

अर्ज क्रमांक 6752 कानून/विषय 23 अन्वये
कार्यावाही करणारे वकील Adv. Ganesh Chavan
दिनांक 9/7/13
15/7/13
1
रकचण क्रमांक 60/

Exh-11

CR No.ACC/Hosp/3188/11

**BEFORE THE DEPUTY CHARITY COMMISSIONER
GREATER MUMBAI REGION, MUMBAI.**

Change report No.ACC/Hosp/ 3188/2011
(Under Section 22 of the Maharashtra Public Trusts
Act,1950).



In the matter of -
The Indian Association of
Physiotherapists
P.T.R. No. F-1335(M)

Dr. Ali Irani

... Reporting Trustee

-: Versus :-

Dr. Sanjiv Kumar Jha

... Opponent

- Appearance :1.** Advocate Inamdar for the reporting Trustee.
2. Advocate Sunil Nair, Advocate Ganesh Chavan and advocate Wadhwa for the Opponent.

J U D G M E N T
(Delivered on 04.07.2013)



This is a change report filed by the reporting trustee regarding change occurred in view of election for the tenure 2008-2010 of the Trust viz. "The Indian Association of Physiotherapists" (hereinafter referred to as the "Trust").



02. Dr.Ali Irani is the reporting trustee in the present matter and according to him the process of election for the Central Executive Committee for the period 2008-2010 was started in the year 2007. After election procedure, results were declared in March, 2008. As the procedure was correctly followed he has prayed to allow the change report.

03. Per contra, opponent submitted that the reporting trustee Dr.Ali Irani has no power and authority to submit present change report after losing the election which was conducted by the Association. It is denied that the tenure of Central Executive Committee is of two years. According to the opponent the tenure of the Central Executive Committee is three years than that of two years as stated by the reporting trustee. The reporting trustee has enjoyed tenure of three years as a President for the term 2008-2011 and thus he is now mis-representing the facts. As the tenure was for the period 2008-2011 and the reporting trustee has no locus standi to file change report for the period 2008-2011. Opponent has prayed to reject the change report

4. Looking to the rival contentions of the parties the following points arise for my determination and I have recorded my findings thereon for the reasons given in later part of Judgment.

Sr. No.	<u>Points</u>	<u>Findings</u>
01.	Whether the change report is legal and acceptable?	. . . In Negative.
02.	What order?	. . . As per final order

REASONS

05. **As to point No. 1:** To prove its change report the reporting trustee has adduced common evidence in change report No.2092/2011. More-so, he has relied upon only one document which is separately marked at Ex.23 in the news letter of the Trust for August 2008 (Ex.16) filed in Change report No.2587/2010. This much is the evidence relied by the reporting trustee and nothing beyond this either orally or documentary is produced and proved during the proceeding.



06. Now, let us go through the affidavit of common evidence filed in change report No.2092/2011. Only para

No.4 of the evidence of the reporting trustee deals with the election for the period 2008-2010. Para 4 runs as under:

Para 4 I say that process of election to the CEC for the period 2008-2010 was started in 2007 and the results thereof were declared in March, 2008. I say that the election report for the said election is produced by the opponent and the same has been exhibited.


Thus, it can be gathered from the evidence of the reporting trustee that he has least bothered to explain and prove the election procedure, its commencement and final report in original filed by the then election officer. It was bounden duty of the reporting trustee to explain and prove every minute detail stating how the election procedure was commenced, what procedure was adopted and how the result came out. No doubt that election procedure can be commenced by issuing of notice, calling general body meeting and declaration of election officer therein. Such, election officer thereafter took charge of the required documents from the Presiding Central Executive Committee to proceed with the election procedure. Election officer have then to fix the dead lines of every stage of the election including sending





nomination papers, collecting them, displaying names of candidates, providing voters list, issuance of ballot papers, receipt of ballot papers, counting of votes, dealing with objections, if any, and thereafter declaring results. This entire chronology is required to be pleaded and proved by the reporting trustee to declare elections to be held as legal and valid.


07. Admittedly in the present matter, neither evidence of the election officer is recorded nor even original election report is produced and proved. In absence of evidence of election officer or his election report it is not at all possible to come to a conclusion or to see what procedure was adopted by the election officer and whether or not it was as per the constitution of the Trust. No doubt, that Exhibit 23 specially marked in the change report ACC/Hosp/2587/2010 goes to show that election officer declared final results for the post of President, Vice President, General Secretary, Treasurer and Executive Members. But that itself is not sufficient to prove that election procedure was rightly followed. On the contrary, minute perusal of the report specifically shows that only






statistics regarding total number of envelopes received, invalid envelopes, invalid votes and valid votes is given by the then Election Officer. What is missing is exact number of eligible voters and number of ballot papers posted for valid conduction of election. As the election report is silent regarding valid number of voters and total ballot papers issued, the legality of the election comes under scanner and this issue goes unanswered for want of evidence of election officer and original report filed by him. No doubt that the only person who can throw light on the point discussed above is the election officer only and reporting trustee had not taken any pain to bring him in the witness box for explaining the things.

08. Admittedly, there is no *lis* between the parties in the matter of Trust. Inquiry contemplated in the section and being guardian of the charities, it is the duty of this authority to confirm that valid procedure is followed while electing the trustees. As already discussed, the reporting trustee has miserably failed to prove the necessary requirement with its minute detail to show that election procedure was carried out



as per the rules and regulations of the Trust. This itself goes to the root of the case to invalidate the change forwarded to this Authority.

09. However, this fact cannot be over looked that present committee whose names are shown in Exh.1 as new trustees for period 2008-2010, have looked the administration of Trust and also enjoyed further period of one year till 2011. As such, they are required to be taken on record as de-facto-trustees because they have dealt with trust funds and property. Since, the trust funds and property are involved, being guardian of the charities, it is the duty of this authority to fix the liability, if any, on the persons who claims to be in the management for the period 2008-2011. Admittedly, it is the case of the reporting trustee that he alongwith other nine trustees were in the management of the Trust. This fact is not disputed even by the opponent. In such circumstances their names are required to be taken on Schedule-I as de-facto trustees. Otherwise, vacuum would be created in the management and administration of the Trust for the period 2008-2011. So also, in absence of any managing committee, liabilities if any could




not be fixed. Thus, it is equally necessary to take the name of present managing committee members on record only as a de-facto trustees purely for the sake of liabilities to be fixed, if any. In the result, I answer point no.1 in the negative and pass the following order.

ORDER

The change report stands rejected.

02. Names of the new trustees shown in schedule-III be taken on schedule-I strictly as de-facto trustees for the period 2008-2011.
03. No order as to costs.
04. Pronounce in open court.

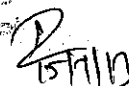
Place:Mumbai
Dated:04/07/13


(P. R. Ashturkar)
Deputy Charity Commissioner
Greater Mumbai Region, Mumbai.



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15/7/13
Public Information Registration Office
Greater Mumbai Region, Mumbai


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