



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

WRIT PETITION NO.1699/2024

1. Dr. Shruti Sakharam Sorte,
Aged about 35 years, Occ. Doctor,
R/o Itwari Peth, Umred, Tahsil-
Umred, District- Nagpur.
2. Mahesh Dnyandev Tawale,
Aged about 45 years, Occ. Business,
R/o Waghmare Layout, Parsodi,
Near Pandit Nehru School, Umred,
Tahsil Umred, District Nagpur.
3. Sau. Vijaya Nitin Jachak,
Aged about 52 years, Occ. Household,
R/o Plot No.8, Arvind Society,
Narendra Nagar, Nagpur 440015.

....PETITIONERS

...VERSUS...

1. Anant Bajirao Buradkar,
Aged Major, Occ. Retired,
R/o 83, Kalyaneshwar Nagar,
Manewada Besa Road,
Nagpur 440027.
2. Sau. Manjusha Purushottam Darvankar,
Aged Major, Occ. Nil,
R/o 40, Chintamani Nagari-1,
Manewada-Besa Road, Parvatinagar,
Nagpur.
3. Mr. Shammi Gaffar Sheikh,
Aged-Major, Occ. Nil,

R/o Near Dhabale Well, Mangalwari
Peth, Umred, Tahsil Umred,
District Nagpur.

...**RESPONDENTS**

Shri N.A. Jachak, Advocate for petitioners
Shri A.P. Thakare, Advocate for respondent Nos.1 and 2
Shri V.N. Morande, Advocate for respondent No.3

CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ..

DATED: 29/04/2024

ORAL JUDGMENT (PER AVINASH G. GHAROTE, J.)

Rule. Rule made returnable forthwith. Heard Shri N.A. Jachak, learned Counsel for petitioners, Shri A.P. Thakare, learned Counsel for respondent Nos.1 and 2 and Shri V.N. Morande, learned Counsel for respondent No.3.

2. The petition questions the order dated 28/02/2022 (page 159) passed by the Deputy Charity Commissioner, Nagpur Region, Nagpur, on the application under Section 41-A of the Maharashtra Public Trusts Act, 1950 (hereinafter referred as the

‘M.P.T. Act, 1950’) whereby a direction has been issued to the present petitioners not to take any policy decision touching either to administration of the Trust or the service condition including appointment, suspension and termination of the employees of the Trust or its Institution, so also enrollment, dismissal and termination of the member till disposal of change report inquiry No. 1232/2022 (page 175).

3. It is the contention of Shri Jachak, learned Counsel for the petitioners that the election held on 23/07/2022 of the Managing Committee of the Trust, in which the respondent No.2 came to be elected, along with the petitioners, was in pursuance to the direction of the learned Deputy Charity Commissioner as contained in the judgment dated 28/06/2022 (page 63) in an application under section 41-A of the M.P.T. Act, 1950 bearing inquiry application No.103/2022. He further contends that since there was no challenge to this order dated 28/06/2022, the same

has attained finality, and therefore, the elections held in pursuance thereto, cannot be questioned in parallel proceedings under Section 41-A of the M.P.T. Act, 1950. It is also contended that the order dated 28/02/2024 does not assign any reason, even on the prima facie basis, for injuncting the elected committee, to take any policy decision on account of which also, the same stands vitiated. It is also contended that since the change has also been effected, it comes into effect immediately in terms of the language of Section 22 of the M.P.T. Act, 1950, and therefore, cannot be stopped, unless and until an inquiry in that regard indicates a finding that a change has not occurred, which could only be done upon an inquiry under Section 22 of the M.P.T. Act, 1950 being concluded. In the instant case, inquiry under Section 22 of the M.P.T. Act, 1950 is still pending. He, therefore, submits that the order dated 28/02/2024 cannot be sustained.

4. Shri A.P. Thakare, learned Counsel for respondent Nos. 1

and 2, while opposing the contentions, submits that all that has been done by the impugned order, is to merely ensure that the property of the Trust is not wasted and such a direction, according to him, can be granted under Section 41A of the M.P.T. Act, 1950.

5. Shri Morande, learned Counsel for respondent No.3 contends that the respondent No.3 was not a party to the proceedings in an inquiry application No.103/2022, which was also the case in respect of respondent Nos.1 and 2, and therefore, the order dated 28/06/2022 would not be binding upon them.

6. At the outset, it is necessary to note, that though respondent Nos.1 and 2 claimed not to be party to the proceedings under section 41-A of the M.P.T. Act, 1950 bearing inquiry application No.103/2022, the respondent No.2, in fact, has participated in the election to the Managing Committee held on 23/07/2022 in pursuance to the order dated 28/06/2022, and therefore, cannot approbate and reprobate, having participated in

the election.

7. Insofar as the change report inquiry is concerned, we are in complete agreement with what has been held by the learned single Judge in *Chembur Trombay Education Society Vs. D.K. Marathe* 2002(3) Bom.C.R. 161 regarding the nature of proceedings under Section 22 of the M.P.T. Act, 1950, which we quote as under:

"11. A priori, any amendment or change brought about in accordance with law would come into effect from the date of resolution of the Society to bring about such a change. This proposition is fortified from the plain language of Section 22 of the Bombay Public Trusts Act. The said section requires that where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, report such change to the Deputy or Assistant Charity Commissioner, as the case may be. The dictionary meaning of expression "occur" as observed in the Black's Law Dictionary is:

"to happy; to meet one's eyes; to be found or met with; to present itself; to appear; hence, to befall in due course; to take place; to arise."

Giving the natural meaning to this word in section 22 of the Act, coupled with the principle enunciated by the Apex Court that when the Act does not require that registration of any

change is a condition precedent to come into effect, I have no hesitation in taking the view that the amendment to the constitution as well as subsequent elections of the President and members of the Governing Council, therefore, came into effect from the date of the respective resolutions of the general body. The enquiry postulated under section 22 is only to ascertain the factum as to whether the change has occurred or not. In the event, the competent authority is satisfied that the change has not occurred in accordance with law, only then that change will have to be undone and status quo ante will have to be restored. A fortiori, resolution of the general body of the Society is sufficient to ignite the change of amendment in the constitution as well as of sufficient to ignite the change of amendment in the constitution as well as of electing new general body for administering the affairs of the Society. The fact that the change report is pending consideration before the Charity Commissioner, would be of no avail. Understood thus, as a necessary corollary, it will have to be held that the respondent-Shri Marathe ceased to be the President of the Society from the date when the General Body elected another President in its meeting dated June 18, 1995. If this be the position, the respondent-Shri Marathe will have no right whatsoever to continue in the post of president and, there would be no question of granting any mandatory relief at this stage."

8. It would, thus, be apparent that any duly elected body, cannot be enjoined from functioning merely because a change inquiry report is pending, for doing so, without reasons to be

recorded in writing, which point out the necessity for doing so, would be prohibiting the elected body, from performing its democratic functions.

9. That apart, it is material to note that the order dated 28/02/2024, which is purported to have been passed under section 41-A of the M.P.T. Act, 1950, appears to have been passed, merely for the sake of asking, for it does not record any reason for doing so, except an allegation regarding an apprehension of a possibility of taking policy decision, in view of the background, that executive body has removed the respondent Nos. 2 and 3 from their membership and the respondent No.2 has been suspended from the executive body of the Trust. This also, in fact, is incorrect, as Shri Thakare, learned Counsel for respondent Nos.1 and 2 fairly admits that this is not so as the respondent No.2, was never suspended from the executive body and continues to function as a member of executive body as such. It is therefore

apparent, that the order dated 28/02/2024, has been passed without any materiel being brought to the notice of the learned Deputy Charity Commissioner and absence of any finding rendered in that regard, and therefore cannot be sustained.

10. Though Shri Morande, learned Counsel for respondent No.3, raises a grievance that the order dated 28/02/2022 was passed in his absence, it is material to note that even today, there is no challenge on behalf of respondent No.3, to the order dated 28/02/2022, rather on the contrary, the minutes of the special general body meeting held on 23/07/2022 for election to executive body in pursuance to the order dated 28/06/2022 would indicate that respondent No.3 was present in the meeting in which the election committee was selected.

11. We are, therefore, not impressed by this argument. In the result, the petition is allowed.

12. The order dated 28/02/2024, passed by the Deputy Charity Commissioner, Nagpur Region, Nagpur in Inquiry Application No. 414/2023 is hereby quashed and set aside.

13. Rule is made absolute in above terms.

(SMT. M.S. JAWALKAR, J.) (AVINASH G. GHAROTE, J.)

R.S. Sahare