



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

Writ Petition (WP) No. 3133 of 2021

Abdul Rajjak S/o Abdul Jabbar Taji

Versus

Joint Charity Commissioner, Nagpur and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Massod Sharif, Advocate alongwith Shri S.S.Ahmed
Advocate and Shri A.J.Mirza, Advocate for the
petitioner.

Shri U.R.Phasate, Advocate for the respondent/State.

Shri S.D.Abhyankar, Advocate for the respondent no.3.

CORAM : ANIL S. KILOR, J.

DATED : 7th FEBRUARY, 2024.

Heard.

2. The rejection of the change report No. 1464 of 2017 by the Assistant Charity Commissioner vide order dated 5th December, 2019 and upheld by the order dated 4th August, 2021 passed by the Joint Charity Commissioner, are under challenge in this writ petition.

3. The petitioner is the trustee of Hazrat Baba Tajuddin Awalia Darbari Khuddam Charitable Trust, Nagpur in a proceeding under Section 31-A of the

Maharashtra Public Trust Act, 1950 (in short hereinafter referred as 'Trust Act, 1950'), the Assistant Charity Commissioner, Nagpur on 4th January, 2017 issued direction to the Trustee to call general body meeting of all the 55 members for the process of the election of the executive body. The direction further say that the Trust shall declare the election programme and publish the same in the General Body Meeting by appointing the Election Officer.

4. It is the case of the petitioner that in view of the said directions by the Assistant Charity Commissioner dated 4th January, 2017, the elections was held on 25th March, 2017 and in the meantime though the respondent no.3 applied for review of the order of the Assistant Charity Commissioner dated 4th January, 2017, it was rejected on 1st April, 2017 i.e. after the date of the election.

5. It is submitted that after the election held on 25th March, 2017, the change report was filed i.e. change report No. 1464 of 2017. The said change report came to be rejected by the Assistant Charity commissioner vide judgment and order dated 5th December, 2019. The petitioner carried the said judgment and order in appeal under Section 70 of the Act, 1950 before the Joint Charity Commissioner who upheld the order of the

Assistant Charity Commissioner, vide judgment and order dated 4th August, 2021. Hence, this petition.

6. The Assistant Charity Commissioner while rejecting the change report as held thus:

“14. At the outset, it is significant to note that reporting trustee has not proved any of the documents filed on record as per the provisions of Indian Evidence Act. Furthermore, admittedly, election officer Mr. Sanjay Shevale is not examined by the reporting trustee.

15. In this regard, oral evidence of reporting trustee as well as objector is vital one. The reporting trustee deposed that Mr. Sanjay Shivade was appointed by this Hon’ble Authority as an Election Officer to undertake the election programme of the trust. But on perusal of the order dated 04.01.2017 in Application No. 52/2016, it appears that vide this order non-applicants are directed to declare the election programme and publish the same in the general body meeting by appointing an election officer. Furthermore, on perusal of documents of election report it appears that election officer is appointed in view of decision taken in meeting of the said trust dated 12.01.2017. Moreover, it is significant to note that the resolution in which election officer is appointed by the said trust is not filed on record.”

7. The Co-ordinate Bench of this Court in a case of Jagatnarayansingh Swarupsingh Chithere and others Vs. Swarupsingh Education Society and another¹, has held thus:

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

1 1980 Mh.L.J 372

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 grant of the inquiry under section 22 of the Act, it is obvious that this inquiry can not 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 pertaining the character of judicial adjudication. An elemental perquisites or the minimal requirement of a judicial inquiry and a judicial process is compliance with the principles of natural justice. These principles, though not embodies 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.

8. The above referred judgment was followed in a subsequent judgment of the Coordinate Bench of this Court in the case of *Prabhakar Vs. Dr. Jamnadas*² and in the case of *Vithalrao S/o Sambhajirao Kharpade and others Vs. Motiram S/o Narsingrao Birajdar and others*³. In the case of *Vitthalrao S/o Sambhajirao Kharpade and others Vs. Motiram S/o Narsingrao Birajdar and others* (supra), this Court has observed that the provisions under Section 22 of the Act requires judicial decision before ordering that the change report was recorded. Rule 7 provides that the inquires under

2 1997 (99)1 BOM LR 166

3 2010 Mh.L.J (1) 977

section 22 of the Act shall be held as far as possible in accordance with the procedure prescribed for trial of suits under the Presidency Small Cause Courts Act, 1882.

9. Thus, it is evident from the above referred observations that, the inquiry under Section 22 of the Act, 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 but investigation into the legality and validity of the change is implicit.

10. Thus, considering the above well settled principle of law, I do not find any error committed by the learned Assistant Charity Commissioner in rejecting the change report.

11. Admittedly, in the matter at hand, though documents were produced before the Assistant Charity Commissioner in support of the change report but none of them was proved by the petitioner. Even the Election Officer did not enter into the witness box to prove the contents of the report submitted by him in pursuance to the alleged election.

12. If the objection to the change report filed by the respondent no.3 is perused, it is evident that, he has categorically stated in the said objection that no proper

procedure as contemplated in the Bye Laws appears to have been followed for holding alleged election. The alleged election is nothing but a farce and is only a paper show.

13. In view of the said objection, it was obligatory on the petitioner to prove the documents and also the contents of the same. However, as the petitioner failed to prove any of the documents and the contents, the Assistant Charity Commissioner has rightly rejected the change report and the said order has been upheld by the Joint Charity Commissioner.

14. As far as the judgment cited by the learned counsel for the petitioner in the case of *Ratneshwar S/o Trimbakappa Kore and others Vs. Manmatthappa S/o Pandaba Lokhande and others*⁴, there is no dispute about the law laid down in the said matter. However, in view of peculiar facts and circumstances of the present case, the said judgment is of no assistance to the petitioner.

15. In the circumstances, I do not find any error committed by the both the authorities below in rejecting the change report. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]

4 2014(6) ALL MR 544