

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.832/2001
WITH CA/8368/2011 IN WP/832/2001 WITH CA/1802/2015 IN
WP/832/2001**

1. The Varangaon Education Society,
registered public Trust C/o.
Mahatma Gandhi Vidyalaya at
Varangaon, Taluka Bhusawal,
District Jalgaon, through its
trustee Dr. Manohar Nilkanth Choudhari,
age 45 years, occ. Agriculture,
Resident of Varangaon,
Taluka Bhusawal, Dist. Jalgaon.

2. Pandharinath Vithal Shinde,
Age 75 years, Occ. Agriculture,
R/o. Fulegaon, Post. Varangaon,
Presently residing at Near Gokhale
Compound Shinde Building,
Dombiwali (East), Dist. Thane.

...Petitioners

Versus

1. The State of Maharashtra,
2. Chandrakant Hari Radhe,
Age 44 years, Occ. Agriculture and business,
R/o. Varangaon, Taluka Bhusawal, Dist. Jalgaon.
3. Ganesh Maharu Zope,
Age 32 years, Occ. Agriculture and Business,
Resident of Near Mahatma Gandhi Vidyalaya,
Varangaon, Taluka Bhusawal,
District Jalgaon.
4. Namdeo s/o Tukaram Mali,
Age 60 years, Occ. Business,
Resident of Maliwada, Varangaon,
District Jalgaon.

5. Natthu Bhiku Zope,
Age 45 years, Occ. Agriculture,
R/o. Varangaon, Tal. Bhusawal,
District Jalgaon.
6. Raghunathrao Wamanrao Deshmukh,
Age 45 years, Occ. Agriculture,
R/o. Old Post Galli, Varangaon,
Taluka Bhusawal, Dist. Jalgaon.
7. Hiralal Mooljibhai Patel,
Age 45 years, occ. Business,
r/o. Saw Mill, Varangaon,
Taluka Bhusawal, Dist. Jalgaon.
8. Totaram Asaram Mali,
Age 62 years, Occ. Business,
R/o. Mali Wada, Varangaon,
Taluka Bhusawal, Dist. Jalgaon.
9. Janardhan Shankar Saraf,
Age 38 years, Occ. Business,
R/o. Varangaon, Tal. Bhusawal,
District Jalgaon.
10. Supdu Dhondu Dhangar,
Age 58 years, Occ. Agriculture,
R/o. Varangaon, Tal. Bhusawal,
District Jalgaon.
11. Yeshwant Dagdu Surwade,
Age 58 years, Occ. Business,
R/o. Varangaon, Tal. Bhusawal,
District Jalgaon.
12. The Assistant Charity Commissioner,
Jalgaon Near Appa Maharaj Samadhi,
Jalgaon, District Jalgaon.

Respondents...

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Shri A.G.Talhar, Advocate for petitioners
 Shri S.P.Deshmukh, AGP for respondent State.
 Shri S.U.Choudhari, Advocate for respondent no.2
 Shri B.R.Warma, Advocate for respondent nos. 3 to 11.

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CORAM : S.V.GANGAPURWALA,J.

DATED : 29TH OCTOBER, 2015

ORAL JUDGMENT :

The order dated 3/1/2001 passed by the 4th Additional District Judge, Jalgaon is assailed in the present Petition. By virtue of the impugned order, the District Judge directed the Assistant Charity Commissioner, Jalgaon to revise Annexure-A in enquiry No.805/1997 dated 22/9/1997 after deleting names of the persons as enumerated in the said order.

2] The proceeding before District Judge were reverted by virtue of the order of the Apex Court in Civil Appeal No.4863/2000. The Apex Court passed the following order :

“Be that as it may, assuming that the Assistant Commissioner has no jurisdiction to go into the question, there is nothing wrong in assuring the decision of the Assistant Commissioner as a prima facie view of the matter and in directing the District Judge who framed the Scheme to verify whether the decision of the Assistant Commissioner on the facts applicable to each applicant in regard to the eligibility for membership, is correct or not. This is a charitable trust and the District Court by virtue of provisions of Section 92 of the Code of Civil Procedure as supervisory jurisdiction even as to the manner in which the scheme framed by it is to be implemented. We,

therefore, direct the District Judge to go into the correctness of the order passed by the Assistant Commissioner on the merits of the eligibility of the applicants.

The appeal is allowed and is disposed of in the light of the above observations. The District Judge will go into the question within four months from the date of this order.

After the decision given by the learned District Judge on the question of eligibility of the fresh members the learned District Judge will issue appropriate directions for the conduct of the elections at an early date, in accordance with law.”

3] Mr.Talhar, learned counsel submits that though the trust was party before the District Judge, however, the District Judge did not grant any opportunity to the present applicant either by way of filing say or producing the record. Learned counsel submits that when the eligibility of the members was in question, opportunity ought to have been given to the trust to put forth the record in its proper perspective before the District Judge, the principles of natural justice have not been adhered.

4] Mr.Verma, learned counsel appearing for respondents who had filed application before Assistant Charity Commissioner which was taken up to the Apex Court and the order referred above was passed by the Apex Court, pursuant to which the District Judge has passed the impugned order accepts the position that the present appellant trust was not given any opportunity to put

forth its stand with regard to the membership of 1067 members.

5] When the trust was before the District Judge, it would have been appropriate if the trust would have been given opportunity to put forth the record about the said members so as to assist the District Judge in arriving at just conclusion.

6] In view of the fact that the present appellant trust was not heard when the said impugned order was passed by District Judge, I deem it appropriate to grant an opportunity to the present appellant to put forth its case with regard to the eligibility of members as it is a trust to enrol the members.

7] In the result, the impugned judgment and order is quashed and set aside. The parties are relegated before the District Judge, Jalgaon. The District Judge, Jalgaon shall decide the Misc. Application No.236/2000 afresh after giving opportunity of hearing to the parties before it including the present appellant. The parties shall appear before the District Judge on **30/11/2015**. The District Judge shall decide said application expeditiously in consonance with the directions of the Apex Court in Civil Appeal No.4863/2000. Writ Petition accordingly disposed of. No costs. Civil Applications also stand disposed of.

[S.V.GANGAPURWALA,J.]

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