

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

WRIT PETITION NO.3458 OF 2016

[Vijay s/o Ashok Kumar Kungwani and others .vs. Assistant Charity Commissioner (Election Officer),
Gondia and others]

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

Court's or Judge's orders

Shri I.S. Charlewar, counsel for the petitioners.

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CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : JUNE 22, 2016.

By this writ petition, the petitioners challenge the process of admission of members to the respondent no.2-trust and seek the implementation of the process of admission of members to the trust as per the direction of this court in the judgment, dated 2.8.2014 in Second Appeal Nos.425/2012 and 441/2012.

There were some disputes between the two rival groups in a trust and against the order in some of the matters in a couple of Miscellaneous Judicial proceedings, that were decided by the learned District Judge, this court had, by the judgment dated, 2.8.2014 in a couple of Second Appeals, directed the Assistant Charity Commissioner to take steps for holding the elections to the respondent no.2-trust. According to the petitioners, as per the said judgment, the Assistant Charity Commissioner was directed to fix the criteria for membership and applications were required to be called from the interested persons. It is the case of the petitioners that in all 308 applications were received and out of 308 applicants, 131 applicants were selected for being inducted as members. The petitioners claim to be the applicants that were selected for admission to membership out of the 131 members that were selected. It is the case of the petitioners that

despite the selection of 131 members, as required, the matter pertaining to the selection of members from all the 308 applicants is again placed before the General Body Meeting of the trust. It is stated that the said action is contrary to the directions issued by this Court in the judgment, dated 2.8.2014. It is stated that out of the 308 applicants, some applicants have criminal antecedents but still their applications are sought to be considered. In this background, the petitioners have approached this court seeking the aforesaid relief.

The petitioners have abused the process of this court by filing the writ petition under Article 226 of the Constitution of India for seeking the aforesaid relief. If the application of the petitioners was not rightly considered and/or if the name of the petitioners was deleted from the list of members that are liable to be selected, the petitioners have a remedy under the provisions of the Bombay Public Trust Act. Without availing the alternate remedy, the petitioners have rushed to this court for inclusion of their names as members of the trust. The issue in regard to the membership of the trust cannot be decided in exercise of the writ jurisdiction. Also, there would be a serious dispute in respect of the facts averred by the petitioners in the writ petition, specially the ones relating to the criminal antecedents of some of the applicants and/or their eligibility.

In the circumstances of the case, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE