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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4221 OF 2025

Manohar J. Mhatre S. O Janu K Mhatre … Petitioner
V/s.
The State Of Maharashtra & Ors … Respondents

Mr. Drupad Patil a/w. Mr. Ishwar Nankani, Mr. Huzefa Khokhawala and Mr. Karan Pramar i/b M/s. Nankani & Associates for the Petitioner.

Ms. M. S. Srivastava, AGP for Respondent.

CORAM : AMIT BORKAR, J.

DATED : APRIL 15, 2025

P.C.:

1. Challenge in this petition, preferred under Article 226 of the Constitution of India, is directed against the order dated 14.02.2025 passed by respondent No.2 – the Revisional Authority, whereby the said authority has confirmed the order passed by the Assistant Charity Commissioner accepting the change report submitted under Section 22 of the Maharashtra Public Trusts Act, 1950 ("the said Act" for short). The petitioner has impugned the said order on the ground of procedural irregularity and absence of compliance with the statutory mandate under Section 22 of the said Act.

2. The factual matrix giving rise to the present writ petition is that respondent No.4 is a public charitable trust duly registered under the provisions of the said Act since the year 2003. It is the case of respondent Nos.5 to 10 that an election was conducted for electing the trustees of respondent No.4-trust on 31.07.2023. Pursuant thereto, a change report, reflecting the change in the constitution of the Board of Trustees, came to be filed before the Assistant Charity Commissioner on 19.04.2024. The said change report was allowed by the Assistant Charity Commissioner by an order dated 26.04.2024. Notably, the said order was passed without holding any inquiry as contemplated under the Act. Aggrieved thereby, the petitioner preferred a revision under Section 70 of the said Act being Revision Application No. 220/2024 before respondent No.2. The Revisional Authority dismissed the revision on merits, thereby giving rise to the present petition.

3. Perusal of the impugned order reveals that there is a fundamental dispute regarding the date of election. According to the petitioner, and borne out from the documents on record, the election was purportedly held on 31.07.2023, whereas respondent Nos.5 to 10 have taken a contrary stand before the authorities that the election took place on 31.07.2024. Even assuming that the election was held on 31.07.2023, as per the stand taken by the respondents themselves, the change report was filed on 19.04.2024, much beyond the prescribed period under the Maharashtra Public Trusts Rules, 1951. Therefore, in the absence of any application seeking condonation of delay being made or considered by the Assistant Charity Commissioner, the acceptance of the change report appears ex facie contrary to the statutory scheme.

4. At this juncture, it is apposite to refer to the provisions of Section 22 of the said Act. Sub-section (1) of Section 22 mandates that where a change occurs in any of the entries recorded in the register kept under Section 17, the trustee shall report such change within a prescribed period to the Deputy or Assistant Charity Commissioner, as the case may be. Sub-section (2) vests discretion in the authority to hold an inquiry in the prescribed manner for verifying the correctness of the change so reported. The proviso to sub-section (2) further contemplates that the Assistant Charity Commissioner may, for reasons to be recorded in writing, provisionally accept the change report and cause a public notice to be issued inviting objections within 30 days from the date of such publication. If no objections are received, the provisional order attains finality.

5. A plain reading of the statutory provision makes it clear that the power conferred on the Assistant Charity Commissioner to accept a change report is coupled with a duty to adhere to the procedural safeguards prescribed under the proviso to Section 22(2). The exercise of discretion must be within the confines of law and not in derogation thereof. In the present case, the record is conspicuously silent as regards any publication of notice, or any inquiry conducted, prior to passing the order dated 26.04.2024. The manner in which the change report has been accepted, therefore, does not inspire confidence and appears to be in breach of the mandatory provisions of the said Act.

6. Furthermore, the issue of delay in filing the change report has not been addressed in accordance with law. Rule 13 of the

Maharashtra Public Trust Rules prescribes the time limit for reporting changes. Any change not reported within the stipulated period requires an application for condonation of delay supported by sufficient cause. The order dated 26.04.2024 does not make any reference to condonation being granted after application of mind. In the absence of such a process, the order suffers from the vice of procedural impropriety.

7. In my considered opinion, such a course is not permissible. The discretion conferred upon the Assistant Charity Commissioner by sub-section (2) of Section 22 must be exercised judiciously, with due regard to the nature and gravity of the change reported. If the facts placed before the Charity Commissioner are incontrovertible, he may, in his discretion, dispense with an inquiry. However, where the change report discloses facts or events which require verification, or where the rights of trustees or third parties are affected and the Charity Commissioner entertains any doubt as to the veracity of the report, it becomes incumbent upon him to hold an inquiry in the prescribed manner. The expression "may" in sub-section (2) cannot be construed to confer unguided or arbitrary discretion upon the Charity Commissioner; rather, it imports a conditional discretion which is constrained by the proviso to sub-section (2) and by the overarching principles of fair procedure.

8. To give effect to the requirement of procedural fairness, the Legislature, by way of Maharashtra Act No. 65 of 2017, introduced a proviso to sub section (2) of Section 22. The proviso envisages that the Assistant Charity Commissioner may provisionally accept a change report, publish a notice inviting objections within thirty days, and, in the absence of objections, render the provisional order final. This legislative amendment underscores the necessity of transparency and the opportunity for affected persons to ventilate their grievances before final acceptance of any change.

9. It follows that, in the facts of the present case, the Assistant Charity Commissioner was under an obligation to comply with the procedure contemplated by the proviso to sub section (2) of Section 22. He ought to have provisionally accepted the change report, published a notice inviting objections, and provided a pre-decisional hearing to those who might be aggrieved. The failure to do so constitutes a jurisdictional infirmity which could not be cured on revision by simply considering the merits of the change report.

10. The Revisional Authority, while affirming the order of the Assistant Charity Commissioner, has entered into the merits of the election and composition of trustees, which was wholly unnecessary in the backdrop of the fact that the foundational procedural requirements under Section 22 were not complied with. The Revisional Authority failed to consider the jurisdictional error committed by the Assistant Charity Commissioner in bypassing the mandatory inquiry and notice procedure.

11. In the circumstances, the order dated 26.04.2024 accepting the change report shall stand treated as a provisional acceptance under the proviso to sub-section (2) of Section 22 of the Maharashtra Public Trusts Act.

12. The petitioner is granted liberty to file objections to the change report before the Charity Commissioner within four weeks from the date of this judgment.

13. The Charity Commissioner shall, within a further period of four weeks thereafter, consider any objections so raised, decide any application for condonation of delay in filing the change report, and thereafter pass a final order on the change report strictly in accordance with law and after affording due opportunity of hearing to all parties concerned.

14. The impugned orders are accordingly set aside and substituted by the aforesaid directions.

15. The writ petition stands disposed of in above terms. No order as to costs.

(AMIT BORKAR, J.)