

(2022) 09 BOM CK 0086
In the Bombay High Court
Case No : Writ Petition No.12732 Of 2021

Vishnu And Others

APPELLANT

Vs

Totaram Pundlik Jadhav And Others

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2022) 09 BOM CK 0086

Hon'ble Judges : Nitin B. Suryawanshi, J

Bench : Single Bench

Advocate : N. B. Khandare, D. J. Choudhary, S. S. Kulkarni, P. K. Nikam

Final Decision : Disposed Of

Judgement

Nitin B. Suryawanshi, J

1. This petition filed under Articles 226 and 227 of the Constitution of India, impugns the judgment and order dated 27/12/2019, passed by Assistant Charity Commissioner, Jalna, in Change Report Inquiry No.797/2010, to the extent of negating membership of petitioners while rejecting the change report, which is confirmed in the appeal filed before Joint Charity Commissioner, Aurangabad.

2. Respondent No.1/reporting trustee filed Change Report Inquiry No.797/2010 in pursuance of change occurred in view of notice dated 15/05/2010 and General Body Meeting dated 30/05/2010. Respondent Nos.2 to 12 in the present petition filed objection at Exhibit-5 to the said change report, contending that alleged change is not legal and valid as the same is in violation of rules and regulations of respondent No.13 trust.

3. The petitioners filed intervention application in the change report inquiry, which was allowed. Thereafter, petitioners filed objection at Exhibit-120 to the said change report, contending that the change report is illegal and in violation of provisions of Constitution and the same is based on false documents.

4. In support of the change, respondent No.1 examined himself at Exhibit-24 and was also cross-examined. Petitioners and respondent Nos. 2 to 12 have examined four witnesses at Exhibit Nos. 130, 74, 180 and 188, to prove membership of petitioners. Petitioners also relied upon documentary evidence at Exhibit Nos. 131 to 167. After hearing the parties, Change Report Inquiry No.797/2010 was rejected by the Assistant Charity Commissioner. After rejection of the change report, petitioners filed application and prayed for grant of stay to the impugned order to the extent of finding recorded on the issue of membership of petitioners. Since several change reports were pending with the authority, by order dated 27/12/2019, the Assistant Charity Commissioner, Jalna, granted stay to the said finding till appeal period is over.

5. Petitioners, thereafter, preferred Appeal No.08/2020, challenging judgment and order of Assistant Charity Commissioner in Change Report Inquiry No.797/2010, before Joint Charity Commissioner, Aurangabad. Petitioners also preferred interim application Exhibit-2 for stay to the execution and operation of impugned judgment and order of Assistant Charity Commissioner to the extent of point No.2 i.e. in respect of membership of the petitioners. The appellate authority, by order dated 03/11/2020, allowed the application and granted stay to the finding of membership of petitioners.

6. Respondent Nos. 2, 4, 5 to 7 and 10 to 13 appeared in the appeal and opposed the appeal as well as application for stay. After hearing the appeal on merits, Joint Charity Commissioner dismissed the same, by judgment and order dated 21/09/2021. After dismissal of appeal, petitioners filed application seeking stay to the order of appellate authority for 12 weeks. The said application is allowed and order dated 21/09/2021 was stayed for a period of 08 weeks. Petitioners are, therefore, before this Court challenging the finding of Assistant Charity Commissioner that petitioners are not valid members of the trust and order of Joint Charity Commissioner, dismissing the appeal.

7. Heard learned advocate for petitioners, learned advocate for respondent No.1 and learned advocate for respondent Nos.2, 4, 6, 7, 10, 11 and 13.

8. Learned advocate for petitioners has taken me through the record and submitted that meeting of Managing Committee was held on 29/03/2009 only for the issue of grant of membership. Pursuant to the said meeting, membership was granted to the petitioners and accordingly petitioners have complied with the requirements and became members of respondent No.13 trust. He relied on the observation of Assistant Charity Commissioner that there is no specific provision in Bylaws that without signature of the President, no applications for membership are to be accepted, no membership fee is to be issued and no communication in respect of acceptance of their membership is to be given. He assailed the finding of Assistant Charity Commissioner to the effect that though membership applications were addressed to the President, those were received by Vice President. He further relied on the finding that there is no resolution required to be passed in meeting held by General Body, for induction of a person as a life

member. He, therefore, submits that absence of signature of President on the applications of petitioners is of no consequence and on that ground petitioners cannot be dismembered. He further pointed out that, though Assistant Charity Commissioner observed that oral evidence of witnesses in respect of notice in dispute dated 15/03/2009 and resolution in dispute dated 29/03/2009 remained intact, however, the authority has exceeded their jurisdiction in inquiring about its' legality and validity. He submits that Assistant Charity Commissioner has erroneously appreciated the evidence on record and has recorded perverse finding that membership fee receipt and letter of communication of membership, so also, the concerned correspondence, were not issued in accordance with provisions of Rules. He submits that in view of the evidence led by petitioners, it is proved that they have become valid members of the trust. According to him, Assistant Charity Commissioner has wrongly interpreted the rules and passed the impugned order. By relying on Bylaw No.17, he submits that executive committee can grant membership. He submits that as per the Bylaws there is no power with the General Body to confer membership. He further assailed the judgment of appellate authority contending that appellate authority has also wrongly interpreted the Bylaws and has not properly appreciated documents placed on record and evidence led by the petitioners. Further submission is that respondent No.1 reporting trustee could not raise objection about membership of petitioners. He submits that both the impugned orders are liable to be quashed and set aside and all the pending change report inquiries are required to be decided together. In support of his submissions, he relied on Krishnarao Kanhaiya Naidu and Others Vs. Jeevraj Bhairavlal Agrawal and Others [2010(1) ALL.M.R. 95], order dated 22-07-2022, passed by the Hon'ble Apex Court in Civil Appeal No.4868/2022 (Anand Vs. Rahul Vedprakash Patil and Others).

9. Learned advocate for respondent Nos. 2, 4, 6, 7, 10, 11 and 13 supported the petitioners. He submits that office bearers of the trust were examined to prove membership of petitioners. He submits that the witnesses have supported membership of petitioners. According to him, respondent No.1 reporting trustee torn some pages of proceedings of the meeting.

10. Learned advocate for respondent No.1, on the other hand, supported the impugned orders. According to him, in Change Report Inquiry No.416/2020, list of 46 valid members of the trust is filed wherein names of the petitioners are not mentioned. According to him, petitioners have manipulated the record. Membership of petitioners is not approved. By pointing out order passed below Exhibit-1 in Inquiry No.797/2010, he submits that Exhibit Nos. 170 and 171 were de-exhibited by the Assistant Charity Commissioner. According to him, General Body has to make efforts to increase the members. He submits that Bylaw Nos.7, 8 and 11 are properly interpreted by both the authorities. According to him, there is no specific power to the Managing Committee to induct members. He, therefore, submits that there is no substance in the writ petition and the same is liable to be dismissed.

11. In the grounds raised by the petitioners, it is averred that in four change report inquiries bearing Inquiry Nos. 764/2010, 839/2010, 735/2015 and 736/2015, petitioners have participated in election since more than 10 years and some of them have worked as designated officers and office bearers. The petitioners have placed on record a chart (marked as 'X' for identification), stating that total seven change report inquiries are pending for decision before the Assistant Charity Commissioner, which is as follows:

Sr. No.

C.R. No

Reporting Trustee

Tenure

Status

1.

797/2010

Totaram Jadhav

2010-2015

Decided on 27/12/2019

2.

727/2015

Keshav Janjal

2015-2020

Pending

3.

839/2015

Keshav Janjal

Vacancy

Pending

4.

764/2010

Keshav Janjal

2010-2015

Pending

5.

735/2015

Nandkumar Girhe

2015-2020

Pending

6.

736/2015

Nandkumar Girhe

Vacancy (V.C. Died)

Pending

7.

242/2020

Nandkumar Girhe

2020-2025

Pending

12. Since all the above change reports are in respect of change in respondent No.13 trust and are filed by the parties claiming to be elected on the Managing Committee of the trust, it would have been appropriate on the part of Assistant Charity Commissioner to decide all the change reports together by recording evidence and hearing the parties.

13. Apart from the above, Assistant Charity Commissioner when came to a conclusion that there is no specific provision in Bylaws that without signature of President, no applications for membership are to be accepted, no membership fee is to be issued and no communication in respect of acceptance of their membership is to be given, he has erroneously proceeded to further observe that all the applications of petitioners are received by Vice President, when the President is supposed to receive them.

The Assistant Charity Commissioner has further observed that, "The evidence to that effect on record remained intact. So it is also evident that these applications were made to said trust and their membership receipts have been issued. The entries to that effect have been reflected in Audit Report. Now the question arose before this authority is that whether their membership is valid with strict adherence of provisions in Bylaws....

It is pertinent to note that, there is no resolution required to be passed in meeting held by General Body in respect of induction as a life member of the

said applicants.” Further erroneous finding is recorded that, though the oral evidence in respect of notice in dispute and resolution in dispute remained intact, this authority needs to inquire about its legality and validity.

14. By misinterpreting the evidence on record and rules/ Bylaws Nos. 11(1), 14 and 15, it is held that there is violation of the said rules. Assistant Charity Commissioner has misinterpreted admission of reporting trustee that all meetings presided over by him are unanimously conducted to which he has no objection.

15. It is clear from the record that impugned decisions are rendered by misinterpreting Bylaws and Rules and by wrongly appreciating the evidence on record. Assistant Charity Commissioner has failed to appreciate the documentary evidence placed on record.

16. Taking into consideration the peculiar facts of the present case and the fact that seven change reports in respect of respondent No.13 trust are pending, decision on which has bearing on the membership issue of petitioners, this Court is of the opinion that the impugned orders deserves to be quashed and set aside and the matter needs to be remanded back, with direction to record evidence in all the change reports simultaneously and decide the same within stipulated period. In this view of the matter, following order would meet the ends of justice.

ORDER

(I) Writ petition is allowed in terms of prayer clause ‘C’.

(II) Both the impugned orders are hereby quashed and set aside. Change Report Inquiry No.797/2010 is remanded back to the Assistant Charity Commissioner, Jalna, who shall record evidence in all the change reports mentioned in paragraph No.11, simultaneously and decide all the change reports together, in any case within a period of one year from the date of receipt of this order.

(II) Till the decision of change reports, there shall be stay to the findings recorded on the issue of membership of the petitioners.

With these directions, the writ petition is disposed of.