

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

WRIT PETITION NO. 8681 OF 2013

1. Adarsh Education Society,
Hingoli, through its Treasurer.
2. Balasaheb s/o Gangaramji Aralkar,
Age: 62 years, Occu. Agriculture,
R/o Saraswatinagar, Hingoli,
Tq. and District Hingoli. ...Petitioners

versus

1. Shriram Bhagirath Sharma,
Age: Major, Occu.
R/o Hingoli, Taluka and
District Hingoli.
**(Leave to delete as per Court's
order dated 23/10/2013)**
2. Kamalkishor Motilal Kabra,
Age: Major, Occu.
R/o Hingoli, Taluka and
District Hingoli.
3. Assistant Charity Commissioner,
Hingoli.
4. Rajaram S/o tukaram Bangar,
Age: 57 years, Occu. Agriculture,
R/o Ram Maidir, Hingoli.
5. Prakash S/o Dattatraya Vasekar,
Age: 63 years, Occu. Agriculture and
Business,
R/o Gawalipura, Hingoli.
6. Murlidhar S/o Dwarkadas Bagadiya,
Age: 68 years, Occu. Business,
R/o Near Gramin Police Station,
Hingoli.
7. Ashok S/o Kashinathrao Patil,
Age: 56 years, Occu. Business,
R/o New Plots, Hingoli.

8. Chakradhar S/o Devdatta Davali,
Age: 53 years, Occu. Service,
R/o 207-D, N-3, Cidco, Aurangabad.
9. Ramesh Sawarmal Bagdiya,
Age: 68 years, Occu. Business,
R/o near Kabra Oil Mill, Akola Road,
Risala Bazar, Hingoli,
Tq. & Dist. Hingoli. ...Respondents

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 Mr. S. R. Barlinge, Advocate for petitioners.
 Mr. A. H. Kasliwal, Advocate for respondent No. 2.
 Mr. Ajay Deshpande, Advocate for respondent No. 4.
 Mr. P. S. Agrawal, Advocate for Intervenor.

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CORAM : N.W. SAMBRE, J.

**RESERVED ON : 9TH MARCH, 2015
 PRONOUNCED ON: 12TH MARCH 2015**

ORDER :

1. The present petition is by the Trust which is registered under the Societies Registration Act and Petitioner No. 2 claims to be Member of the Petitioner No. 1-Trust. The Trust is engaged in the activities of managing Educational Institutions.

2. The petitioners have questioned the legality and validity of the order dated 24/09/2013 passed by the Assistant Charity Commissioner, Hingoli region, Hingoli in Misc. Application No. 423 of 2012 pertaining to the legality and validity of enrollment of 94 and 160 members by the managing committee.

3. The issue as regards, enrollment of 94 members were brought before this Court in writ petition No. 4877 of 1996 and this Court while dealing with the issue by an order dated 29/03/2012 observed thus :

(i) The Assistant Charity Commissioner, Hingoli, shall consider the legality and validity of the membership of 94 persons, allegedly enrolled in the year 1992, so also the validity of further members, if any enrolled and thereafter take steps to hold elections of the said Trust expeditiously under his supervision. The Assistant Charity Commissioner, Hingoli shall decide the validity of the enrollment of the members within a period of four(4) months from today and thereafter, shall take steps to hold elections. The office of the Charity Commissioner, shall take all possible steps for smooth functioning of the Trust and shall take action as is permissible for the said purpose.

(ii) The Writ Petition is accordingly disposed of. No costs.

4. As consequences of above observations, the order impugned came to be passed by the Assistant Charity Commissioner. By the order impugned, the Assistant Charity Commissioner has held that 94 and 160 members were enrolled by the managing committee are not legal and valid.

5. The petitioner No.1 claiming to be trust and petitioner No. 2 to be member of petitioner No. 1-trust, sought setting aside of the said order passed by the Assistant Charity Commissioner and prayed for remand.

6. So far as petitioner Nos. 1 and 2 are concerned, it is required to be noted that, they were not party before the Assistant Charity Commissioner.

7. While questioning the legality and validity of the order impugned, Mr. Barlinge, learned Counsel for the petitioners would urge that as the petitioner-trust and the members whose membership is cancelled by learned Assistant Charity Commissioner were interested in participating the election process so as to canvass cause and object of imparting education, denial of such right of membership, according to the petitioners is illegal.

8. Learned Counsel for the petitioners would further urge that no opportunity of hearing was given to the said members before the Assistant Charity Commissioner and the said authority has also failed to appreciate the documentary evidence submitted by the petitioners. He would further urge that once the record reflects enrollment of membership by the managing committee, the Assistant Charity Commissioner ought not to have substituted its decision taken by the managing committee on hyper-technical basis. It is

further claimed by the petitioners that, record that was available was produced before the Assistant Charity Commissioner. It is further claimed that the old record might have been misplaced and as such, it was duty of the Assistant Charity Commissioner to have positive approach and analyze the entitlement of members, prayed for setting aside the order impugned.

9. Per contra, Mr. Kasliwal, learned Counsel for respondent No. 2 would urge that the order passed by the Assistant Charity Commissioner is well reasoned order. In support of his contention, he has taken me through the observations made by learned Assistant Charity Commissioner. He would further urge that the petitioners are incompetent in preferring the writ petition as none of the members to whom right of membership is denied, have raised any objection to the order impugned. According to him, the order of the Assistant Charity Commissioner is based on record that was made available before Assistant Charity Commissioner and default on the part of trust in producing original proceedings has prompted the authority to pass the Impugned order. He would further urge that the order impugned is just and proper and the present petition is liable to be rejected.

10. Preliminary objection as regards the competency of the petitioners, who preferred the present petition, is required to be

looked into on two counts; (a) whether the trust was authorized to prefer present petition and (b) whether the petitioners are prejudiced because of the order of the Assistant Charity Commissioner.

11. It is required to be noted that the petitioners herein are neither party to the proceedings before the Assistant Charity Commissioner nor they applied for intervention. It is also required to be noted that there is no resolution in favour of Treasurer to prefer petition before this Court, questioning the legality and validity of the impugned order passed by the Assistant Charity Commissioner. It is also required to be noted that the petitioner-trust or petitioner No. 2 an individual member, have failed to demonstrate any prejudice because of passing of the impugned order. As such, the petition, at the behest of the present petitioners, in my opinion, is not tenable.

12. Apart from the above contentions, the issues which are canvassed by learned Counsel for the petitioners, are examined on merits. It is noted that the Assistant Charity Commissioner by an order dated 03/05/2012 has directed the petitioner-Trust to produce all relevant record in order to prove the membership. In compliance thereof, the list of membership was submitted by the Incharge President of the Trust and notices were issued to all the parties who were before the Assistant Charity Commissioner.

13. The petitioner-Trust submitted in all 3 lists pertaining to

112 members, 94 members and 160 members. The Assistant Charity Commissioner issued notices to all these persons by registered post A.D. and on behalf of office bearers of Trust heard Advocate Mr. Puri.

14. It was claim of the trust that, 94 members, enrolled in the year 1993 and 160 members, enrolled in the year 2011, are legal and valid members of the trust and it is claimed that these members have paid their fees.

15. The respondents herein claimed that at the time of registration of the trust, there were 16 members of the trust and change reports were filed subsequent thereto. The trust, as is observed herein above, was directed to produce original record by an order dated 03/05/2012 pertaining to the membership list from the establishment of the society till date of decision, membership fees receipt books from the date of registration till the year 2012, ledger book/cash book so as to show that membership fees deposited by the members, notice book and proceeding book of the managing committee as well as general body meeting and list of 112 members, 94 members and other members enrolled thereafter by the trust.

16. The Assistant Charity Commissioner noticed that though sufficient opportunity for production of original documents was given trust submitted four proceeding books of managing committee, at

Exhibit-2 notice registers, two presence registers and one membership register, in which only names of members are mentioned who are enrolled in the year 2011.

17. The Assistant Charity Commissioner noticed that though sufficient opportunity was given, the entire record as directed was not produced and as such, same prompted the authority to draw adverse inference. The Assistant Charity Commissioner, based on record available before it, particularly the proceedings of the meeting dated 09/01/1993 at Exhibit-48 in relation to enrollment of 94 members, non production of notice book so as to demonstrate issuance of notice of meeting dated 09/01/1993, which was mandatory under by law No.11 to be maintained specifying the date, time, place and agenda of the meeting, has inferred that 94 members were illegally and invalidly enrolled. The Assistant Charity Commissioner has taken shelter of bye-laws and noted that the person who attend the meeting on 09/01/1993, few of them were not trustee and there was no sufficient quorum.

18. The Assistant Charity Commissioner noted that the managing committee, whose change report was rejected, have no locus to enroll the members and as such, gave finding that enrollment of 94 members was without any authority.

19. The Assistant Charity Commissioner also noted that

enrollment of 160 members in the meeting dated 03/06/2011 is concerned, upon perusal of register Exhibit-51, same discloses no proposer or seconder to resolution No.4 which is pertaining to enrollment. The register Exhibit-55 discloses that only four members were present in the meeting and resolution of enrollment of 160 members was passed by only three members, which is contrary to bye-laws particularly Rule No.12.

20. The Assistant Charity Commissioner also noted the minutes of meetings at Exhibit-49 which were for the meeting from 28/01/1989 to 12/03/1998, Exhibit-50 pertaining to meeting from 08/06/1998 to 24/03/2008. Upon perusal of the said Exhibits, the Assistant Charity Commissioner noticed that no proceedings of meetings depicts enrollment of members in Exhibit-50 and as such held that meeting of managing committee dated 15/03/2011 and subsequent meeting dated 07/07/2011 were called in ordinary course and proceedings does not reflect enrollment of 160 members. The Assistant Charity Commissioner also looked into preparation of Exhibit-51, which according to him, was in latter date. It is noticed that no notice of enrollment of 160 members was issued to trustees and as such, negated the claim of members for enrollment.

21. Once the Assistant Charity Commissioner having noted above, least that was expected of the petitioner-trust was to place on

record documentary evidence contrary to the finding recorded by Assistant Charity Commissioner so as to demonstrate the perversity. The petitioners have gone to the extent of admission in the pleadings, particularly Paragraph-7 that the record was misplaced, however, it is required to be noted that the said stand was not raised before the Assistant Charity Commissioner though available. However, the petitioners have chosen to justify their action by producing the record which was prepared by them by latter point of time, as observed by Assistant Charity Commissioner.

22. In my opinion, the petitioners have not approached this Court with clean hands and have raised contradictory pleas.

23. As such, present writ petition being sans merits, stands dismissed.

24. It is required to be observed that this Court by order dated 31/10/2013 ordered that 254 members, who are disqualified by the order of the Assistant Charity Commissioner would cast their vote on 09/11/2013, which shall be maintained in separate ballot box. It was further directed that after voting was over, the Election Officer will seal all ballot boxes and would mark ballot box containing voting of 254 members, whose membership is in dispute. It was also directed not to declare result of the election.

25. In view of dismissal of the present writ petition, it will be now appropriate to issue directions to the Election Officer, to forthwith declare the result of the election, ignoring the votes of 254 members, whose claim for membership was adjudicated and rejected by the Assistant Charity Commissioner.

26. Upon declaration of the result, successful trustees will be at liberty to file change report.

27. The writ petition stands dismissed, with above observations.

[N.W. SAMBRE, J.]

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