

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders or Registrar's orders.	Office Coram,	Court's or Judge's orders.
--	---	---------------	----------------------------

SECOND APPEAL NO.: 33 OF 2014
GURULING MALLIKARJUNAPPA DHARASHIVE AND
ANOTHER
VERSUS
MANMATHAPPA PANDABBA LOKHANDE AND OTHERS

WITH
CA/6088/2014
IN
SA/33/2014
DR. SANTOSH SIDRAMAPPA KAVTHALE
VERSUS
GURULING MALLIKARJUNAPPA DHARASHIVE AND OTHERS

WITH
SA/34/2014
SAMBAPPA TRIMBAKAPPA GIRWALKAR AND ANOTHER
VERSUS
VISHWANATHAPPA CHANDANBASAPPA DHARNE AND
OTHERS

WITH
CA/3794/2014
IN
SA/34/2014
GURLING MALLIKARJUNAPPA DHA RASHIVE
VERSUS
VISHWANATHAPPA CHANDANBASAP PA DHARNE AND
OTHERS

WITH

**CA/11285/2015
IN
RAST/1346/2015**

**RATNESHWAR TRIMBAKAPPA KORE AND OTHERS
VERSUS
MANMATHAPPA PANDABA LOKHANDE AND OTHERS**

Mr. S. V. Natu, Advocate for the Applicants.
Mr. R. N. Dhorde, Senior Counsel h/f Mr. V. D. Gunale for
the Respondent No.1/ Caveator.
Mr. T. G. Gaikwad, Advocate for Respondent No.3 in SA
34/2014.
Mr. R. S. Deshmukh, Advocate for Respondent No.9 in SA
34/2014.

CORAM: T. V. NALWADE, J.
DATED: 5th OCTOBER, 2015.

PER COURT:

1. The appeals are filed to challenge the judgment and orders of District Court, Latur delivered in Miscellaneous Civil Application Nos. 78 to 80 of 2012. These applications were filed by some of the present Respondents against the decisions given on the change report by Assistant Charity Commissioner and the Joint Charity Commissioner.

2. The change report No.688 of 2006 filed before Assistant Charity Commissioner in respect of one

educational institution from Latur having name Mahatma Basveshwar Education Society, Latur was accepted by the Assistant Charity Commissioner and this decision of the Assistant Charity Commissioner and Joint Charity Commissioner are set aside by District Court. The change report was filed by the Appellants of the present two appeals. Review Application bearing (St) No. 1346 of 2015 is filed for the present Appellants for review of decision given by this Court in [Second Appeal No.32 of 2014 Ratneshwar Trimbakappa Kore and others V/s Manmathappa Pandaba Lokhande and others - dated 13th August, 2014]. During arguments it was submitted that the decision given by this Court was challenged by filing S.L.P. in Supreme Court but the Honourable Apex Court has refused to interfere in the decision given by this Court. Thus, only the two second appeals are for consideration. They have arisen out of the same change report and so they are being decided together.

3. The aforesaid institution was formed by some of the contesting parties. As per the contribution made by the persons for formation of the institution and for

running the institution appropriate posts were given to them in the constitution of institution. Shri Mallikarjun Bidve was made permanent President of the society till his life time and Shri Ramrao Kavthale was made permanent Vice President till his life time. Till the year 1994 there was no dispute and in the elections held to governing council 8 members of Bidve group and 7 members of Kavthale group were elected. Then, the proceeding under section 41 (D) of Bombay Public Trust Act was started and all the 15 trustees were removed. The dispute started and then these two groups filed separate proceedings to challenge the order of Joint Charity Commissioner. The District Court allowed the appeal filed by Kavthale group but dismissed the appeal of Bidve group. The District Court made following order in proceeding filed by Kavthale group M.A. No.52 of 1999:

“iii) The applicants in M.A. No.52/99 to hold the reins of administration of the trust and to take steps for appointment of other trustees according to the provisions of the instrument of the trust or in accordance with the provisions of Bombay Public Trust Act, 1950.”

4. Bidve group challenged the decision of their matter in this Court but the matter was pending in the year 2006. There was one more dispute between the two groups and that was with regard to increasing the number of members. Resolution by which the strength of members was increased was challenged by Kavthale group and in the aforesaid decision, in [Second Appeal No.32 of 2014 Ratneshwar Trimbakappa Kore and others V/s Manmathappa Pandaba Lokhande and others - dated 13th August, 2014] this Court held that the Resolution was legal and it needs to be given effect. In the year 2006 the proceeding filed to challenge this resolution was pending but the resolution was not set aside and some new members were already made on the basis of this resolution, probably by Bidve group. In the year 1997 Kavthale group had filed Civil Suit also against the persons who were made members under that resolution but the Civil Court did not interfere due to want to jurisdiction. Thus, in the year 1997 Kavthale group had the knowledge that under the aforesaid resolution new

members were made of the trust.

5. In the year 2006 Kavthale group held the elections for electing members to Governing Council and change report No.688 of 2006, which is under consideration, came to be filed. The District Court has held that the election of the persons from group of Kavthale to governing council is illegal and the decision is given for following reasons:

- i. All the members of the trust were not served with the notice of Special General Body meeting dated 26th November, 2006.
- ii. In view of the constitution of the trust the group of Kavthale could not have elected the President.
- iii. Under the aforesaid order made by the District Court in M.A. No.52 of 1999 no permission was given to kavthale group for holding elections to Governing Council and Kavthale group, the 7 members of Governing Council, were not de jure members as their term had already expired, in January, 1999.

6. The aforesaid order was made by the District Court in the year 2002. The District Judge has referred to some observations made by this Court in similar matters for holding that group of Kavthale, who was allowed to administer the trust, was not de jure trust. It appears that in one proceeding, which was filed by a person who is not party to the present proceeding, this Court had observed that the group of Kavthale could have worked as de jure members. In view of the facts quoted above and as the term of the Kavthale group was over, much prior to the year 2002, this Court holds that Kavthale group which was allowed to run the administration was expected to approach appropriate authority like Charity Commissioner who could have followed the procedure to see that the new Governing Council was elected as per the provisions of Bombay Public Trust Act and as per the constitution of this institution.

7. This court has carefully gone through the constitution of the institution. There were 5 founder members who included the President and Vice President and one Mr. S. T. Girwalkar. There is special power to

President and Vice President, to nominate 4 Governing Council members. The Governing Council consists of 15 trustees (The president and Vice President are permanent members, till their life time) and the remaining Governing Council members are required to be elected by the general body and the period of this governing council is 5 years. Categories of members of the trust are given in the constitution and except the honorary members, other kinds of members constitute general body. It is admitted that the group of appellants did not give notice of the special general body called for electing members to the members of other group. Even if it is presumed that the governing council members of the other group had suffered disqualification, they were the members of general body and they were entitled to at-least vote for electing members of governing council. As the notice to those members and other members of the opposite group was not given by the group of present Appellants, this single circumstance is sufficient to hold that the election of 26th November, 2006 was not legal. It appears that the opposite group had also arranged for calling similar

special general body meeting and in that meeting they had also elected governing council. The change report submitted by them is not accepted and that decision has become final.

8. The District Court has observed that the new members, who were made as per the resolution, prior to 1994, were also entitled to participate in the general body. The aforesaid record, which includes suit filed by the group of present Appellants against those new members show that in the year 1997 itself they knew that such new members were made on the basis of resolution made by the general body. Though there was no approval to the resolution of Charity Commissioner, this Court has already decided that point. So it was necessary for the present Appellants to go with presumption that there was the resolution and the new members made were there to constitute general body. Admittedly, no notice was given to these new members also. Thus, the holding of election in meeting dated 26th November, 2006 was only affair of the group of present Appellants and most of the members of general body

were not informed about the meeting and for that reason such election cannot be held to be a valid election. Thus, even if it is ignored that the members of governing council, who were allowed to run the administration under the order of District Court, had not followed other procedure like taking permission of Charity Commissioner for holding elections, the fact remains that there was no legal meeting held of Special General Body and so on that ground the change report could not have been accepted by the authority.

9. There was one proceeding between the group of present appellants and one Manohar Patil in this Court and in that proceeding this Court had made observation that the body which was running the administration needs to be treated as de jure governing council. This proceeding involved altogether different point and that was against Manohar Patil. The decision under challenge in the present Appeals shows that the District Court held that Manohar Patil had no locus-standi to oppose change Report No.688 of 2006. In view of this circumstance, not much can be made out from the observations made by

this Court in Second Appeal No.708 of 2010.

10. The provisions of constitution of the institution show that special powers are given to the President and the Vice President. They were to remain on that post till their life time. Though Shri Bidve had suffered disqualification, in view of the aforesaid circumstances and provisions of constitution, he was entitled to participate in general body as a member of trust. This point is also rightly considered against the present Appellants by the District Court.

11. The discussion made above shows that the group of the present Appellants had no power to hold the elections and they ought to have approached the Commissioner for that purpose. Most of the members of general body were not informed about the special general body meeting called by the group of the present Appellants and so the meeting was not a legal meeting. In view of these circumstances, this Court holds that there is no material on the basis of which substantial question of law can be formulated in the two appeals. The submissions made show that subsequently, both the

sides held elections for further period and those change reports are now under consideration before the authority.

12. In the result, both the appeals stand dismissed.

13. The review application also stands dismissed.

14. In view of disposal of the second appeals itself, nothing further survives in the pending civil applications, in both the appeals, and the same also stand disposed of accordingly.

[T. V. NALAWADE, J.]

Dt.05/10/2015

ans/33