



(1)

WP-1433-2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1433 OF 2025

Vyankatrao S/o. Gangaram Tembhurne,

Age: 72 years, Occu: Agril.,

R/o. Hatrala, Tq. Mukhed,

Dist. Nanded.

...PETITIONER

VERSUS

1. Sambhaji s/o. Manikrao Biradar,

Age: 64 years, Occu: Pensioner,

R/o. Vasantnagar Nanded,

Tq. and Dist. Nanded.

2. Tulshidas s/o. Vyankatrao Tembhurne,

Age: Major years, Occu: Agril,

R/o. Hatrala, Tq. Mukhed,

Dist. Nanded.

3. Saw. Nilawati w/o. Vyankatrao Tembhurne,

Age: Major Years, Occu: Household,

R/o. Hatrala, Tq. Mukhed,

Dist. Nanded.

...RESPONDENTS

Mr. S. S. Thombre, Advocate for the petitioner.

Mr. V. D. Gunale, Advocate for Respondent No.1.

Mr. M. S. Karad, Advocate for Respondent Nos. 2 and 3.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 12th MARCH 2025
PRONOUNCED ON : 9th APRIL 2025

PC :-

1. Heard Mr. Thombre, the learned Advocate for the Petitioner, Mr. Gunale, The learned Advocate for Respondent No.1 and, Mr. Karad, the learned Advocate for Respondent Nos. 2 and 3.
2. A challenge in this petition is to an order dated 7th January 2025 passed by the learned Joint Charity Commissioner, Nanded Region, Nanded in Revision Application No.166 of 2024 thereby allowing the revision filed by Respondent No.1.
3. The learned Joint Charity Commissioner by way of impugned order, set aside the order dated 2nd August 2024 accepting provisional change report, passed by the learned Deputy Charity Commissioner in Misc. Inquiry No.595 of 2024 in Change Report No.583 of 2024. The Deputy Charity Commissioner was directed to decide the Change Report No.583 of 2024 and Change Report No.748 of 2024, on its own merit.

The trustees shown on Schedule-01, on that day, were permitted to look after day-to-day affairs of the Trust till final disposal of Change Report Nos. 583 of 2024 and 748 of 2024. However, they were directed not to take any policy decision till final disposal of the change report.

4. The facts, in short, giving rise to the present petition, as stated by the petitioner, are that the petitioner happens to be the President of one, *Shri. Chhatrapati Shivaji Shikshan Sanstha, Hatral Tq. Mukhed Dist.Nanded*. The said institution is registered under the provisions of Maharashtra Public Trusts Act, 1950 (for short “the said Act”). The petitioner and Respondent Nos.2 and 3 filed an application under Section 41-A of the said Act, seeking permission to hold the election of the Trust by appointing competent person. The learned Deputy Charity Commissioner, Nanded allowed such application and appointed an Advocate to hold the meeting of Executive Committee of the Trust.

5. When trust was founded, there were only seven members of the Executive Committee. Presently, only the petitioner and respondent Nos.1 to 3 are the members, who are alive. Three members have already

expired. Respondent No.1 had filed one Change Report No. 601 of 2022 to add one Mr. Abhijit Sambhaji Biradar as a member of the Trust. However, said report was rejected. Mr. Abhijit Biradar is thus, not a member of the Trust. In the year 2024, the election took place and the petitioner came to be elected as President. The Respondent No.2 was elected as a Secretary and Respondent No.3 was elected as a Treasurer. The post of Vice-president, Joint Secretary and two members were vacant. The Respondent No.1 had filed Change Report under Section 22 of the said Act, bearing Change Report No.583 of 2024. In the said report, the petitioner filed Misc. Application to provisionally accept the Change Report No.583 of 2024. The said application came to be allowed by provisionally accepting change report by order dated 22nd July 2024.

6. It is further case of the petitioner that, the Respondent No.1 also had filed Change Report bearing Change Report No.748 of 2024. In the said report, wife of Respondent No.1 is shown as President. Respondent No.1 is shown as Secretary and his son Mr. Abhijit Biradar is shown as a

Treasurer. Respondent No.1 filed Revision Application No.166 of 2024 and prayed for quashing of order dated 2nd August 2024 provisionally accepting the change report of the petitioner. This revision came to be allowed and thus, the petitioner is before this Court.

7. Mr. Thombre, the learned Advocate for the petitioner vehemently argued that the petitioner was required to file an application under Section 41-A of the Maharashtra Public Trusts Act, seeking direction to hold the election. One Advocate Mr. Keshav Hanmante was directed to conduct the election of the executive committee of the Trust amongst the legal and valid members of the Trust. The said Advocate issued notices to conduct the meeting to hold the election. He, therefore, held the election and declared these petitioners to be elected. It is on this, the change report came to be filed on 2nd August 2024 whereas, the respondent No.1 filed another Change Report on 20th August 2024. He submits that the learned Deputy Charity Commissioner rightly accepted the provisional change report. Earlier change report filed by respondent bearing Change Report No.601 of 2022 was rejected. The revisional

authority, however, wrongly allowed the revision by setting aside the provisional acceptance of the change report of the petitioner. He submits that, the said order is totally illegal and could not have been passed. He points out that Mr. Abhijit Biradar, on the date of election, had not completed 21 years of age as per clause 12(c) of the bye-laws and, he was not eligible to be taken as a member of the trust. He thus prays for setting aside the impugned judgment and order and to confirm the order accepting provisional report. He submits that, when the provisional report was accepted, the respondent ought to have filed reply. However, the respondent directly filed a revision.

8. Mr. Thobmre, the learned Advocate for the petitioner, has relied upon the following Judgments in support of this submissions:-

(i) ***Qidwai Education and Cultural Society Vs. The State of Maharashtra*** passed by this Court at Nagpur Bench in Writ Petition No.3296-1365-1366 of 2020 on 27th April 2022.

(ii) ***Bapuro Shankar Rathod Vs. The Joint Charity Commissioner, Latur*** passed by this Court in Writ petition No.7949 of 2024 on 2nd August 2024.

(iii) ***Banjara Shikshan Prasarak Mandal Vs. Mukinda Nandu***

Chavan and Ors. passed by this court in Writ Petition No.11141 of 2022 on 14th November 2022.

9. Mr. Gunale, the learned Advocate for the Respondent No.1, forcefully argued that the Trust is registered in the year 1989 under the Maharashtra Public Trusts Act, with seven founder members. Out of seven members, four members have expired. Thus, only three members are now on the body of the Trust. In view of the constitution of the Trust, at-least seven members are required. In the year 2022, change report was rejected as the election was held by the committee after expiry of the term. The petitioner and Respondent Nos.2 and 3 are from the same family. The joint application was made by the petitioner and Respondent Nos. 2 and 3 on 18th March 2024. No notice of the election was issued to Respondent No.1, who was Secretary since day one. There was no notice issued to Respondent No.1. There was no report of service of notice. Order passed was thus *ex-parte* by the Deputy Charity Commissioner. The Deputy Charity Commissioner allowed the prayer which was not made in the application and directed to hold the election.

10. He submits that on 4th July 2024, the Returning Officer i.e. Advocate Mr. Keshav Hanmante called for a meeting on 20th July 2024 for conducting election by giving the program. The election was to be held in the office of the Trust. Only nomination of the petitioner and Respondent Nos.2 and 3 were held to be valid. It is submitted that, when the election officer Mr. Keshav Hanmante was appointed, he himself has given an affidavit that when he went to the office of the Trust, the Respondent No.1 pressurized the said Returning Officer. 25-30 persons had gathered in the premises. They pressurized the Returning Officer and asked him to sign on the paper and expressed inability to furnish the documents. It is submitted that, if at all, this was the complaint then the petitioner should have immediately reported this to the authorities. The same is not done. The petitioner mislead the authorities and got the order. It is in the report itself that the petitioner himself conducted the election as Returning Officer did not come. He submits that, thus, even as per theory of the petitioner, no proper election was held and submits that, the authority had rightly accepted the revision petition. It is submitted that, this respondent has no objection to hold fresh election.

The learned Advocate for the respondent thus supports the impugned order.

11. Mr. Karad, the learned Advocate for the Respondent Nos.2 and 3 supports the petition.

12. In the case of *Qidwai Education and Cultural Society* (supra), this Court had considered the statement of objects and reasons of Amendment Act, by which sub-Section (2) is inserted to Section 22 of the said Act, providing for provisional acceptance of the report. In the case of *Bapu Shankar Rathod* (supra), this Court considered the provision of Section 22(2) of the said Act. It is held that though no full fledged inquiry is necessary at this stage, however, an opportunity of hearing needs to be given to the applicant seeking changes, if necessary. It is held that giving an opportunity of hearing to the respondent is not contrary to the basic principles of law. In the case of *Banjara Shikshan Prasarak Mandal Vs. Mukinda Nandu Chavan and Ors.* (supra), the Court in that case rejected the contention of the parties and held that no specific application is required to be filed by any of the parties for

provisional acceptance of the change report.

13. By going through the order of the Deputy Charity Commissioner it is seen that though it was pointed out that the Returning Officer himself has stated that he could not hold the election in transparent manner. There is no discussion on this, the said order is provisionally accepting the report. The provisional acceptance order is passed in mechanical manner. The respondent, therefore, had filed revision specifically taking all the grounds. The Revisional Authority has considered that, in an application under Section 41-A in Inquiry No.258 of 2024, the Deputy Charity Commissioner herself had directed to hold election. It was pointed out that the Deputy Charity Commissioner considered that the meeting on the basis of which change report is filed by the petitioner itself was not properly held. The petitioner conducted a separate meeting without direction or permission of the Competent Authority. When the Returning Officer could not hold the meeting as per allegations of the petitioner, because of the atmosphere created. It is considered that it was open for the petitioner to seek fresh direction for holding

separate meeting. It is recorded that, the meeting of the executive body was not held on the date in which the election is stated to have taken place. It is after holding this, the learned Deputy Charity Commissioner set aside the order of provisional acceptance.

14. This Court has seen both the orders, it is sufficiently brought on record that the Returning Officer could not hold the meeting as per the direction of the Deputy Charity Commissioner. From the application by the petitioner it is clear that he conducted separate meeting for election. When such were the facts, the learned Deputy Charity Commissioner was required to pass the order with care and caution. The Returning Officer did not prepare and publish list of valid voters. In spite of several request, it was not given to the petitioner. On 20th July 2024, meeting was started in the office of the Trust where he received message from the headmaster of the school that the Advocate Mr. Keshav Hanmante had come in the office of the school with Respondents and some others and there meeting is concluded. The petitioner and Respondent nos. 2 and 3 went to office where the Returning Officer was holding the

meeting. The petitioner raised objections and thereafter, boycotted the meeting requesting to call off the said meeting. It is further stated in the application that thereafter, the petitioner and others held another meeting on the same day at 04:00 p.m. in the office of the Trust. It has also come that, in the said meeting, the Returning Officer was absent. Thus, when it is clear from the application of the petitioner himself that, the meeting was held in absence of the Returning Officer then naturally there would be a question as to whether the meeting would be said to be legally held meeting at all. When this basic flaw is pointed out, still Deputy Charity Commissioner did not discuss this aspect.

15. Much is argued on Section 22(2) of the said Act, it is true that the change report needs to be accepted provisionally as the decision of change report takes some time. However, it is not expected to go into details, however, certainly every authority acting judiciously is supposed to apply its mind even while considering the case *prima facie*. Here it is clear that meeting which was held was in absence of Returning Officer, the said meeting thus, in any sense, cannot be said to be meeting when

such thing is apparent on record is must for the authority to consider this aspect. It cannot be said that Section 22(2) of the said Act, empowers the authorities to accept the report provisionally without applying mind. The power vested by the authority is always required to be exercised judiciously. This court finds that the learned Deputy Charity Commissioner, in the present case, failed to appreciate the basic aspect and had committed error. The learned Revisional Authority rightly considered this aspect. This Court, therefore, finds that there is no illegality in the order passed by the learned Revisional Authority. No interference is, therefore, required in the judgment and order. Hence, the following order:

ORDER

- (i) Writ petition stands dismissed.
- (ii) No order as to costs.
- (iii) Pending civil applications, if any, also stands disposed off.

[KISHORE C. SANT, J.]