



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1273 OF 2024

(Sampatrao s/o Kisanrao Dhurde Vs. Ramkrushna s/o Kisan Bhagat)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. A. P. Chaware, Advocate for Petitioner.
Mr. A. S. Dhage, Advocate for Respondent.

CORAM: R. M. JOSHI, J.

DATE: 3rd JULY, 2025.

1. This petition takes exception to the order passed by the learned Joint Charity Commissioner, Amravati dated 05.10.2023 in Appeal No.117/2019 whereby the order passed by the Assistant Charity Commissioner dated 30.04.2019 passed in Change Report No.1087/2014 came to be set aside and change report is directed to be accepted.

2. Perusal of the record indicates that the application came to be filed for recording the change under Section 22 of the Maharashtra Public Trusts Act pursuant to the elections conducted of Dhyandeep Shikshan Prasarak Mandal Jamod, Tahsil Jalgon Jamod, District Buldhana Trust/Society registered under the Maharashtra Public Trusts Act as well as the Societies Registration Act, 1860. The election came to be held in the general body on 14.12.2014. Admittedly, the notice was issued by the Secretary of the trust. In the said meeting the trustees

passed unanimous resolution. This change was aforesated which for acceptance.

3. Present petitioner raised objection before the Assistant Charity Commissioner for accepting the change on the ground that the notice has not been issued in accordance with the bye-laws of the Trust. In an appeal the Joint Commissioner accepted the contention of the respondent that the notice has been issued in accordance with the bye-laws as the same has been issued by the Secretary.

4. Heard Counsel for both sides at length.

5. It is sought to be argued on behalf of the petitioner that the bye-laws of the Trust contemplate that the notice of the general body shall be issued by the Secretary only on the instructions of the President. Now it is sought to be claimed that no such instructions were issued for calling the general body meeting to the Secretary. The Court has asked the specific query to the Counsel for the petitioner to point out that this issue was specifically raised before the Assistant Charity Commissioner. On going through the record the learned Counsel was not able to point out anything in this regard.

6. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Babu Verghese and others v. Bar Council of Kerala and others (1999) 3 SCC 422*** to contend that it is the principle of law is settled to say that

if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. It is his submission that since the notice was not issued on the instructions of the President, it is bad in law. Counsel for the respondent opposed the said contention by submitting that it is a fact as to whether the instructions to that effect were issued by the President to the Secretary or not and such fact/objection ought to have been raised before the Assistant Charity Commissioner. Since the same was not raised, it cannot be now permitted to be said that the notice of general body issued by Secretary is not in consonance with the bye-laws.

7. There is no dispute about the fact as meeting was held on 16.11.2024. The participation of the members/trustees in the said meeting is also not in dispute. There is no challenge to the procedure adopted during the course of the meeting. The only challenge which is now sought to be raised is that the notice of meeting was not at the instance/instruction of President. If it is so, it ought to have been claimed before the authorities/Court at first instance. Pertinently even in the appeal before the Assistant Charity Commissioner no such specific plea was raised. Now it will not be permitted to the petitioner to claim a fact which was not pleaded before the courts below. Permitting the parties to take such plea at this stage will lead to lay down wrong precedent which could be abused by unscrupulous litigants, as they would take a different stand altogether or even on occasion a false stand.

8. Suffice it to say that this issue was never raised and in any event otherwise the Secretary had power to issue notice for convening the general body. This Court therefore, finds no perversity in the impugned order passed by the Joint Charity Commissioner.

9. Hence, petition stands dismissed.

(R. M. JOSHI, J.)