UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO.2609 OF 2016.

1. Yogesh Kesharlal Manudhane,
Age 42 years, Occ.Private Service,
R/o Patil Wada, At Po : Erandol,
Dist.Jalgaon.

2. Amol Ashok Kabra,
Age 36 years, Occ.Business,
R/o Marwadi Galli, At Po :
Erandol, Dist.Jalgaon.

3. Manakchand Shivji Totle,
Age 81 years, Occ.Nil,
R/o Marwadi Galli, At Po:
Erandol, Dist.Jalgaon.

4. Yogesh Anil Biyani,
Age 37 years, Occ.Business,
R/o Marwadi Galli, At Po :
Erandol, Dist.Jalgaon.

5. Suryakant Chandrashekhar Jaju,
Age 33 years, Occ.Medical Practice,
R/o Marwadi Galli, At Po:
Erandol, Dist.Jalgaon. … Petitioners.

Versus

1. The State of Maharashtra,
through the Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai-32.

2. The Deputy Charity
Commissioner, Jalgaon,
Dist.Jalgaon.

3. The Erandol Shikshan Prasarak
Mandal, Erandol, Tal. And
Dist.Jalgaon, through its
President Shri Manoj S/o
Ghanashyam Birla, Age 45 yerars,
Occ.Business, R/o At Post
Erandol, Dist.Jalgaon. … Respondents.

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Mr.R.R.Mantri, advocate holding for
Mr.B.A.Agrawal, advocate for the petitioners.
Mr.S.P.Sonpawale, A.G.P. for Respondent Nos.1 and 2.
Mr.V.D.Sapkal, advocate holding for
Mr.S.B.Yawalkar, advocate for Respondent No.3.
Mr.A.N.Sabnis, advocate for Respondent No.4.

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CORAM : S.V.GANGAPURWALA AND K.K.SONAWANE,JJ.

Reserved on : 25.04.2016.
Pronounced on : 02.05.2016

JUDGMENT (Per S.V.Gangapurwala,J.)

1. Heard.

2. Rule. Rule returnable forthwith. With the consent of the parties, taken up for final hearing.

3. The present petition is filed against the order dated 8.1.2016, passed by the Deputy Charity Commissioner, Jalgaon, below Exh.12 in

Inquiry No.2685/2015.

4. Mr.Mantri, learned counsel for the petitioners submits that the petitioners are the members of Respondent No.3 Mandal. The same is registered as a Public Trust, so also is registered under the Societies Registration Act. The learned counsel submits that General Body Meeting of the said Trust was not held since 2009. There are in all 594 members. On 8.12.2015, 271 members of the Trust gave requisition to the President, Secretary to call Special General Body Meeting to discuss and take decision in respect of the matters detailed in the said requisition. The learned counsel submits that according to the byelaws, more particularly clause 8(3), if 75 members request in writing to call for Special General Body Meeting, then the President has to call the Special General Body Meeting within 21 days of the receipt of the requisition. In the present case the requisition was given by 271 members. According to the learned counsel, the date of the Special Body Meeting was scheduled on 10.1.2016,

pursuant to the said requisition. The Respondent No.3 filed application before the Assistant Charity Commissioner, Jalgaon i.e. Exh.12 in Inquiry No.2685/2015, requesting for audit for the period 2010-11 to 2012-13. The learned counsel submits that when the petitioners went to attend the meeting on scheduled date and time, it was revealed to them that there was stay to the said meeting and, therefore, it was postponed. The petitioners thereafter, got the knowledge that in daily newspaper Erandol-warta, the news item about the stay of the said meeting was published. On making inquiry it was learnt by the petitioners that in the said Inquiry Application No.2685/2015, an application for interim stay was moved on 5.1.2016 and the Deputy Charity Commissioner by interim order Exh.12 prohibited Respondent No.4 from holding the meeting dated 10.1.2016.

5. The learned counsel further submits that the learned Deputy Charity Commissioner does not have the jurisdiction to stay the said meeting. While passing the impugned order, the

Deputy Charity Commissioner exercised the powers not vested in him. U/s 41A of the Maharashtra Public Trusts Act, the Deputy Charity Commissioner does not have any jurisdiction to prohibit holding of the meeting or to issue prohibitory orders. The Charity Commissioner can not interfere into the internal affairs of the Trust. He only has supervisory jurisdiction. It was within the right of these members to call for the Special General Body Meeting. According to the learned counsel, the facts are appreciated perversely by the Deputy Charity Commissioner. He has observed that only 37 members have signed the requisition for calling the Special General Body Meeting. In the application Exh.12 itself the applicant therein had mentioned that the requisition was received from 271 members. The Deputy Charity Commissioner could not have observed in the order that only 37 members had signed the requisition. According to the learned counsel, the reason given in the order that application U/s 33(4) of the Maharashtra Public Trusts Act, was pending is also erroneous. The said reason is untenable. The members have a right to consider the financial position and audit report. The learned counsel submits that the powers of Deputy Charity Commissioner are not affected even if the audit reports are accepted or rejected in General Body Meeting. The General Body is the Supreme Body of the Trust. According to the learned counsel, the Charity Commissioner did not extend any opportunity of hearing to the petitioners and has passed the final order in the manner prejudicial to the interest of the petitioners. The Respondents be directed to call Special General Body Meeting.

6. Mr.V.D.Sapkal, learned counsel appearing for the Respondent No.3 submits that Deputy Charity Commissioner had powers U/s 41A and passed the orders for the purpose of proper management of the Trust. According to the learned counsel, Section 41A of the Maharashtra Public Trusts Act, is an administrative proceedings and directions can be issued. According to the learned counsel, it was resolved that there should be re-audit by the panel of auditors through Assistant Charity Commissioner.

The Respondent No.4 instigated few members of the institution and prepared requisition with the help of them. The subject which was fixed for discussion before the General Body and in respect of which the proceedings are pending before the office of Charity Commissioner were same. As such there can not be discussion in respect of the matters which are subjudice. The same would tantamount to interference in the course of administration of justice. The learned counsel relies on the judgment of the Apex Court in the case of **“In re :P.C.Sen Appellant** reported in **AIR 1970 Supreme Court 1821.** The Respondents are ready to call the meeting excluding the subjects which are subjudiced before the office of the Charity Commissioner. According to the learned counsel, the present petition is a collusive petition between the petitioners and Respondent No.4.

7. I have considered the submissions canvassed by the learned counsel for respective parties. It does not appear that it was anybody's case before the Deputy Charity

Commissioner that only 37 members have signed the requisition. Perusal of application Exh.12, more particularly, para 3 itself suggest that about 271 members had given requisition for calling the Special General Body Meeting. The said observation of the Deputy Charity Commissioner in the impugned order that only 37 persons have signed the requisition does not appear to be proper.

8. Section 41A of the Maharashtra Public Trusts Act, gives power to the office of the Charity Commissioner to issue directions to any Trustee or a Public Trust or any person connected therewith, to ensure that the trust is properly administered and the income thereof is properly accounted. He can also give directions to ensure that the Trust is properly administered. The directions with regard to proper administration of the Trust has a wider amplitude.

9. As per the bylaws if 75 or more members give requisition then the President has to call the Special General Body Meeting. In the

present case the same was called by the Secretary.

10. It is a matter of record that proceedings U/s 33(4) of the Maharashtra Public Trusts Act, regarding the audit is pending before the office of the Charity Commissioner. It is also a matter of record that proceedings in respect of the elections conducted i.e. the change report proceedings are also pending before the authority. The persons interested can participate in the said proceedings and raise objections. The Deputy Charity Commissioner in his order has found that the proceedings U/s 33(4) are pending with him. The same is subjudice. As such there is no urgency to hold a meeting of General Body to again consider the audit report.

11. The Apex Court in a case of **"In re : P.C. Sen Appellant** referred to supra has observed and held that if a party to the proceeding is likely to be deterred from prosecuting his proceeding or people who have similar cause are

likely to be dissuaded from initiating proceedings, contempt of Court would be committed.

12. In the present case as stated supra, the proceedings with regard to the audit of accounts is pending with the office of the Deputy Charity Commissioner U/s 33(4), so also change report with regard to the validity of the elections of the Managing Committee is pending before the office of the Assistant Charity Commissioner and in the agenda set out calling for Special General Body Meeting amongst other subjects these subjects are also included.

13. No doubt, if 75 or more members give requisition to the President to call for the General Body Meeting, the President is obliged to call Special General Body Meeting. It would be open for the members to discuss the subjects, however, in respect of subject for which a judicial/quasi judicial proceeding is pending in the Court, the said discussion would not affect or ought not tend to affect the proceedings

before the office of the Charity Commissioner, where the statutory proceedings are pending and the decision of the authority where the proceedings are pending would be final then it would not be appropriate for the General Body to take any decision even on the ground of propriety. The members can raise their objection in the proceedings before the competent authority, however, the said proceedings can not be scuttled by any decision amongst the members.

14. The petitioners have also filed Civil Application No.4460/2016, thereby seeking directions against the Respondents from taking up/considering the subject No.2 of the agenda for the meeting to be held on 6.4.2016, so also the same subject in a subsequent meeting i.e. 22.4.2016 called by the Respondent. It would be seen that Respondent Nos.3 and 4 are elected office bearers of the Managing Committee. The validity of the election is pending consideration in the change report. It is settled proposition of law that after the elections of new body takes place and the change report is pending, mere

pendency of change report is not an impediment for the new body to hold the office. As such, it would not be possible to restrain them from holding the meeting and discussing the subjects. In case the petitioners feel that some illegal decisions are taken, they are at liberty to assail the same in appropriate proceedings.

15. In light of the above, we pass the following order :

a) The impugned order is quashed and set aside. The Respondent Nos.3 and 4 i.e. President and Secretary of the Trust shall call the Special General Body Meeting pursuant to the requisition received by them from 271 members. The Special General Body may discuss the subjects before it, however, any decision taken in the Special General Body Meeting with regard to the pending proceedings before the office of the Charity Commissioner/Deputy Charity Commissioner/ Assistant Charity Commissioner shall not take effect till the said proceedings are decided by the Deputy Charity Commissioner/Assistant Charity

Commissioner.

b) The Writ Petition is partly allowed.

The Civil Application is disposed of. No costs.

Sd/- Sd/-
(K.K.SONAWANE,J.) **(S.V.GANGAPURWALA,J.)**

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