

(2023) 05 BOM CK 0004

In the Bombay High Court

Case No : Writ Petition No. 14492, 14563, 14609 Of 2021

Pravin Vinayakrao Patil And Others

APPELLANT

Vs

Uday Narayan Patil And Others

RESPONDENT

Date of Decision : 03-05-2023

Acts Referred:

Maharashtra Public Trust Act, 1950 — Section 41A, 70

Citation : (2023) 05 BOM CK 0004

Hon'ble Judges : Nitin B. Suryawanshi, J

Bench : Single Bench

Advocate : V.D. Sapkal, D.B. Thoke, S.P. Brahme, P.V. Barde, S.B. Yawalkar, Mangesh Patil, G.D. Jain, S.R. Kolhare, P.S. Kochar

Final Decision : Allowed

Judgement

Nitin B. Suryawanshi, J

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. Since common question of law and fact is involved in these petitions, they were heard together and are being disposed of by this common order.
3. The petitioners are aggrieved by the judgment and order dated 26.11.2021 passed by Joint Charity Commissioner, Nashik in Appeal No. 20 of 2015, thereby allowing the appeal.
4. Facts which are not in dispute are as follows: Gram Vikas Shikshan Sanstha Mudi (Pra. Dangri) is a public trust registered under Maharashtra Public Trust Act, 1950 (for short 'said Act'), bearing PTR No. E-90/Jalgaon. It is an educational trust and conducts schools at various places in Amalner taluka and Jalgaon district. The trust is established on 10.07.1955. As per the constitution of the trust executive body is of 15 members, which comprises of President, Honorary Secretary and Director from Mudi, one person from each branch of school i.e. total 7 persons, 5 life members, 2 headmasters from employee representatives,

2 teachers and one non teaching staff.

5. In the elections held in the year 2008, Executive Body was elected for the period of five years i.e. from 3. 02.2008 to 02.02.2013. After the tenure of the said body was over, some of the trustees filed applications under section 41A of the said Act, in the year 2013 for direction to hold elections. The applications were numbered as Inquiry Application No. 13/2013 and 15/2013. In both these applications, trust as well as respondent No. 1 and other Executive Body members, were party respondents. After hearing the parties, on 17.10.2013, Assistant Charity Commissioner, passed the following order:-

ORDER

1) Applications under Section 41-A are partly allowed.

2) The entire board of trustees appearing on Schedule-I by last approved change report No. 103/08 are hereby directed to co-operate with each other and start the proceeding of election. The President namely Uday Narayan Patil and Secretary shall proceed with the election by appointing an independent Election Officer particularly having experience in the field of law. The President and Honorary Secretary shall convey the consent in writing of advocate Shri. Vinchurkar from Amalner.

3) All trustees shall co-operate with election officer Adv. Shri. Vinchurkar. They shall co-operate by proving relevant record to the Chief Election Officer. The Chief Election Officer shall declare the election programme within 3 months from today. He shall follow procedure of secret ballot considering the huge number of valid members.

4) SDPO Amalner is hereby directed to supply the necessary police aid for proper election of the public trust.

5) The necessary expenses for election shall be borne from the account of public trust.

6) In the circumstances, there will be no order as to cost.

6. In the meanwhile some of the members of the trust including some of the petitioners herein moved two applications to the President of the Trust seeking amendment in the constitution in respect of a) appointment of returning officer, b) for taking election by secret ballot (as per rule 4 of the constitution) c) by giving right to each member to cast nine votes and d) amendment in Rule 4(c) and Rule 8(1) of the constitution.

7. Though, the term of the Executive Body was over on 2. 02.2013, care taker body held meeting on 01.05.2013 and in that meeting 11th hour subjects were discussed. By subject No. 3/1, applications moved by the members were taken up for discussion. A resolution is passed for amendment in the constitution, seven members committee is constituted and it was entrusted the duty to consider the proposed amendment in the constitution.

8. The constitution committee held its meeting on 18. 08.2013 and passed a resolution thereby proposing amendment in Rule 8, 22 and 28(9). The said resolution is recorded in the proceeding book of the trust, and it is signed by President and constitution amendment committee of the trust.

9. The above proceeding was placed before the general body meeting dated 20.10.2013 and in the proceeding book it is mentioned that Ramesh Patil, who is in possession of record of the trust is not present. He should have handed over the record before the general body meeting to the senior trustees and members of the trust. However, he has not produced the record. The general body has no option but to start new proceeding book with the permission of President and members present at the meeting. Resolution No. 4 is passed in the said general body meeting, thereby approving the amendments suggested by the constitution amendment committee.

10. On 30.10.2013, executive body filed Inquiry Application No. 2292/2013 thereby seeking change in respect of amendment in the constitution of the trust, before Deputy Charity Commissioner, Jalgaon. The petitioners objected to the said change report. After recording evidence and after hearing the parties, Deputy Charity Commissioner rejected the said change report by order dated 29.07.2015, holding that the tenure of the executive body had already expired and therefore they could not have taken policy decision of amendment in the constitution of the trust.

11. Being aggrieved, President of the trust filed appeal No. 20/2015 under section 70 of the said Act. The appeal is allowed by Joint Charity Commissioner. Said order is impugned in the present petition.

12. Heard Mr. V.D. Sapkal, Senior Advocate instructed by Mr. D.B. Thoke, Advocate for petitioners in writ petition no. 14492/2021 and for respondents No. 6, 11, 17, 19 and 20 in writ petition no. 14609/2021, Mr. Mangesh Patil, Advocate for the petitioners in writ petition no. 14609/2021 and for respondents No. 8 to 11 in writ petition no. 14492/2021, Mr. S.B. Yawalkar, Advocate for the petitioners in writ petition no. 14563/2021 and for respondents No. 2 and 3 in writ petition nos. 14492/2021 and 14609/2021, Mr. S.P. Brahme holding for Mr. Parag Barde, Advocate for respondents No. 1, 6, 7, 12 to 16 in writ petition no. 14492/2021 and for respondents No. 1, 3, 4, 10 to 13 and

15 in writ petition no. 14563/2021 and for respondents no. 1, 8, 12 to 15 and 18 in writ petition no. 14609/2021, Mr. S.R. Kolhare and Mr. P.S. Kochar, Advocate for respondent No. 4 in writ petition no. 14492/2021, for respondent No. 18 in writ petition no. 14563/2021 and for respondent no. 5 in writ petition no. 14609/2021 and Mr. G.D. Jain, Advocate for respondent No. 5 in writ petition no. 14492/2021, for respondent no. 2 in writ petition no. 14563/2021 and for respondent No. 7 in writ petition no. 14609/2021, at length. Perused the grounds raised in the writ petitions, documents placed on record and the impugned order, so also reply affidavits filed by the respondents and the citations relied upon by

both the sides.

13. Learned Senior Advocate for the petitioners assailed the impugned judgment and order on the ground that term of executive body had expired on 02.02.2013 and thereafter it was a care taker body and was not entitled to take any policy decision. In support of this submission he placed reliance on Sandeep Ram Meghe and ors. vs. Pundlikrao Balaji Gohad (Dead) and ors., 2013 (4) Mh.L.J. 703. According to him, appointment of seven members constitution amendment committee was beyond the powers of the executive body who was admittedly acting as a care taker body. Further submission is said committee has used the proceeding book of the trust as if they were members of executive body. The proceeding book of the trust can only be used by either executive body or by general body. He further assailed the starting of new proceeding book in general body meeting dated 20.10.2013 and submitted that said proceeding is a fabricated piece of document and no such general body meeting has taken place and said new proceeding is prepared by the executive body.

14. He further urged that, admittedly, committee's term expired on 02.02.2013 and a direction is given on 17.10.2013 to the executive body to hold elections and elections were held as per unamended constitution and Change Report No. 2292/2013 was filed on 30.10.2013 i.e. after direction was issued to hold election. He further submits that Assistant Charity Commissioner was right in rejecting the said change report inquiry by giving cogent reasons. He further submits that care taker executive body ought to have conducted meeting for holding election and not for carrying out amendment in the constitution. Minutes of meeting dated 20.10.2013 were not confirmed in the subsequent meeting and hence said resolution was not legal and valid. In support of this submission he relied on Ramesh Gangadhar Dongre and another vs. Charity Commissioner, Mumbai and others, 2020 (5) Mh.L.J., 596. By pointing out rule 4(c), 7, 11, 13 and 30 of the constitution of the trust, he submits that the amendment in the constitution was carried out in defiance of these rules.

15. Learned advocate for the petitioners in writ petition no. 15463/2021 adopted the arguments of learned Senior Advocate. In addition, he pointed out that in the applications filed seeking amendment in the constitution of the trust it was not claimed that rule 28(9) be changed and amended. In support of his submissions he relied on Bahadursinh Lakhubhai Gohil vs. Jagdishbhai M. Kamalia and others, (2004) 2 SCC 65. He submitted that the decision taken by executive body at the behest or on the suggestion of constitution amendment committee, who had no statutory role to play, said decision has to be held as ultra vires. Further submission is, in spite of directions given by the authority to hold elections, as the term of executive body was over, it is obvious that undue haste is shown by them in carrying out amendment in the constitution of the trust. Hence, according to him malafides on the part of executive body can be presumed. He therefore submits that the impugned order since is unreasoned order, it is liable to be quashed and set aside.

16. Learned advocate for the petitioners in writ petition no. 14609/2021 adopted the argument of learned Senior Advocate. He is aggrieved by the amendment thereby removing headmaster's representation in the executive body and voting right of the employees of the trust is curtailed by way of amendment.

17. In reply, learned advocate Mr. Brahme appearing for the respondents supported the impugned order. He submits that outgoing body can validly take policy decision, as the same is permissible in view of Rule 30 of the constitution and on de facto principle. He submits that on 07.10.2013, agenda of general body meeting was issued and no objection was raised by anybody. On 20.10.2013, general body has approved the amendments in the constitution. Therefore, said decision cannot be said to be unilateral, in fact it was asked for by some of the petitioners and constitution amendment committee of seven members was appointed and 386 members have unanimously approved the amendment in the constitution, in the general body meeting dated 20.10.2013. Further submission is because of demands made by members and trustees policy decision was taken to amend the constitution in the interest of the trust. According to him, the Appellate Authority has rightly relied on de facto doctrine while allowing the appeal. He further submits that in proceeding under section 41A of the said Act it was not incumbent on the part of the President of the executive body to disclose that proceeding for amendment in constitution was going on. According to him proper procedure is followed while carrying out amendments and democratic process was followed.

18. Further submission is since there was stay operating during the pendency of appeal, election as per unamended constitution was held on 28.11.2015 in which earlier President Shri. Uday Narayan Patil was elected as President along with other executive body members. Accordingly, Change Report No. 38/2016 filed by his client which is yet not decided. He submits that the election is conducted by officer from the office of Assistant Charity Commissioner and therefore, change report ought to have been decided. In support of his submissions he placed reliance on Manikchand Hiralal Kasliwal vs. Arvind Vithalao Sawalpurkar, 1994 (2) Mh.L.J. 1623, Vijay vs. State of Maharashtra, 2022 (2) Mh.L.J. 91 and Gokaraju Rangaraju vs. State of Andhra Pradesh, 1987 (3) SCC, 693.

19. In reply, learned Senior Advocate submitted that clause 11 of the constitution of the trust provides for only five years tenure to the executive body. Therefore, executive body had no power to appoint committee for amendment in constitution, since their tenure was over. He further submitted that applications for amendment in constitution should have been placed before general body and could not have been considered by the executive body, whose tenure was over. According to him since beginning malafides on the part of respondents is apparent on the face of record.

20. After hearing both the sides and after perusing the impugned judgment and order this Court is of the opinion that the impugned order is unsustainable for the reasons set out hereinafter.

21. Admittedly, the term of executive body of the respondents expired on 02.02.2013. Thereafter, said executive body was a care taker body. In Sandeep Meghe (supra), it is held that 'Executive Council after expiry of the term was purely care taker/ ad hoc body and could not have taken policy decision particularly serious decision like induction of 49 members which could change the whole fabric of general body and could influence the result of the elections to a large extent.'

22. This decision is followed by learned Single Judge in Ramesh Dongre (supra) and it is held that "there was no agenda in the meeting dated 16-1-2006 for confirmation of minutes of meeting dated 5-12-2005, even though the reporting trustee/appellant confirmed the minutes of meeting dated 5-12-2005 in the meeting dated 16-1-2006. Executive Body was not elected after five years."

23. In the present case there is nothing on record to show that minutes of meeting dated 01.05.2013 as well as 20. 10.2013 were confirmed in the subsequent meetings.

24. Learned Senior Advocate was right in pointing out Rule 11 which stipulates that the term of the executive body is five years from the first meeting. It is not in dispute that the term of respondents was over on 02.02.2013. In that view of the matter also respondents could not have taken policy decision for amendment in constitution of the trust, after their tenure was over.

25. Fact remains that in inquiry application no. 13/2013 and 15/2013 in which respondents i.e. members of executive body had participated, after hearing on merits and considering large number of valid members, by order dated 17.10.2013, the executive body was directed to hold election by appointing independent Election Officer by way of secret ballot. In view of this direction, executive body ought to have conducted meeting only for the discussion of subject of holding of election and not for other purposes. The executive body has not brought to the notice of Deputy Charity Commissioner, who was hearing inquiry applications that they had already initiated process of amendment in constitution of trust, by appointing seven members committee.

26. The decision to amend the constitution of the trust is a policy decision. Care taker executive body was not entitled to take such decision, particularly in view of directions to hold election issued by Deputy Charity Commissioner on 17.10.2013.

27. It is not in dispute that out of total 923 members of the trust only 386 members alleged to have attended and approved the amendment in the constitution, in general body meeting dated 20.10.2013. It is pertinent to note that care taker executive body has used a new proceeding book for the said meeting. All these aspects create serious doubt about holding of general body meeting dated 20.10.2013.

28. Contention of the respondents that de facto doctrine is applicable in the facts

of the present case is unacceptable. Reliance on de facto doctrine by respondents is misplaced and misconceived. Said doctrine cannot be said to be applicable to the facts of the present case. In support of the impugned order passed by the Appellate Court and to substantiate his argument that de facto doctrine is applicable to the facts of the present case, learned advocate for the respondents has relied on Manikchand Kasliwal (supra), Vijay (supra), Gokaraju (supra) and Beopar Sahayak Pvt. Ltd. (supra).

All these decisions relied upon by the learned advocate for the respondents are rendered in different facts. De facto doctrine is applied in these rulings to the official acts of persons exercising duties of an officer, without actually being one in strict point of law. Said decisions are in respect of acts done by Collector or by Judge etc., their acts were held to be valid by applying de facto doctrine.

Such are not the facts of the present case. Here, admittedly, term of executive body was over and the care taker body was directed to hold elections. Ignoring the same, care taker body appointed committee for amendment in the constitution of the trust. Care taker body had no authority in law to do so. Hence, de facto doctrine cannot be made applicable to the facts of the present case.

29. The Deputy Charity Commissioner has properly appreciated the facts and record, while deciding the inquiry application No.2292/2013 and has rightly come to a conclusion that after passing of common order dated 17.10.2013, under section 41A, the trustees appearing on Schedule-I were directed to proceed with the election by appointing independent election officer. Three days after this order, reporting trustees conducted election, however, the election was neither by secret ballot nor by appointing election officer. On going through the evidence on record and by relying on Sandeep Meghe (supra) it was held that amendment in the constitution was done after the expiry of tenure of executive body which is not permissible in view of Sandeep Meghe (supra). It is also held that executive body appeared in Inquiry Application No. 13/2013 and 15/2013, but did not disclose about general body meeting convened on 20.10.2013. In view of the findings recorded by the Assistant Charity Commissioner in order dated 17.10.2013 it is clear that the reporting trustee Uday Narayan Patil and others have concealed the said fact and they have not complied with the order dated 17.10.2013. Record shows that even after expiry of tenure, the trustees continued to take policy decision and held meeting of executive body as well as annual general meeting. It is therefore rightly held that since trustees have not complied with the order of Assistant Charity Commissioner dated 17.10.2013 and did not proceed to hold meeting for conducting election, therefore, meeting dated 20.10.2013 would not be legal and valid. Consequently, resolutions passed in the meeting would not be legal and valid and would not have binding effect.

The Deputy Charity Commissioner is justified in recording the above findings by appreciating the facts, record and rival contentions in the proper perspective.

30. The Appellate Court has misdirected itself in applying de facto doctrine to the facts of the present case. The Appellate Court held that general body is the apex body and therefore even though tenure of managing committee was over, since amendments were proposed in annual general meeting, said decision is legal. The Appellate Court has misdirected itself in applying de facto doctrine in the present case, which is wholly inapplicable. Findings recorded by the Appellate Court that. "annual general meeting has approved the amendments and it is in the interest of all the members of the trust and the decision is not taken for the benefit of managing committee" are perverse and cannot be sustained in law and facts of the present case.

31. The Appellate Authority while passing the impugned order has directed to hold election of the trust, as no legal trustees are there. Considering the fact that the term of the executive body which was elected on 28.11.2015 is also over, this direction needs to be sustained in the peculiar facts of the present case. In the result, following order:

ORDER

(I) The writ petitions are allowed.

(II) The impugned judgment and order dated 26.11.2021 passed by Joint Charity Commissioner, Nashik in Appeal No. 20 of 2015 to the extent it sets aside judgment and order of Deputy Charity Commissioner in Inquiry No. 2292/2013 and allows and accepts Change Report Inquiry No. 2292/2013 is hereby quashed and set aside.

(III) The decision of Deputy Charity Commissioner is upheld.

(IV) Direction in clause 4 of the impugned order to the extent it directs holding of election of executive body of the trust is hereby maintained with the time stipulation of two months.

(V) It is accordingly directed that the elections of the trust shall be held within two months from the date of receipt of writ of this order.

(VI) Change Report Inquiry No. 38/2016 shall be decided within one month from the date of receipt of writ of this order.

Rule is made absolute in the above terms with no order as to costs.