

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

CIVIL APPLICATION (W) NO. 2196 OF 2015

IN

WRIT PETITION NO. 2593 OF 2015

(Avinash s/o Ganpatrao Shegaonkar vs. Ganpat Govind Joshi (Died) & Ors.)

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

Court's or Judge's orders

Shri S.D. Abhyankar, Advocate for the petitioner.
Shri N.G. Dhoble, Advocate for respondent Nos. 4 & 8.
Shri Abhay Sambre, Advocate for respondent No. 12.
Shri A.P. Thakre, Advocate for respondent Nos. 16 & 17.
Mrs. Dipali Zanzad with Shri Prashant Gode, Advocate for respondent Nos. 19, 20, 24, 25, 26, 27 & 31.
Shri Tidke, Advocate holding for Shri Mukesh Samarth, Advocate for respondent No. 30.
Shri Nitin Khamborkar, Advocate for the intervenor.
Shri D.V. Chauhan, Advocate for the intervenor.
Shri P.B. Patil, Advocate for the intervenor.
Mrs. B.H. Dangre, GP for respondent No. 32.

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**CORAM : B.P. DHARMADHIKARI &
Z.A. HAQ, JJ.
NOVEMBER 27, 2015.**

The application has been filed for Speaking to Minutes pointing out that figure of members noted as 680 by this Court in its judgment dated 08.08.2015 in Writ Petition No. 2593 of 2015 should be corrected to read as 699.

On 19.11.2015, the original petitioner has filed reply thereto.

Respondent No. 12 in writ petition viz., Shri Raju Pyarelal Jaiswal has also filed reply on the very same day and opposed the correction.

On 21.11.2015, Respondent No. 32 – Joint

Charity Commissioner, who has filed this civil application, submitted an affidavit in support of civil application. He points out that the correct figure was always 699 and it was accordingly informed to the office of Government Pleader. It is further stated that total 699 members had applied for regularization of their membership but some deficiencies were noticed in three applications, therefore, there are 696 valid members entitled to vote in terms of judgment of this Court, mentioned supra.

The learned Government Pleader in this background submits that the application seeking leave to Speaking to Minutes needs to be granted by correcting figures 680 to read as 696.

Shri Abhyankar, learned counsel appearing for the original petitioner has not opposed the request. Shri M.P. Joshi, Advocate holding for Shri N.G. Dhoble, for respondent Nos. 4 & 8 are also not opposing the prayer for modification.

Shri Tidke, Advocate holding for Shri Samarth, learned counsel for respondent No. 30, Shri Khamborkar, learned counsel, Shri Chauhan, learned counsel and Shri Patil, for intervenors in writ petition, are opposing any modification.

Shri Sambre, learned counsel has addressed the Court on behalf of Respondent No. 12. He invites attention to the orders of the Hon'ble Apex Court dated 16.10.2015 to urge that the Hon'ble Apex Court granted Special Leave Petition and thereafter the judgment delivered has been modified to some extent.

It has, therefore, merged with the orders of the Hon'ble Apex Court and hence, no modification therein can be allowed by this Court. He seeks support from the judgment of the Hon'ble Apex Court in the case of Kunhayammed & Ors. vs. State of Kerala & Anr., reported at AIR 2000 SC 2587. He also points out that while the judgment was delivered, this Court was specifically informed figure 680 to be correct number and accordingly that number has been mentioned as an undisputed fact in it. He submits that in this situation, the application as originally filed, does not give any reason for seeking such correction. The reason given in the additional affidavit is also, therefore, not correct. Without prejudice to these submissions, he points out that though there was direction to proceed with election with 680 numbers, Respondent No. 32 has proceeded further with 696 persons and thus orders of this Court are violated. Having moved civil application, without seeking appropriate leave, such an exercise could not have been undertaken.

After hearing the respective counsel, we find that in terms of judgment delivered by this Court, a public notice was issued on 30.10.2015 in local Newspaper. In that notice, it is mentioned that list of 696 old members and 11010 new members was made available and objections were invited to it. The objections were to be filed by 07.11.2015. The objections, if any, were to be heard on 9th & 10th November 2015 insofar as 696 members are concerned. The objections in relation to 11010 persons were to be

heard on 18th & 21st November 2015. The final voters list was to be published on 26.11.2015.

The learned Government Pleader has submitted that the Election programme will be published as per orders of this Court and if allowed, in relation to 696 old members. The result of hearing is available and list has been finalized but has not been published so far because of pending application. At this stage, the learned Government Pleader points out that insofar as the list of 696 members are concerned, not a single objection was received by Respondent No. 32.

During hearing, we have inquired specifically from all learned counsel appearing for the parties raising objection to correction, whether they have raised any objection before Respondent No. 32. Candidly the learned counsel have accepted that no such objection was ever raised.

Thus, only technical facets are being pressed into service to oppose the application moved by Respondent No. 32. The facts on record show that on behalf of the State Government, learned counsel appearing for respondent No. 32, erroneously communicated the figure of 680 to this Court bonafidely. The correction therein communicated by the office of Respondent No. 32 to the office of Government Pleader could not be then pointed out. The records, therefore, support the correction as sought for. It is obvious that total 699 old members applied for making amends and 696 out of them were found to have removed the deficiencies. Thus, the correction

sought for is only in the figure and it does not affect the consideration of controversy on merits.

The Hon'ble Apex Court has also in its order observed that it was not inclined to interfere at that stage insofar as old members are concerned. The Hon'ble Apex Court has directed certain modifications insofar as new members and their rights are concerned.

We, therefore, do not find any substance in technical objection being raised. The prayer made is granted and figure 680 appearing in the judgment dated 08.09.2015 is corrected to read as 696. The judgment was delivered and time bound completion of Election programme was ordered by us to see that body democratically elected, starts administering a public trust. The correction has also been allowed only keeping in mind the very same purpose.

Civil Application is disposed of accordingly.

JUDGE

JUDGE

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