, however, without giving an opportunity to the objector, order came to be passed behind his back. Moreover, this Court agrees with observations made by Jt.C.C. to the effect that the manner in which order is passed is perverse. Perusal of record indicates that the application for provisional acceptance of change is filed on 30.10.2023. Dy.C.C. passed order thereon "keep for hearing". It is thus clear that no hearing had taken place on application on that date. The order however is dated 30.10.2023. In such event, it can be safely said that the order has been passed without hearing. At this stage, this Court refrains itself from making any further comments on this issue. Suffice it to say that the manner in which said order is passed becomes a reason for its non-sustainment.

16. The findings recorded by learned Jt. C.C. to the effect that before passing order of provisional acceptance of change, opportunity of hearing ought to have been given to Respondent No. 3 is not contrary to basic principles of law and in no case contrary to

the spirit of amendment to Section 22 of the act. Having regard to overall facts and circumstances of the case and in view of above discussion no error seems to have been committed by learned Jt.C.C. in setting aside order passed by Dy.C.C. in Change Enquiry No. 335/2023. Thus, no interference is required in impugned judgment and order.

17. This Court is informed that there are directions issued by this Court in Writ Petition No. 4346/2024 for expeditious decision on Change Report Nos. 300/2023 and 335/2023 and these proceedings are before the Dy. C.C. for final hearing on 01.08.2024. Counsel for both sides are unanimous to say that these proceedings can be decided before 16.08.2024. Hence, Dy.C.C. to decide both enquiries on or before 16.08.2024. It shall be responsibility of Petitioner to bring to the notice order passed by this Court forthwith.

18. In the result, Petition stands disposed of. Rule made absolute in above terms.

19. It is clarified that the Dy.C.C. not to get influenced by the order passed by this Court on merit.

(R. M. JOSHI)
Judge

dyb