

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO. 22 OF 2016

(Adv. Shri Arun Bhimrao Shelke and others .v. Adv. Shri Pradeep Prabhakar Rao Mahalle and others)

WITH

SECOND APPEAL NO. 27 OF 2016

(Vinayak Govindrao Bhamburkar .v. The Charity Commissioner and others)

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

Court's or Judge's Orders

Shri R.S. Kalangiware, Advocate for the appellants in SA No. 22/2016 and Shri C.S. Kaptan, Senior Advocate with Shri P.A. Kadu, Advocate for the appellant in SA No. 27/2016.

Shri R.L. Khapre, Advocate for respondent No.1 in SA No. 22/2016 and respondent No.4 in SA No. 27/2016.

Shri K.P. Mahalle, Advocate for respondent No.2 in SA No. 22/2016 and respondent Nos.5 and 6 in SA No. 27/2016.

Shri A.A. Naik, Advocate for respondent No.7 in SA No. 27/2016.

Shri G.R. Sadar, Advocate for respondent No.11 in SA No. 22/2016 and respondent No.21 in SA No. 27/2016.

Shri P.V. Bhoyar, AGP for respondent Nos.12 and 13 in SA No. 22/2016 and respondent Nos.1 to 3 in SA No. 27/2016.

CORAM : PRASANNA B. VARALE, J.
05TH FEBRUARY, 2016.

CIVIL APPLICATION (CAS) NO. 103 OF 2016.

Heard.

Shri Kaptan, the learned Senior Counsel for the appellants submits that during the pendency of the appeals, the appellant No.3 in SA No. 22 of 2016 expired and on demise of appellant No.3, right to sue does not survive as the present matters pertain to the election in a public trust. The learned Senior Counsel on this submission prays for deletion of appellant No.3 from the array of the appellants.

As the prayer made in the application is of formal nature, the application is allowed in terms of prayer clause (i) of the Civil Application No. 103 of 2016.

Civil Application stands disposed of as such.

SECOND APPEAL NOS. 22 OF 2016 AND 27 OF 2016.

Heard Shri C.S. Kaptan, the learned Senior Counsel for the appellants at length in challenge to the judgment and order impugned in the present appeals. The learned Senior Counsel raises two fold submissions in his attempt to pray for interim order by referring to the various documents placed on record more particularly the constitution of the trust. The first submission of the learned Senior Counsel is about the induction of respondent Nos.1 and 5 was unsustainable on more than one ground. The second submission of the learned Senior Counsel is that by order dated 27.07.2015 though the learned Joint Charity Commissioner found no fault with the President-ship of appellant Shri Arun Shelke, the Joint Charity Commissioner by clause (12) of the order prohibited the appellant/president to take any policy decisions in the matters of the appointment/admission of special quota in education till new executive council comes into existence and takes over the charge. It is the submission of the learned Senior Counsel that when the constitution of the trust puts no embargo on the rights of the President, prohibition for exercising the powers of the President in the administration of trust who runs the education institutes cause hindrance and difficulty in the smooth running of the education institutes. Thus Shri Kaptan, the learned Senior Counsel prays for interim orders.

Shri Khapre, the learned Counsel for respondent No.1 in reply, submits that the appellants in challenge to the order passed by the Joint Charity Commission by preferring an appeal, sought stay. The learned Counsel for respondent No.1 then placed on record the copy of the order passed by the Joint Charity Commissioner dated 31.07.2015. The same is taken on record and marked as "X" for identification. Shri Khapre, the learned Counsel submits that the Joint Charity Commissioner, considering the difficulty, granted stay subject to certain conditions thereby a care was taken by permitting the appellants to appoint teachers on temporary basis. Shri Khapre, the learned Counsel for respondent

No.1 submits that the learned District Judge, Amravati vide order dated 22.12.2015 also took note of these difficulties and continued the stay. As this Court finds that it would be necessary to hear the parties at length as various grounds are raised in these appeals and as the induction of certain persons/respondents in the trust itself is under challenge, certain interim order is required to be passed though not as claimed by the learned Senior Counsel. It is not in dispute that the said trust runs various education institutes and if required teaching or not teaching staff is not appointed, it ultimately results in causing a disturbance to the students community in their academic career.

Considering the interest of the students who are prosecuting their academic career in the education institutes being run by the trust, this Court is of the opinion that certain interim directions can be issued to protect the interest of the career of the students. In case there is an exigency for appointment of the teaching or non teaching staff in the education institutes being run by the trust, the appellant No.1 to put such proposal before the appropriate authorities either the Joint Director of Education, Amravati Region or the concerned authorities of the respective Universities including Punjabrao Krishi Vidyapeeth. The appointments such made would be then subject to the approval of the Deputy Director of Education, Joint Director of Education, Director of Higher Education or the concerned authorities of the respective Universities. It is further directed that the advertisement calling the persons for such appointments to the teaching and not teaching staff shall make it clear that the appeals are pending in this Court filed by the trust. The learned Senior Counsel appearing for the appellants as well as for respondent No.1 agree for stay to the order passed by the Joint Charity Commissioner in respect of conduct of the elections as per clause No.7 and modified by the learned District Judge by clause No.3 in order dated 22.12.2015. The said order is stayed until further orders. The appellant is permitted to move this Court if there is any exigency which relates to the academic activities of the

institutes are suffered.

S.O. to 15th March, 2016.

The parties are put on notice that the appeals may be heard and decided finally at the stage of admission itself, if it is convenient to the Court.

In the meantime, call for R and P.

JUDGE

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