



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.14605 OF 2023
IN
WRIT PETITION NO.5243 OF 2018**

Chetan Ramesh Patil
Age : 40 Years, Occ. Professional
Residing at Patil House,
Talwadi Naka, Near Rable Railway
Station, Navi Mumbai-400 701. ... Applicant

In the matter between :

Anant Vaman Tare
And Others ... Petitioners
Versus
Assistant Charity Commissioner-1
And Others ... Respondents

* * *

Mr. A.V. Anturkar, Senior Advocate a/w Mr. Yuvraj P. Narvankar for
the Applicant in I.A. No.14605 of 2023.

Mr. Ajit Tamhane @ Amit Potnis @ Rohan Tamhane i/b Tamhane &
Co. for the Petitioner.

Mr. S.B. Kalel, AGP for Respondent Nos.1 and 12-State.

Mr. S.R. Paranjape, Additional Prothonotary And Senior Master
present.

* * *

**CORAM : SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ.**

DATE : 24 AUGUST 2023

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1 Heard.

2 By this application, the Applicant, who was not party to the party to the Petition, when the Order dated 3 April 2023 was passed by this Court, has made a prayer for issuance of directions to Respondent No.13, i.e. the Prothonotary and Senior Master to conduct the selection process of the two trustees by way of secret ballot and to measure and assess the votes of the Board of Trustees by maintaining strict confidentiality.

3 Mr. Anturkar, learned Senior Advocate appearing for the Applicant submits that even if the remaining two trustees are to be selected, given the number of applications, which is about 65 in the present case, the body of 7 trustees would ultimately have to take a recourse to some method, whereby they ensure that two remaining trustees that they are going to select are selected purely on merit. He submits that it is for this reason that, it is necessary that while making selection, the body of seven trustees elects suitable candidates by casting their votes secretly which is the best way of ensuring transparency and fairness in whole process. He submits that in the interest of fairness, it is necessary to order selection of two trustees by secret ballot and if such directions are issued by this Court, it would insulate the selection process from external influence. He relies upon the law laid down in the case of **Laxmi**

Singh And Others Vs. Rekha Singh And Others¹.

4 Facts of this case show that at present there is already in existence body of 7 trustees, who have been elected with the Prothonotary and Senior Master as Observer in the election process, and now what has remained is only filling up of vacancies of two trustees, not by election but by selection. Additional Prothonotary and Senior Master present in Court invites our attention to his report dated 17 March 2023 submitted to this Court, of which cognizance has been taken by this Court in its Order dated 3 April 2023 whereby the the prayer clause (a) of the Application has been granted and interim application, being Interim Application No.18292 of 2022, in which the said Order was passed, has been disposed of by this Court. He submits that since the terms of the Trust Deed envisage the filling up of vacancies of two trustees by selection and not by election and it is also necessary that in selecting remaining two trustees there is maintained transparency and fairness in the selection process, he had vide his report dated 17 March 2023 given certain suggestions and he sought directions from the Court in the following words :

A) Hon'ble Court may direct the Election Officer, Shri

1 SLP Nos.10733-10734 of 2019 decided on 19 June 2020.

Parche to publish the advertisement in two local newspapers inviting applications from general public from outside, who should be devotees of Devi Ekveera to enable the newly appointed 7 trustees to scrutinize and interview the candidates for remaining two trustees on the presence of Observer and Election Officer.

5 Prothonotary and Senior Master submits now as this Court has considered the report dated 17 March 2023, while passing the Order on 3 April 2023, it can be said that this Court has no objection if the selection of remaining two trustees is made by following the said method and so no further direction would be necessary.

6 According to Mr. Anturkar, learned Senior Advocate, even if such a method is to be followed, no purity and fairness of the selection process can be guaranteed and it can be assured only if there is selection made by casting vote by secret ballot. He also submits that today the position is that even though shortlisting of candidates has been made, the number of shortlisted candidates itself is around 21-25, which is quite large and which would make it difficult for the body of the 7 trustees to select two of the trustees, in a fair manner, unless the selection is done by adopting method of secret ballot.

7 The rival submissions pose a question as to what should be the best method which should be adopted in selecting two trustees to fill up the two vacancies of the trustees. To find out an answer, let us consider the case law cited before us.

8 In the case of **Laxmi Singh** (supra), the Apex Court has held that one of the fundamental principles of election law pertains to the maintenance of free and fair elections, ensuring the purity of elections. It holds that the principle of secrecy of ballots is an important postulate of constitutional democracy. It further holds that when there is a possibility of the election process being tainted with the presence of some unpleasant or unwarranted elements, one of the best ways of maintaining the purity of the election is of secret ballot.

9 Afore-stated principles of law have been stated in the said case of **Laxmi Singh** in the context of facts peculiar to that case, which are not the facts here. In that case, the votes of the elected members of Zilla Panchayat were to be cast on motion of no confidence against the Panchayat Adhaksha, Ms. Rekha Singh, who was the first respondent before the Supreme Court. In that fact

situation, the Apex Court held that the best way of ensuring fairness of the motion of no confidence was voting by members through secret ballot. Here in this case, the two vacancies of trustees are to be filled up by selection and not by election and there is no consideration of any motion of no confidence which is always by casting of votes. For selection there is evaluation, deliberation, consultation and decision. But, in deciding a motion of no confidence by members, there is no detailed evaluation, deliberation and consultation and it is mostly in the nature of expression of choice by casting vote. We are, therefore, of the humble opinion that the ruling relied upon by the Applicants does not have application straightway to the facts of the present case.

10 While there can be no doubt about the fact that purity of any election is a cardinal principle of law and there must be free, fair and transparent election and one of the best ways of ensuring the same would be holding it by a secret ballot, the rule of purity would also have equal application even to any selection process, though there may a difference in the way or method adopted to achieve the object of purity of selection process. We are of the view that considering the nature of selection process, which

contemplates conduct of interviews, it would be highly impractical to direct the body of seven trustees to take their decision casting votes by secret ballot and so we refrain ourselves from doing so. We would rather choose to issue some more directions to strengthen the objectivity and fairness of the selection process, which has now reached the stage of interview of short-listed candidates by the body of seven trustees, which now forms the panel of interviewers. The interviews, as already directed, are to be conducted in the presence of the Observer and Election Officer, learned Prothonotary and Senior Master of this Court. But, as said by us, some more safeguards would be in order and hence the following directions, in addition to directions issued on 3 April 2023, which are as under :-

1. There shall be allotted by each of the members from the Interview Panel separate marks to each of the candidates including the panel of 7 elected trustees and records of the same shall be maintained by them.
- 2 The average of the marks allotted to each of the members to each of the candidates shall be arrived

at and its records shall also be maintained by the Interview Panel.

3. The selection shall be made by the Interview Panel in accordance with the marks allotted to each of the candidates, starting from the highest marks allotted to candidates and which shall ensure that there are no criminal cases pending against the candidates proposed to be selected by the Interview Panel and the selected candidates are otherwise true devotees of Devi Ekveera and has no individual political aspirations and ambitions.
- 4 The Minutes of the proceedings shall be recorded by the Interview Panel in the presence of the Observer and the Election Officer, which shall be signed by each of the members of the Interview Panel and shall be countersigned by Observer and Election Officer.
- 5 The copy of Minutes of Proceedings shall be made available in public domain.

- 6 We direct the Superintendent of Police of Pune Gramin to provide adequate police bandobast for the purpose of election of these two trustees on the date and at the time indicated to him in writing by the Observer and Election Officer, i.e. learned Additional Registrar, O.S./Additional Prothonotary and Senior Master of this Court, at the expense of the State.
- 7 In order to find out the criminal antecedents of the candidates whose interview is going to be conducted by the Interview Panel, their police verification reports shall be called for and on the basis of those reports, it shall be decided by the Interview Panel about the clean or tainted past of the candidates, in terms of the notings made in the police verification report. Needless to say that any candidate having criminal antecedents shall disqualify himself from the selection process. Similarly, any candidate having any connection with any of the local body as its elected member, may also not be considered as a proper candidate for being selected in the selected process, and this is for the reason that the

emphasis here is upon the true devotees of Devi Ekveera and need for keeping affairs of the Trust free from any political interference.

- 8 The Police Verification reports shall be called for of the candidates forthwith by the Interview Panel by sending a communication in that regard to Superintendent of Police, Pune (Gramin) and also Commissioner of Police, Pune and these Authorities shall ensure that said verification reports are sent to the Panel of Interviewers within a period of seven days.
- 9 Since this process is going to take some time, we direct that now the interviews shall not be held on 29 August 2023 and they are postponed to a date to be fixed by the Panel of the Interviewers. The Panel of the Interviewers shall conduct the interview of the short listed candidates and duly qualified candidates within seven days of receipt of last of individual's police verification report.

10 The Interim Application is disposed of in above terms.

(FIRDOSH P. POONIWALLA, J.)

(SUNIL B. SHUKRE, J.)