

UNREPORTED

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

BENCH AT AURANGABAD.

WRIT PETITION NO.9217 OF 2017.

1) Dilip S/o Dattappa Vasmatkar
Age 52 years, Occ.Business.

2) Sau. Pratibha W/o Dilip
Vasmatkar, Age 47 years,
Occ.Household.

Both R/o Parbhani, Dist.Parbhani. ... Petitioners.

Versus

1) The State of Maharashtra,
through Assistant Charity
Commissioner, Parbhani.

2) The Returning Officer,
For the Election of Shri
Sarang Swami Shikshan
Prasarak Mandal, Parbhani,
Dist.Parbhani,
Shri D.B.Jangale,
Inspector in the office of
Charity Commissioner,
Gandhi Park, Parbhani,
Dist.Parbhani.

3) Ashok Sadashivrao
Sawargaonkar, Age major,
Occ.President of Shri Sarang
Swami Shikshan Prasarak Mandal,
Parbhani, Dist.Parbhani,

C/o Ellora Tiles, Gavane Chowk,
Parbhani.

... Respondents.

...

Mr.V.D.Salunke, advocate for the petitioners.
Mr.S.P.Tiwari, A.G.P. for the State.
Mr.R.L.Kute, advocate for intervener respondent No.3.

...

CORAM : SUNIL P. DESHMUKH,J.

Date : 21-07-2017.

ORAL JUDGMENT

1. Rule. Rule made returnable forthwith.
With the consent of the learned counsel for parties, the petition is taken up for final hearing and heard finally.

2. Heard Mr.V.D.Salunke, learned counsel for the petitioners, Mr.R.L.Kute, learned counsel appearing for added respondent, Mr.Tiwari, learned A.G.P. for the State.

3. After hearing the parties, the position emerges that for about 9 posts of managing committee only nine nominations have been received. The stage of submission of nominations is already over. The petition has been

moved to claim franchise.

4. It is the contention of petitioners that they were enrolled as members of the trust way back in 2011 under a resolution of then managing committee and said membership of the petitioners had been approved and sanctioned in a general body meeting dated 9-4-2011. Despite this while pursuant to the orders of the Assistant Charity Commissioner dated 19-5-2017, the elections were being held, yet the list of voters published on 23-6-2017, did not include petitioners' names. Therefore, they had taken objection. The objection instead of being decided by the returning officer, the same was forwarded to the so called trustees who had given a negative opinion in respect of petitioners' membership. Consequently, returning officer did not include their names in the voters list and as such the petitioners were before this court in a writ petition bearing W.P.No.8642 of 2017. This Court had directed the returning officer to decide objections to the voters list.

5. Mr.V.D.Salunke, vehemently contends that even thereafter without calling upon the petitioners,

straightaway decision has been rendered on the objection based on the feed back from the so called trustees. The order is in breach of principles of natural justice and is unsustainable.

6. He refers to a few judgments, contending that scope of inquiry in respect of change report No.175 of 2011 would be only the validity of the elected managing committee and no further and much less the membership of the petitioners. He submits the case of "*Jagatnarayansingh Swarupsingh Chithere and others Vs. Swarupsingh Education Society and another*" reported in 1980 Bom.C.R.837 clearly spells out scope of inquiry of change report and that it is confined to managing committee. It is further submitted that in a decision of this court in the case of "*Eknath Keshav Teli and others Vs. Mr.Ajit Pandurang Gogte and others*" of Hon'ble single judge (dated 5-11-2012 in writ petition no.8651 of 2012), it had been vividly made clear that issue of membership would not be a subject matter in the scope of inquiry of change reports.

7. It is, therefore, being submitted that order passed by the returning officer be set aside and the

petitioners names be included in the voters list.

8. The learned counsel Mr. R.L.Kute, on behalf of added respondent submits that the petition is defective since it does not make the added respondent and one other as party who were parties in earlier writ petition No.8642 of 2017. It is an attempt of the petitioners to keep back resistance to present writ petition without making them party.

9. Learned counsel further submits that it can not be said that membership which is contended to have been accorded sanction by general body is a valid membership.

10. According learned counsel, the concerned meeting dated 9-4-2011 is held to have been vitiated under a decision of the appellate authority and as such the decision taken on the subjects stands invalidated.

11. He submits that the returning officer is not expected to hear the petitioners. Returning officer has decided the matter with reference to objection and based

upon record available with him. The reasons given are immaculate. On merits petitioners have no case at all.

12. He submits that it would not be appropriate to go ahead deciding the writ petition, particularly, as decision on legality or validity of order passed by returning officer at this stage is not going to serve any fruitful purpose having regard to that for nine posts of managing committee, only nine nominations according to respondents are received. In the estimate of the respondents, voting would not be necessary.

13. In the circumstances, it would not be necessary to proceed with further in the writ petition leaving it open for the petitioners to take up their grievance in any appropriate proceedings as would be available in law.

14. Rule discharged.

Sd/-

(SUNIL P. DESHMUKH,J.)

