

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

**Change report No.DY.CC/ 617/2008**

(Under Section 22 of the Maharashtra Public Trusts Act,1950).

अर्ज क्रमांक 6399	दिनांक 22/11/13
अर्जदार - Adv. Amol	14/11/13
अर्जदाराचे पत्ता -	
अर्जाचे विषय -	
अर्जाचे निष्पत्ती -	
अर्जाची प्रत - 110/-	दिनांक 12/7/13

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

Dr. B. S. Desikamani

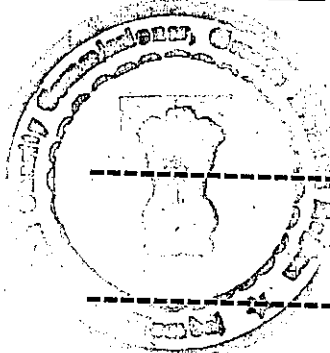
... Reporting Trustee

- : Versus : -

Dr. Sanjiv Kumar Jha

... Opponent

- Appearance** :
1. Advocate Inamdar for the applicant.
  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 2006-2008 of the Trust viz. "The Indian Association of Physiotherapists" (hereinafter referred to as the "Trust").



**02.** Reporting trustee Dr. B. S. Desikamani submitted that the Trust come into an existence in the year 1955-1956, as it was registered under the Societies Registration Act, 1860. Thereafter, in the year 1965 or thereabout it was registered as a public Trust with P.T.R.No.F-1335(M).


**03.** It is further submitted that day to day management and administration of the Trust is vested in a body called Central Executive Committee (hereinafter referred to as CEC). The elections of the CEC are required to be held by postal ballot biennially. The elections are always conducted as per the Rules and Regulations governing the Trust. To start with election for the tenure 2006-2008 annual general meeting of the Trust was held on 21.01.2005 at Hyderabad. In the said meeting, Dr. A. K. Bhatnagar was appointed as an Election Officer. After the appointment of Dr. A. K. Bhatnagar as an Election Officer he resigned from his duties /post by letter dated 28.06.2006. Due to it, in virtue of notice dated 08.06.2006 special general body meeting was called on 25.06.2006 by the then President Dr.S.Prabhu for the appointment of new Election Officer. In the said meeting, Dr.





Shaila Sabnis was appointed as an Election Officer. After the ballot papers were received they were counted on 17.09.2006 and Election Officer accordingly submitted her report on the same day. Thereafter, annual general body meeting of the Trust was held on 02.02.2007 and in the said meeting election results for the period 2006-2008 were declared. As the CEC was elected by following rules and regulations laid down in the Trust, the reporting trustee has lastly prayed to allow the change report filed by him.

**04.** The opponent by filing his written statement below Ex.17 strongly opposed the change report. According to the opponent election procedure was not followed as per rules and regulations of the Trust. The notice by which alleged special general body meeting was called was incorrect, as it was without signature of the President. So also, the appointment of new Election Officer in special general body meeting held at Mumbai was illegal. The election conducted by Dr. Shaila Sabnis and report submitted by her is doubtful due to lot of discrepancies. According to the opponent ballot papers were not rightly sent and its rejection is also incorrect.



Less number of ballot papers were sent and, thus, election is illegal. Even Election Tribunal did not play fair role while dealing with the complaints. For the reasons above, the opponent has lastly prayed to reject the change report with compensatory costs.

**05.** 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.

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

### **REASONS**

**06. As to Point No. 1:** In support of its contention the reporting trustee has filed his affidavit below Ex.15. On going through the affidavit it can be seen that he has relied upon so many documents filed by the opponent along with his affidavit below Ex. 11. Needless to say as the reporting trustee has relied upon documents filed by the opponent,



those documents are exhibited. Thus, now contents their in are now binding on both the parties.


**07.** It is pertinent to note here that, at the time of commencement of election for the tenure 2006-2008, amended rules and regulations of the Trust were in force. These amendments were allowed by the order dated 14.06.2006 of the then Deputy Charity Commissioner. Said order is on record below Ex.37. As per amended rules and regulations, Clause VII deals with election procedure, Clause XVI deals with the manner of issuance of notice for the respective meetings and Clause A of XVII deals with general body membership and meeting. Thereafter Clause B of XVII specifically requires that quorum of the general body meeting shall be at least of  $1/5^{\text{th}}$  of the total members of the Trust shall present in person to form valid quorum. In absence of such valid quorum at the fixed time, the meeting shall stand adjourned and be held after half an hour even if no quorum is present.

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**08.** Admittedly, to start with an election procedure it is necessary that the general body meeting shall be held with valid quorum and in the said meeting an election officer shall be appointed. The election officer thus appointed shall appoint two members of the Trust to assist him in advisory capacity in holding election. Similarly, it is the duty of the Central Executive Committee to prepare the programme of the election of a New Central Executive Council.


**09.** Thus, these are the facts which should come on record very specifically in the evidence of the reporting trustee. Now let us deal with the evidence of the reporting trustee and see whether the necessary requirements discussed above were followed before starting election procedure for the period 2006-2008. In the evidence reporting trustee in para 4 bluntly stated that annual general meeting of the Trust was held at Hyderabad on 21.01.2005 and Dr.A.K.Bhatnagar was appointed as an election officer for the elections to be held for the period 2006-2008. Very surprisingly not a single word is uttered by the witness as to when and by whom notices were issued to call for such annual general meeting. The





way/manner of service of notice to the members is also not disclosed. As already discussed, 30 days clear notice shall be given for ordinary meeting and 15 clear days notice for special meeting of the CEC. So also, there is no whisper as to the quorum of the meeting in the evidence.

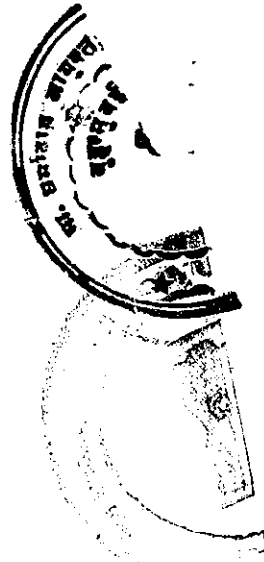
**10.** As the affidavit of the reporting trustee is silent regarding date of issuance of notice calling general body meeting, author of the notice under whose signature it was issued, its mode of service and quorum present for the said meeting, his version regarding holding annual general meeting on 21.01.2005 holds no base. In absence of such evidence regarding issuance of notice and its service it can not be held that the alleged meeting which took place on 21.01.2005 was itself a legal and valid meeting.




**11.** Even in the cross examination at one point the reporting trustee deposed that minutes of annual general body meeting dated 21.01.2005 were circulated to all the members through News Letter issued by the Secretary of the Trust. On this note cross examination was deferred giving fair chance to the

reporting trustee to furnish copy of said News Letter. Despite, this opportunity the reporting trustee on next date admitted in cross examination that he cannot assign any reason regarding failure on his part to submit minutes of the election on the basis of which change report is filed. This admission again goes to the root of the case and shake credibility of the exact procedure required to hold elections.


**12.** Moving further the reporting trustee also admitted that the copy of news letter Ex.2 filed by him in support of present change report is an incomplete document. He also admitted that he has not filed copy of rules and regulations of the Trust alongwith change report. Thus, the admissions of the reporting trustee show that mandatory requirements to commence with an election procedure or to prove a change report on that basis are not fulfilled. Moreover, as already discussed the reporting trustee has failed to prove the very mandatory notice required to commence the election proceedings and its detail minutes, his evidence fell short to prove his version.





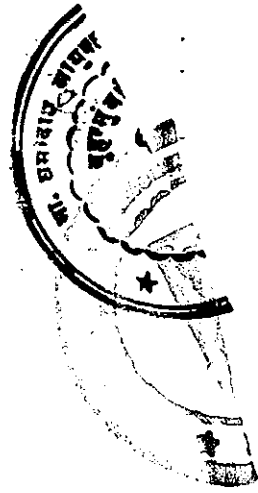



**13.** Nonetheless, the reporting trustee has utterly failed to examine the then election officer in the present matter. Had it been the case that the election officer would have stepped in the witness box and proved further contents, there would have been certain corroborative evidence to support the contentions of the reporting trustee. In absence of evidence of the election officer discrepancies like number of valid member and number of ballot papers circulated remains unanswered.




**14.** Be that as it may, now let us see what transpires from the report of the election officer which was published in the news letter December 2006(Ex.43). At page 11 of the said news letter statistics regarding total ballot posted, ballot received etc. is published as per the report of the election officer. In the said report, election officer submitted that number of total ballot posted were 12458. In this regard, it is necessary to go through minutes of annual general body meeting dt. 21.01.2005 (Ex.14A) which allegedly started election proceeding in question. In the said minutes in agenda 5 – Treasurer's report Dr. Subodh Desai specifically

submits that total registered members are 12558, Associate members 125, student members 686. Upto 13<sup>th</sup> January, 2005, 1310 new members registered, 797 Associate members registered and 1 student member registered. It means on the date the meeting held on 21.01.2005 the total number of members were 18477. In that case, either this much ballot papers should have been despatched for the election of the candidates for Central Executive Committee or explanation to that effect shall come on record. Very surprisingly, in the report of the election officer number of ballot papers despatched are 12458 as against 18447 existing members or say 12558 total registered members. This again shows that there is great discrepancy in the number of existing members and ballot papers issued by the election officer. As already discussed in this scenario it was only the election officer who would have thrown light on the difference of valid members and number of ballot papers issued. However, in absence of her evidence this discrepancy goes to invalidating election procedure carried out by her in the capacity of election officer.





**15.** From the discussion in the foregoing paras, now it is crystal clear that the notice calling annual general meeting which allegedly initiated election procedure for the tenure 2006-2008 itself is not proved. More so, there is great discrepancy in the number of valid members (18447) / total registered members (12558) and ballot papers posted (12458) for the election, which certainly creates doubt regarding the election. Thus, the commencement of election and the procedure followed do not inspire any confidence to declare election procedure as legal and valid.



**16.** No doubt, in view of the admission of the opponent in his cross examination it is crystal clear that he has taken the charge for the next period from the present committee which is shown in Schedule-III(Exh.1). However, as the election procedure, its commencement and conduction as stated by the reporting trustee itself is proved to be invalid, this change report deserves to be declared as invalid and stands rejected. But, this fact cannot be over looked that present committee whose names are shown in Exh.1 as new trustees for period 2006-2008 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 2006-2008. 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 2006-2008. So also, in absence of any managing committee, liabilities if any, could not be fixed so 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.

**17.** In view of aforesaid discussion, I hold that no proper procedure was adopted while conducting election of the present Managing Committee for the tenure 2006-2008. In

