

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

999 WRIT PETITION NO. 9216 OF 2016

SOMNATH GANPATI WAGHMARE
VERSUS
ARUN PANDURANG GARAD AND OTHERS

Shri. Vevek Deshmukkh, Advocate, for petitioner.

Shri. Santosh Jadhavar, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 16 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order dated 5-8-2016 passed by the learned Assistant Charity Commissioner Osmanabad on Exhibit 42 in Inquiry No.130/2016. Both sides are heard.

2) There is dispute in respect of control over the institution, Shri. Sant Goroba Kaka Shikshan Prasarak Mandal, Satephal, Tahsil Kallam, District Osmanabad. Present petitioner was contending that he is the founder member of the institution and till today he is working as Secretary. Respondent No.1 is also claiming that he is the

Secretary of the institution. Change Report was filed under provision of Section 41-A of the Maharashtra Public Trusts Act by respondent No.1 and it was rejected by the Assistant Charity Commissioner on 10-12-2007. The other change report filed by the opposite side of the petitioner was also rejected on 23-1-2009.

3) It appears that in the year 2014 both, the petitioner and the respondent No.1 filed new change reports by contending that the change reports were in respect of the elections held for the period from 2014 to 2017. In the past, change reports of both the sides were rejected. In view of the long standing dispute between the two groups and as no change report was accepted in the past, the Assistant Charity Commissioner has held that the elections were not held for many years and so the Assistant Charity Commissioner directed to take the elections. Under the direction of the learned Assistant Charity Commissioner the election is to be conducted by the Inspector of the office of the Assistant Charity Commissioner for the term 2016 to 2019.

4) Learned counsel for the petitioner submitted that when the change reports of rival groups were pending for consideration, the authority ought to have taken decision on the change reports and the authority ought not to have given direction to take elections. Learned counsel for the petitioner placed reliance on the observations made by this Court in **2008(4) ALL MR 707 (Dinkar Shankarrao Patil Vs. Dr. Sheshrao Shankarrao Patil)**.

5) The submissions made and the reasoning given by the learned Assistant Charity Commissioner show that the Trust runs a school and since long the elections are not held by following the procedure. From the year 1987 many change reports were filed but they came to be rejected. Both the sides are having record to show that they had held elections and both the sides are claiming control over the institution. The petitioner is making allegation against the other side that the other side has created false record. Learned Assistant Charity Commissioner has formed opinion that due to the dispute between the two groups which has taken serious turn, the

administration of the school and the Trust has been affected and the students are the sufferers of the dispute.

6) The reasoning given by the learned Assistant Charity Commissioner shows that the persons of both the groups, except the present petitioner now want to see that the dispute is set at rest and by following the proper procedure the elections are held. Written submissions were filed by the persons of both the groups before the learned Assistant Charity Commissioner though the petitioner is opposing such election. In view of the desire of all the remaining members of the Trust, the majority, the learned Assistant Charity Commissioner has taken such decision.

7) Learned Assistant Charity Commissioner has placed reliance on the case reported as **2007 (1) Mh.L.J. 48** Bombay High Court (**Dattatraya v. Arjun**). In this case, it is laid down that in view of the provisions of section 41-A of the Act, the Assistant Charity Commissioner has the power to give direction to hold election and such power is implicit in provision of section 41-A of the Act. It is held

that such order can be made for proper administration of the Trust and the election can be held under the supervision of the officers of the office of the Charity Commissioner. This Court holds that the observations made in the case of Dattatraya need to be used in the present matter. This is also a Division Bench case. The facts of the present matter show that there was no other option before the Assistant Charity Commissioner and such decision is in the interests of all and particularly in the interests of the beneficiaries of the Trust. No interference is possible in the order of the Assistant Charity Commissioner. In the result, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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