
(2023) 04 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No.6212, 6625 Of 2022, Interim Application No.30251 Of 2022

Bhagwan Pandurang Khedekar And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 05-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227, 227(2), 227(3)

Citation : (2023) 04 BOM CK 0019

Hon'ble Judges : N.J.Jamadar, J

Bench : Single Bench

Advocate : G.S.Godbole, Rahul S. Kadam, Yuvraj Narvanka, P.P.Kakade, Yogesh D. Pati, Vaibhav Sugdare, Deepali Kedar, Dr. Uday Warunjikar, Pankaj Purway, Ashutosh M. Kulkarni, Manoj Badgujar

Final Decision : Dismissed/Disposed Of

Judgement

N.J.Jamadar, J

1. Though these Petitions assail distinct orders passed by the Assistant Charity Commissioner, Pune, yet the genesis of the impugned orders being common, both these Petitions are proposed to be decided by this common judgment.

2. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.

3. The background facts necessary for determination of these Petitions can be summarized as under :

3.1 Shri Sadguru Santvarya YogiRaj Shankar Maharaj Samadhi Trust, Pune – Respondent No.3, in Writ Petition No.6212 of 2022, is a Public trust registered under the Maharashtra Public Trusts Act, 1950 (the Act of 1950). A scheme came to be settled by the Assistant Charity Commissioner, Pune in suo motu Scheme proceeding No.30 of 1968 along with Scheme Application No.5 of 1969 for the administration and management of the said trust. Under the Scheme, the

number of trustees was to be not less than 5 and more than 7. One of whom was to be always from the family of late Pannalal Balkishan Malpani. Under the said Scheme, the first board of trustees was appointed. The Scheme, inter alia, provided for the mode of succession to the office of the trustees under clause 10A to the effect that the trustees would be appointed for every three years by the Assistant Charity Commissioner, Pune, out of the panel of at least 10 suitable names to be submitted to him by the existing trustees three months before the expiry of their term along with the consent of the persons proposed in the panel.

3.2 An Application being Application No.491 of 2014 was filed seeking appointment of the trustees, pursuant to a resolution passed by the then Board of trustees on 24 September 2014 to nominate 10 persons for appointment to the post of trustees for the period 1 January 2015 to 31 December 2017.

3.3 By an order dated 8 August 2017, the learned Assistant Charity Commissioner, Pune, was persuaded to hold that the panel of 10 names was not validly nominated by the then Board of trustees. The learned Assistant Charity Commissioner in exercise of the power conferred under clause 10A of the Scheme, appointed 7 trustees to administer the affairs of the trust.

3.4 Writ Petition being No.9443 of 2017 came to be filed before this Court assailing the order dated 8 August 2017, under which Mr. Bhagwan Pandurang Khedekar – Petitioner No.1 in WP No.6212 of 2021 and others were appointed as trustees. By an order dated 31 August 2017, this Court stayed the effect and operation of the order dated 8 August 2017 passed by the Assistant Charity Commissioner. Eventually, by an order dated 18 June 2019, the said Writ Petition and the Applications therein were dismissed.

3.5 The Petitioner preferred an Application being IA No.1 of 2020 in the said Writ Petition seeking clarification that the period for which the stay to the order of the Assistant Charity Commissioner dated 8 August 2017 was in operation be excluded while computing the term of three years.

3.6 By an order dated 5 August 2020 this Court declined to entertain the application for clarification. However, liberty was given to the Applicant to prosecute the application filed before the Assistant Charity Commissioner seeking directions regarding the tenure of the trustee.

3.7 In Misc. Application No.131 of 2020 preferred before the Assistant Charity Commissioner, the Petitioners prayed for a direction that the tenure of the trustees appointed pursuant to the order dated 8 August 2017 passed in Misc. Application No.491 of 2017 be calculated from the date they took charge of the office i.e. 13 December 2019. It was, inter alia, averred that though the Writ Petition No.9443 of 2017 was decided on 18 June, 2019, copy of the said order was not made available till 17 October 2019.

3.8 The learned Assistant Charity Commissioner was, however, not persuaded to accede to the aforesaid prayer of the Petitioners and the Misc. Application No.137

of 2020 came to be rejected by an order dated 11 March 2022. While rejecting the application, the Assistant Charity Commissioner directed all the trustees to take requisite steps in accordance with the Scheme and submit a panel of 10 suitable persons for appointment as trustees of the trust within a period of 15 days thereof. The learned Assistant Charity Commissioner noted that since the tenure of then incumbent trustees had already expired, three months time in accordance with clause 10A of the Scheme can not be granted for nomination.

3.9 The Petitioners and Mr. Surendra Vasant Waikar – Respondent No.4 in Writ Petition No.6212 of 2022 filed an Application being Misc. Application No.126 of 2022 seeking appointment of trustees from and out of the panel of 10 names mentioned therein on the strength of the resolution passed by the board of trustees in its meeting held on 20 March 2022.

3.10 Mr. Dnyaneshwar Bajirao Darwatkar – Petitioner in Writ Petition No.6625 of 2022, preferred Writ Petition assailing the aforesaid order passed by the Assistant Charity Commissioner on the ground that in accordance with clause 10A of the Scheme, the board of trustees can nominate 10 persons for appointment as the succeeding trustees within three months of the expiry of the term of the office. In the order dated 11 March 2022, the Assistant Charity Commissioner having noted that the term of office of then board of trustees was already over, could not have granted permission to the board of trustees to nominate the persons for appointment as trustees. In substance, de jure board of trustees had not nominated the panel and, resultantly, the appointment of persons from such panel was invalid.

3.12 In Inquiry Application No.126 of 2022, the learned Assistant Charity Commissioner perused the record and interviewed the persons who had submitted applications in the prescribed format to assess their suitability for appointment as the trustees of the trust. By an order dated 5 May 2022, impugned in Writ Petition No.6212 of 2022, the learned Assistant Charity Commissioner appointed Respondent Nos.4 to 8 as the trustees of the trust for a term of three years. Petitioner Nos.1 and 2 whose names were at Sr. Nos.1 and 8 of the panel nominated by the board of trustees have preferred Writ Petition No.6212 of 2022 assailing the legality, propriety and correctness of the impugned order.

WRIT PETITION NO.6625 OF 2022

4. Mr. Narvankar, learned Counsel for the Petitioner would urge that the nomination of a panel of 10 names by the incumbent trustees was legally infirm. Amplifying the submission, Mr. Narvankar would urge that the authority to nominate panel of 10 names can only be drawn from the provisions contained in clause 10A of the Scheme. Authority vests in a board of trustees which is lawfully in office. Such authority is required to be exercised before three months of the expiry of the term of the incumbent board of trustees. In the circumstances, the learned Assistant Charity Commissioner by an order dated 11 March 2022 could

not have granted liberty to the board of trustees which was non-est in the eye of law to nominate persons. Resultantly, the entire exercise is tainted with incurable illegality.

5. Clause 10A of the Scheme, which bears upon the determination of both the Petitions, reads as under :

"10A Future trustees will be appointed for every three years by the Assistant Charity Commissioner, Poona, out of a panel of at least suitable names to be submitted to him by the existing trustees 3 months before the expiry of their term along with the consent and particulars of the persons proposed in the panel. Such persons should file a declaration on solemn affirmation that he is a devotee of Late Shankar Maharaj. The existing or continuing trustees shall be eligible for their re-appointment. In case no such panel is submitted by the existing trustees or if the names given in the panel are not found suitable, the Assistant Charity Commissioner, Poona, shall appoint new trustees as he may deem fit and proper. The term of the new trustees will be for 3 years, i.e. from 1st January to 31st December."

6. A plain reading of the aforesaid clause incorporating the mode of succession to the office of the trustees indicates that the power to appoint the trustees vests in Assistant Charity Commissioner. The Assistant Charity Commissioner may appoint the trustees from out of a panel of at least 10 suitable names to be submitted by the existing trustees three months before the expiry of their term. The aforesaid provision of clause 10A cannot be so rigidly construed as to limit the power of the Charity Commissioner to appoint the trustees only from the panel suggested by the existing trustees. He is not bound to appoint any of the persons nominated by the board of trustees. The Charity Commissioner is vested with further discretion to appoint the trustees as he may deem fit and proper.

7. The Assistant Charity Commissioner is expected to exercise a judicious discretion to appoint trustees who appear to be fit and proper to administer the affairs of the trust. Once no limitation is to be found in the matters of choice of persons to be appointed as trustees in the provisions contained in clause 10A of the Scheme, the submission sought to be canvassed on behalf of the Petitioner crumbles traceless. Nomination by the existing trustees within three months of the expiry of their term cannot be considered as a peremptory requirement. The existing board of trustees is given an authority to suggest the names of the persons who it considers fit and suitable. It is an enabling provision and nothing more. Ultimately, it is for the Assistant Charity Commissioner to appoint fit and suitable persons in exercise of a judicious discretion.

8. In the peculiar facts of the case, grant of liberty by the Assistant Charity Commissioner to the trustees to nominate suitable persons when an application was made for extending the tenure of the existing trustees on the premise that a major part of the three year term was covered by the stay order granted by this Court, cannot be faulted at. The object of clause 10A of the Scheme seems to be

to render assistance to the Charity Commissioner in the appointment of the trustees by placing before him a panel of persons whom the existing trustees consider fit and suitable for appointment. If this object is kept in view, the grievance of the Petitioner does not merit acceptance.

9. The Petition, therefore, fails.

WRIT PETITION NO.6212 OF 2022

10. Mr. Godbole, learned Senior Advocate appearing for the Petitioners assailed the impugned order of appointing Respondent Nos.4 to 8 as the trustees of the Respondent No.2 Trust for being most arbitrary. Taking the Court through the observations in the impugned order, especially the consideration on the relative suitability of the 10 persons nominated by the existing trustees in paragraphs 17 to 19, Mr. Godbole strenuously submitted that the learned Charity Commissioner resorted to selective questionnaire to judge the suitability of the candidates. The Petitioners were declared as not suitable for appointment for being unaware of the important provisions of the Act, 1950. Conversely, Respondent Nos.4 to 8 were not confronted with the questions relating to the provisions of the Act, 1950 and, yet, they were declared fit and suitable. Such an exercise is in complete derogation of the judicious discretion. Had the Assistant Charity Commissioner assessed the suitability of the candidates on uniform standard, the Petitioners would not have a cause to agitate, but the Assistant Charity Commissioner has adopted completely different yardsticks and, therefore, the impugned order deserves to be quashed and set aside, urged Mr. Godbole.

11. Mr. Sugdare, learned Counsel for Respondent No.3 and Mr. Kulkarni, learned Counsel for Respondent Nos.4 and 5 supported the impugned order. It was urged that the Assistant Charity Commissioner in exercise of the power vested in him under clause 10A of the Act, has appointed the persons whom he found more suitable. The process adopted by the learned Assistant Charity Commissioner cannot be said to be arbitrary. Nor the exercise of discretion can be termed as non-judicious.

12. I have given anxious consideration to the rival submissions. Indisputably, 10 persons were nominated by the then board of trustees comprising Petitioner No.1 also.

The essential suitability of those 10 names cannot be, thus, questioned by the Petitioners. Consequently, the challenge revolves around the relative suitability of the persons who came to be appointed as trustees (Respondent Nos.4 to 8) qua the Petitioners.

13. In the light of the controversy which essentially revolves around the non-selection of the Petitioners and the selection of Respondent Nos.4 to 8 as the persons fit and suitable to administer the affairs of the trust, the pivotal question is the scope of interference by this Court in exercise of the writ jurisdiction. The aforesaid controversy, it must be noted, arose out of an exercise of the power by

the Assistant Charity Commissioner conferred under the Scheme. The appointment of the trustees is not in pursuance of the exercise of a statutory power. This essential distinction further influences the exercise of writ jurisdiction.

14. At this juncture, it would be apposite to note the nature of the writ jurisdiction exercised by this Court. It is well settled the High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation and evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. The certiorari jurisdiction is exercised for correcting gross error of jurisdiction, like when a subordinate court/tribunal has acted without jurisdiction or in excess of jurisdiction or while exercising the jurisdiction, acts in violation of the provisions of law or rules of procedure or fundamental principles of judicial process entailing failure of justice.

15. A useful reference in this context can be made to a Constitution Bench judgment of the Supreme Court in the case of Syed Yakoob V/s. K.S.Radhakrishnan and Ors. AIR 1964 SC 477 wherein the nature of the writ jurisdiction was expounded. The enunciation of law in paragraph No.7 is instructive and, hence, extracted below :

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a

writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the same inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath V/s. Ahmad Ishaque* AIR 1955 SC 233; *Nagendra Nath V/s. Commissioner of Hills Division* AIR 1958 SC 398 and *Kaushalya Devi V/s. Bachittar Singh* AIR 1960 SC 1168).

(emphasis supplied)

16. In the case of *Surya Dev Rai V/s. Ram Chander Rai and Ors.* AIR 2003 SC 3044 the Supreme Court expounded the inter-play between the provisions contained in Articles 226 and 227 of the Constitution of India, as under :

"21. Certiorari jurisdiction though available is not to be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice has been occasioned. In exercising the certiorari jurisdiction the procedure ordinarily followed by the High Court is to command the inferior Court or Tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine whether on the face of the record the inferior Court has committed any of the preceding errors occasioning failure of justice.

22. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by sub-articles (2) and (3) of Article 227 with which we are not concerned hereat. It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

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24. The difference between Articles 226 and 227 of the Constitution was well brought out in *Umaji Keshao Meshram and Ors V/s. Smt. Radhikabai and Anr.* (1986) Supp. SCC 401. Proceedings under Article 226 are in exercise of the

original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this Article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and Tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the Court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tentamounts to overstepping the limits of jurisdiction.” (emphasis supplied)

17. In the light of the aforesaid enunciation of law, re-adverting to the facts of the case, it is imperative to note that the Court in this case is called upon to exercise writ jurisdiction in the context of an order passed in pursuance of the power conferred under the Scheme of the Trust. Under the Scheme, as noted above, power to appoint the trustees is vested in the Assistant Charity Commissioner. Undoubtedly, the Assistant Charity Commissioner is obligated to consider the panel of names nominated by the existing board of trustees. Ultimately, it is imperative to note, it is for the Assistant Charity Commissioner to appoint persons whom he finds fit and suitable to be trustees. The latter part of clause 10A, thus, explicitly provides that in the event no panel is submitted by the existing trustees or if the names given in the panel are not found suitable, the Assistant Charity Commissioner shall appoint new trustees as he may deem fit and proper. Evidently, the Scheme vests authority in the Assistant Charity Commissioner as he exercises *parens patriae* jurisdiction over the public trusts.

18. Undoubtedly, the Assistant Charity Commissioner is required to exercise the power to appoint the trustees in a judicious manner. Discretion is not unfettered. Trustees cannot be appointed at the whim or caprice of the Assistant Charity Commissioner, *de hors* their suitability.

19. As noted above, the essential suitability of the persons nominated by the then board of trustees cannot be assailed, for the Petitioner No.1 was himself a party to the said nomination and also made an application for appointment of the trustees from amongst them. The persons so nominated and also the persons who made application for being appointed had, at best, a right to be considered. None had a vested right to be selected. It was for the Assistant Charity Commissioner to assess their suitability.

20. Mr. Godbole’s submission that uniform questions were not put to all the candidates appears attractive at the first blush, but does not pass judicial muster. It is not an immutable rule that all the interviewees should be put uniform questions to assess their relative suitability. It all turns upon the overall profile of

a given candidate. The fact that the Assistant Charity Commissioner considered it proper to put a particular line of questionnaire to a set of candidates and a different line of questionnaire to another, without anything more, cannot be faulted at. What has to be considered is whether the decision making process was impaired. I do not find that there was such an infirmity.

21. Moreover, since the Assistant Charity Commissioner has appointed the trustees in exercise of the power conferred under the Scheme, which vests a fair amount of discretion in him, in my considered view, the said discretion is not capable of correction in exercise of writ jurisdiction.

22. The upshot of aforesaid consideration is that the Petition fails.

23. Resultantly, the following order :

ORDER

(i) Writ Petition No.6212 of 2022 stands dismissed.

(ii) Writ Petition No.6625 of 2022 also stands dismissed.

(iii) Rule discharged.

(iv) Interim Application No.30251 of 2022 also stands disposed.

(v) No order as to costs.

(N.J.JAMADAR, J.)

24. At this stage, in Writ Petition No.6212 of 2022, the learned Counsel for the Petitioners seeks continuation of status quo order which was passed on 20 May 2022.

25. For the reasons assigned in this judgment, the prayer for status quo does not deserve acceptance. Hence, the oral application for continuation of status quo stands rejected.