



- 1 -

wp10113.24.odt

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

WRIT PETITION NO. 10113 OF 2024

Ramesh s/o Gundu Chavan .. Petitioner

versus

The Jt. Charity Commissioner & others .. Respondents

AND

WRIT PETITION NO. 10138 OF 2024

Ramesh s/o Gundu Chavan .. Petitioner

versus

The Jt. Charity Commissioner & others .. Respondents

Mr. S. Y. Patil, Advocate for the Petitioner.

Mrs. A. S. Mantri, AGP for the State.

Mr. V. D. Sapkal, Senior Counsel instructed by Mr. S. R. Sapkal along
with Mr. Onkar Waghule, Mr. A. H. Narke and Mr. Y. A. Jadhav
Advocates for Respondent No. 3.

CORAM : R. M. JOSHI, J.

DATE : 9th DECEMBER, 2024.

ORDER :

1. These Petitions take exception to the orders passed under Section 70 of Maharashtra Public Trust Act whereby appeals filed by Respondent No. 3 were partly allowed reversing the findings recorded in Inquiry Nos. 3531/2017 and 254/2018 in respect of

legality of the meeting dated 14.02.2012. The Petitioner is aggrieved with the fact that his membership which, according to him, came to be accepted by Assistant Charity Commissioner (for short 'ACC'), is declared illegal by the impugned orders without hearing him.

2. Petitioner claims himself to be member of Banjara Shikshan Prasarak Mandal, Balsur, Tq. Omerga, Dist. Osmanabad. It is his case that he was enrolled as a member of the trust along with other 19 members in a meeting held on 14.02.2012. According to him, there was a dispute between Respondent Nos. 3 and 4 in respect of management of the trust and various change reports came to be filed before ACC. Respondent No. 4 filed change reports for the period 2014-2020. Said change reports were rejected by ACC. Against these orders, revision came to be filed by Respondent No. 3 before Joint Charity Commissioner (for short 'JCC') under Section 70 of the Act being Revision Application Nos. 23-29/2021. It is contended that in view of compromise arrived at between Respondent Nos. 3 and 4, Respondent No. 4 filed affidavit in the said proceedings and sought allowing of the change reports. It is claim of the Petitioner that he had filed change report No. 131/2022 which was provisionally accepted by the ACC. Said order, however, came to be

set aside in Writ Petition No. 1114/2022. Respondent No. 3 had preferred change report No. 254/2018 whereas Respondent No. 4 preferred change report No. 3531/2017. Both reports were rejected on 13.02.2024. Learned ACC, in exercise of powers under Section 41A of the act, issued directions to conduct elections in view of findings recorded in change report Nos. 3531/2017 and 254/2018 in respect of membership dispute considering the members enrolled in the meeting dated 14.02.2012 as valid members. The said order came to be challenged in Writ Petition No. 2261/2024 and this Court has modified the said order to the extent of holding elections within 30 days and directed JCC to decide appeals within stipulated period. The appeals filed against the orders of rejection of change report Nos. 254/2018 and 3531/2017 came to be allowed in Appeal Nos. 9/2024 and 8/2024. The JCC has placed reliance on order passed in Revision Nos. 23-29/2021 to hold that the trust has 20 members and election was directed to be held on the basis of the same. The Petitioner is aggrieved by the said order for the reason that he was not heard before passing of the said order.

3. Learned counsel for Petitioner submits that the Petitioner was not heard before passing of the said order whereby the

membership of the Petitioner is held to be invalid. To support his submission, he placed reliance on judgment of this Court in case of Rajaram s/o Vithoba Kadam and others vs. The Joint Charity Commissioner and others in **Writ Petition No. 9165/2010**. He also took aid of the judgment of coordinate bench of this Court in case of Dr. Ganesh Deokaranji Boob vs. The Joint Charity Commissioner and others in **Writ Petition No. 4307/2018** and other connected Petitions wherein, according to him, it was held that the members were necessary party to the proceedings and that orders could not have been passed in their absence. He also sought to place reliance on the proceedings of meeting held on 14.02.2012.

4. Learned Senior Counsel appearing on behalf of Respondent No. 3 resisted the Petition on the ground that the findings recorded by JCC are recorded on the basis of evidence of Respondent No. 4 in the proceedings before ACC. He drew attention of the Court to the relevant portion of the evidence which, according to him, indicates that there is clear admission that the documents filed along with change report by this Respondent are created documents. Thus, it is his submission that on the basis of such created documents and admission of Respondent No. 4, it cannot be

said that any membership was given to any person in the said meeting. As such, according to him, this is not a case wherein any opportunity of hearing ought to have been given to the Petitioner. In this regard, it is argued that number of other persons who were also joined as members in the said meeting had filed application before JCC for impleadment as party to the proceedings. The said application was rejected. None of these persons have challenged the said order of rejection. He placed reliance on judgment of coordinate bench of this Court in case of Dr. Ganesh Deokaranji Boob (supra) wherein it is held that in the proceeding under Section 22 of the Act, question of impleadment of all the members of the trust does not arise. Finally, it is submitted that change reports filed by Respondent No. 3 for the period from 1993 to 2014 came to be allowed by JCC and it was held therein as to the number of persons to be members of the trust from time to time. Thus, it is his contention that both the Petitions are devoid merit.

5. There is no dispute about the fact that Respondent No. 4 had filed change report under Section 22 of the act for the period from 2014-2018. His claim is based upon the meeting of the trust conducted on 14.02.2012. He examined himself and was also

subjected to cross-examination on behalf of Respondent No. 3. In his cross-examination, he has candidly admitted that since 1993 to 2010, he was President of the trust. He also admitted that in the year 2011 he was elected as President whereas Respondent No. 3 was elected as Secretary. He further admits that record of the trust was with Respondent No. 3 in the capacity of Secretary. He, thereafter, went on to admit that the record filed along with change report is prepared by him. In no uncertain terms he accepts that the said record is prepared at the time of filing of change report. These admissions of Respondent No. 4 are fatal to his case of any meeting being conducted on 14.02.2012. The conduct of the meeting on that date is doubtful. Once a person admits that the record which includes minutes of the meeting dated 14.02.2012 are prepared at the time of filing of the change report, question of relying upon the said record does not arise. This evidence shows that no person was enrolled as member of the trust in the said meeting. The ACC had ignored this evidence and recorded perverse findings on this issue, which came to be rightly reversed by Appellate Authority (JCC).

6. Apart from this, Petitioner does not come with the case that he had made any application to the trust or has paid

membership fees. In absence of any such prima facie evidence on record and more particularly in the peculiar facts of the case that the documents on the basis of which the said membership is claimed is created and bogus one, question of according any opportunity of hearing to the Petitioner does not arise. As claim of Petitioner of membership is based upon the meeting dated 14.02.2012 and that the said record being held to be created one for filing change report, nothing survives for Petitioner to be heard.

7. As far as judgment cited in case of Rajaram (supra), there was no issue about the membership or validity thereof, what is held that since the persons who were members and trustees not heard before passing order, there was violation of principles of natural justice. Similarly, in case of Dr Ganesh (supra) there was no dispute about the status of trustees and since they were not heard, said judgment came to be passed. In the instant case, however, facts are totally different. The Petitioner does not claim membership on the basis of any membership receipt or any document for that sake. His claim is based on minutes of meeting dated 14.02.2012 placed on record by Respondent No. 4 before ACC in his change report. The person who could prove the said minutes would be Respondent No. 4

himself and not Petitioner. As discussed above, the said minutes are admittedly created while filing change report, meaning thereby created in year 2017. Thus, once it is held that no meeting of 14.02.2012 was held, question of considering membership of Petitioner does not arise. The judgments cited supra therefore render no help to the Petitioner to substantiate his case.

8. This Court finds substance in the contention of learned Senior Counsel for Respondent No. 3 that the Petitioner has filed these Petitions at the behest of Respondent No. 4. Having regard to overall facts so also connected Petitions filed by Respondent No. 4, there is no reason to discard the said contention. In view of above, there is no substance in the Petitions. As such, both the Petitions stand dismissed.

9. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge