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WP-5083-2023

This order is corrected pursuant to speaking to minutes order dtd.01.07.2025.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5083 OF 2023

Panditrao S/o. Ramrao Deshmukh

Age: 83 years, Occ.: Agriculture,
R/o. Saraswati Colony, Vasmat,
Tq. Vasamat, Dist. Hingoli.

...PETITIONER

(Orig. Reporting Trustee)

VERSUS

1. Sopanrao S/o. Begaji Nadre

Age: 69 Years, Occ: Agriculture,
R/o. Girgaon, Tq. Vasmat,
Dist. Hingoli.

2. The Joint Charity Commissioner,

Aurangabad, Tq. and Dist. Aurangabad.

3. The Assistant Charity Commissioner,

Hingoli, Tq. and Dist. Hingoli.

...RESPONDENTS

(R. No.1-original respondent)

Mr. R. N. Dhorde, Senior Advocate i/by Mr. V. R. Dhorde a/w

Mr. P. S. Dighe, Advocates for the petitioner.

Mr. V. D. Sapkal, Senior Advocate i/by Mr. Avinash D. Hande a/w

Mr. R. N. Patil, Advocates for Respondent No.1.

Mr. K. N. Lokhande, AGP for Respondent No.2 and 3/State.

CORAM : KISHORE C. SANT, J.
DATE : 25th MARCH 2025
PRONOUNCED ON : 13th June 2025

ORDER :-

1. Heard Mr. Dhorde, the learned Senior Advocate appearing for the petitioner, Mr. Sapkal, the learned Senior Advocate appearing for Respondent No.1 and Mr. Lokhande, the learned AGP appearing for Respondent Nos. 2 and 3/State.
2. With the consent of the parties, the petition is taken up for final disposal at the stage of admission. Heard all the parties.
3. The present petition is directed against judgment and order dated 28th March 2023, passed by the learned Joint Charity Commissioner, Aurangabad Region, Aurangabad in Revision Application No.66 of 2021.
4. By way of impugned judgment and order, the learned Joint Charity Commissioner allowed the Revision Application filed by present Respondent No.1 thereby setting aside the order passed by the learned

Assistant Charity Commissioner, Hingoli in Change Report Inquiry No.537 of 2012. The proceeding is filed under the provisions of Maharashtra Public Trusts Act, 1950 (for short “the said Act”). In Change Report, the learned Assistant Charity Commissioner (for short “ACC”) partly accepted the Change Report thereby removing the Respondent No.1 from the post of Secretary of the Trust. So far as other relief in the Change Report, that was also rejected.

5. The facts, in short, giving rise to the present petition are that the present petitioner happens to be a Member of the Trust namely, *Bahirji Smarak Vidyalaya Shikshan Sanstha Wapti, Tq. Vasmat, Dist. Hingoli*. Both were elected in the year 2008 to the Managing Committee for a term of three years, i.e., from 2008 to 2011. The said Change Report came to be rejected by order dated 17th December 2015. The appeal filed there-against was withdrawn. After the term of 2008-2011 expired, fresh elections were held for the term 2012-2015. This election process was challenged by filing Writ Petition No.2830/2012 in this Court. This Court stayed the elections. In the Special Leave Petition (SLP) filed

against the order in the writ petition, the Hon'ble Apex Court directed to proceed with the elections; however, not to declare the results. Pending this, the period of 2012-2015 also came to be expired. This petition is still pending. In view this, the Managing Committee which was elected for the year 2005-2008, continued to be on Schedule-I, and, therefore, they were looking after the Trust.

6. Elections were held for the period of 2015-2018 and a Change Report was filed. The said change report came to be accepted on 3rd July 2019. Further election for a period were also held. Thereafter, the Change Report is, however, pending. In the meantime, the Constitution of the Trust was amended, and the tenure of the Managing Committee came to be extended to five years, and in that view, now the elections were held for a period of 2021-2026. The Change Report for this term is also pending.

7. There were disputes within the Trust. The respondent No.1 was elected as a Secretary during the period of 2005 to 2008. It is alleged that Respondent No.1 committed certain irregularities and illegalities in

the Management of the Trust and in the schools run by the Trust by misusing his position. He also made appointments of teachers in these schools and transferred some employees. He illegally gave promotion to some staff members. Therefore, in a meeting held on 16th May 2012, the members of the Trust unanimously decided to hold an inquiry against Respondent No.1 by appointing Enquiry Committee. In response to this action, The respondent No.1 filed proceeding before the learned ACC, Hingoli by filing an application bearing No.333/2012 under Section 41-A of the said Act, praying for certain directions. The learned ACC directed Respondent No.1 to look after the Trust. However, the learned ACC refused to grant stay on the appointment of the Enquiry Committee. On receiving the Enquiry Committee's Report, notice was issued to Respondent No.1. However, he refused to accept the notice and raised objections to the meeting.

8. In meeting dated 9th September 2012, the Managing Committee passed a resolution removing Respondent No.1 from the post of Secretary as well as from Membership of the Trust, in view of Clause

10(3) of the Scheme of the Trust. The present petitioner came to be appointed in place of Respondent No.1, and a Change Report came to be filed under Section 22 of the Maharashtra Public Trust Act before the learned ACC, Hingoli. After recording evidence and hearing of the parties, the learned ACC, Hingoli confirmed the removal of the Respondent No.1 as a Member of the Trust by order dated 3rd July 2019. The respondent No.1, instead of filing appeal, filed a revision application after a delay of two years and the same is now decided by way of judgment which is under challenge in the present writ petition.

9. Mr. Dhorde, the learned Senior Advocate, strenuously submits that the only reason given by the learned Joint Charity Commissioner (for short "JCC") for setting aside the well-reasoned judgment of the learned ACC is that, when the decision was taken to remove the Respondent No.1, there was no validity constituted committee in power. He submits that the revisional authority failed to appreciate that the members of the Managing Committee were duly elected and their names appeared in Schedule-I of the Trust. Therefore, the findings recorded by the learned

JCC is perverse and illegal. The learned ACC had rightly considered the matter on merits and had confirmed the removal of the Respondent No.1. After 2008, various change reports had been filed and were pending. Even after action of removal was taken, elections were held. Thus, it cannot be said that no decision could be taken by the person who are looking after the Management of the Trust. This will lead to absurdity. He submits that, two years of passing judgment by the learned ACC, no appeal was preferred when remedy is provided under Section 70 of the Act. Merely because, he could not file an appeal within limitation, he could not have filed a revision. The learned JCC has committed illegality in entertaining the revision filed by Respondent No.1. The order passed by the learned ACC on 3rd July 2019 whereas the revision was filed on 21st July 2021. Before the learned ACC, no ground as regards membership was taken. He submits that, not filing the appeal within time, needs to be inferred as waiver of the right of filing appeal. For the first time, in the revision, Respondent No.1 raises ground which is considered when the revision was decided in the year 2023. The question about the legality of the body was only an academic question.

Thus, on these grounds, he submits that the impugned judgment and order deserves to be quashed and set aside.

10. Mr. Dhorde, the learned Senior Advocate, in support of his submissions, relied upon the following judgments:

- (i) *Union of India and Ors. Vs. Jagdish Pandey and Ors.*¹;
- (ii) *Cauvery Coffee Traders, Mangalore Vs. Hornor Resources (International) Company Limited*²;
- (iii) *Arce Polymers Private Limited Vs. Alphine Pharmaceuticals Private Limited and Ors.*³;
- (iv) *Jagatnarayansingh Swarupsingh Chithere and Ors. Vs. Swarupsingh Education Society and Anr.*⁴;
- (v) *Hindayatkhan Bismillakhan Pathan Vs. Vajjnath and Ors.*⁵;
- (vi) *Maharashtra Gandhi Smarak Nidhi, Pune Vs. Gandhi Smarak Nidhi (Central), New Delhi and Anr.*⁶;
- (vii) *Dadasaheb Dattajirao Nimbalkar (deceased) Bhojraj Satyappa Patil and Ors. Vs. Ushadevi Rajaram Nimbalkar*⁷;
- (viii) *M/s. Woolcombers of India Ltd. Vs. Woolcombers*

1 (2010) 7 SCC 689

2 (2011) 10 SCC 420

3 (2022) 2 SCC 221

4 1980 Mh.L.J. 372

5 2009 (6) Mh.L.J. 1 SC

6 2011(4) Mh.L.J. 295

7 2002(2) Mh.L.J. 740

Workers' Union and Anr.⁸

11. Mr. Sapkal, the learned Senior Advocate appearing for Respondent No.1, vehemently opposes the petition. He submits that the respondent No.1 was the founder member of the Trust and his name appears at Serial No.5 in the Interim Managing Committee. By inviting attention to the bye-laws, he submits that a person can only be expelled from membership of the Trust by a majority decision of the Government Body by following the principles of natural justice. This can be done only in three contingencies i.e. (i) he is residing beyond the jurisdiction of the society; (ii) such person has failed to pay the fee prescribed for the membership within three months; and (iii) such person behaves in the manner detrimental to the objectives of the society. None of these three grounds are made out and that no principles of natural justice were followed. As per the bye-laws, notice of General Body Meeting needs to be issued in writing by post or by *tapal* book. Atleast ten days notice prior to the proposed date of meeting is required. It is for the Secretary to convene a meetings. The President could not have convened the

meeting by himself. A meeting can only be convened on demand in writing by 2/3 members of the Government Body. Such meeting shall be convened within 15 days from the date of demand by giving agenda.

12. His submissions is thus that, meeting is not legally held and, therefore, resolution panel in such meeting could not be said to be validly passed. The decision was taken in General Body Meeting in the year 2012. For the period of 2008-2011, change report was rejected and thus, there was no General Body Meeting which could have taken such decision. He submits that, in the proceeding under Section 41-A filed by Respondent No.1, there was specific direction given to the Secretary to look after the Trust by order dated 3rd September 2012. This necessarily shows that the Management was not in existence on the date of passing of a resolution expelling for Respondent No.1. Even thereafter, the committee was appointed. On the point of limitation, he submits that, order was passed by the learned ACC on 3rd July 2019 and the revision is filed on 5th July 2021. In the meantime, there was lock-down imposed due to covid-19 pandemic situation. From March 2020, the Hon'ble Apex

Court had extended the period of limitation. Thus, the delay in filing the revision was only about 6 to 8 months. In any case, he submits that, on this ground, no judgment can be set aside. The resolution which was passed is not confirmed in the next meeting.

13. Mr. Sapkal, the learned Senior Advocate, in support of his submissions, has relied upon the following judgments:

- (i) *Sandeep Ram Meghe and Ors. Vs. Pundlikrao Balaji Gohad (dead) and Ors.*⁹;
- (ii) *Pravin Vinayakrao Patil and Ors. Vs. Uday Narayan Patil and Others passed by this Court in Writ Petition No.14492 of 2021 decided on 3rd May 2023 alongwith connected matters*;
- (iii) *Mohamad Haidar Mujawar Vs. Jamal Haidar Mujawar and Ors.*¹⁰;
- (iv) *Social and Cultural Association and Ors. Vs. State of Maharashtra and Ors.*¹¹;

14. Mr. Lokhande, the learned AGP appearing for Respondent Nos. 2 & 3/State supports the impugned order. He submits that the learned JCC has rightly passed the order and that no interference is required. He,

9 2013(4) Mh.L.J. 703

10 1969 AIR (Bom.) 328

11 2014(4) Mh.L.J. 174

therefore, prays for dismissal of the writ petition.

15. In the case of ***Union of India and Ors. Vs. Jagdish Pandey and Ors.*** (supra), the Hon'ble Court dealt with the practice and procedure. A plea was raised before the Hon'ble Supreme Court without any document or any cogent material, only bald averment was made in the Hon'ble Apex Court. The said was not considered. In the case of ***Cauvery Coffee Traders*** (supra), the Hon'ble Apex Court considered the doctrine of estoppel by election. In the case of ***Arce Plymers Pvt. Ltd.*** (supra), the Hon'ble Apex Court considered the principle of estoppel and waiver holding that statutory right may be waived by implied conduct. In that case, it was held that waiver is an intentional relinquishment and the same need not be inferred by mere failure to take action. In that case, there were repeated positive acts even after notices under section 13(2) and (4) of the SARFAESI Act. The said were neither questioned nor objected by the borrower. In that case, it was held to be waiver.

16. In the case of ***Jagatnarayansingh Chithere*** (supra), this Court held that while deciding the case, the Court cannot ignore the

subsequent event. In that case, by the time, an appeal was heard. The term of the managing body had expired. The earlier body had only taken routine administrative decisions. It was held that the legality of the election of the old body, therefore, became mere academic question. Order of remand by the District Judge, in that case, was set aside. It was the case of the inquiry under Section 22 of the Bombay Public Trusts, Act. This case was of the change report under Section 22 of the BPT Act. In the present case, it was not a question of management or the term of the management. The question involved is about the very membership of respondent No.1. The respondent No.1 was expelled from the post of secretary and the membership. This Court therefore, finds that the present judgment is not applicable to the facts of the present case.

17. In the case of *Hidayatkhan Bismillakhan Pathan* (supra), the Hon'ble Apex Court held that the superior Court would not entertain the appeal or revision wherein no effective order can be passed. The Court while doing so can even take into consideration the events which took place subsequently. It was the case where the Charity Commissioner had

suo motu exercised the jurisdiction. The said jurisdiction was exercised after a long time. By that time, even the fresh election had taken place. It is in that view, it was held that, the Charity Commissioner could not have exercised the jurisdiction *suo motu* after long time. In the fact of that case, by the time, *suo motu* revision was taken, elected body had already taken charge. In view of the facts of the case, it was held that no revision could have been entertained. With respect, in the facts of this case, this judgment is not applicable. It is also clear that the apex Court had exercised the power under Section 142 of the Constitution of India.

18. In the case of ***Maharashtra Gandhi Smarak Nidhi, Pune*** (supra), this court had held that, the power of the revision should be exercised within reasonable period. It is held that however, the reasonable time will depend on the facts and circumstances of each case. The court relied upon the judgment in the case of ***Santoshkumar Shivgonda Patil Vs. Balasaheb Tukaram Shevale and Ors.***¹². In the case of ***Dadasaheb Dattajirao Naimbalkar*** (supra), it is held that the power of revision under Section 70-A of the BPT Act be exercised within reasonable

¹² 2010(2) Mh.L.J. (SC) 150

period. The above judgments are in respect of reasonable time. However, it is clearly seen that reasonable time is depend upon from the facts and circumstances of the present case. In the present case, since it was the question of very membership of the respondent No.1, this court does not find that the revision was not filed within reasonable time coupled with the explanation that within 7-8 months there was nationwide lock-down was imposed.

19. While considering these questions, the learned JCC has held that, on the date of 9th September 2012, when the resolution was passed, the committee was not a valid committee having right to take a policy decision. By relying upon the judgment in the case of ***Sandeep Ram Meghe and Ors.*** (supra), it was held that an executive body whose term has expired would only be caretaker body and would refrain itself from taking any policy decisions. It is further held that removal of Secretary would amounts to take policy decision. The authority thus held that the resolution was passed without there being any authority in the executive body. This issue will be discussed in detail later.

20. So far as maintainability of the revision is concerned, in the case of ***Sandeep Ram Meghe and Ors.*** (supra), the executive committee had inducted 49 new members. In the said case, the learned Joint Charity Commissioner and the learned District Judge had held that the member could not have been inducted by the caretaker/ad-hoc body. It is held by this Court that, it was not open to take policy decisions. It is a matter of fact that, on the date of passing of the resolution, no Change Report was accepted in respect of the executive body. It is also on record that, in the proceeding filed under Section 41-A by the petitioner, the authority had, by way of interim order dated 3rd September 2012, allowed the petitioner to act as Secretary. It is also material to note that, even assuming the resolution was passed, there is nothing on record to show that the minutes of the said meeting were confirmed in the next meeting.

21. In the case of ***Pravin Patil*** (supra), this court had considered the judgment in the case of ***Sandeep Ram Meghe and Ors.*** (supra). This court by relying upon the judgment in the case of ***Sandeep Ram Meghe***

and Ors. (supra), in that case, the term of the executive body expired on 2nd February 2013. The said body, thereafter, was only a caretaker body and could not have taken policy decision. In that view, the group of petitions was allowed. This Court, therefore, finds that the case of **Sandeep Ram Meghe and Ors.** (supra) and **Pravin Vinayakrao Patil** (supra), are totally applicable to the facts of the present case. In the case of **Mohamad Haidar Mujawar** (supra), the question of section 70-A of the BPT Act was considered. The Division Bench clearly held that where a person cannot file an appeal in time, would suffer hardship and it is only for that reason, Section 70-A is added to this Act to provide remedial provision to prevent perpetuation of injustice. It is also held that, the powers given are as wide as available to the appellate Court. It is only held that the revisional jurisdiction is to be exercised in the interests of justice and not for technical reason. Thus, there is no doubt that the revision can be still entertained when the person failed to file an appeal. He has rightly done in the present case. In the case of **Social and Cultural Association** (supra), this court considered the “terms” and “any right”.

22. So far as the judgment in the case of *Jagatnarayansingh Chithere* (supra), this Court considered the scope of Section 22 of the Bombay Public Trusts Act (now Maharashtra Public Trusts Act). It was held that an inquiry under Section 22 is a judicial process and cannot be mere factual process or one purely of a formal nature. It is further held that, the Court cannot ignore the term of managing body. It was considered that, mere academic question need not be considered. This judgment is relied upon by the learned Senior Advocate for the petitioner to support of his submissions that, the subsequent elections were held after the decision taken by the then Management and, therefore, the question of the authority of the Management would become infructuous. In the case of *Hidayatkhan Bismillakhan Pathan* (supra), the Hon'ble Apex Court held that, an appeal under Sections 70 and 70-A of the Bombay Public Trusts Act must be filed within reasonable period. The judgment, in that case, was passed by invoking power under Article 142 of the Constitution of India to do complete justice. This judgment, therefore, is of no use to the petitioner, as this Court is not equipped with the power of Article 142 of the Constitution of India.

23. So far as judgment in the case of ***Maharashtra Gandhi Smarak Nidhi, Pune*** (supra), this Court held that the power under Section 70-A of the Act to entertain the revision be exercised within reasonable period. In the case of ***Dadasaheb Nimbalkar*** (supra), it is held that the power of revision should be exercised within reasonable period. There is no dispute about these propositions. However, in the present case, it is pointed out that order is passed on 3rd July 2019, and the same was challenged by filing revision on 5th July 2021. From March 2020, there was lock-down imposed by the Central Government due to covid-19 pandemic situation.

24. The learned Senior Advocate, Mr. Dhorde, has submitted that the order of the Hon'ble Apex Court in *Suo Motu Writ Petition No.3 of 2020* as regards extension of limitation, is applicable only in cases where the limitation period expired after imposition of lock-down period, and not in cases where the limitation had already expired before such imposition. This Court, however, finds that even upon considering the judgment relied upon by the learned Senior Advocate, Mr. Dhorde,

would to show that the power of revision must be exercised within reasonable period. If the period of lock-down is considered, the delay is only 7 to 8 months. The said period cannot be said to be unreasonable. Therefore, no illegality is found in entertaining the revision by the learned Joint Charity Commissioner.

25. Considering the above discussion, this Court finds that the main question was about the authority of the executive body to remove the Respondent No.1. There is substance in the argument advanced by the learned Senior Advocate Mr. Sapkal, that a person could have been removed only in three contingencies provided in Rules 14 and 16 of the bye-laws and, no such contingency is shown. This Court also finds that though the subject was discussed and the resolution was passed, no proper opportunity was given to Respondent No.1 before passing the resolution. This clearly amounts to violate Rules 14 and 16 of the bye-laws.

26. Considering all of the above, this Court does not find any illegality or perversity in the order passed by the learned Joint Charity

Commissioner. The petition, therefore, deserves to be dismissed. There shall be no order as to costs.

27. Hence, the following order:-

ORDER

- (i) Writ petition stands dismissed.
- (ii) No order as to costs.

[KISHORE C. SANT, J.]

. At this stage, the learned advocate for the petitioner prays for continuation of the interim relief that was running during the pendency of the writ petition.

2. A request is vehemently opposed by the learned advocate for the respondent.

3. However, considering that the interim relief is in operation since 2023, the same be continued for a period of six (06) weeks from today.

[KISHORE C. SANT, J.]