



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12472 OF 2019

Mohan s/o Bhaurao Gange
& others

.. Petitioners

versus

Bahadursahab Mohiddin Shaikh
& others

.. Respondents

Mr. D. J. Chudhary, Advocate for the Petitioners.

Mr. V. D. Salunke and Mr. Shoyab Shaikh, Advocates for Respondent
Nos. 1 to 7.

Mr. V. V. Jahagirdar, AGP for the State.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 21st NOVEMBER, 2025.

PRONOUNCED ON : 19th DECEMBER, 2025.

ORDER :

1. By way of this Petition, the Petitioners have approached this Court challenging judgment and order passed by the learned Joint Charity Commissioner, Latur Region, Latur, dated 16.03.2019 in Appeal No. 134/2018 allowing the Appeal of the Respondent thereby setting aside order dated 13.08.2018 passed by the learned Assistant Charity Commissioner, Latur in Change Report Enquiry No. 511/2013. Change Report Enquiry No. 511/2013 preferred by Respondent No. 1 came to be accepted.

2. Facts in short giving rise to the present Petition are as below :-

The Petitioners are the members of Bhagatsing Shikshan Sanstha, Wagholi (Bhise), Tq. & Dist. Latur, a trust registered under the Maharashtra Public Trusts Act. The Petitioners are shown to be the President and Vice President in Change Report Enquiry No. 618/2013 filed by them. Respondent No. 1 filed a Change Report Enquiry No. 511/2013. Respondent Nos. 2 to 7 are alleged office bearers of the trust, Respondent No. 8 is the Assistant Charity Commissioner and Respondent No. 9 is the Joint Charity Commissioner, Latur region, Latur. It is the case of the Petitioners that when the trust was registered there were only 10 founder office bearers. It is alleged that Respondent No. 1 started manipulating record of the trust. He manipulated one notice dated 16.08.2012 and showed that the said notice is served on the office bearers. Pursuant to the notice it is shown that a meeting was held and 5 persons were shown to have been made members of the trust. All these 5 persons are the family members of Respondent No. 1. Thereafter, he prepared a record and showed that an election took place on 21.07.2013 by showing that a notice was given on 01.07.2013 to all the members. However, no notice was served upon the Petitioners or other members

and it is behind the back of the other members. Record was prepared and on that basis, Change Report Enquiry No. 511/2013 came to be filed. Even thereafter, as alleged in the Petition, new members were inducted in the trust.

3. On realising these mis-deeds by Respondent No. 1, Petitioners and one Yogiraj Gange submitted objection to the Change Report No. 511/2013 with a case that Respondent No. 1 has prepared false and fabricated report. The meeting was held in violation of the rules of the trust. Witnesses were examined by Respondent No. 1 in support of his case. Petitioners also led oral evidence by examining four witnesses in support of their case. The learned Assistant Charity Commissioner, on hearing the parties, dismissed the change report against which, Respondent No. 1 filed Appeal to the Joint Charity Commissioner. The Joint Charity Commissioner, allowed the Appeal and consequently accepted the change report.

4. Learned Advocate for the Petitioners Mr. Choudhary vehemently argued that the learned Assistant Charity Commissioner had rightly passed the order dismissing the change report. The

learned appellate authority, however, committed a mistake in allowing the Appeal. He submits that the members who were newly inducted in the trust were added without following due process of law. The alleged meeting in which the election is shown to have been conducted is itself illegal. The Petitioners came to be removed from membership illegally. No notice was ever served of the said meeting. There was no coram of 9 members on the date of the meeting and only 5 members were present. There is nothing in the minutes of the meeting to show that for want of coram the meeting was postponed and was thereafter held after sometime. All the members happen to be the relatives of Respondent No. 1/Secretary. The resolution passed in such meeting cannot be said to be valid. In the presence of such members, the election was shown to be conducted. The notice was sent by hand and not by registered post as required under the rules. He further submits that since there is also a question of removal of members of the trust, the right of members is involved therein. The Petition, therefore, needs to be allowed. The subsequent events will not make the Petition infructuous. So far as the minutes of the meeting are concerned, he submits that the proceeding need to be read as it is. When there is no reference that for want of coram the meeting was postponed, it needs to be taken as

no meeting was postponed for want of coram and thus, the meeting becomes invalid for not observing this rule. He, thus, submits that the appellate authority failed to appreciate all these contentions and has wrongly decided the Appeal. He relied upon following judgments in support of his contentions :

- (i) 2014(1) Mh.L.J. 960
Shakil Musa Patel and another vs. Dilipsing Pratapsing Patil and others
- (ii) 2007(4) Mh.L.J. 77
Dekar Shivkumar Kale vs. Digamber Shridhar Mhapsekar & others
- (iii) 2017(6) Mh.L.J. 888
Santosh s/o Shankarlal Agrawal vs. Purushottam s/o Jaganath Murme
- (iv) Judgment in Writ Petition No. 4003/2020 (Aurangabad)
Bhagwan s/o Venkatrao Peddawad vs. The Joint Charity Commissioner & others.
- (v) 1997 (2) All MR 456
Shri Prabhakar s/o vithobaji Meshram and others vs. Dr. Jamnadas s/o Patruji Khobragade & others

5. Learned Advocate Mr. Salunke instructed by Mr. Shaikh, learned Advocate for Respondent Nos. 1 to 7 vehemently opposed the Petition. He submits that the Petitioners have not approached this Court with clean hands. They have suppressed the material facts.

There is an attempt to mislead the Court. The Petitioners have produced on record fabricated documents. The Petition, therefore, deserves to be dismissed at the threshold. He relies upon Clause No. 12(iii) of the bye-laws. He further submits that in view of Section 140(b)(c) of the Act, nothing survives in the Petition. Since the election for two terms thereafter have also been held, by now, the Petition has become infructuous. The Petitioners are not the members of the trust and therefore, do not have *locus standi*. So far as service of notice is concerned, he submits that the manner of service of notice is not given in the rules. It is not necessary to serve the notice through RPAD. Merely because there are no minutes to show that the meeting was postponed for want of coram, it is not sufficient to make allegation that the meeting was held without fulfillment of the coram. There is no averment in the entire Petition that the meeting was not postponed for want of coram. In the say filed in the change report by the Petitioners, there is no objection taken that the meeting is vitiated for want of coram. The observations of the learned Assistant Charity Commissioner that the added members have not paid fees is against record as there are receipts produced on record. He relied upon Section 16 of the General Clauses Act to submit that when trust has powers to

admit/include members, it also has powers to remove/withdraw membership. Removal of the Petitioners and other members was challenged by filing a suit. The said suit came to be dismissed. Though the suit was dismissed, it was challenged only by one Pandurang Pahade and not by the present Petitioners. Removal of Petitioners from membership is thus accepted by the Petitioners. It is not open for the Petitioners to challenge the action of removal thereafter. He further submits that since now subsequent elections are held the Petition has become infructuous, no interference is required at the hands of this Court and prays for dismissal of the Petition. He relies upon following judgments :-

- (i) 1977 CJ(Bom) 22
Balwantrao B. Kadam vs. District Deputy Registrar
Co-operative Societies and others.
- (ii) Writ Petition No. 13403/2018 (Aurangabad)
Rameshwarji s/o Bankatlalji Chitlange and another vs.
The State of Maharashtra & others.
- (iii) 1979 CJ(Bom) 72
Jagtnarayansingh Swarupsingh Chithere vs.
Swarupsingh Education Society and another
- (iv) Judgment in Second Appeal No. 113/2008
Nagnath s/o abasaheb Kakade vs. Ankush s/o Niwartirao
Kachwe & others dated. 25.11.2008

6. In view of the above, the questions for consideration are as below:-

- (i) Whether the members were rightly served ?
- (ii) Whether the members were rightly removed ?
- (iii) Whether new members are duly inducted as members of the trust ?
- (iv) Whether Change Report Enquiry No. 511/2013 is rightly accepted by the learned Joint Charity Commissioner ?
- (v) Whether any interference is required at the hands of this Court ?
- (vi) Whether the Petition is rendered to be mere academic or whether the Petition needs to be decided on merits ?

For deciding these questions, we need to see the legal position.

7. In the case of **Shakil Musa Patel** (supra), this Court held that in the said case finding was recorded by the District Court that when the members were enrolled, there was no legal and valid management committee in existence, the general body was consisting only of 80 members and that the alleged enrollment was never made by the general body. It was thus observed that in order to gain complete control over the trust, both the parties therein made

members of their own. This Court, in such facts, held that the members were not legally enrolled and set aside their membership.

8. In the case of **Kedar Kale** (supra), there was no agenda of the meeting to remove the members of the trust from the post of Chairman. No intimation was given to all the members who were entitled to remain present. The resolution passed by the managing council was therefore treated to be illegal and void ab initio. In the case of **Santosh Agrawal** (supra), the meeting of the trust was called without giving 15 clear days notice. In such meeting, a resolution was passed removing some of the members from the trust. No opportunity was given to such members. This Court held that it was necessary to give 15 clear days notice before passing resolution in meeting in accordance with law. In the case of **Bhagwan Peddawad** (supra) the Court considered the bye-laws of the trust therein. It was observed that the persons who were desirous of becoming member, did not submit application to the Secretary and no such applications were placed before the managing committee. There was no resolution passed by 3/5th majority of the total members in the meeting. Thus, the resolution was held to be illegal. In that case, the Assistant Charity Commissioner accepted the change report of the Deputy

Charity Commissioner which was held to be illegal. The judgment in case of Shri Prabhakar (supra) is also in respect of induction of new members by the governing body in the trust. It was held that no notice was given to the objecting members. No hearing was also given and therefore, the induction of members was held to be illegal.

9. In the case of Balwantrao Kadam (supra) the Division Bench of this Court was considering the nature of bye-laws 36 and 36(a) of the Co-operative Society providing for general body meeting. Bye-law 36(a) authorises the Registrar of the Co-operative society to nominate the first board. Bye-law 36(a) provides for 9 members to be elected as directors. There was no manner of the first election provided. There was provision of ex-officio Chairman, who was the President elected under bye-law 28(1). It was found to be inconsistent with Sub-Clause (4) of bye-law 36 which provides for election of the Chairman and Vice-Chairman from amongst the members of the board. The board was also referred to as the Managing Committee under Sub-Clauses (3) and (4) of bye-law 36. This was also found inconsistent with Rule 59 of the said bye-laws which provided for convening the first general body meeting by the promoters. It was thus recorded that there were anomalies in the

rules. It was concluded that the order impugned therein did not consider the bye-laws and did not address the actual questions involved in the dispute. The impugned order, therefore, was quashed and set aside.

10. In the case of **Rameshwarji Chitlange** (supra), the dispute was in relation to the election of the trust. This Court, in view of subsequent events of further elections, recorded that the question under challenge in the said Writ Petition rendered academic and on that count did not interfere in the Writ Petition.

11. In the case of **Jagatnarayansingh** (supra), though the Appeal was found to be meritorious, the same was rejected in view of the subsequent developments that took place pending the Appeal. It was thus observed that the Court need not decide the academic question. Similar are the facts in the case of **Nagnath Kakde** (supra). There again, the Court refused to entertain the question being academic.

12. The learned Assistant Charity Commissioner, on the point of notice, recorded that the notice was tried to be served

through the peon of the school. There was no order passed by the Secretary in writing to serve the notice upon the Petitioners. They refused to accept the notice. It was further recorded that the person who went to serve the notice also happened to be the relative of the Chairman of the trust. It is further observed that the notice was not sent through RPAD as required in the bye-laws. It was observed that there was no panchanam drawn of refusal of notice. The learned Assistant Charity Commissioner, thus, refused to accept the change report. The learned Joint Charity Commissioner, while reversing the findings, observed that the notice was sought to be served on all the 8 members personally through peon. Respondent Nos. 2 to 4 however, refused to accept the notice. Such endorsement was taken on the copies of the notice. So far as coram is concerned, it is observed that there is no specific mention that for want of coram the meeting was postponed and was held after some time. It is also observed that there is no provision regarding service of notice to be through RPAD. The peon, who sought to serve the notice, is examined, who has deposed on oath that the Respondents have refused to accept the notice. It was held that the notice was properly served in the above facts. This Court holds that notice was rightly served.

13. On the point of membership, it was held that the membership fees was paid and there is requisite entry in the form in the audit report for the year ending 2013. The members thus paid the life membership. It is a matter of record that a certified copy of the audit report is on record at Exhibit 36. There is entry of the persons who were enrolled as members pursuant to the general body meeting in the register of members. The Trial Court's finding was set aside by observing that the Trial Court failed to see the original record. The issue of membership is raised after 15 to 16 years. So far as one member namely Pandurang Pahade is concerned, it is observed that he has challenged the action of his removal by filing suit. He lost in the said suit. He also lost Second Appeal in this Court. It is observed that the show cause notice was served on Govind Jadhav and Bhikaji Mandale before cancelling the membership. The notice was served on 06-07-2007. This finds place at Exhibit 81 and 82. By way of said notice, explanation was called from them. It is thus observed that proper opportunity was given. It is thereafter the resolution was passed removing this members from the membership. Subsequently, it was observed that thereafter Change Report No. 86/2009 was filed after cancellation of the membership. The said Change Report was accepted. There was no

challenge to this Change Report by any of these members by raising the issue of their membership. The learned Joint Charity Commissioner thus found that the action of removal of membership was legal and proper and accordingly allowed the Appeal. This Court does not find any mistake committed by the learned Joint Charity Commissioner while deciding the issue of membership.

14. This Court, on considering the above, finds that the learned appellate authority had considered the actual record. This Court also finds that the learned Joint Charity Commissioner has passed the order by looking at the original record. The discussion about original record is not seen in the order passed by the learned Assistant Charity Commissioner. So far as service of notice is concerned, it is rightly seen that there is provision of service of notice through RPAD. The learned Assistant Charity Commissioner however, still expected service of notice through RPAD and on that count accepted the contentions of the Petitioners that no proper notice was given before cancelling membership, which is clearly against the record. So far as question of proper coram is concerned, this Court finds substance in the arguments of learned Advocate Mr. Salunke that in the meeting there need not be recorded as to whether

the meeting was postponed for want of coram. His second submission also found to be acceptable that there is no positive averment by the Petitioners that no such meeting was postponed for want of coram.

15. So far as judgments are concerned, this Court finds that in view of subsequent events that now for two terms thereafter the elections are conducted and Change Reports are accepted or pending, the present dispute does not become merely academic. It was relevant only for the purpose of deciding the question of removal of/or cancellation of the membership of the present Petitioners. On this question, this Court finds that the learned Joint Charity Commissioner has rightly recorded finding and has passed the order. In view of the above, the question of Change Report becomes academic. It is also a matter of record that Change Report No. 86/2009 was not challenged by raising the issue of membership. This also clearly shows that entertaining such issue now would be of no use. The minutes of the meeting were rightly confirmed in the meeting dated 25.11.2012. The change report is thus rightly accepted.

16. This Court finds that there is no merit in the Petition. Writ Petition, therefore, stands dismissed.

17. Pending Civil Application, if any, does not survive and stands disposed off.

(KISHORE C. SANT)
Judge

dyb