

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 10591 OF 2016

SOMNATH S/O. GANPATI WAGHMARE AND ANR.
VS.
THE ASSISTANT CHARITY COMMISSIONER AND ORS.

...
Advocate for petitioners : V.D. Salunke
AGP for respondent No. 1 : S.N. Kendre
Advocate for respondent 4 : S.S. JADHAVAR
...

CORAM : T.V. NALAWADE, J.
DATED : 20th October, 2016.

ORDER :

1. The petition is filed to challenge the order made by Returning Officer of Sant Goroba Kaka Shikshan Prasarak Mandal, Satephal, Taluka Kallamb, District Osmanabad on 29.9.2016 by which he has rejected the objections taken by the present petitioners and he has allowed some objections taken by present respondent No. 4.

2. It appears that in Inquiry No. 130/2016, which was pending before the learned Assistant Charity Commissioner, Osmanabad in respect of the aforesaid institution, a direction is given by the learned Assistant Charity Commissioner to hold elections as the proceeding was filed under section 41-A of the

Maharashtra Public Trust Act. One Shri. D.B. Pawar is appointed as Election Officer and one Inspector is appointed to assist him. Shri. Pawar is also Inspector of the office. While passing the order, the learned Assistant Charity Commissioner made it clear that the Returning Officer was not to ascertain the membership as the proceeding was of nature that is filed section 41-A. But, he expressed that it was open to the Returning Officer to consider the material, evidence for preparation of voters list.

3. The Returning Officer published provisional voters list of 37 persons. In the present proceeding, the grievance in respect of petitioner No. 2 Suryakant Waghmare is that he is deleted from this voters list when he was at Sr. No. 19 and there was grievance of petitioner No. 1 and 2 against the persons, who are shown as voters at Sr. Nos. 2 to 8, 10 to 13 and 15 to 18. There was grievance of other side that petitioner has created false record of membership of some persons.

4. The Returning Officer has passed the reasoned order. So far as the petitioner No. 2 is concerned, it can be said that against him there is order made in Change Report No. 594/2008 dated 30.12.2008 by which the incharge Assistant Charity

Commissioner, Latur had rejected the Change Report by holding that he was not validly made member of the trust. So far as the other persons like voters shown at Sr. Nos. 2 to 8, 10 to 13 and 15 to 18 are concerned, reasoning given by the Returning Officer shows that the petitioners were not disputing that in the past, these person were members of the trust. They are contending that they were subsequently removed by the Body which was controlled by the petitioners by passing resolution and so, they cannot be allowed to vote in the election.

5. The record shown to this Court is to the effect that Change Reports filed by both the sides in the year 2007 were rejected. In proceeding No. 83/2007, Change Report Inquiry, it was observed that petitioner No. 1 Somnath was not holding the post of Secretary legally and validly and so, his acts like calling meetings, issuing notice dated 1.12.2007 as Secretary cannot be treated as legal and his further actions like holding meeting, taking resolutions in the meeting cannot be recognized in law. This decision is not challenged. Thus, record of membership of some person created after 2007 cannot be considered.

6. The petitioners want to show the record which is to

the effect that the other persons were made members by the Body controlled by them. In the aforesaid Change Report decided against the present petitioners, it was made clear that the meeting in which these persons were made members was not legal. This circumstance is considered by the Returning officer. The reasoning given by the Returning Officer shows that he considered the admitted position, the past position, which was prevailing till the year 2006 when there was no dispute. The persons who were shown as members till that time are considered by the Returning Officer and they are taken on the voters list.

7. In view of the nature of dispute and steps taken by the learned Assistant Charity Commissioner, this Court holds that the Returning Officer has done the correct thing and this was the only step which was possible to settle the dispute forever. When the Change Report of 2007 of the present petitioners was not accepted and it was held that the Secretary was not holding the post legally, the persons who were made members by him, cannot be allowed to vote. Similarly their action of deleting/removing some persons from membership register cannot be recognised in law. In view of these

circumstances, this Court holds that it is not possible to interfere in the order made by the Returning Officer. The petition stands dismissed. The observations are limited for the purpose of process of election. It will be open to raise the dispute in election petition.

[T.V. NALAWADE, J.]

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