

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2299/2013

Buddhist Samanvay Kriti Samiti Chandrapur (through its Secretary)
Shri Mahendra Dashrath Khandale

...Versus...

The learned Assistant Charity Commissioner, Chandrapur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.V. Sirpurkar, Advocate for petitioner
Shri N.S. Khubalkar, AGP for respondent no.1
Shri S.K. Tambde, Advocate for respondent nos.2 to 5

CORAM : B.P. DHARMADHIKARI AND
A.P. BHANGALE, JJ.

DATE : 21.01.2015

Heard the respective Counsel.

The only question to be gone into is whether the order passed below Exh.1 by the Assistant Charity Commissioner, Chandrapur on 12.4.2013 in Misc. Application No.30/2013 is in consonance with law.

Advocate Shri Sirpurkar for the petitioner submits that the said authority indirectly adjudicated upon the disputed issue of membership and therefore, the entire order is without jurisdiction.

Advocate Shri Tambde as also learned Assistant Government Pleader submit that the resolution dated 11.11.2012, which is admitted by the petitioner is used and accordingly, the persons present in the meeting are directed to act as voters.

Advocate Shri Tambde has also pointed out that though he has raised objection in April, 2014 that only operative part of the impugned order was filed for this Court and entire text of the impugned order was suppressed, the petitioner has not taken any steps to make it available on record. He submits that respondent no.1 has also not placed that text on record. Today, Advocate Shri Tambde produced the copy of the impugned order on record during the course of hearing. The same is taken on record and marked "X" for identification. We have perused the same.

The question, whether a particular person is a member of Trust or then voter eligible to cast vote or to participate in election, needs to be looked into in the background of bye-laws/Constitution thereof.

It is a disputed issue and while issuing administrative directions under Section 41 A of the Maharashtra Public Trusts Act that issue could not have been gone into. The administrative directions normally could not render the situation irreversible. If the impugned directions given by the Assistant Charity Commissioner, Chandrapur on 12.4.2013 are implemented, it is apparent that the situation becomes irreversible and the aggrieved party has to wait till adjudication of change report proceeding for redressal of its grievance.

This Court has in the present matter on 24.4.2013 stayed the impugned order.

During the course of hearing, the parties agree that respondent no.1 should appoint an independent Election Officer, preferably an employee of his office to conduct the elections and the said officer should conduct the elections in accordance with

the provisions of Constitution/bye-laws of the Trust. The joint request needs to be accepted as tenure of the Trust has expired about two years back.

The learned Assistant Government Pleader is seeking time to obtain instructions from respondent no.1 in this respect. However, considering the situation, we direct respondent no.1 to nominate any officer in his office to conduct the said elections within a period of two weeks from today. The said officer shall then proceed further and undertake the exercise of holding elections in accordance with Constitution/bye-laws within the time, as required in the said bye-laws or Constitution.

Needless to mention that the said officer can look into all disputed questions, in accordance with law.

The impugned order dated 12.4.2013 shall not come in his way while undertaking that exercise. However, parties shall maintain *status quo* as on today till such elections are over and the restraining order passed by this Court on 24.4.2013 shall also continue to operate.

The writ petition is accordingly disposed of.

Steno copy of this order is granted.

JUDGE

JUDGE

Wadkar