2024:BHC-NAG:6732



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH: NAGPUR**
**WRIT PETITION NO. 2302 OF 2024**

Mahesh D. Jadhao ...Petitioner

Versus

1. The Joint Charity Commissioner
Amravati Region, Amravati
2. The Assistant Charity Commissioner,
Yavatmal
3. Kisanrao L. Jadhao
4. Devendra L. Jadhao
5. Kisan B. Pawar
6. Subhash M. Pawar
7. Sau. Bebi D. Jadhao
8. Kundlik H. Rathod
9. Sau. Mamta R. Rathod
10. Pradip D. Jadhao ...Respondents

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Mr. Masood Shareef a/w. Mr. Aadil Anwar J. Mirza for the Petitioner.
Ms Prachi Joshi, AGP for the Respondent/ State.
Mr. A. P. Thakare for Respondent No.3.
Mr. K.P. Mahale for Respondent Nos.5 and 6.
Ms Poonam P. Moon for Respondent Nos.4,7,9 and 10.
Mr. Anup J. Gilda for Respondent No.8.

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**CORAM : N. R. BORKAR, J.**
**DATE : 25 JUNE 2024.**

**PC:-**

1. This petition takes exception to the order dated 19.3.2024 passed by the learned Joint Charity Commissioner, Amravati Region, Amravati in Revision Petition No. 47 of 2023.

2. A change report was filed and the same was allowed by the learned Assistant Charity Commissioner, Yavatmal by order dated 16.10.2022. The said order reads thus:

*"**ORDER BELOW EXH-1**
**IN CHANGE REPORT NO.91/2020.***

*The reporting trustee, Ravi Kisanrao Jadhav has filed this change report under section 22 of the Maharashtra Public Trusts Act, 1950 in respect of Shri. Jagdamba Shikshan Prasarak Sanstha, Digras, Tah-Digras, Distt-Yavatmal, bearing registration No. F-1616/Yavatmal.*

*This change report is filed by the reporting trustee for recording the change occurred in the meeting of the general body dated 22/02/2020. The reporting trustee in support of this change has filed affidavit by way of his evidence in this proceeding at Exh-4 and also the relevant documents such as consent letter of the incoming trustees at Exh-6, no objection of the outgoing trustees at Exh-5, list of the general members at Exh-11, copy of death certificate of Shriram Kaniram Chavan at Art-A, copy of notice of executive commitee meeting dated 15/01/2020 at Exh-7, copy of resolution passed by the executive committee in the meeting dated 01/02/2020 at Exh-8, copy of notice of general body meeting dated 05/02/2020 at Exh-9, copy of resolution passed by the general body in the meeting dated 22/02/2020 at Exh-10. The reporting trustee closed his evidence by filing Pursis at Exh-14.*

*Perused the documents, that the tenure of the said committee is completed. Hence, election was conducted in the meeting of general body dated 22/02/2020, in the said meeting the general body passed the resolution and elected new executive committee for next tenure by filling the vacancy created in the said society after the death of its trustee.*

*Further perusal of the proceeding shows that there are five outgoing trustees in this proceeding including one deceased trustee; copy of death certificate is filed on record. The outgoing trustees in this proceeding Kisan Baliram Pawar and Badu Hatuji Jadhav have filed joint notarized affidavit at Exh-12, stating therein that they have no objection to the change report filed by the reporting trustee. Remaining two outgoing trustees Devendra Limbaji Jadhav and Kisan Limbaji Jadhav also have filed joint Pursis at Exh-13 stating therein that they have no objection for deletion of their names from Schedule-I. I have gone through the documents* *produced on record; there seems no objection in this proceeding and the reported change seems to be legal one. Therefore I pass the following order;*

***ORDER***

*1. Change report inquiry no. 91/2020 is hereby accepted.*
*2. Entry be taken in Schedule-I accordingly."*

3. By the order impugned, the learned Joint Charity Commissioner has allowed the revision filed by respondent No.3 against the order of Assistant Charity Commissioner dated 16.10.2022.

4. The learned Joint Charity Commissioner while allowing the revision has recorded the following findings in paragraph 20:

*"20. As per rule 7 A of the Maharashtra Public Trust Act notice must be issued to the affected persons. In view of the above mentioned judgment of Jagatnarayansingh (supra) the notice must be issued to the affected persons and they must be heard before passing any order. This authority has perused the Roznama and record and proceeding of inquiry No.91/2020. It is seen that notices have not been issued to the 7 outgoing trustees. The learned advocate for the respondents invited attention of this court to the affidavit Exh. 12 and pursis Exh.13 while before the Assistant Charity Commissioner and submits that the affected persons have knowledge about the change report. Hence, there is no need to issue notice to the outgoing trustees. It is significant to note that, the authenticity of notarized affidavit and pursis Exh. 13 has been challenged by the petitioners. The petitioners have denied the execution of notarized affidavit and pursis Exh. 13. On these backdrop of fact this authority is of the view that, the learned Assistant Charity Commissioner ought to have issued notice to the affected persons. Moreover, the leaned Assistant Charity Commissioner ought to have verified the authenticity of the notarized affidavit and pursis. The leaned Assistant Charity has placed reliance on the notarized affidavit and pursis without issuing notices to the affected persons. Hence, this*

*authority is of the view that, the findings recorded by learned Assistant Charity Commissioner is not based on proper and correct appreciation of evidence on record".*

5. Similarly, on merits the learned Joint Charity Commissioner has recorded the following findings in paragraph 24:

*"24. It is crystal clear from the ratio decidendi of the above mentioned judgement that after expiry of tenure of the executive committee, the said committee become caretaker body and the sad body has no powers to take the policy decision like induction of new members. This authority has perused the resolution Exh. 8. It is seen that on 01/02/2020 the meeting of the executive committee of the trust has been held and 03 members namely Kundalik Hiraman Rathod, Mamta Rajkumar Rathod and Pradip Dayaram Jadhav have been inducted as a members of the trust. It is not disputed that change report No.80/2014 and 149/2014 have been rejected by the Assistant Charity Commissioner, Yavatmal. Hence, it is crystal clear that on 01/02/2020 the caretaker executive committee has inducted 03 members namely Kundalik Hiraman Rathod, Mamta Rajkumar Rathod and Pradip Dayaram Jadhav. Hence, this authority is of the view that, induction of 03 members by caretaker body is not legal, proper and correct. Hence, election of the trust held on 22/02/2020 has not been held amongst the said members of the trust. It is seen from Exh.10 minutes of the meeting dt.22/02/2020 and resolution that meeting of the general body has been held and illegally inducted members have participated in the election. Hence, this authority is of the view that, reported change is not legal and valid. Hence, I answer point No.2 in the negative."*

6. If according to the learned Joint Charity Commissioner the change report was allowed without issuing notices to the affected parties or that the affidavits or pursis were not filed by

them, then the learned Joint Charity Commissioner ought to have remanded the matter back to learned Assistant Charity Commissioner. Apart from it, the learned Joint Charity Commissioner ought not to have recorded the findings on merits for the first time in revision. The order impugned therefore cannot be allowed to stand.

7. The order passed by the learned Assistant Charity Commissioner and the learned Joint Charity Commissioner are set aside and the matter is remanded back to the learned Assistant Charity Commissioner for deciding it afresh.

8. The learned Assistant Charity Commissioner shall permit the concerned respondents to file their objections and shall thereafter endeavour to decide the matter in accordance with law, within a period of four months from the date of receipt of copy of this order.

9. The order passed by this Court dated 6.5.2024 shall remain in operation till the decision of the matter by learned Assistant Charity Commissioner.

10. The Petition is disposed of in the above terms.

11. Pending applications, if any, are disposed of.

**(N.R. BORKAR, J.)**