

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 8455 OF 2024.**

Maharashtra Olymic Association Thr. Its General Secretary Namdev S. Shirgaonkar ...Petitioner.

**Versus**

Suryakant Sitaram Pawar ...Respondent.

*Adv. Shrirang Katneshwarkar a/w Sandeep Gupta i/by Ganesh Gade for the Petitioner.*

*Mr. S. D. Vyas Addl GP a/w Mr. S. D. Rayrikar AGP for the Respondent-State.  
Mr. Satyajeet A Rajeshirke for the Respondent.*

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

**Date : December 5, 2024.**

**P. C. :**

1. Heard.
2. By this Petition, the challenge is to the order dated 4<sup>th</sup> April 2024, passed by the Joint Charity Commissioner in Revision Application No. 49 of 2024, by which the Application below Exhibit-42 filed by the Respondent under Section 73-A of the Maharashtra Public Trust Act 1950, came to be allowed.
3. At the outset, learned counsel appearing for the Respondent would submit that before the Assistant Charity Commissioner the proceedings were at the stage of recording of

evidence of the last witness and at that stage the present order came to be challenged and stay was granted by this Court.

4. Learned Counsel appearing for the Petitioner would submit that, if the order on the Intervention Application is unsustainable in law the recording of the evidence by the Respondent is immaterial and the entire evidence will have to be discarded. He would point out that by an order of 12<sup>th</sup> December 2023, passed by this Court in Writ Petition filed by the Maharashtra Cycling Association, liberty was granted by this Court to file an appropriate proceeding before the Charity Commissioner by 8<sup>th</sup> January 2024, and thereupon the Charity Commissioner to list the matter on 15<sup>th</sup> January 2024. He submits that firstly it is not the Maharashtra Cycling Association who has filed the Application for Intervention and the Respondent has filed the application in his personal capacity and secondly it was not filed within the time limit prescribed by this Court i.e. before 8<sup>th</sup> January, 2024.

5. He would further point out that the earlier Intervention Application filed by the Intervenor was rejected and therefore the fresh Application could not have been filed. He would further submit that the findings in the impugned order is unsustainable as the Revisional Authority has held that the aspect of the photocopy of the affiliation produced by the Intervenor in support of this Intervention

Application can be decided during the time of evidence. Pointing out to the provisions of Section 73-A and 70-A of the Maharashtra Public Trust Act he submits that where the evidence is required to be held direction can be given to the Deputy or the Assistant Charity Commissioner to take such additional evidence which procedure is not followed in the case.

6. He would further submit that the inquiry was required to be conducted prior to the Application being allowed and cannot be delegated at the stage of leading evidence. He would further submit that reading of the impugned order would indicate that the Revisional Authority has considered the order of the High Court as permitting the Intervention Application and has thus dismissed the Revision Application.

7. *Per contra*, learned Counsel appearing for the Respondent would submit that the Intervention Application was filed by the Respondent in his capacity as Secretary of the Maharashtra Cycling Association which is evident from the Application which bears verification as the Secretary of Maharashtra Cycling Association. He would further submit that the Managing Committee of the Petitioner-Association was disqualified and Writ Petition in that behalf was filed by the Respondent-Association in which the order came to be passed on 12<sup>th</sup> December 2023, whereby the Intervention Application was

directed to be decided. He would submit that the fact that the Maharashtra Cycling Association is an affiliate of the Petitioner-Association is evident from the PTR record which is at page No. 301 which enumerates the affiliated Associations of the Petitioner-Association and includes the name of Maharashtra Cycling Association. He would further submit that the Petitioner-Association has issued a certificate by communication dated 23<sup>rd</sup> October 2013, in response to RTI Application where it is stated that the Maharashtra Cycling Association is the founder member of the Petitioner-Association and therefore there is no question of any affiliation. He submits that as objection was also taken that the State Cycling Federation is not an affiliate of the Cycling Federation of India certificate to that effect was also produced. He would therefore submit that the Respondent-Cycling Association would squarely fall within the definition of person interested being member of the Petitioner-Association and therefore the Intervention Application has been rightly allowed.

**8.** Considered the submissions and perused the record.

**9.** The Application has been filed under Section 73-A of the Maharashtra Public Trust Act which vest the power in the Inquiry Officer to join persons as party to the proceedings. The perusal of the said provision would indicate that any person having interest in the Public Trust may be joined as party to the proceeding. The only inquiry

which was contemplated while adjudicating an Application under Section 73-A is whether the person seeking Intervention is member of the Society.

**10.** Perusal of the impugned order would indicate that the submission canvassed before the Revisional Authority was that the Intervenor had filed the photocopy of the affiliation of the Maharashtra Cycling Association with the Petitioner-Association and the submission of the Petitioner-Association to counter the same was that the period of affiliation of Maharashtra Cycling Association with Applicant-Trust had expired. The said submission would infact indicate the acceptance by the Petitioner that Maharashtra Cycling Association was an affiliate of the Petitioner-Association. As it was the Petitioner's contention of cessation of affiliation, by reason of expiry of the period of affiliation, it was for the Petitioner to produce the necessary document to demonstrate that the affiliation period has expired. Admittedly the Petitioner-Association has not brought any material on record to show that the affiliation was for a particular period which is the specific observation of the Revisional Authority. Before this Court learned Counsel appearing for the Respondent has pointed out the PTR extract enumerating the affiliated Association's of the Petitioner which include the Maharashtra Cycling Association as also the information received under the Right to Information Act which states

that the Respondent-Association is the founder member of the Petitioner-Association and therefore there is no question of any affiliation. The documents on record therefore established the affiliation of the Maharashtra Cycling Association of which the Respondent is Secretary. As there was no documents produced on record by the Petitioner which would substantiate the case of expiry of period of the affiliation the Revisional Authority has rightly held that the Respondent-Association is a person interested being member of the Petitioner-Association. The expression "person having interest" has been defined under Section 2 (10) (e) and in case of any other Public Trust Act, the Trustee or Beneficiary. As the affiliation of the Respondent with the Petitioner-Trust has been demonstrated from the photocopy of the affiliation and as also been substantiated by the PTR extract and the information supplied under the Right to Information Act by virtue of the affiliation the Petitioner the Beneficiary within the meaning of Section 2 (10) (e) of the Public Trust Act being entitled to the benefit as per the objects of the Trust and is therefore person interested.

**11.** The contention of learned Counsel appearing for the Petitioner that the order proceeds on the basis that the High Court has permitted intervention erroneous as it is only refers to the order of the High Court and the Revisional Authority has thereafter independently

assessed the submissions and has arrived at finding of the Respondent being a person having interest. As regards the submission that the order of the High Court dated 12<sup>th</sup> December 2023, permitted the filing of an Application by a particular period, perusal of Clause-4 of the said order does not indicate any consequence of filing of an Application beyond the said period of 20<sup>th</sup> January 2024. This is countered by learned Counsel appearing for the Respondent by submitting that the proceedings were filed by 6<sup>th</sup> January 2024, and therefore the said submissions also does not deserves consideration.

**12.** As regards the finding of the Revisional Authority that the photocopy of the document can be proved at the time of evidence, the same is immaterial as once it is held that the Respondent is an affiliate of the Petitioner-Association the Respondent falls within the definition of person interested. The inquiry thereafter at the stage of evidence will be limited to examination of the Change Report and there is no question of any evidence being led in order to again substantiate that the Intervention Application is by a person interested.

**13.** Learned Counsel appearing for the Petitioner has also relied upon the decision of this Court in the case of ***People Education Society vs. Mansing S. Moray***<sup>1</sup> where this Court has held that the Authorities considering such Application cannot mechanically without

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<sup>1</sup> 2015 (6) Bom C.R. 786

Application of mind to the provisions of the Act permit any person claiming to have any interest in such Trust to participate in the proceedings. There is no quarrel with the said proposition as laid down by the decision of this Court. However in the present case perusal of the impugned order of the Revisional Authority does not demonstrate that without applying its mind to the relevant factors for deciding an Application under Section 73-A the Revisional Authority has in mechanical manner allowed the Application. The Revisional Authority has considered the documents which shows affiliation of the Respondent with the Petitioner-Association which was the primary requirement under Section 2 (10) (e) of the Maharashtra Public Trust Act and having satisfied itself about the same has allowed the Application and therefore the decision is clearly distinguishable on facts.

**14.** At the outset, learned Counsel appearing for the Respondent had pointed out that the matter is at the stage of evidence and on this ground alone the Petition ought to have been dismissed however considering that the learned Counsel appearing for the Petitioner emphasized that the Respondent is not a person interested, this Court has heard the matter on merits. On complete adjudication, in my view, there is no infirmity in the order passed by the Joint Charity Commissioner which would warrant interference under

Article 227 of the Constitution of India.

**15.** Resultantly, the Petition fails and stands dismissed.

**[Sharmila U. Deshmukh, J.]**