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 Adv. Anmol Inamdar
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 रकम रुपये 60/- दि. 11/7/13

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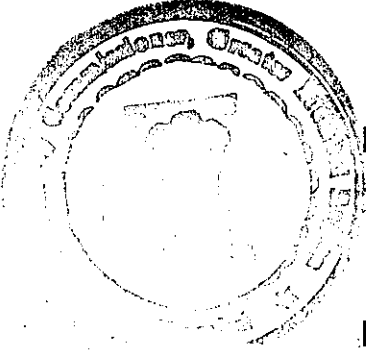
C.R.No.Acc/Hosp/1738/11

Eph-25

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

Change report No.ACC/Hosp/1738/11
(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.Sanjiv Kumar Jha

..Reporting Trustee

:-Versus:-

Dr.Ali Irani

..Opponent.

Appearance : 1) Advocate Sunil Nair, Advocate Ganesh Chavan and advocate Wadhwa for the Reporting trustee.

2) Advocate Inamdar for the Opponent



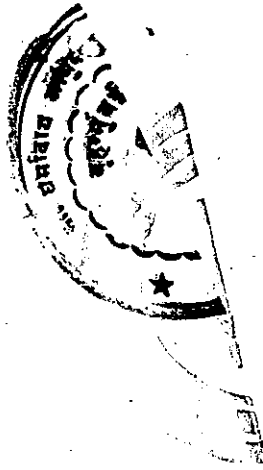
J U D G M E N T
(Delivered on 04.07.2013)


This is a change report filed by the reporting trustee regarding change occurred in view of election for the tenure 2011-2014 of the Trust viz. "The Indian Association of Physiotherapists" (hereinafter referred to as the 'Trust').

2. The case of the reporting trustee in nut shell is as follows:


As the tenure of previous Central Executive Committee for the period 2008-2011 ended in the year 2011 General Body Meeting was called on 22.01.2010 at Mangalore. In that meeting Dr.Jagdeesan was appointed as an election officer for the term 2011-2014. Accordingly, he took over the charge and following procedure laid down in Rules and Regulations (amended up to 2008) he completed the election procedure. After completion of elections he has handed over his election report to the Election Tribunal and Tribunal has accepted the same. In the said election the present Committee including reporting trustee were elected and they have formed the Central Executive Committee accordingly. As the present body is elected as per the election carried out in consonance with the Rules and Regulations of the Trust, the reporting trustee has prayed to allow the same.

3. Per contra, opponent has strongly opposed contentions of the reporting trustee by filing his written statement below Ex.5. It is stated that day to day management and





administration of the Trust is vested in a body called Central Executive Committee. According to the rules and regulations governing the Trust, the tenure of the Central Executive Committee is two years only. The elections thus required to be held by postal ballot biennially. The previous elections of the Central Executive Committee were held for the period 2008-2010 and it was bounden duty of the Secretary to announce and carry out further elections soon after the expiry of the Central Executive Committee in the year 2010. As the fresh election of Central Executive Committee did not take place in the year 2010 as per the provisions of the rules and regulations in force, present elections for the tenure 2011-2014 are invalid. Thereafter, enormous allegations are made regarding existing members, ballot papers issued, ballot papers received, entire conduction of election and so many irregularities. For the reasons above, the 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

5. Needless to discuss the merit of the case what is more important is to state here is the development and consequences of previous change reports of the Trust. The change report for amendment which would have empowered the Central Executive committee to conduct elections for the period of three years is already rejected. Thus, when it was not legal and valid to carry out elections for the tenure of three years (i.e. 2011-2014) very base of the notice is erroneous. Admittedly, unless there is strong foundation there cannot be any structure. As the basic foundation i.e. notices of the election for tenure of three years of the Central Executive Committee is erroneous, the result and fate of the



same will automatically collapse. As the amendments in the rules and regulations proposed in the year 2008 are rejected, nothing based on it could be termed as legal and valid in the eye of law. As such, the starting point of the election is not correct and it can neither be go into or decided on merit. For the reasons above, I hold that the elections thus carried out are invalid and not legal in the eye of law.

6. But, this fact cannot be over looked that present committee whose names are shown in Exh.1 as trustees for period 2011-2014 have dealt with the Trust fund, properties and day to day administration. This was the reason as to why an application was also filed to direct present trustees to maintain status-quo while operating the bank accounts. Be that as it may, what is required to be considered here is the fact that present committee has dealt with day to day administrative work. Therefore, their names are required to be taken on record as de-facto-trustees. 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 2011-2014. Admittedly, it is the case of the



reporting trustee that he alongwith other nine trustees were in the management of the Trust. 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 2011-2014. 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 *de-facto* trustees purely for the sake of liabilities to be fixed, if any.

6. In view of aforesaid discussion, I hold that no proper procedure was adopted while conducting election of the present Managing Committee for the tenure 2011-2014. So also, all the change reports pertaining to the trustees of the Trust from the year 2006 onwards are already rejected. The change report for the year 2004-2006 is already allowed and never challenged by any one. As such, it is the only committee which is legally recognised and shall require to be considered for the conduction of new election of the Trust. In



the result, I answer point no.1 in the negative and pass the following order.

ORDER

Change report stands rejected.

02) Names of the new trustees for the period shown in schedule III be taken on schedule-I strictly as de-facto trustees from 27.03.2011 till the date of this order.

03) The last Governing Body of Indian Association of Physiotherapists, P.T.R. No. F -1335(M) elected for the period 2004-2006 (change report No.Dy.CC 613/06 allowed on 03.03.2006) is directed to initiate the election process for the tenure of next two years from the date of this order.

04) The election process shall be initiated as per Memorandum of Association and Rules and Regulations of Indian Association of Physiotherapists (change report No.1883/06 allowed on 14.6.2006) under the supervision /observation of Inspectors Shri Gawli and Shri Dhawale of this office within 60 days by the aforesaid committee from the date of this order.

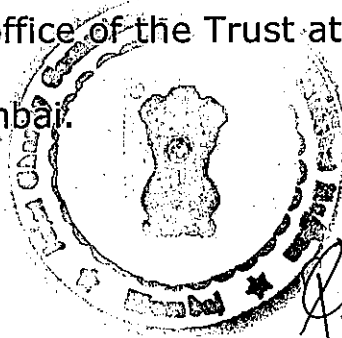
05) In case of failure to commence the election process for the appointment / selection of the Governing Body within 60

days as ordered, the Inspectors (Shri Gawli and Shri Dhawale) shall initiate the election process thereafter within 30 days as per the Memorandum of Association and Rules and Regulations of the I.A.P and submit report accordingly.

06) In case when Inspectors of this office will commence with the election process, the Trust would have to incur all the expenses of the election procedure.

07) The election process as per reference in above clause 2 to 4 be held at registered office of the Trust at Mumbai or any other suitable place at Mumbai.

08) No order as to costs.



P.R. Ashturkar
04/07/13

Mumbai

Dated:04.07.2013

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



Certified to be a True Copy

Arun
12/7/13
Supervisor (A)
Public Trusts Registration Office
Greater Mumbai Region, Mumbai

P.R. Ashturkar
12/7/13