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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.319 OF 2024

Charu Mehta & Anr. ... Petitioners

V/s.

Niket Mehta & Anr. ... Respondents

WITH

WRIT PETITION NO.363 OF 2024

Charu Mehta & Anr. ... Petitioners

V/s.

Bhavin Mehta & Ors. ... Respondents

WITH

WRIT PETITION NO.335 OF 2024

Charu Mehta & Anr. ... Petitioners

V/s.

Rashmi Mehta & Ors. ... Respondents

WITH

WRIT PETITION NO.516 OF 2024

Charu Mehta & Anr. ... Petitioners

V/s.

Ayushman Mehta & Anr. ... Respondents

WITH

WRIT PETITION NO.360 OF 2024

Charu Mehta & Anr. ... Petitioners

V/s.

Sushila V. Mehta & Anr. ... Respondents

WITH

WRIT PETITION NO.514 OF 2024

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Charu Mehta & Anr. ... Petitioners
V/s.
Nimesh H. Seth & Anr. ... Respondents

**WITH
WRIT PETITION NO.515 OF 2024**

Charu Mehta & Anr. ... Petitioners
V/s.
Chetan Mehta & Anr. ... Respondents

Mr. Atul Damle, Senior Advocate with Mr. Kartik Seth, Mr. Dakshesh Vyas, Mr. Abhishek Prabhu, Mr. H. N. Thukore, Mr. Abhishek Kandwal, Ms. Jyoti Ghag and Mr. Shailesh Prajapati i/by Dua Associates for the petitioners in WP/514/2024.

Mr. Tushad Cooper, Senior Advocate with Mr. Kartik Seth, Mr. Dakshesh Vyas, Mr. Abhishek Prabhu, Mr. H. N. Thukore, Mr. Abhishek Kandwal, Ms. Jyoti Ghag and Mr. Shailesh Prajapati i/by Dua Associates for the petitioners in WP/515/2024.

Mr. Kartik Seth, Mr. Dakshesh Vyas, Mr. Abhishek Prabhu, Mr. H. N. Thukore, Mr. Abhishek Kandwal, Ms. Jyoti Ghag and Mr. Shailesh Prajapati i/by Dua Associates for the petitioners in WP/516/2024.

Ms. Dhruvi Kapadia with Mr. Abhishek Prabhu, Mr. H. N. Thukore, Ms. Jyoti Ghag, Mr. Shailesh Prajapati i/by Dua Associates for the petitioners in WP/319/2024.

Mr. Malcon Siganporia with Mr. Abhishek Prabhu, Mr. H.N. Thukore, Ms. Jyoti Ghag, Mr. Shailesh Prajapati i/by Dua Associates for the petitioners in WP/335/2024.

Mr. Kartik Seth with Mr. Dakshesh Vyas, Mr. Abhishek Prabhu, Mr. H.N. Thukore, Ms. Jyoti Ghag, Mr. Shailesh Prajapati and Mr. Abhishek Kandwal i/by Dua Associates for the petitioners in WP/360/2024 & WP/363/2024.

Mr. Vishal Kanade with Mr. Dharendra Sinha, Mr. Raghav Taneja i/by Vidhii Partners for respondents in

Writ Petition Nos.514/2024, 515/2024 & 516/2024.

Mr. Abhishek Gupta with Mr. Siddhant Dhavale, Mr. Kush Agarwal, Ms. Noopur Mathurawala i/by MZM Legal LLP for respondent No.1 in WP/363/2024 & WP/335/2024.

Ms. Padma Shelatkar for respondents in WP/319/2024 & WP/360/2024.

Ms. M.S. Srivastava, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 30, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** Leave to amend. Amendment to be carried out forthwith.
- 3.** All these writ petitions involve a common question of fact and law and, therefore, are being decided by a common judgment.
- 4.** Considering the limited question of the issue involved, only those facts which are relevant for adjudication of the issue involved are stated.
- 5.** Respondent No.1 filed a Change Report before the Assistant Charity Commissioner reporting the permanent trusteeship of Respondent No.1. By order dated 14th December 2023, the Assistant Charity Commissioner rejected all Change Reports, including petitioners.
- 6.** Respondent No.1 challenged the order of rejecting the Change Report by filing an appeal before the Joint Charity

Commissioner. Respondent No. 1 along with the appeal applied to stay the order of rejection of change report. The prayer in the application for a stay made by respondent No.1 reads as follows:

“Pending the hearing and final disposal of the present Appeal, the implementation, effect and operation of the order dated 14th December 2023 passed in Change Report No.796 of 2020 be stayed.”

7. The Joint Charity Commissioner, by the impugned order, granted a stay to the implementation effect and operation of the order dated 14th December 2023. The operative part of the order passed by Joint Charity Commissioner-1 reads as follows:

“Appellants are granted ad-interim relief in terms of prayer clause 19(c) thereby granting stay to the implementation, effect and operation of the order dated 14/12/2023 passed in Change Report No.796/2020 in term of prayer Clause 19(b) till filing of reply by the Respondents.”

8. Thereafter, the stay order was continued. It is not in dispute that the order granted on 15th December 2023 is in force as of today.

9. The petitioners have taken exception to the order passed by the Joint Charity Commissioner on the ground that considering the nature of the operative part of the order passed by the Assistant Charity Commissioner, the Joint Charity Commissioner had no power to grant a stay to the rejection of Change Report as there was no executable order against respondent No.1.

10. Learned advocate for respondent No.1 supported the order passed by the Joint Charity Commissioner, contending that in the facts and circumstances of the present case, the Joint Charity Commissioner passed such an order to maintain the status quo,

which was prevalent during the pendency of the change report. According to respondent No.1, considering the nature of the power conferred on the Charity Commissioner, the Joint Charity Commissioner acted as *parens patriae* to maintain the status quo. According to him, after passing the impugned order, the petitioners have performed some illegal acts of appointing their relatives as trustees. The impugned order is, therefore, passed by the Joint Charity Commissioner to prevent such abuse of the process of law.

11. Learned advocate for respondent No.1 in another petition submitted that the Assistant Charity Commissioner can provisionally accept the Change Report. Under Sub-section (3) of Section 23, the Joint Charity Commissioner has the power to entertain a challenge to any finding recorded by the Assistant Charity Commissioner while deciding the Change Report and, therefore, will have the power to grant a stay to such finding recorded by the Assistant Charity Commissioner.

12. Having considered these submissions made on behalf of both sides, I am of the considered view that the Joint Charity Commissioner had no power to grant a stay to the operative part of the order of the Assistant Charity Commissioner rejecting Change Reports. In the absence of an executable order, the power of stay could not have been exercised by the Joint Charity Commissioner.

13. Moreover, the reasons assigned by the Joint Charity Commissioner for the grant of such relief appear to be as follows:

- i) Hasty developments have taken place since the rejection of

the Change Report.

ii) The Order of the Assistant Charity Commissioner proceeds on the basis that respondent No.1 failed to lead evidence, which resulted in the rejection of the change report. However, there exists material on record to substantiate the change alleged by respondent No.1.

iii) Respondent No.1 has been in administration for the last 16 years and, therefore, the balance of convenience is in favour of respondent No.1

14. Assuming that a joint charity commissioner had such power of stay, even on merits, the reasons referred to above for passing such an exceptional order are not satisfactory. The developments which took place after the passing of the impugned order have no relevance for the grant of relief of the stay of the operative part of the order. On perusal of material on record, I find no compelling reason to pass such an order. The contention that respondent No.1 was in the administration for 16 years can hardly be a factor for the grant of stay to the operative part of the order of rejection of change report.

15. It is pertinent to note that Respondent No.1 neither prayed for a stay of the judgment of the order nor did the Joint Charity Commissioner grant a stay to the effect of the judgment. No application was filed by respondent No.1 seeking permission to allow him to continue as Trustee. No findings are brought to the notice of this Court which would have the effect of executable findings, nor any order of provisionally accepting change report is

placed on record. In the absence of all such factors and in the absence of power to grant a stay to the rejection of the Change Report, the Joint Charity Commissioner could not have granted a stay to the operative part of the rejection of the Change Report.

16. Learned counsel for the respondent No.1 placed reliance of some paragraphs in the affidavit-in-reply filed by respondent No.1. It is well settled that the quasi judicial or judicial orders passed by public authorities need to be supported by the reasons stated in the order. The affidavit-in-reply filed by the parties need not be considered for validating orders passed by such authorities. In the facts of the case, this Court finds that such affidavit-in-reply is not necessary for complete and effectual adjudication of the issue involved in the petition.

17. The law in this regard has been explained by the three Judges bench of the Apex Court in the case of **Commissioner of Police, Bombay Vs. Gordhandas Bhanji** (1951) SCC 1088, paragraph 9 of the judgments reads as under:

“9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of the Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order

itself.”

18. The judgment is thereafter approved and explained by the constitutional Bench of the Apex Court in the case of **Mohinder Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi & Ors., (1978) 1 SCC 405**, The Constitutional Bench in paragraph No.8 laid down as under.

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) :

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

19. Having considered the preposition of law laid down by the

Apex Court in the said judgments, in my opinion, the orders of judicial or quasi judicial authorities need to be decided based on reasons assigned in the order, and it is justiciability cannot be supported by additional facts or reasons in the affidavit-in-reply which were not considered by the authority while arriving at its decision.

20. In overall view of the matter, in my opinion, the impugned order passed by the Joint Charity Commissioner suffers from patent illegality and, therefore, it needs to be set aside. Hence the following order:

a) The impugned orders passed by the Joint Charity Commissioner dated 15th December 2023 in Writ Petition No.515 of 2024, 15th December 2023 in Writ Petition No. 514 of 2024, 21st December 2023 in Writ Petition No.516 of 2024, 21st December 2023 in Writ Petition No.363 of 2024, 21st December 2023 in Writ Petition No.335 of 2024, 22nd December 2023 in Writ Petition No.360 of 2024, 22nd December 2023 in Writ Petition No.319 of 2024 and subsequent orders of continuation of such orders by order dated 23rd January 2024 are quashed and set aside.

b) Rule is made absolute in the above terms.

21. It is made clear that the Charity Commissioner shall decide appeal on its own merits uninfluenced by the observations made in this order.

(AMIT BORKAR, J.)