Exh. 25

BEFORE THE DEPUTY CHARITY COMMISSIONER
GREATER MUMBAI REGION, MUMBAI.

Change report No.ACC/Hosp/2587/2010
(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 change report under Section 22 of the Bombay Public Trusts Act, 1950 (Now Maharashtra Public Trusts Act, 1950) for carrying out certain amendments in the bye laws of

the Indian Association of the Physiotherapists (hereinafter referred to as the Trust).

02. The case of the reporting trustee in brief is as follows. According to the reporting trustee one Dr.B.S.Desikamani issued notice dated 27.10.2007 for holding special general body meeting on 09.01.2008 at Balawala Dehradun for approval of changes in the Constitution, Memorandum of Association and Rules and Regulations of the Indian Association for Physiotherapists (hereinafter the Trust). Pursuant to the notice dated 27.10.2007 meeting was held on 09.01.2008 and the bye laws of the Trust were amended. For the reasons above he has prayed to allow the present change report.

03. Per contra, the opponent has opposed the change report on various grounds. It is submitted that lawful requirements to carry out amendment in the object and name were not followed. The mandatory meetings with an interval of one month were not taken. The proposed amendments were not circulated amongst the members and no special general body

meeting to approve the same was lawfully conducted. 3/5th members did not vote either in person or proxy to accept the amendments and, therefore, the amendments were never approved by the members. For the reasons above, 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.	Points	Findings
1.	Whether the change report is legal and acceptable?	In the negative
2.	What order?	As per final order

REASONS

05. Before discussing the proposed change/amendment into its merit, it is necessary to see whether in the prescribed proforma it can be allowed or not.

06. Admittedly, the Trust in hand came into existence previously under Societies Registration Act, 1860, and, thereafter it was registered as a Public Trust under the Bombay Public Trusts Act, 1950 (now the Maharashtra Public Trusts Act,1950). In this context, we will have to read specific sections in the Societies Registration Act, which deals with empowering the society to alter, extend or abridge their purpose as sell as change the name. Section 12 deals with, "Society enable to alter, extend or abridge their purpose and Section 12A deals with "registration of change of name". Similarly, Section 22 of the Maharashtra Public Trusts Act, 1950 also deals with simillar changes in Trust name and objects which is generally referred as change report. Thus, in the case before hand the association is governed simultaneously by two different Acts i.e. one is Central Act and other is State Act.

07. In this scenerio, now I would like to go through or refer Article 251 of the Constitution of India. Article 251 of the Constitution of India deals with situation when inconsistency between laws made by the Parliament under Article 249 and

250 and laws made by the Legislatures of States occurs. Article 251 runs as under;

> **251.** Inconsistency between **laws** made by Parliament under Articles 249 and 250 and **laws** made by the Legislatures of **States** Nothing in Articles 249 and 250 shall restrict the power of the Legislature of a **State** to make any **law** which under this Constitution it has power to make, but if any provision of a **law** made by the legislature of a **State** is repugnant to any provision of a **law** made by Parliament which Parliament has under either of the said articles power to make, the **law** made by Parliament, whether passed before or after the **law** made by the legislature of the **State**, shall **prevail**, and the **law** made by the Legislature of the **State** shall to the extent of the repugnancy, but so long only as the **law** made by Parliament continues to have effect, be inoperative

From minute perusal of Article 251, it is crystal clear that the law made by the Parliament whether passed before or after the law by the Legislature of the States shall prevail over Legislature of the State. Now, therefore, as the Societies Registration Act, 1860 is the Central Law, it will definitely prevail over the Legislature of States i.e. Maharashtra Public Trusts Act, 1950.

08. Thus, whenever any society desirous to change, alter or abridge either name or object, it shall have to follow legal provisions explained under the Societies Registration Act,1860 and thereafter Section of Maharashtra Public Trusts Act, 1950 will come in picture. In the present matter the reporting trustee is not only proposing change in object but also in the name too. Thus, Section 12 which deals with the change in purpose as well as Section 12A which deals with the change in name will come in picture first and thereafter Section 22 of the Maharashtra Public Trusts Act, 1950 will have role to play.

09. It is also settled principle of law that the Court cannot deal with an issue which is not a subject matter and relief cannot be given which is never prayed for. In the present matter very surprisingly the reporting trustee has failed to file mandatory application below Sec.12 and 12A of the Societies Registration Act, 1860 for the reasons best known to him. It was rather bounden duty of the reporting trustee to file an application below Sec. 12 and 12A of the Societies Registration Act, 1860 alongwith change report under Section

22 of the Maharashtra Public Trusts Act, 1950 for the approval of amendments proposed in objects and name. However, the reporting trustee opt not to file an application under Sec.12 and 12A of the Societies Registration Act, 1860 and desired to move with change report under Section 22 only. By no stretch of mind, it is acceptable that in the present circumstances and in absence of mandatory application under Sec.12 and 12A the change report merely filed under section Sec. 22 of the Maharashtra Public Trut Act filed by the reporting trustee is any way maintainable in the eye of law. One who sleeps over its own right cannot seek relief without following procedure laid down in the law. Even, it is not the case of the applicant that certain things have prevented him to file application under Sec. 12 and 12A of the Societies Registration Act, 1860. Had it been the case that the applicant has specifically explained the reason for not filing application under Section 12 and 12A of the Societies Registration Act, 1860 or sought permission to file the same second thought would have been given while deciding the present change report. As the applicant has utterly failed to comply mandatory requirements contemplated under Section

12 and 12A of the Societies Registration Act, 1860, to my mind he has failed to present his case in prescribed proforma. For the reasons above, the entire submissions made by the reporting trustee lacks of merit and/or unsustainable in the eye of law.

10. Be that as it may, now let us see whether the reporting trustee satisfactorily proved that the change occurred lawfully as per the requirements prescribed under Section 12 and 12A of the Societies Registration Act, 1860.

11. **As to Point No.1**: To prove its contention, the reporting trustee has filed his affidavit below Ex. 11. So also he has relied upon news letter of December, 2007 and August, 2008 (Exs.15 and 16) to prove notice of meeting and approval of proposed amendments by the members of the Society. In the evidence, reporting trustee deposed that Dr.B.S.Desikamani issued notice dated 27.10.2007 for holding special general body meeting on 09.01.2008 at Balawala Dehradun for approval of changes in the Constitution, Memorandum of Association and Rules and

Regulations of the Indian Association for Physiotherapists (hereinafter the Trust). In view of the notice dated 27.10.2007 meeting was held on 09.01.2008 and the bye laws of the Trust were amended. Thus, from the evidence itself it is crystal clear that the reporting trustee is referring only single special general body meeting dated 09.01.2008 to prove that the amendment was lawfully proposed and accepted. On this background of documentary evidence and affidavit produced, it would be pertinent to pursue Sec.12 and 12A of the Societies Registration Act,1860 which runs as under:

Section 12:- Societies enabled to alter, extend or abridge their purposes ;

Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes that it is advisable to alter, extend, or abridge such purpose to or for other purposes, within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society (or whenever the governing body of any society registered under this Act decides to change the name of the

society), such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society.

But no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof. Nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

Section 12A. Registration of change of name.

1 ***Where a proposition for change of name has been agreed to and confirmed in the manner prescribed by Section 12***, *a copy of the proposition so agree to and confirmed shall be forwarded to the Registrar for registering the change of name.(If the proposed change in name is in his opinion undesirable for any of the reasons mentioned in section 3A), the Registrar shall refuse to register the change of name.*

2 *Save as provided in sub-section(1) the Registrar shall, if he is satisfied that the provisions of this Act in respect of change has been complied with, register the change and issue a certificate of registration altered to meet the circumstances of the case. On the issue of such a certificate the change of name shall be completed.*

3 *The Registrar shall charge for any copy of a certificate issued under sub-section (2) a fee of rupee one and all fees so paid shall be accounted for to the (State) Government.*

4 *If, through inadvertence or otherwise, a society is registered by a name which should not have been registered (due regard being had to the provisions of section 3A), the Registrar may, after hearing the party concerned.*

12. From perusal of the aforesaid section, now it is crystal clear that whenever change is proposed to enable, to alter, extend or abridge purpose of any society firstly the Governing body shall submit proposed amendments to the member of the society in prescribed proforma and convey a special meeting for the consideration thereof according to regulation of the Society. Secondly, after following the norms of services of the proposed amendment second special meeting must be convened by the Governing body at an interval of one month after the former meeting to effect such amendments alongwith agreeing votes of 3/5th of the members of the society.

13. In the case in hand the applicant nowhere specifically deposed nor documentary evidence to that effect is filed on

record that two meetings with an interval of one month were carried out and proposed amendments were given effect with the votes of 3/ 5th agreeing members. On the contrary, from the perusal of the documents and the affidavit of the reporting trustee it becomes crystal clear that Trust has not followed mandatory provisions as laid down in Section 12 and 12A of the Societies Registration Act, 1860 while changing objects as well as name of the Trust. The Trust has utterly failed in convening special general body meeting for the consideration of the proposition to the change in objects and name of the Trust. So also, the Trust has not convened second special general body meeting at an interval of one month after the former meeting to confirm the proposition with 3/5th agreeing votes of the members of the Society. The Trust has convened only one meeting which is deposed in the affidavit and failed to follow necessary requirements contemplated under Section 12 and 12A of the Societies Registration Act, 1860. For the reasons discussed above on this note also the reporting trustee has failed to show that amendment was lawfully approved.

14. It was vehemently argued by advocate Wadhwa at the time of final arguments that Section 12A does not come in picture, as there is no proposed change in name. However, advocate Inamdar had rightly pointed out showing the comparative statement that the change is proposed not only in the objects but also in name of the Trust. Even, the reporting trustee in his cross examination specifically admitted that some of the amendments were regarding name and objects of the Trust. Thus, there is no reason to believe the arguments of the applicant that Section 12A has no role to play in the present change report.

15. Nonetheless the reporting trustee has specifically admitted in the cross examination that he was not part and parcel of the meeting dated 09.01.2008. Admittedly, it is the case of the reporting trustee himself that in the special general meeting dated 09.01.2008 amendments were kept for approval and were allowed accordingly. However, his admission in cross examination regarding his absence in the said meeting goes to show that he has no personal knowledge as to what happened in the said meeting. At the

most his evidence could be termed as hearsay evidence which definitely have less evidentiary value.

16. As the reporting trustee has utterly failed to show that mandatory requirements to lawfully carry out amendments were duly followed. Hence this change report lacks of merit and deserves to be rejected. In sequel I pass the following order.

ORDER

Change report for amendments stands rejected.

2. No order as to costs.

3. Pronounce in open court.

04/07/13

Mumbai
Dated: 04.07.2013

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

Certified to be a True Copy

Public Trusts Registration Office
Greater Mumbai Region, Mumbai

12/7/13