

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

WRIT PETITION NO. 1065 OF 2015

Gulveersing Bhagwantsingh Kalara
& others

.. PETITIONERS

VERSUS

Parildas Ferumal Tolani
& others

.. RESPONDENTS

Mr. V.D. Sapkal, advocate holding for Mr. B.A. Agrawal, advocate for petitioners.

Mr. V.J. Dixit, Senior Counsel instructed by Mr. S.B. Yawalkar, advocate for respondents 1 to 3.

Mr. Subodh Shah, advocate for respondents 4 to 6.

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CORAM : R.M. BORDE &

P. R. BORA, JJ.

DATE : 2nd FEBRUARY, 2015.

PER COURT :

1. Petitioners are taking exception to the order passed by the Assistant Charity Commissioner, Dhule Region, Dhule in Enquiry Applications no. 5/14 and 9/14 on 31.12.2014 issuing certain directions in respect of holding election of the trust.

2. The Assistant Charity Commissioner, taking note of the fact that the term of the Managing body has come to an end directed holding of election of the trust of the Managing Committee. Objection is as regards direction no. 4 which reads thus :

4The former President Secretary and Managing Board are hereby directed to allow all the members who are enrolled and published as on 31/03/13 as per clause 3(a) of Election Rules 1973 framed for election of Managing board by the trust.

The Assistant Charity Commissioner has appointed inspector from the office of the Public Trust Registration Office, Jalgaon to attend and supervise the proceedings of Special General Body Meeting as observer. The President / Secretary are directed to intimate the date of Special General Meeting to the concerned inspector well in advance. It is also directed by the Assistant Charity Commissioner to the newly elected managing board to submit change report under section 22 of the Maharashtra Public Trust Act within time prescribed under the Act. It is pointed out that on 01.02.2015 Special General Body Meeting was held and decision is taken in the meeting to hold election in accordance with the program published separately in that behalf. As per the program published in accordance with the decision taken in the meeting, provisional list of voters is to be published on 06.02.2015 and period upto 13.02.2015 is prescribed for receiving objections on the list. Objections are required to be dealt with by the Managing Committee on 16.02.2015 as per bylaws and the final list of voters is required to be published on 24.02.2015. The date prescribed for publication of election program is 11.03.2015. The date prescribed for recording votes is 13.04.2015 and the results of election are to be declared on 18.04.2015.

3. It is the contention of petitioners that the direction issued by the Assistant Charity Commissioner to allow all the members whose names appear in the list published on 31.03.2013 to cast vote at the election is erroneous and is in excess of powers prescribed under section 41A of the Act. It is true that the Assistant Charity Commissioner is empowered and would be perfectly justified in directing holding of election to elect the

managing body of the trust whose term has already expired. However, the Assistant Charity Commissioner is not expected to specify and permit the class of voters who are eligible to exercise right to cast vote while dealing with application, in exercise of powers under section 41A of the Act. Learned counsel for respondents has invited our attention to rule 3 of the Election rules framed by the society and contended that the direction issued by the Assistant Charity Commissioner is in conformity with the Election rules. Rules 3 and 4 of the Election rules which are relevant for the purpose of consideration are quoted as below :

3. Maintenance and Custody of List Voters :

(a) The Secretary shall maintain a list of Voters of the Society which shall contain the names and addresses of all members who are enrolled by 31st of March each year as -

- (1) Patrons, Vice-Patrons and Fellows (excluding Hon. Fellows) who are voters for all the purposes and,
- (2) Hon. Fellows and Life members including Retired Life Members who are voters for the purposes other than election.

(b) The List of voters of the Society so maintained shall be published by the Secretary of the Society on the Notice Board of the Society at least 60 days prior to the date of election of the Society for inspection and objections, if any, for the members of the Society. Any member of the Society may send his Objection to the said list of Voters to the Secretary of the Society within 7 days from the date of publication of the said list.

All such objections shall be considered and decided by the Managing Board of the Society within 10 days from the date of publication of the said list. Final list of voters of the Society shall be published by the Secretary of the Society on the Notice Board of the Society at least 45 days prior to the date of election of the Society, and shall also be kept open for inspection at the Society's office for the members of

the Society on any working days and hours of the Society.

The Secretary shall authenticate each list of voters of the Society so maintained and sign every page thereof and shall seal it with the common seal of the Society.

(c) The list of voters maintained under this Rule shall be kept in the Society's chest or safe custody under the lock and key of the Secretary or the officer of the Society whose duty is to keep the key of the chest or safe custody of the said list.

(d) Copies of the list of voters shall be available for the members of the Society on payment of price fixed by the Managing Board from time to time.

4. Fixation of various stages of Election :

(a) For the purpose of holding an election of President, Vice-President, Trustee and the Members of the Managing board of the Society, the President of the Society in consultation with the Managing Board of the Society shall fix dates, hours and place or places for the following stages of Election :

1. Nomination of Candidates
2. Scrutiny of Nomination
3. Withdrawal of Candidature
4. Recording of Votes
5. Counting of Votes.
6. Declaration of Result.

(b) The President shall cause to be published a notice of such election not less than 30 days prior to the last date fixed for nomination of candidates. Such notice shall be published on the Notice Board of the Society and also be published in one of the Newspapers.

(c) The President shall appoint an Election Sub-Committee as defined in Rule 2. Election Sub-Committee shall elect its Chairman in its first meeting.

(d) Notwithstanding any things contained in the rules and constitution of the Society and these election rules and rules No. 3 and 4 in particular, the

following shall be the time schedule for the purpose of the 1st election of 1973-74.

(i) List of voters under rule No. 3 shall be the last of voters as on record on 1-8-1973 and shall be the final list of voters for the purposes of the 1st election of 1973-74.

(ii) For the purpose of holding the first election of the society the following shall be the various stages of election as contemplated in rule No. 4 :

1.	List of Voters	28-8-1973
2.	Notice of election	29-8-1973
3.	Nomination of Candidates	8-8-1973
4.	Scratching of Nomination papers	9-9-1973
5.	Withdrawal of candidature	12-9-1973
6.	Recording of Votes	30-9-1973
7.	Counting of Votes	30-9-1973
8.	Declaration of Result	7-10-1973

4. As has been specified in rule 3(a) the Secretary is required to maintain a list of voters of the society which shall contain names and addresses of members who are enrolled upto 31st March of each year as Patrons, Vice-Patrons and Fellows (excluding Hon. Fellows) who are voters for all the purposes and, Hon. Fellows and Life members including Retired Life Members. On going through the program published in accordance with the decision taken in the general body meeting, it transpires that due care is taken to observe the mandate of rule 3 of the rules framed by the trust. We are of the opinion that the functions in respect of finalisation of voters list shall also to be monitored by the officer appointed by the Assistant Charity Commissioner apart from exercising supervision over process of election and, it is accordingly directed. Rule 4 of the rules provides for fixation of various stages of election and it is provided that the President of the society in consultation with the Managing Board shall fix dates, hours

and place of various stages of election. The election program published is in conformity with rules 3 and 4 of the rules and as such, we are of the view that the election program so published in pursuance to the decision taken in the meeting of the general body shall be maintained and the election shall be permitted to be held in accordance with the said program. We also hereby direct that the process of election and the result shall be subject to such of proceedings those may be taken up in accordance with section 22 of the Act and shall also be subject to the pending proceedings initiated by the petitioner independently challenging the enrollment of 1800 members. Order passed by the Assistant Charity Commissioner so far as it relates to clause 4 stands modified in above terms. It would be open for the parties to raise all objections legally permissible in a proceeding raising challenge to the election of the Managing Committee of the society before an appropriate forum. Any observation made in the instant order shall not be construed as a decision on any of the issues concerning election and decision in the instant petition shall not be an impediment in pursuing or presenting proceedings for questioning the election to Managing Committee of the trust.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

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