

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

WRIT PETITION NO. 5836 OF 2016

Dnyanoba Narayanrao Jawale

... Petitioner

Versus

The Assistant Charity Commissioner & others ... Respondents

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Mr. V. D. Hon, Senior Advocate i/by Mr. A. R. Vyawahare,
Advocate for petitioner

Mr. B. A. Shinde, Assistant Government Pleader for
respondent No.1

Mr. D. J. Choudhary, Advocate h/f Mr. R. D. Khadap, Advocate
for respondent No.2.

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 9th JUNE, 2016

ORDER :

1. Heard learned counsel for the parties.
2. This writ petition is moved by objection petitioner challenging order dated 11th May, 2016 passed by Assistant Charity Commissioner, Parbhani on Exhibit-78 in Inquiry No.69 of 2010, whereunder his request to issue witness summons to Dr. Bhimrao Gyanoji Nirwal has been turned down.

3. Learned senior advocate appearing for the petitioner submits that Dr. Bhimrao Nirwal is an important witness and it would be relevant and imperative to examine him. He has specifically referred to that in 2003 respondent No.2 had filed change report No.527/2003 which was rejected. It is further contended that member Bhimrao Nirwal had convened meeting by issuing public notice. Respondent No.2 had also challenged notice of general body meeting in Trust Suit No.1/2010 before the District Judge, Parbhani. Pursuant to the notice elections were held, which were reported vide change report No.190 of 2010. According to learned counsel, now Bhimrao Nirwal has been won over by the other side and has withdrawn objection to the change report. He is shirking his responsibility to appear as witness. His evidence, therefore, assumes importance in the facts and circumstances of the present case.

4. In earlier attempt under Exhibit-64, according to learned senior advocate, request to issue summons to said witness had been rejected by Assistant Charity Commissioner and said request had also not been acceded to by this court for the reason that the application did not give any particulars of circumstances under which witness was required to be

summoned, giving liberty to petitioner to make efforts afresh to secure presence of witness. Learned senior counsel further submits, subsequently application Exhibit-78 was presented before the Assistant Charity Commissioner for securing presence of said Bhimrao Nirwal since he was avoiding to appear before the authority. However, Exhibit-78 has been rejected under impugned order dated 11th May, 2016.

5. He submits that the position that proceedings before the Assistant Charity Commissioner are judicial proceedings, can be gathered from a decision in the case of *Jagatnarayansingh Swarupsingh Chithere and others Vs. Swarupsingh Education Society and another* reported in 1980 *Mh.L.J.* 372. He, therefore, submits that presence of Dr. Bhimrao Nirwal as witness and summons to him in the matter is worthwhile. He also refers to yet another decision in the case of *Balaji Bhikaji Kapale and another Vs. Punjaji Balaji Tayade and others* reported in 2001(4) *Mh.L.J.*

6. Learned senior counsel contends that reasons as are appearing in impugned order dated 11th May, 2016 are not in consonance with the factual position, as the petitioner in his examination in chief has specifically referred to Dr. Bhimrao Nirwal. According to him, the other reason of having not

submitted list of witnesses having regard to earlier application during 22nd April, 2016 is not good enough and as such, the impugned order cannot be said to be tenable and the petition deserves to be allowed.

7. Learned Counsel Mr. D. J. Choudhary appearing for respondent No. 2 - caveator submits affidavit in reply, tendering the same across the bar and refers to various orders passed from time to time by this court and contends that one or the other person is trying to prolong the hearing of the change reports which is expedited pursuant to directions issued by the High Court. He submits, earlier on, there was an attempt by one Mr. Anand Bharose to secure presence of Dr. Nirwal as witness. Said request had been rejected by the Assistant Charity Commissioner, aggrieved by which, writ petition No. 4317 of 2016 had been filed before this court and the court after taking stock of the situation disposed of the same under order dated 13th April, 2016 observing thus;

" 7. If the petitioner is going aggrieved by the order rejecting his application and by which his case he feels is likely to be prejudiced, he may take up such pleas/objections/grounds, if it comes to filing of appeal against final decision in respect of such order. Needless to say that these observations are confined to the change report concerned. "

8. He submits that in addition to aforesaid, in the present case, there is no material placed on record worth the name to show that any other attempt had been made to secure presence of Dr. Nirwal as witness and directly intervention of the authority for said purpose is being sought. He submits that, if at all the petitioner is aggrieved by rejection of his request, he will be governed by aforesaid observations as are appearing in paragraph 7 of the order dated 13th April, 2016 in Writ Petition No. 4317 of 2016 quoted above.

9. Having regard to the aforesaid background in which the petitioner is approaching and that, although it is being contended that the witness is material and if the petitioner is aggrieved by rejection of his request for said purpose, it is not the case wherein the court should cause interlude in the proceedings going on before the Assistant Charity Commissioner in respect of the change reports pursuant to directions of the Division Bench.

10. It would be open for the petitioner, since he feels that he would be prejudiced, to take up all these pleadings, objections, grounds, if it comes to filing of appeal against final decision in respect of the change report.

11. As such, I am not inclined to interfere with the impugned order and as stated above, and cause interlude in the proceedings and the request for said reason is not being considered.

12. With aforesaid observations, writ petition stands disposed of.

13. It is made clear that the observations in this order are confined only to change report No. 69 of 2010.

(SUNIL P. DESHMUKH, J.)

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