

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6727 OF 2023

1. Nitinchandra s/o Shriram Patil,
Age 55 years, Occupation Business/Member
Marathwada Shikshan Prasarak Mandal,
R/o Apurva A Samarthsaha Niwas
Bhagyanagar, Adalt Road, Aurangabad,
Tq. And Dist. Aurangabad. **...Petitioner**

VERSUS

1. Marathwada Shikshan Prasarak Mandal,
Campus of Deogiri College, Station Road,
Aurangabad, Tq. And Dist. Aurangabad.
(Through its Secretary)
Satish Bhanudasrao Chavan,
Age Major, Occupation Social Work.
2. Dr. Lav s/o Bhagwanrao Pansambal,
Age 66 years, occupation Medical Practitioner,
R/o Vidya Nagar (East), Behind Hotel
Sahyadri, Barshi Road, Beed, Tq. And
Dist. Beed.
3. The State of Maharashtra,
Through its Secretary,
Education Department, Mantralaya,
Mumbai – 32. **Respondents.**

.....

Advocate for Petitioner : Mr. S. R. Barlinge h/f Mr. G. L.
Deshpande

GP for Respondent-State : Mr. D. R. Kale

Advocate for Respondent No.1 : Mr. S. V. Adwant

.....

WITH
WRIT PETITION NO.6735 OF 2023

1. Mansing s/o Balasaheb Pawar,
Age 60 years, Occupation Social Worker,

R/o Ratnaprabha Motors, Plot No.405/406,
N-1, CIDCO, Aurangabad,
Tq. And Dist. Aurangabad.

2. Chandrashekhar s/o Venkatrao Rajurkar,
Age 72 years, occupation Business and
Social worker,
R/o C/o. Hotel Devpriya, Central Bus-stand
Road, Near Varad Ganesh Mandir,
Aurangabad, Tq. And Dist. Aurangabad.
3. Devidas s/o Deorao Pawar,
Age 65 years, Occupation Service,
R/o Amrut Residency, Flat No.B-11,
Near Tiwari Mangal Karyalaya,
Vedant Nagar, Aurangabad,
Tq. And Dist. Aurangabad.

...Petitioner

VERSUS

1. Marathwada Shikshan Prasarak Mandal,
Campus of Deogiri College, Station Road,
Aurangabad, Tq. And Dist. Aurangabad.
(Through its Secretary)
2. Dr. Lav s/o Bhagwanrao Pansambal,
Age 66 years, occupation Medical Practitioner,
R/o Vidya Nagar (East), Behind Hotel
Sahyadri, Barshi Road, Beed, Tq. And
Dist. Beed.
3. The State of Maharashtra,
Through its Secretary,
Education Department, Mantralaya,
Mumbai – 32.

Respondents.

.....

Advocate for Petitioner : Mr. V. J. Dhage
GP for Respondent-State : Mr. D. R. Kale
Advocate for Respondent No.1 : Mr. N. B. Khandare

.....

**WITH
CIVIL APPLICATION NO.7494 OF 2023
IN WP(ST)/16333/2023**

Nitin s/o Shrikrishna Bagwe,
Age 60 years, Occupation Social Work,
R/o : Plot No.26, Flat No.5-6, Saraswatichandra
Apartment, Near Guru Tegbahadur High
School, Osmanpura, Aurangabad.

**...Applicant/
Intervenor**

VERSUS

1. Marathwada Shikshan Prasarak
Mandal, Aurangabad Through its Secretary,
Satish Bhanudasrao Chavan, Aged 60 years,
Occupation Agriculture, R/o. Plot No.9,
'Supriya', Jyoti Nagar, Aurangabad
431005.
2. 2. Dr. Lav s/o Bhagwanrao Pansambal,
Age 66 years, occupation Medical Practitioner,
R/o Vidya Nagar (East), Behind Hotel
Sahyadri, Barshi Road, Beed, Tq. And
Dist. Beed.
3. The State of Maharashtra,
Through its Secretary,
Education Department, Mantralaya,
Mumbai – 32.
4. Mansingh Balasaheb Pawar,
Aged 60 years, Occupation Business,
R/o Plot No.E-32, Ratnaprabha Motors,
MIDC Chikalthana, Aurangabad.
5. Chandrashekhar Vyankatrao Rajurkar,
Aged 72 years, Occupation Business,
R/o Hotel Devpriya, Central Bus Stand
Road, Aurangabad.

6. Devidas Deorao Pawar,
Aged 65 years, occupation Service,
R/o Amrut Residency, Flat No.B-11,
Near Tiwari Mangal Karyalay,
Vedant Nagar, Aurangabad. **...Respondents.**

Advocate for Applicant/Intervenor : Mr. D. J. Choudhari
GP for Respondents-State : Mr. D. R. Kale
Advocate for Respondents No.4 to 6 : Mr. V. J. Dhage

**CORAM : MANGESH S. PATIL &
SHAILESH P.BRAHME, JJ.**

DATE : 21st June, 2023

ORDER : (PER SHAILESH P. BRAHME, J.)

1. Heard the learned Counsel for the parties. With their consent the matters are taken up for final hearing at the admission stage.
2. As the facts and circumstances of both the petitions are identical, they are being decided by this common order. The relief claimed in both the petitions are also identical.
3. The respondent No.1 is a registered Trust. The respondent No.2 is the office bearer of the Trust. The petitioners in both the petitions are the objectors belonging to rival group of the respondents. In both the petitions the relief of prohibitory orders is

sought against the respondents from holding election till final decision of Inquiry Application No.761 of 2018 which is pending before Deputy Charity Commissioner, Aurangabad.

4. It is relevant to notice that both the petitions are filed under Article 226 of the Constitution of India seeking directions for appointment of administrator and injunction restraining the respondents from conducting the election. Respondent No.1 does not get any financial assistance from the respondent No.3 State of Maharashtra or the Central Government. Neither the respondent No.1 is instrumentality of the State.

5. The last election of respondent No.1 was held on 04/06/2018 which was for the period 2018 to 2023. The tenure is expiring on 10/07/2023. Enquiry Application No.761 of 2018 was lodged with Deputy Charity Commissioner, Aurangabad under Section 22 of the Maharashtra Public Trust Act (hereinafter referred to as an 'Act' for the sake of brevity and convenience). The change report was contested by the petitioners and others. The reporting trustees had filed application (Exhibit 37) for interim provisional arrangement under Section 22 Sub-section (2) of the Act. It was contested by the petitioners by filing Say at Exhibit 40. On 03/03/2020, the

application (Exhibit 37) was rejected. The order was not challenged by the respondents before higher forum.

6. The respondent reporting trustees had filed application No.301 of 2019 under Section 36 Sub-section (2) of the Act for sanction to sell land Gut No.7 and 8, before the Joint Charity Commissioner, Aurangabad. After contest, the application was rejected on 31/01/2022. Being aggrieved, Writ Petition No.5041 of 2022 was filed before the High Court. By order dated 10/03/2021, the petition was disposed of with directions for expeditious disposal of change report No.761 of 2019 within a period of 12 weeks. The direction was issued because the tenure is expiring on 10/07/2023 and the parties assured to cooperate for expeditious disposal.

7. The change report No.761 of 2018 is still pending. According to the petitioners, the respondents protracted the said proceedings and did not cooperate for expeditious disposal as contemplated by order dated 10/03/2023. Deliberately frivolous applications were filed and hurdles were created in final disposal of the matter. The respondents were strategic in protracting the matter. With the mala fide intentions, they declared meeting for holding the elections.

8. Under above circumstances, present petitions were filed. It is argued that the conduct of the respondent was against orders passed by High Court in Writ Petition No.5041 of 2023. The respondents already suffered rejection of interim application (Exhibit 37) for provisional arrangement as well as rejection of Application No.301 of 2019 which disqualified them to conduct the election. It is further submitted that in the wake of rejection of application (Exhibit 37) which was not challenged, it was not permissible for them to proceed with the election unless change report No.761 of 2018 was finally decided in their favour.

9. The Counsel for the respondents raised preliminary objection regarding maintainability of the writ petitions which are filed under Article 226 of the Constitution of India. According to him, the respondent No.1 is not a State within the meaning of Article 12 of the Constitution of India. It is further contended that the allegations of non-cooperation and protraction of the proceeding before the Deputy Charity Commissioner, are false. The rejection of interim application (Exhibit 37) or application No.301 of 2019 would not preclude them from looking after the business and conducting election. It is contended that the decision of holding election was

proper and legal because the term is to expire on 10/07/2023.

10. The petitioners relied upon following Judgments :-

- (1) Chandrakant Mahadev Patole and Others Vs. State of Maharashtra and Others, 2010 (Supp.) All.M.R. 457
- (2) Pundlik Vs. State of Maharashtra, 2005 (4) Mh.L.J. 254,
- (3) Ahmednagar Zilla S.D.V. and P.Sangh Ltd. And another Vs. State of Maharashtra and others, 2004 AIR (SC) 1329,
- (4) Prashant s/o Bhaskar Dekate Vs. Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur, 2023 (1) AIR Bom R 518,
- (5) Madan Chindarkar Vs. Registrar of Co-operative Societies, 2019 (6) Bom.C.R.821.

11. As against that the respondents relied upon following Judgments to buttress objection for maintainability of the writ petition.

- (1) Mahadeorao Gulabrao Bhuibar and others Vs. State of Maharashtra and otehrs, 1995 (2) Mh.L.J. 881,
- (2) Shri Milind Purshotom Jahangirdar and Others Vs. Sarvajanik Vachanalaya and Others, 2017 SCC OnLine Bom 1825,
- (3) Lakhichand Marotrao Dhoble and another Vs. Joint Charity Commissioner, Civil Lines, Nagpur and others, 2020 (6) Mh.L.J.,
- (4) Inbasagaran and Another Vs. S. Natarajan (Dead) Through Legal Representatives, (2015(11 Supreme Court

Cases 12.

12. It is held in para No.16 of the Judgment by the Division Bench of this Court in case of Lakhichand Marotrao Dhoble (Supra) as under :-

"16. Considering the objects of the Trust, the voluntary nature of its activities, absence of any State assistance in any manner, absence of any positive obligation of public nature to be discharged and lack of public law element vis-a-vis the Trust, we are of the considered view that the Trust is not a "person or authority" as contemplated under Article 226 of the Constitution of India; moreso when the dispute is purely personal to the petitioners based on alleged infraction of the Scheme of administration of the Trust. We thus hold that the present writ petition under Article 226 of the Constitution of India seeking the declaratory relief against the Trust is not maintainable. For said reason we have neither gone into the merits of the challenge raised to the resolution dated 5-7-2020 nor do we deem it necessary to examine the aspect of existence or otherwise of an alternate efficacious remedy for being invoked by the petitioners."

13. We further rely upon the judgment rendered in Shri Milind Purshotom Jahangirdar and Others (Supra), paragraph No.5 reads as under :-

"5. In our view, there is some substance in the submissions made by the learned counsel appearing on behalf of Respondent Nos.1 and 3. It is not in dispute that Respondent No.1 Trust is a private entity and, as such, it is not amenable to the writ jurisdiction. This Court, at the highest, can issue a writ of certiorari against an order passed by one of the authorities constituted under the said Act, which is adverse to the interest of the petitioners. However, we cannot issue a writ or direction to Respondent No.2 in the nature of mandamus, directing him to reverse his decision."

14. We further rely upon the ratio of Mahadeorao Gulabrao Bhuibar (Supra) as recorded in following paragraph :-

"25. It may thus be seen that it is a condition for issue of a writ of quo-warranto that the office or the post held by a person against whom such a writ is claimed must be a public office and that it is held by the person concerned i.e. the usurper contrary to the provisions of law. It is therefore necessary for the petitioners in the instant writ petition to show that the respondents 2 and 3 are holding public office and that too contrary to the provisions of law."

"33. Considering now independently the question whether the offices held by the respondents 2 and 3 are public offices, what has first to be seen is that Shri Shivaji Education Society registered under the Societies

Registration Act does not become a statutory body, merely because it is required to be registered under section 18 of the Bombay Public Trust Act, 1950. This is clear even from the judgment of the Supreme Court in Anadi Mukta's, case cited supra paras 11 and 12 of which, it has referred to its judgments in the case of i) Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain, AIR 1976 SC 888, and (ii) Deepak Kumar Biswas vs. Director of Public Instruction (1987) 2 SCC 252. It is held in the case of Executive Committee of Vaish Degree College, cited supra that a society running the said college which was registered under the Co-operative Societies Act was not a statutory body, because of which a relief of reinstatement could not be claimed against it. Therefore, merely because the Society of which the respondent No. 2 is a President and the respondent No. 3 is the Secretary is registered under the Bombay Public Trust Act, 1950, it would not mean that it is a statutory body. The offices held by the respondents 2 and 3 cannot therefore, be said to be created under the Statute."

"34. Even otherwise, merely because the education is a charitable purpose within the meaning of the definition of the expression "Public Trust" under the Bombay Public Trusts Act, 1950, it would not necessarily follow that a society running an educational institution and registered as a Public Trust under the said Act is a public body or public authority. The character of the body, whether

private or public is one thing and carrying on the charitable purpose is another. It has to be borne in mind that we have to consider the said question from the point of view of issuance of a writ of quo-warranto. As observed in the passage from Halsbury's Laws of England 4th Edition Vol. I para 171 cited supra and the Judgment of the Calcutta High Court cited supra since the educational purpose is a charitable purpose and since it has to do something with the public or section of people, i.e. the students, the guardians and the teachers, it would not mean that the body which carries on such purpose is a "public body" or "public authority" in the sense that a writ of quo warranto can be issued to it. If such a meaning is given, then all trusts registered as public trusts under the Bombay Public Trusts Act would become "public authorities" and the officers or the members of the Trust would be holding public offices for the purpose of issuance of a writ of quo warranto."

15. So far as the preliminary objection regarding maintainability of the writ petitions are concerned we are inclined to hold that the writ petitions are not maintainable. The respondent No.1 is not a State within meaning of Article 12 of the Constitution of India. There are no pleadings and material on record to suggest that it is instrumentality of the State or it has substantial financial assistance from State of Maharashtra, Union of India. Respondent No.1 is a

private public Trust.

16. The reliance placed by the petitioners in the Judgments referred above, are not useful to determine the maintainability of the writ petitions as well as to decide the writ petitions on merits. All the judgments pertain to the matters under the provisions of Maharashtra Co-operative Societies Act. The statutory scheme for conducting elections under the Maharashtra Co-operative Societies Act is totally different than that is under the Maharashtra Public Trust Act. None of the authorities lay down any principle in respect of effects of rejection of the interim application under Section 22 of the Act.

17. The arguments of the petitioners that the respondents have no authority to conduct the election because of the rejection of application (Exhibit 37) and application No.301 of 2019, is devoid of any substance. Application (Exhibit 37) was filed for the provisional interim arrangements. When a change is reported to the Charity Commissioner, there would be exigencies and some body has to look after the administration. In order to cope up the situation, the provisional interim arrangements can be made as contemplated by the proviso to Section 22 of the Act. Rejection of the interim

application would not preclude the reporting trustee from administering the Trust. The reporting trustees though unsuccessful at the beginning in their interim application may succeed in final adjudication under Section 22 of the Act.

18. The arguments advanced by the petitioners cannot be accepted for another reason. The scheme of Section 22 does not provide that if the interim application is rejected then the reporting trustees are incompetent or ineligible to conduct the business of the trust. If these submissions are accepted, then after rejection of interim application, the Deputy Charity Commissioner/ Assistant Charity Commissioner will have to then make necessary arrangement for administration of the Trust, which cannot remain in limbo. Admittedly, neither any such request was made by anybody nor has the Deputy Charity Commissioner passed any other order in that respect.

19. In our view the observations made while rejecting application Exhibit 37 and while rejecting application No.301 of 2019 cannot be regarded as disqualifying the respondents from administering the Trust. Application No.310 of 2019 was filed for securing sanction to alienate the immovable property as contemplated by Section 36 (2)

of the Act. The observation recorded in those proceedings would pertain to the propriety and authority to alienate the properties of the Trust, and not to decide validity of a party in the office to manage the Trust.

20. Besides, the petitioners have directly approached this Hon'ble Court seeking prohibitory orders against the respondents from holding the election. The petitioners in Writ Petition No.4735 of 2023 were not parties to the Writ Petition No.5041 of 2022. The petitioners have an alternate remedy available to restrain the respondents from conducting the elections. There is no substance in the submission that due to rejection of application (Exhibit 37) and application No.301 of 2019, the respondents had no authority to look after the administration or to conduct the election.

21. For the reasons stated above, both the writ petitions are not maintainable. Besides that, on merits also we do not find any substance to exercise our jurisdiction to stall the elections. Therefore, both the petitions are dismissed. No order as to the costs.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

vjg/-