



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO.457 OF 2023

- 1) Ejaj Kibriya Khan Maqsood Ali Khan
Alias Azaz Kibriya Khan Arshi Khan,
Aged about 63 years, Occ.
Agriculturist, R/o. Malvipura,
Malkapur, Buldhana.

.... Petitioner(s)

// VERSUS //

- 1) Assistant Charity Commissioner,
Buldhana, Buldhana.
- 2) The Joint Charity Commissioner,
Amravati, Amravati.
- 3) Masumiya Urdu Education Society,
Malkapur, Through, Assistant Charity
Commissioner, Buldhana
(As there is dispute pending in respect
to persons named in schedule 1 of the
Trust the Charity Commissioner being
guardian of the trust)

Amendment
carried out
as per
Court's
Order dt.
06/03/2024

(Amendment
carried out as
per Order
dated
15.06.2023)

... Respondent(s)

Mr Z.Z. Haq, Advocate for the Petitioner/s
Shri Damle, AGP for the Respondent Nos.1 and 2/State

CORAM : ANIL S. KILOR, J.
DATED : 11.01.2024

ORAL JUDGMENT :

1. Heard the learned counsel for the petitioner and the learned AGP for the State. None for the respondent no.3, though served.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. The judgment and order dated 05.09.2017 passed by the Jt. Charity Commissioner, Amravati in appeal No.37 of 2014 filed by the Objector, allowing the appeal and thereby, reversing the judgment and order dated 19.08.2014 passed by the Assistant Charity Commissioner, Buldhana in Change Report No.362 of 1996, accepting the same, is under challenge.

4. The change Report No.362/1996, filed by the trust, was accepted vide judgment and order dated 19.08.2014 passed by the Assistant Charity Commissioner, Buldhana and thereby the petitioner has been recognized as the member of the trust.

5. The petitioner was made member in view of the resolution passed on 18.08.1993, which says that the persons who have paid

Amendment
carried out as
per Court's
Order dt.
15/2/2024

their fees in the month of May 1993 and June 1993 they are made members of the society.

Amendment
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15/2/2024

6. The record shows that there is a receipt dated 10.06.1993 in the name of the petitioner, depositing the fees towards membership. Since the petitioner fulfilled the condition as stated in the above referred resolution, he was made member of the society.

7. The objector, before the decision passed on the Change Report, filed an application under Section 41 A of the Maharashtra Public Trusts Act, 1950, namely the application No.27 of 1998 before the Assistant Charity Commissioner, wherein, the petitioner was made party non-applicant as member of the society.

8. From the record it further appears that even before the Assistant Charity Commissioner objection to the induction of the petitioner as member, was raised after about 17 years.

9. For the above stated reasons, the Assistant Charity Commissioner accepted the Change Report. However, vide

impugned judgment and order, the Joint Charity Commissioner reversed the same on recording the erroneous findings that the petitioner failed to prove that any meeting was held on 18.08.1993 and further he failed to prove that how many applications for membership were received by the society in the month of May or June 1993.

10. It is further held that no member of the Executive Committee was examined by the petitioner. Accordingly, the learned Joint Charity Commissioner held that the petitioner failed to prove to establish that he was legally inducted as member of the society.

11. The said findings are erroneous because the objectors were party to the resolution dated 18.08.1993 and the objectors did not enter into the witness box to establish the fact that the petitioner cannot be treated as member as he never deposited the fees in the month of May or June 1993 and further, there was no resolution passed on 18.08.1993.

12. If there is a case that the petitioner was not inducted legally, it was of the objectors and therefore, the burden would lie on the

objectors to prove it. However, the learned Joint Charity Commissioner committed error in shifting the burden on the petitioner. Accordingly, I pass the following order:

- (i) The writ petition is **allowed**.
- (ii) The judgment and order dated 05.09.2017 in Appeal No.37 of 2014 passed by Joint Charity Commissioner, Amravati, is hereby quashed and set aside.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]