

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

WRIT PETITION NO.3223 OF 2016

[Madhusudan s/o Achyutao Pasarkar and others .vs. Bharat Shikshan Prasarak Mandal, Akola 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 Anand Parchure, counsel for the petitioners,
Shri Anand Jaiswal, senior counsel with Shri A.R. Deshpande, counsel for
respondent nos.1, 2, 4 & 5,
Shri A.M. Balpande, Assistant Government Pleader for respondent no.7.
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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 order of the Assistant Charity Commissioner, Akola dated 24.5.2016 rejecting the application filed by the petitioners under Section 41-A of the Maharashtra Public Trust Act.

By filing the proceeding under Section 41 of the Act, the petitioners/applicants had sought a restraintment order against the non-applicants/respondents not to act on resolution no.3, dated 2.11.2015. The petitioners had sought the cancellation of the said resolution and also the withdrawal of letter, dated 6.11.2015, that was addressed to 11 founder members that the governing body would take action for suspending them.

According to the petitioner nos.1 and 2, they were the founder members of the trust and in view of the constitution of the trust, they had inducted the other 9 petitioners as founder members. According to the petitioners, by the resolution dated 2.11.2015, the governing body decided to return the membership fees that were secured from the 9 persons that were inducted as the founder members. The petitioners have challenged the said resolution and have sought a direction restraining the

respondents from acting upon the same. The Assistant Charity Commissioner, Akola, on an appreciation of the material on record, found that the provisions of Section 41-A of the Act could have been invoked only to ensure that the trust is properly administered and the income thereof is properly accounted for and duly and properly applied to the objects of the trust and the directions sought by the petitioners could not have been issued. Having held so, the Assistant Charity Commissioner rejected the application filed by the petitioners and directed the parties to cooperate in the matter of the pending Change Enquiry No.738/2013, so that the change report could be expeditiously decided.

According to the petitioners, the Assistant Charity Commissioner could not have rejected the application filed by the petitioners under Section 41-A of the Act. It is stated that the matter in regard to the suspension of the members and/or the refund of the membership fee that was paid by them for their induction as founder members pertains to the administration of the trust and the Assistant Charity Commissioner could not have rejected the application. It is stated that the induction of 9 members was in accordance with the constitution/trust deed.

On the other hand, it is submitted on behalf of the concerned respondents that the resolution providing for the return of the membership fees to 9 persons that were sought to be inducted as founder members would not be a matter under Section 41-A of the Act. It is stated that resolution no.3 was passed only by the governing council and the subject of suspending the petitioners is not considered in the general body meeting. It is stated that the said subject would be discussed in the general body meeting of the trust. It is stated that the proceedings in the matter of removal/suspension of the petitioners are premature.

On hearing the learned counsel for the parties, we find that the Assistant Charity Commissioner was justified in rejecting the application filed by the petitioners under Section 41-A of the Act. If the names of some of the petitioners find place in Schedule-I and if there is any change in Schedule-I in view of the so called suspension or removal of the petitioners, the petitioners could have, as rightly observed by the Assistant Charity Commissioner, raised appropriate objection in a change report enquiry proceedings. Whether the enrollment of the members was proper or not could be decided in an enquiry under Section 22 of the Act. We find much force in the submission made on behalf of the respondents that the meeting of the general body for considering the suspension of the founder members is not yet held and the proceedings in the matter of suspension/removal of the petitioners before the Assistant Charity Commissioner were premature. The petitioners are entitled to file appropriate proceedings if they so desire. We, however, do not find any fault in the order of the Assistant Charity Commissioner in rejecting the application filed by the petitioners.

In the circumstances of the case, we dismiss the writ petition with no order as to costs. The Assistant Charity Commissioner should decide the change report enquiry proceedings that are referred to in clause 2 of operative part of the impugned order, as early as possible. Order accordingly. No costs.

JUDGE

JUDGE