

(1)

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

WRIT PETITION NO.5713 OF 2008

1. Hari Venkatrao Biradar,
Age: 49 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
2. Ramkisan Tulshiram Dadge,
Age: 35 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
3. Bhadgawan Govindrao Bobade,
Age: 32 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
4. Gayabai Hari Biradar,
Age: 45 years, Occ: Household & Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
5. Ankush Ramrao Biradar,
Age: 28 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
6. Pandurang Nivrutti Biradar,
Age: 38 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
7. Subhash Gundaji Biradar,
Age: 52 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
8. Mangalabai Ramkisan Dadge,
Age: 30 years, Occ: Agri., & Household,
R/o. Yenki, Taluka Udgir,

(2)

Dist. Latur.

9. Ramchandra Gundaji Biradar,
Age: 42 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
10. Venkatrao Santukrao Biradar,
Age: 85 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
11. Radhikabnai Ramrao Biradar,
Age: 52 years, Occ: Agri. & Household,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
12. Chandrabhagabai Tulshiram Dagade,
Age: 58 years, Occ: Agri. & Household,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
13. Gobind Maruti Bobade,
Age: 60 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
14. Rajkumar Govindrao Biradar,
Age: 30 years, Occ: Agri.,
R/o. Hansnal, Taluka Deoni,
Dist. Latur.
15. Yeshodabai Govindrao Biradar,
Age: 42 years, Occ: Agri. & Household,
R/o. Hansnal, Taluka Deoni,
Dist. Latur.
16. Govind Narayanrao Biradar,
Age: 44 years, Occ: Agri.,
R/o. Hansnal, Taluka Deoni,
Dist. Latur.
17. Vijaykumar Govindrao Biradar,
Age: 26 years, Occ: Agri.,

(3)

R/o. Hansnal, Taluka Deoni,
Dist. Latur.

18. Minakshi Dnyaneshwar Biradar,
Age: 26 years, Occ: Agri. & Household,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
19. Maruti Zatingrao Biradar,
Age: 55 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
20. Narayan Govindrao Bobade,
Age: 34 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
21. Jijabai Dnyanoba Bobade,
Age: 52 years, Occ: Agri. & Household,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
22. Gokula Rajkumar Patil,
Age: 24 years, Occ: Agri. & Household,
R/o. Gurnal, Taluka Deoni,
Dist. Latur.
23. Swati Ankushrao Biradar,
Age: 24 years, Occ: Agri. & Household,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
24. Manjulabai Dnyaneshwar Sawant,
Age: 40 years, Occ: Agri. & Household,
R/o. Helamb, Taluka Deoni,
Dist. Latur.
25. Balaji Dnyaneshwar Sawant,
Age: 26 years, Occ: Agri.,
R/o. Helamb, Taluka Deoni,
Dist. Latur.
26. Dnyaneshwar Abhangrao Sawant,

(4)

Age: 48 years, Occ: Agri.,
R/o. Helamb, Taluka Deoni,
Dist. Latur.

27. Dnyaneshwar Hari Biradar,
Age: 25 years, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.

..PETITIONERS

VERSUS

1. Assistant Charity Commissioner,
Latur Division, Latur
Dist. Latur.
2. Returning Officer
For the elections of the
Managing Committee of
Nagbuwa Shikshan Prasarak Sanstha
Yenki, Taluka Udgir, Dist.Latur.
3. Tulshiram Govindrao Dadge,
Age: Major,m Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
4. Haribhau Piraji Bhande,
Age: Major, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
5. Pandurang Tulshiram Dadge,
Age: Major, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
6. Ram Venkatrao Biradar,
Age: Major, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur.
7. Sarojabai Pandurang Dadge,
Age: Major, Occ: Agri.,
R/o. Yenki, Taluka Udgir,

(5)

Dist. Latur.

8. Harischandra Dhondiba Biradar,
Age: Major, Occ: Agri.,
R/o. Dighol, Taluka Shiruranantpal,
Dist. Latur.

9. Dnyanoba Maruti Bobade,
Age: Major, Occ: Agri.,
R/o. Yenki, Taluka Udgir,
Dist. Latur

..RESPONDENTS

Mr P.V. Barde, Advocate for petitioners;
Mr A.P. Basarkar, A.G.P. for respondent No.2;
Mr S.S. Thombre, Advocate for respondent Nos. 4,5,7
and 8

CORAM : NITIN W. SAMBRE, J.

DATE : 14th SEPTEMBER, 2017

ORAL ORDER :

Assistant Charity Commissioner/Returning
Officer of trust i.e. respondent Nos. 1 and 2
rejected the claim of the petitioners of being
members-voters of the trust in question i.e.
Nagabuwa Shikshan Prasarak Sanstha, Yenki, Taluka
Udgir, District Latur.

2. The said order was questioned by the
petitioners-alleged members in this petition,

(6)

wherein this Court on 30th January, 2009 passed detailed order granting 'Rule' and staying the impugned order dated 25th September, 2008 permitting the petitioners to participate in the election process as members without prejudice to the rights of the parties.

3. The election programme would commence from the stage at which it was stayed; from 24th February, 2009 and I am informed that after petitioners were permitted to cast their votes in the said election, the Change Report being No.376 of 2009 out of same is pending adjudication before Assistant Charity Commissioner, Latur.

4. Heard Mr. Barde, learned Counsel for the petitioners for some time, who submits that Rule is required to be made absolute in terms of interim order, as the petitioners are already permitted to participate in the election process by casting their votes. According to him, Assistant Charity Commissioner, who has rejected their prayer for

(7)

naming them as validly enrolled members/voters of the trust and refusing to confer right of voting is without any legal basis. He submits that the petitioners were rightly enrolled as members pursuant to by-laws of the trust. According to him, there is sufficient material available to infer that the petitioners were validly enrolled as members.

5. Per contra, Mr. Thombre, learned Counsel for the respondents would urge that the issue of membership can be gone into by the Assistant Charity Commissioner while deciding the Change Report under Section 22 of the Maharashtra Public Trusts Act and would draw support from the judgment of this Court in First Appeal No.1087 of 2014 [Baburao s/o Sopanrao Palmate & ors vs The Joint Charity Commissioner, Latur Region, Latur & ors] decided on 21st November, 2015. He would urge that in extraordinary jurisdiction, it will be difficult for this Court to record findings as regards payment of membership, rightful enrollment after

(8)

following prescribed procedure under by-laws. He would urge that, it is only upon recording evidence, Assistant Charity Commissioner can record findings.

6. Considered rival submissions. What is required to be noted is, by the impugned order dated 25th September, 2008 passed by the Returning Officer/Assistant Charity Commissioner, the objectors qua petitioners before this Court have raised objection to the non-inclusion of the petitioners in the list of voters, published by respondent No.2. The objection was in relation to non-induction of their names in final members list.

7. This Court, upon *prima facie* appreciation of the material placed before it, has already permitted the petitioners to participate in the voting as is apparent from the reasoned interim order dated 30th September, 2009 passed by this Court.

(9)

8. The impugned order passed by the Returning Officer i.e. respondent No.2 is based on the material which was available before him, particularly earlier change report of 1994 and 2004. He has considered the compliance of by-law No.6 and the order of Charity Commissioner setting aside the order passed on Change Report No.36 of 2004. The Returning Officer then proceeded to consider that in view of the setting aside the order of acceptance of Change Report No.36 of 2004, status quo ante was restored and as such, enrollment of the members viz., petitioners does not appear to be legal and valid.

9. The fact remains that the Returning Officer proceeded to record such findings based on the limited material to the extent of setting aside the order of acceptance of Change Report No.36 of 2004 and restoration of status quo ante, however, the fact, whether the petitioners were rightly enrolled pursuant to the provisions of by-laws and the fact of setting aside the acceptance of Change

(10)

Report No. 36 of 2004 and subsequent developments thereafter on the claim of the petitioners to be enrolled as members has not been appreciated, particularly without giving any opportunity to lead evidence.

10. In the backdrop of above, it will be appropriate, in my opinion, to remand the petitioner to the Assistant Charity Commissioner in Change Report No. 376 of 2009 which is pending adjudication under Section 22 of the Maharashtra Public Trusts Act with liberty to raise appropriate claim in the said proceedings, as the petitioners are already permitted to participate in the election process subject to outcome of the petition.

11. The petitioners undertake that they shall file such claim being validly nominated as members of the trust in question within period of twelve weeks from today. It is expected of the Assistant Charity Commissioner to deal with the claim of the petitioners as regards their enrollment as members

(11)

of the trust upon giving them appropriate opportunity and record findings about their status thereafter.

12. In view of the fact that the petition is pending before this Court since 2008, it will be appropriate to direct the Assistant Charity Commissioner to decide such claim, if brought before him, in Change Report No.376 of 2009 expeditiously, in any case, 18 months from the date of filing of such objection.

13. So far as the permission granted vide order dated 30th January, 2009 passed by this Court permitting the petitioners to participate in the election process be also taken into account and if the petitioners are found to be validly nominated members, the Assistant Charity Commissioner shall consider their votes and pass appropriate orders.

14. With above observations, the petition stands disposed of.

(NITIN W. SAMBRE, J.)