

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.527 OF 2024.

- | | | |
|---|---|-------------------------------|
| 1) Mr. B. Paramanandhan Age- 48 Yrs, |] | |
| Occ. Educationalist, C/o. Sri Balaji Society, |] | |
| Survey No. 55/2-7, Tathawade, Off |] | |
| Mumbai- Bangalore Bypass, Pune – 411 |] | |
| 033, |] | |
| 2) Mrs. Thilagavathy Balasubramanian, Age- |] | |
| 70 Yrs. C/o. Sri Balaji Society, Survey No. |] | |
| 55/2-7, Tathawade, Off Mumbai- |] | |
| Bangalore Bypass, Pune – 411 033, |] | <u>...Petitioners.</u> |

Versus

- | | | |
|---|---|-------------------------------|
| 1) Mr. Balasubramanian Parandhaman Age- |] | |
| 48 Yrs. Occ-Educationalist, R/at 2/9, |] | |
| Kumar City Kalyani Nagar, Pune – 411 |] | |
| 014. |] | |
| 2) Chendur Vardhini Parandhaman, Age-48 |] | |
| Yrs, Occ- Home Make, R/at 2/9, Kumar |] | |
| City Kalyani Nagar, Pune – 411 014. |] | |
| 3) The Joint Charity Commissioner, |] | |
| Pune Region, Pune. |] | |
| 4) The Assistant Charity Commissioner-IV, |] | <u>...Respondents.</u> |
| Pune. |] | |

Mr. Vineet B. Naik, Senior Advocate a/w. Mr. Ashutosh M. Kulkarni i/by Mr. Akshay Kulkarni for the Petitioners.

Mr. Yuvraj Narvankar a/w. R.Shaikh i/by Suraj Kaushik, for Respondent Nos.1 and 2.

Mr. P. V. Nelson Rajan, AGP for the Respondent Nos.3 and 4-State.

Coram : **Sharmila U. Deshmukh, J.**

Reserved on: **October 15, 2024.**

Pronounced on : **December 11, 2024.**

JUDGMENT :

1. **Rule.** With consent, Rule made returnable forthwith with and taken up for final hearing.
2. By this Petition, exception is taken to the order dated 30th November, 2023 passed by the Joint Charity Commissioner, Pune Region, in Appeal No. 127 of 2022, reversing the order of acceptance of Change Report No 2834 of 2021 dated 27th January 2022, passed by the Assistant Charity Commissioner-IV Pune.
3. The concerned public charitable Trust i.e. Sri Balaji Society, ("the said Trust") duly registered under Maharashtra Public Trusts Act, 1950 ("the Trust Act"), is an educational trust and runs several institutes, colleges, schools and private university. The Change Report No 2834 of 2021 was filed for reporting the decision taken in the meeting stated to have been held on 14th May, 2021 for appointment of Vice President of the Trust as President as stop gap arrangement until the next Annual General Meeting due to the demise of the founder president on 20th February 2021.
4. As per Clause 9 of the Memorandum of Association of the Trust, the Managing Committee is to consist of minimum seven members and maximum nine members, who shall be the Trustees. Clause 6 provides that in case of vacancy occurring by reason of resignation, disqualification or death , the continuing or surviving

trustees shall appoint by majority any other person to be trustee in the vacancy occurred. Clause 15 governs the holding of extraordinary Meeting and reads as under

“(15) Extra Ordinary Meeting :- Such meeting shall be held at the request of at least 1/ 3rd of the total number of members on roll provided that the request is made in writing to the President, and states the business to be discussed. No other business shall be discussed at a Extra Ordinary Meeting than the specific purpose for which it is called.

Decisions shall be taken by simple majority. The president shall have a Casting vote. The quorum for the transaction of the business shall 2/3rd members. In the event of quorum not being present within half an hour for the time set for the meeting, the meeting shall be adjourned and reassemble after half an hour. At such adjourned meeting the rule of quorum shall not apply. ”

5. The case set out in the Petition is that upon a written requisition made on 23rd April 2021 by Petitioner No. 1, Mrs. Sushma Sainath and T. Anabalagan to Petitioner No 2 to call for extraordinary Meeting of the managing committee for election of the President and for appointment of authorized signatory for the Bank accounts of the said Trust, Petitioner No 2 instructed Petitioner No 1, who was the Secretary at the relevant time, to call the meeting. Accordingly, notices were issued to all trustees through speed post and e-mail on 29th April 2021. As the notices wrongly mentioned the date of meeting as 7th April, 2021 instead of 7th May, 2021, fresh notices through speed

post and email were issued on 7th May, 2021 to the trustees for an extraordinary meeting to be held on 14th May 2021, at 10 am at Bungalow No 10, Cluster No 2, Kumar City, Kalyani Nagar, Pune. The notices issued by speed post at the residential address of the Respondent Nos 1 and 2 at Cluster No 2, Bungalow No 9, Kumar City, Kalyani Nagar, Pune were returned unclaimed. The meeting held on 14th May, 2021 was attended by four members of the Managing Committee and both the agenda items were approved by full majority.

6. Change Report No 2834 of 2021 was filed before the Respondent No 4, which was accepted vide order dated 27th January, 2022 . An appeal was filed on 18th April, 2022 by Respondent Nos 1 and 2 challenging the order dated 27th January, 2022, which came to be allowed and the Change Report No. 2834 of 2021 was rejected.

7. During the hearing, both parties have brought to the notice of this Court, various civil and criminal proceedings filed against each other. Submissions have been advanced on the issue whether the exercise has been rendered academic as the appointment of President till the Annual General Meeting has served its purpose as there was fresh appointment in the Annual General Meeting.

8. I have heard Mr. Naik, Learned Senior Advocate appearing for the Petitioners and Mr. Narvankar, Learned Counsel appearing for Respondent Nos. 1 and 2.

9. Mr. Naik would submit that after demise of founder President on 20th December 2021, notices were issued on 7th May 2021 for the meeting to be held on 14th May 2021 in accordance with the constitution of the Trust and as a stop gap arrangement, the Petitioner No. 2, who was the Vice President was appointed as President till the holding of the next Annual General Meeting. He submits that Change Report No 2834 of 2021 was filed with Respondent No 4 alongwith the required documents as mandated by Rule 13 of The Maharashtra Public Trust Rules, 1951 (MPT Rules) and was accepted by Respondent No 4. He submits that the challenge to the acceptance by Respondent Nos 1 and 2 is on the grounds of breach of principles of natural justice and the proceedings being forged and fabricated. He submits that two months after the Change Report No. 2834 of 2021 was filed, the Respondent Nos. 1 and 2 have filed Change Report No. 3320 of 2021 and 3321 of 2021 in respect of alleged meeting held on 8th December 2020, in which two additional members were inducted and the Respondent No. 1 was appointed as president.

10. He submits that as the Appellate Authority has held that there is no change report filed in respect of meeting held on 24th December 2021, it will be futile to advance submissions on the said meeting. Pointing out to Clause 15 of the Constitution of Trust, he submits that the requisition for calling of extraordinary Meeting is has

to be signed by atleast 1 / 3rd of the total number of members and upon death of President, the requisition could be made by two members. He submits that the finding of Appellate Authority that the condition for calling extraordinary meeting is neither fulfilled nor proved as the letter of requisition is not annexed to the Change Report is in teeth of the check list set out in Rule 13 of the MPT Rules. He submits that an order to satisfy the conscience of the Court, the same is annexed at page 690 of the present Petition.

11. He submits that the Respondent No 3 has accepted the fact of issuance of notice on 7th May, 2021 and proof of service of notice, while considering the alleged discrepancy about venue of meeting as per the notice of meeting and proceeding book. He submits that the notices were sent by speed post and emails to the Respondent Nos 1 and 2 and even if notices sent by post were returned as unclaimed, the notices sent by email were received. He would further submit that though the heading in the proceeding book notes the meeting as ordinary meeting, the minutes clearly shows that the same is extraordinary meeting. He would further point out that as far as the quorum is concerned the minutes record that though the requisite quorum of 2 / 3rd was satisfied as per the Constitution of the Trust the meeting was adjourned. He would further submit that the place of the meeting noted in the proceeding book as Bungalow No. 9

was a typographical error and Bungalow No. 10 and Bungalow No. 9 are adjacent to each other. He submits that it is not the Respondent's case that they had gone to Bungalow No. 10 for attending the meeting and there was no meeting held there.

12. He submits that the finding of Appellate Authority that without any leave application, the minutes could not record grant of leave of absence to Respondent No 1 and 2 ignores that in fact the leave was granted to ensure that that failure to attend the meetings did not result in their disqualification.

13. He would further submit that the challenge in the present case is purely academic as the appointment of President as stop gap arrangement has served its purpose and in the next Annual General Meeting fresh resolution has been passed. He submits that this Court in the case of ***Jagat Narayansing Swarup Singh Chithere vs. Swarup Singh Education Society***¹ has, despite holding in favour of the Appellants, had dismissed the Appeal in view of the subsequent development of expiry of term of Managing Committee and appointment of fresh Managing Committee and had considered it unnecessary to go into the questions in abstract or questions academic which are normally not decided by the Court. He would further submit that the said decision was noted in the case of ***Marutirao Vishwanath***

1 1980 Mah. L.J. 372

Bagal vs. Dinkar Kashinath More². He submits that as the Appellate Court has not rendered any finding of fraud and forgery, the issue is rendered academic.

14. He would further submit that the Respondents in their reply have referred to an order of JMFC, dated 17th August, 2022 is on a complaint alleging fabrication of documents of the meeting of 24th February, 2021. He would further point out that Petition was filed under Section 156(3) of CRPC by the Respondent No. 1 in Chennai and the Respondent sought transfer of the proceedings before the High Court, and the order notes that the investigation is closed as further action is stopped and therefore the Petition was disposed of as infructuous.

15. *Per contra* Mr. Narvankar, would submit that considering the allegations of forgery and fabrication, the issue cannot be said to be merely academic drawing support from the decision of ***Marutirao Vishwanath Bagal*** (supra). Pointing out the grounds in the Appeal Memo, he submits that it is the specific ground that the entire Minutes of Meetings dated 24th February 2021 and 14th May 2021 are fabricated. He would substantiate the allegation of fabrication by submitting that the notice was of the meeting to be held on 14th May, 2021 at Bungalow 10, Cluster No. 2, Kumar City, Kalyani Nagar Pune, at

2 (2004) 4 Mh LJ 982

10.00 a.m. whereas the proceeding book of the Meeting shows the venue of Meeting at Bungalow No. 9 and the time of Meeting at 11.00 a.m. He submits that the attendance sheet would show an attempt to forge the signature of the Respondent No. 1 which is thereafter scrolled out. He submits that there is no letter of requisition proved to satisfy Clause 15 of Constitution of Trust. He submits that in the alleged meeting stated to have been held on 14th May 2021, not only the Vice President was appointed as a President but the Vice President and Petitioner No 1 were authorised to operate the Bank accounts. He submits that in case of **Jagat Narayansing** (*supra*), the Court observed that they were no policy decisions taken so as to adversely affect the interest of the public Trust and only routine administration was carried out and in that view of the matter held that the subsequent developments would render the inquiry academic. He submits that in the present case in the said meeting itself, decision was taken as regards the operation of the Bank accounts and therefore the challenge cannot be considered to be merely academic. He would further submit that in the copies of the order passed by the JMFC Court, Pune were placed on record in the appellate proceedings, which were not considered, for which the Respondent Nos 1 and 2 cannot be faulted.

16. Rival contentions now fall for determination.

17. The issue arising for consideration is whether the acceptance of the Change Report is vitiated by reason of non compliance with Section 22 of Trusts Act *qua* the inquiry contemplated.

18. The inquiry is required to be confined only as regards the meeting held on 14th May, 2021 as the change is reported only in respect of the said meeting. The post of President which had fallen vacant by reason of demise, was resolved to be filled by temporary appointment of the Vice President in the meeting held on 14th May, 2021

19. The change was reported in compliance with Section 22 of the Trusts Act. It will be apposite to make a brief reference to the statutory scheme. Section 22 of the Trusts Act provides for reporting of change occurring in any of the entries recorded in the register kept under Section 17 in the prescribed form. Sub Section (2) of Section 22 of Trusts Act provides that for the purpose of ascertaining whether any change has occurred in any of the particulars recorded in the register, the Deputy/Assistant Charity Commissioner may hold an inquiry in the prescribed manner. Rule 7 prescribes the manner of inquiries and provides that the inquiry for purposes of Section 22 shall be held as far as possible in accordance with the procedure for the trial of suits under the Presidency Small Causes Court act, 1882 in respect of Greater Bombay Region.

20. Section 17 mandates maintaining of prescribed books, indices and registers containing the prescribed particulars. The registers are required to be maintained in form of Schedule I and perusal thereof indicates that that the particulars contained therein are in respect of names and addresses of trustees and managers, mode of succession to trusteeship and managership, objects of trust, particulars including documents pertaining to creation of trust and origin of trust, description of movable and immovable property of the trust and its location and estimated value, average annual income and expenditure, particulars of scheme of trust, encumbrances on trust property, particulars of title deeds pertaining to trust property.

21. The importance of the inquiry to be held under Section 22 of the Trusts Act was elaborated in ***Jagat Narayansing Swarupsingh Chithere & Ors vs Swarumsingh Education Society*** (*supra*), in paragraph 8 and 9 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 gamut of the inquiry under section 22 of the

Act, it is obvious that this inquiry cannot 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 partaking the character of a judicial adjudication. An elemental per-requisite or the minimal requirement of a judicial inquiry and a judicial process in compliance with the principles of natural justice. These principles, though not embodied 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.

9. In the circumstances, the fact that a suit may lie against finding in an inquiry under section 22 cannot nullify its judicial character and trappings nor can it obviate the need to determine, either suo motu or at the instance of party aggrieved, the legality and validity of the change in question. And this is not without reason. For, apart from interpretation within the setting of the relevant scheme under the Act equally relevant to note is also the fact that many a public trust is possessed of extensive movable and immovable properties. Many a public trust assumes vital public importance. In a given case, considerable status also happens to be attached to office under a public trust. Moreover, a given public trust may be in charge and control of funds running literally into lacs of rupees. Registers enjoined to be maintained under section 17 of the Act are also important registers. An enquiry under section 22 is also so envisaged by the Act itself as could in a given case already indicated supra ultimately reach even this Court by way of an appeal as of the instant nature both on facts and on

law. And even this appeal may not be the last terminal in the series. For all these reasons and circumstances, it is not possible to accept the contention of Mr. Holey that because a suit lies (on which I express no opinion), the grievance of the appellants should not be entertained in the present proceedings. Even assuming a suit is competent, a party affected by an inquiry under section 22 and order passed therein cannot, therefore, be debarred from agitating its legality and validity under the provisions of the Act itself."

22. The proposition was further explained by Co-ordinate Bench of this Court in ***Marutirao vs Dinkar Kashinath*** (supra), where one of the issues under consideration of the Court was whether the non issuance of notice would amount to vitiating the inquiry and in paragraph 9 and 10, it was held as under:

"9. Section 22 does not lay down that the inquiry which is contemplated must be made in every case only after issuing notice to the affected parties. The inquiry contemplated under Section 22 is as regards the change which has occurred in the entries recorded in the Register maintained under Section 17. The format of the register to be maintained is provided in Schedule I to the said Rules 1951. The said format of the register shows that many particulars such as names of the Trustees and Managers of the Trust, mode of succession, object of the trust, immovable property of the trust are required to be incorporated. It is obvious that it is not in case of every change that the notice is required to be issued by the Assistant Charity Commissioner before passing any order on the Change Report.

10. When the change report is as regards election of new Trustees held in a meeting, it is not necessary in every case that the notice must be served of the

change report on the outgoing trustees. In a given case the change report may be accompanied by the consent letters of the outgoing trustees and/or their affidavits recording their no objection for the change. In such a case if the learned Assistant Charity Commissioner after examining the consent letters and other material produced alongwith the Change Report is satisfied that the documents are genuine and change is legal, after recording reasons for his decision he can allow the Change Report without issuing notice to the outgoing Trustees. In such cases the Assistant/Deputy Charity Commissioner is expected to record brief reasons for not issuing notice. However, in a case in which consent letters of outgoing trustees are not produced or there is doubt regarding genuineness of any such consent letters which are produced or after examining the Change Report and its accompaniments, the learned Charity Commissioner comes to the conclusion that an elaborate inquiry is required, notice to the affected parties will have to be issued before final decision is taken.....”

(Emphasis supplied).

23. Considering the judicial character of the Inquiry under Section 22 of Trusts Act, the judicial review of the validity of the acceptance of change can be segmented into two aspects firstly in respect of non compliance of principles of natural justice as no notice was issued to all the trustees before accepting the change and secondly in respect of legality and validity of the occurrence of change itself.

24. The grant of opportunity of hearing is a facet of principle of natural justice and ensures fairness in conduct of Inquiry and if it is

proposed to dispense with the issuance of the notice, the reasons for the dispensation must be set out in the order. The acceptance of change report is not an inquiry of formal character and has great impact especially in cases of Public Trusts where the Trust holds substantial assets and the operations of the Trust has huge public impact. The change cannot be accepted as matter of course and the inquiry into the validity of the change pre-supposes notice to all concerned. As held in ***Marutirao vs Dinkar Kashinath*** (*supra*), if there is dispensation of service of notice, it is expected that brief reasons will be recorded.

25. Admittedly no notice was issued to the Respondent Nos. 1 and 2 and the order of acceptance of change makes no mention as to why the issuance of notice has been dispensed with. Even if the Assistant Charity Commissioner was of the view that the change was uncontested, appropriate reasons ought to have been recorded, which has not been done.

26. Ordinarily, where there is no opportunity of hearing given, the appropriate course would be to remand the matter to be decided afresh after hearing the objectors. However, before the Appellate Authority as well as before this Court, the matter had been extensively argued on merits and therefore even, if it is held that the notices ought to have been issued, remand would be useless formality. I have

therefore proceeded to deal with the merits of the matter.

27. Coming to the validity and legality of the change, by a cryptic one page order dated 27th January, 2022, the Assistant Charity Commissioner has accepted the Change Report. The Assistant Charity Commissioner makes a cursory reference to the documents produced on record without any discussion. There are no points framed for determination, no consideration of any issue. The order is completely bereft of any reasons and findings in support of the conclusion of acceptance of change. The Assistant Charity Commissioner has clearly lost sight of Rule 7 of the MPT Rules which provides that the inquiry is to be held in accordance with procedure prescribed for trial of suits under the Presidency Small Causes Court Act. The Presidency Small Causes Court Rules applies the Code of Civil Procedure with its First Schedule to the Small Causes Court and the inquiry is thus regulated by Code of Civil Procedure as regards the recording of evidence and exhibition of documents. The Assistant Charity Commissioner had clearly fallen in error in accepting the change without any finding recorded about the validity and legality of the change, which finding could have been recorded only after examination of the material on record.

28. The error committed by the Assistant Charity Commissioner was corrected by the Appellate Authority by going into

the legality of the proceedings. The Appellate Authority has doubted the validity of the meeting held on 14th May, 2021 broadly on the following grounds:

- (a)** Non production of letter of requisition of the extraordinary meeting.
- (b)** Discrepancy about the venue and time of the meeting set out in the notice and the proceeding book.
- (c)** Granting of leave of absence in the proceeding book without any leave application of Respondent No 1 and 2.
- (d)** Absence of 2/3rd quorum and failure to adjourn the meeting and re-assembling after half an hour.
- (e)** During the inquiry before the Assistant Charity Commissioner, the affidavits are filed however, no documents were produced and exhibited as per Rule 13 of MPT Rules.

29. At cost of repetition, it is now well settled that the inquiry is not a mere factual process or one purely formal in nature and investigation into the legality and validity of the change is implicit, the inquiry being a judicial process partaking the character of a judicial adjudication.

30. The Appellate Authority has re-appreciated the evidence on record and has found that neither the documents produced on record were proved nor exhibited. The pleading in the Petition is that

exhibiting the documents is a procedural formality and non exhibition would not mean that the document is not proved which pleading overlooks Rule 7 of MPT Rules. To accept such pleading would amount to rendering the inquiry as a casual inquiry requiring no verification about the change. It is not a clerical recording of change in the registers but an inquiry into the validity and legality of the change. Before this Court, it is not demonstrated that the documents were duly proved and exhibited and on the contrary Ground (E) of the Petition would disclose that the non exhibition of documents is not disputed.

31. The inquiry in facts of present case was to ascertain whether the death had occurred, whether the meeting was validly requisitioned and whether the appointment of President was in accordance with the constitution of the Trust. For establishing the factum of change, it was necessary to produce and prove the documents evidencing the said facts, which has not been done in the present case.

32. Apart from the finding of the Appellate Court on the aspect of the proof of documents, the Appellate Court declined to accept the change report in the absence of letter of requisition. In that context, Rule 13 (2A) of MPT Rules provides that the Change Report in the form of Schedule-III shall be accompanied by the following

documents:

“(2A) Change Report in the form of Schedule-III shall be accompanied by the following documents,-

(a) Copy of notice or agenda of the meeting of the trustees for the proposed change.

(b) Copy of resolution passed by the board of trustees proposing the change.

(c) In case of sole trustee, the letter of addition or deletion signed by the said sole trustee

(d) Consent letters of incoming trustees with their details (ie. full address, identity proof, mobile number, phone number, email address etc).

(e) Affidavit as contemplated in sub-rule (4) of rule 6 of the outgoing trustees:

Provided that, the Deputy or Assistant Charity Commissioner may exempt filing of such affidavit in an appropriate case such as when the trustee, despite due diligence, is not found.

(f) Trust Deed, constitution and Scheme of the Trust

(g) Any other document deemed necessary by the Charity Commissioner, as declared by order published in the Official Gazette and on the Official Website of the Charity Commissioner.”

33. The mandatory accompaniments to the Change Report are set out in Rule 13(2A) which is a kind of check list. Though Rule 13(2A) lists the mandatory accompaniments, the requisite documents to prove the occurrence of the change are likely to differ from case to case and it is for the party seeking to establish the factum of change to use their discretion and produce on record all documents to support the occurrence of change. It cannot be accepted that as Rule 13(2A) only

sets out seven documents, no other document, howsoever necessary, is not required to be produced. The consequence would then be of rejection of change report.

34. In the present case, the primary requirement of Clause 15 of the Memorandum of Association of Trust was requisitioning of extra ordinary meeting by 2/3rd members of the Trust. The Assistant Charity Commissioner without the letter of requisition being on record has committed an error by accepting that the meeting was requisitioned by 2/3rd members. The subsequent production of the letter of requisition in these proceedings will not have the effect of supporting the acceptance of change.

35. Coming to the pivotal aspect of service of notice of the meeting upon the Respondent Nos 1 and 2, the Appellate Authority has held that there is no service of the notice of meeting dated 14th May, 2021 by noting the discrepancy of the venue of meeting in the notice of 7th May, 2021 and in the proceeding book. Whereas the notice of 7th May, 2021 gives the venue at Bungalow No 10, the proceeding book shows the venue at Bungalow No 9. The Appellate Authority has held that there was no service of notice as regards the meeting held at Bungalow No 9. Similarly the notice gives the time of the meeting at 10 am whereas the meeting book shows the meeting held at 11 am.

36. The discrepancy about the venue and time of the meeting

as set out in the notice and as recorded in the proceeding book is not disputed and is sought to be explained as clerical error. In ordinary course of uncontested matter, the noting in the proceeding book could have been brushed aside as being a clerical error. However, when faced with the allegation of fabrication of meeting book on the ground that the meeting has not been held, such discrepancies assumes significance. The purpose of the notice is to intimate the concerned about the necessary details to enable them to attend the meeting. If the notice sets out the venue at Bungalow No 10 and the proceeding book shows the meeting at Bungalow No 9, the discrepancy should have been properly explained in the proceedings before the Assistant Charity Commissioner, which has not been done. The discrepancy cannot be wished away on the ground of clerical error particularly in the absence of any explanation on record.

37. It is submitted by Mr. Naik that the discrepancy is immaterial as it is not the case of Respondent Nos 1 and 2 that they had visited Bungalow No 10 and there was no meeting held there. The contention of Respondent Nos 1 and 2 runs deeper as they contend that the entire proceedings are fabricated and there was no meeting held on 14th May, 2021. The proceeding book shows the meeting to have been held at Bungalow No 9, which is the residential bungalow of the Respondent No 1 and 2.

38. The discrepancy about the venue of the meeting *sans* any explanation thereof raises a doubt about the genuineness and legality of the proceedings, which should have been examined by the Assistant Charity Commissioner. The order of Assistant Charity Commissioner does not indicate any application of mind to the documents produced on record. If the documents would have been properly examined, the Assistant Charity Commissioner would have noted the discrepancy in the venue of the meeting. When so considered, it was necessary for notices to be issued to all the trustees to verify the legality of the holding of the meeting on 14th May, 2021. The Appellate Authority is right in holding that in election of President of such trust, such clerical oversights are not acceptable.

39. The meeting is stated to have been attended by four members and the minutes of meeting shows grant of leave of absence to the Respondent No 1 and 2. The parties have been embroiled in considerable litigation since long. Being fully aware of the *inter se* disputes between the parties, the recording of grant of absence of leave without any application for leave, amounts to incorrect recording of minutes. This incorrect recording of minutes of meeting creates an impression that the Respondent Nos 1 and 2 were aware of the meeting and were unable to attend the same. As the notices issued by speed post to the Respondent Nos 1 and 2 were returned unclaimed,

the same was to the knowledge of the Petitioners and the minutes ought to have properly recorded the said factum.

40. The cumulative effect of the absence of producing the letter of requisitioning the meeting, the discrepancy of the venue and time of the meeting, in the notice and the proceeding book, the incorrect recording of meeting as regards the grant of leave of absence to the Respondent No 1 and 2 when considered creates a doubt about the genuineness of the proceedings. The order of Assistant Charity Commissioner deals with the Change Report in a cursory manner undermining the importance of an inquiry under Section 22 of the Trusts Act. The change was reported in respect of appointment as President of a Trust which runs several educational institutes and private university entailing huge responsibility and any change, even by way of stop gap arrangement, would have significant impact on the operations of the Trust. The Appellate Authority has rightly considered the relevant aspects and rendered detailed findings, which does not warrant interference under Article 227 of Constitution of India .

41. In the Appeal Memo, the order of the Assistant Charity Commissioner had been challenged on two grounds firstly on the legal flaw in the proceedings and secondly on the fabrication of proceedings. The Appellate Authority has rested its finding on the first aspect of the reported change not being in accordance with the rules

and regulations. The submission is advanced that as the change was a stop gap arrangement till the next Annual General meeting, in which the President has been duly appointed, the exercise has been rendered academic drawing support from the decision in the case of ***Jaganarayansingh Swarupsingh Chithere*** and ***Marutirao Vishwanath Bagal*** (*supra*).

42. In ***Jaganarayansingh Swarupsingh Chithere*** (*supra*) despite holding in favour of the Appellants, the Court declined to interfere as the term of the Managing Committee had already expired. The conclusion is however qualified by the observation that the Managing Committee had not taken any major policy decision so as to adversely affect the interest of the public trust. The said observation distinguishes the present case from the facts of that case.

43. In ***Marutirao Vishwanath Bagal*** (*supra*), the Court considered that as in the allegation was of forgery and fraud being committed and the meeting not being held, it declined to hold that the issue is merely academic.

44. In the instant case, the acceptance of Change Report has been assailed on the ground of alleged fabrication of the entire minutes book. The discrepancy in the notice and the proceeding book raises a doubt about the authenticity of the proceedings held on 14th May, 2021. In the written submissions filed in the Appellate

proceedings, it is contended by the Respondent Nos 1 and 2 that the appointment as President has effected further changes by reason of which the control of the Trust was concentrated in the hands of the Petitioners. As the consequence of acceptance of the change report results in cascading effect on the subsequent decisions, in my view, the exercise cannot be said to be rendered academic. The allegation of fabrication of records of the meeting, when considered in light of the discussion above, warranted interference by the Appellate Authority and cannot be called to be an academic exercise. The Appellate Authority though rested its conclusion on the legal flaw in the change reported, the absence of finding on fraud and forgery cannot be construed as rejection of plead of fraud and forgery.

45. In light of the above discussion, I do not find any jurisdictional error so as to interfere with the impugned judgment and order dated 30th November, 2023 in exercise of powers under Article 227 of Constitution of India. Resultantly, Petition is dismissed. Rule stands discharged.

46. In view of the disposal of Writ Petition, nothing survives for consideration in the pending Civil/Interim Applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]

47. At this stage, request is made by learned counsel appearing for the Petitioners to extend the ad-interim relief which was operating in his favour during the pendency of the Petition. The said request is opposed by learned counsel appearing for the Respondent Nos. 1 and 2. As the ad-interim relief was already operating in favour of the Petitioners, the same is continued for a period of 6 weeks from today.

[Sharmila U. Deshmukh, J.]