

Ramkrushna Alias Ramkisan Damodhar Shinde And Another Vs Joint Charity Commissioner II And Others

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Jan. 16, 2025

Acts Referred: Maharashtra Public Trust Act, 1950 " Section 22, 70, 70(A), 70A(2)(a), 70A(2)(b)

Hon'ble Judges: R. M. Joshi, J

Bench: Single Bench

Advocate: R. S. Kulkarni, D. A. Bide, B. S. Shinde, P. D. Bachate

Final Decision: Allowed

Judgement

R. M. Joshi, J.

1. By consent of both sides, heard finally at admission stage.

2. These Petitions take exception to the order passed by the Joint Charity Commissioner in Revision Application Nos. 28/2020 and 29/2020 dated

18.07.2024 setting aside the order passed by the Deputy Charity Commissioner dated 03.10.2020 passed in Change Report Nos. 887/2010, 888/2010,

889/2010, 128/2015, 203/2016 and 69/2020.

3. It is the case of the Petitioners that they are the founder trustees of Punyashlok Ahilyadevi Seva Sangh, Ahmednagar, a trust registered under the

Maharashtra Public Trust Act (for short "the Act"). Petitioners claim that the constitution of the trust reflects that the procedure for

membership of the trust is that the person has paid Rs. 2,000/- as membership and it is approved by 2/3 majority. It is contended by the Petitioners that

only on compliance of these two conditions, a person can be treated as a valid member of the trust and would be eligible to become a managing

trustee. It is further case of the Petitioners that the contesting Respondents along with other members claim themselves to be the members of the trust

and handling affairs of the trust for last 30 years. These persons filed change reports asserting their rights as Managing Trustees. The Deputy Charity

Commissioner, after conducting enquiry under Section 22 of the Act, rejected the change reports with observation that the persons elected as

managing trustees were not life members of the trust to become managing trustees thereof and those who become members are enrolled after general

body meeting. This order passed by the Deputy Charity Commissioner came to be assailed before the Joint Charity Commissioner in Revision under

Section 70(A) of the Act. The Joint Charity Commissioner allowed the revisions and remitted the matter for afresh enquiry.

4. Learned counsel for the Petitioners at the outset raised objection with regard to the maintainability of the revision on the ground that the provisions

of Section 70A is not an alternate remedy but is an independent remedy which cannot be permitted to be exercised after expiry of period of limitation

to file appeal against the order impugned under Section 70 of the Act, just to overcome lapsed period of limitation for filing an appeal. It is her

submission that the powers as an appellate authority under Section 70 of the Act and revision¹, authority², under³, Section⁴, 70A⁵, of⁶, the⁷,

act⁸, are⁹, different. However, the Joint Charity Commissioner here in this case has re-appreciated the evidence on record and recorded contrary

findings to the one recorded by the Deputy Charity Commissioner which is wholly impermissible in law. She further argued that Revisional Authority

ought to have recorded findings on issue of filing of revision within reasonable time and only thereafter would have proceeded to decide¹⁰, it. To¹¹,

support¹², her¹³, submission,¹⁴ she¹⁵, placed¹⁶, reliance¹⁷, on judgment of coordinate bench of this Court in Writ Petition No. 9456/2023 (Mr.

Biswajeet Dibyalochan Mohanty vs. Nirranjan Duryodhan Mohanty and others).

5. This submission is opposed by learned counsel for the contesting Respondents by referring to the relevant provisions. According to him, there is no

embargo created under the provisions of the Act for filing revision even after expiry of period of limitation for filing appeal.

6. At the outset, this Court wishes to deal with the said issue. Section 70 of the Act provides for an appeal against order of Deputy or Assistant

Charity Commissioner passed in a proceeding under Section 22 of the Act. Undisputedly, the proceedings before the Deputy Charity Commissioner

were of change report under Section 22 of the Act. Thus, the orders passed by the Deputy Charity Commissioner is appealable before the Charity

Commissioner. Sub-section 3 empowers the Charity Commissioner for the reasons to be recorded in writing to reverse, modify or confirm the findings

or order appealed against the order to direct the Deputy or Assistant Charity Commissioner to make further enquiry or to take additional evidence as

he may think fit.

7. As against this, Section 70A of the act provides a power of revision to the Charity Commissioner which can be exercised suo motu or even by an

application. This power is for the purpose of seeking record and proceeding of the case before Deputy or Assistant Charity Commissioner for the

purpose of satisfying himself as to the correctness of the findings or order recorded or passed by these authorities. No doubt, in appropriate case, such

order can be reversed, modified, confirmed etc.

8. A bare perusal of these provisions clearly indicate that the powers under Section 70 of the Act is not restricted to satisfy himself as to the

correctness of any finding or order but independently there can be re-appreciation of evidence and a fresh finding can be recorded in the capacity of

appellate authority. such powers are lacked in exercise of jurisdiction under Section 70A. Revisional authority's jurisdiction is restricted to satisfy

itself as to the correctness of any finding or order.

9. Now first question as to whether it is open for the party to file an application under Section 70 A before the Charity Commissioner when the period

of limitation is over and without seeking any condonation of delay for filing appeal such proceeding can be permitted to be filed and entertained.

Secondly, whether in the instant case the Joint Charity Commissioner has exercised the powers of revisional authority or ventured upon to practically

invoked Section 70 without there being an appeal filed against the impugned order by the Deputy Charity Commissioner.

10. Dealing with issue of maintainability of Revision, general principle would be that revision would not be tenable where appeal has been provided

statutorily against any order. However, in case of the Act, an amendment to Section 70 A has been introduced by Amendment Act 59 of 1954.

Thereafter by introduction of Amendment Act 20 of 1971, words "either suo moto or on application" came to be added in the section. Section

70A is reproduced for ready reference as under :-

70A Charity Commissioner to call for and examine records and proceeding before Deputy or Assistant Charity Commissioner

(1) The Charity Commissioner may in any of the cases mentioned in Section 70, [either suo motu or on application] call for and examine the record and proceedings of

such case before any Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to the correctness of any finding or order recorded or

passed by the Deputy or Assistant Charity Commissioner and may either annul, reverse, modify or confirm the said finding or other or may direct the Deputy or

Assistant Charity Commissioner to make further inquiry or take such additional evidence as he may think necessary or he may himself take such additional evidence :

Provided that the Charity Commissioner shall not record or pass any orders without giving the party affected thereby an opportunity of being heard.

(2) Nothing in sub-section (1) shall entitle the Charity Commissioner to call for and examine the record of any case -

(a) during the period in which an appeal under Section 70 can lie against any finding recorded by the Assistant or Deputy Charity Commissioner in such case, or

(b) in which an order has been passed in an appeal made under section 70.

11. Perusal of this provision indicates that in respect of cases mentioned in Section 70, revision would be maintainable. The only embargo is created by

sub-section (2)(a) and (b). Thus, during period of limitation for an appeal or when order has been passed in an appeal, for Charity Commissioner to

call for and examine record of such case. Consequently, only in these two situations Revision would not be tenable.

12. In considered view of this Court, having regard to the specific provision of maintainability of an appeal or revision against order passed in the cases

covered by Section 70, save and except sub Section (2)(a) & (b) of Section 70A, no other restriction can be imposed on tenability of a revision. Doing

so, would amount to re-writing of the provisions of the act, which is impermissible in law. It is therefore held that irrespective of fact that appeal period

is over for taking exception to the cases mentioned in Section 70, a revision could be preferred and entertained, provided it is filed within a reasonable

period. It is also mandatory for the revisional authority to record findings about its satisfaction of the same being filed in reasonable time, before

proceeding to decide the revision on merit.

13. In the instant case, revision under Section 70A came to be filed on 23.10.2020 against order dated 13.03.2020 passed by Deputy Charity

Commissioner under Section 22 of the Act. Thus, the revision is filed after 7 months of the passing of impugned order. The revisional authority

therefore ought to have recorded findings whether revision is filed within reasonable time and only then could have proceeded to pass the order on

merit of revision. The order passed by revisional authority therefore deserves interference on this ground alone.

14. Even otherwise on merits, the Joint Charity Commissioner has practically treated the revision as an appeal under Section 70. While exercising

revisional powers, his jurisdiction was limited to see whether there is non-exercise or excessive exercise of jurisdiction. The procedural aspects could

have been taken into consideration. However, it was not open to treat it as an appeal and reconsider the case afresh on merits. Though it is stated in

the order that applicants therein were not given full opportunity to present their case and address concerns raised about membership and previous

change reports, these observations are contrary to the evidence on record. In absence of any material to support such observation, it can only be said

that only with a view to support the order of remand, such observations are made.

15. The most shocking part of the judgment impugned is applicability of *res judicata* doctrine to the trustees who admittedly are not eligible to be

managing trustees. The Joint Charity Commissioner has assumed that with continuous handling of the affairs of the trust for a long period a right has

been created in favour of the contesting Respondents to become/continue as trustee and therefore, it is observed that the claim of continuous

management by certain individuals even if not properly documented raises a question of defacto trusteeship. Though it is also held that the election

process is partly flawed in terms of compliance of the constitution, what was directed to the Deputy Charity Commissioner is to consider the

trust's long term functioning and the individuals having been managing the trust and furthering its objects.

16. Learned counsel for Respondents has made a feeble attempt to justify this principle sought to be applied by the Joint Charity Commissioner to the

trust by placing reliance on judgment of coordinate bench of this Court in case of Hislop Education Society vs. Presiding Officer & others (Writ

Petition No. 2174/1996).

17. Defacto principle applies to the acts of a person who is said to have assumed the rights to do such acts. Hon'ble Supreme Court in case of

Pushpadevi M. Jatai vs. M.L. Wadhawan, (1987) 3 SCC 367, has observed that :-

"21. Where, an office exists, under the law, it matters not how the appointment of the incumbent is made, so far as validity of his acts are

concerned. It is enough that he is clothed with the insignia of the office, and exercises its powers and functions. The official acts of such persons are recognised as

valid under the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. In Gokaraju Rangaraju case, Chinnappa

Reddy, J. explained that this doctrine was engrafted as a matter of policy and necessity to protect the interest of the public. He quoted the following passage from

the judgment of Sir Ashutosh Mukherjee, J. in Pulin Behari Das. V. King Emperor at p. 574:

The substance of the matter is that the de facto doctrine was introduced into the law as a matter of policy and necessary to protect the interest of public and the

individual where those interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is

necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. The learned Judge also relied upon the following

passage from the judgment of P. Govindan Nair, J. in P.S. Menon v. State of Kerala at p. 170:

This doctrine as a matter of policy and necessity to protect the interest of the public and individuals involved in the official acts of persons exercising the duty of

an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances,

officers, in fact, whose acts, public policy requires should be considered valid."

(emphasis supplied)

18. It is thus clear from above observation that defacto doctrine was introduced into the law as a matter of policy and necessity to protect the interest

of public and the individuals whose interests were involved in the official acts of persons exercising duties of an office without being lawful officers.

The defacto principle at the most may apply to the acts done by the contesting Respondents qua third party or public at large. However, by no stretch

of imagination the same can be made applicable to legitimise illegality done by any person by holding post without right in particular to the trustees who

did not even acquire the said position as per the constitution of the trust. Thus, this Court finds serious error being committed by the Joint Charity

Commissioner to seek application of the defacto doctrine to the present case. Needless to say that the person who without any right has held the post

even for any long period of time, no right can be said to have been created in his favour to validate the said position. A direction issued to the Deputy

Charity Commissioner to consider the said principle is a serious error committed by the Joint Charity Commissioner.

19. Another angle of this issue is that commonly a grievance is made by people that the trusts are sought to be taken over by unscrupulous elements

by using force, coercion or illegal means. In case, such principle as propagated by Joint Charity Commissioner is allowed to be made applicable to the

trust will lead to give license to the dishonest/deceitful persons to take over the trust illegally and to retain its control under the defacto doctrine. This is

fear expressed and in no manner this Court intends any of such attributions to the contesting Respondents herein.

20. The Deputy Charity Commissioner has recorded finding on the basis of evidence on record indicating that the contesting Respondents were not

eligible to contest the election for want of payment of membership fees as a life member and enrollment after general body meeting. This finding has

not been found to be perverse even by the revisional authority. As such, there was no reason or justification to cause interference in the impugned

order passed by the Deputy Charity Commissioner. Even otherwise, the direction issued by the Joint Charity Commissioner while passing order of

remand, directing, the, Deputy, Charity, Commissioner, to, consider defacto principle cannot sustain in the eyes of law.

21. As a result of above discussion, the impugned orders are set aside. Petitions stand allowed in above terms.