

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.597 OF 2017

Sunil s/o Tarachand Dhole,
Age-50 years, Occu-Business,
R/o Bhilai Pada,
Tq. and Dist.Nandurbar

-- PETITIONER

VERSUS

1. Ganesh s/o Tarachand Dhole,
Age-Major, Occu-President,
2. Surekha Vanji Wadile,
Age-Major, Occu-Household,
R/o Bhilai Pada, Nandurbar,
Tq. and Dist.Nandurbar,
3. Madhukar s/o Zipru Thakare,
Age-Major, Occu-Member,
4. Dhakaly Baru Walvi,
Age-Major, Occu-Member,
5. Jayram s/o Shankar More,
Age-Major, Occu-Member

Respondent Nos. 1, 3 to 5
all R/o Bhilai Pada,
Tq. and Dist. Nandurbar

-- RESPONDENTS

Mr.Sachin S.Deshmukh, Advocate for the petitioner.
Mr.Amit S.Savale, Advocate for respondent Nos.1 to 5.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner claims to be a reporting trustee and has submitted a change report which is subject matter in Enquiry No.192/2015. The petitioner is aggrieved by a cryptic order dated 10/05/2016 passed by the Assistant Charity Commissioner directing the petitioner to produce those documents which may be available, after considering the application dated 27/10/2015 at Exh.8 filed by the respondents.

3. I have considered the submissions of the learned Advocates for the respective sides and have gone through the petition paper book.

4. By Exhibit 8, the respondents have demanded the production of 7 documents. A detailed reply was submitted by the petitioner dated 01/12/2015 contending that the respondents who are applying for production of documents, were themselves the elected office bearers and many documents were maintained by them and are in their custody. By the impugned order, which is palpably cryptic and without reasons, the Assistant Charity Commissioner has directed the petitioner to produce those documents which are available. I

cannot accept the said order as being sustainable.

5. It is trite law that the following factors have to be considered while deciding an application/notice for production of documents :-

- [a] Whether the documents have been properly described so as to be identified ?
- [b] Whether the documents are in the exclusive custody of that litigating party from whom the production is demanded ?
- [c] Whether the documents are relevant and germane to the cause of action ?

6. After the Court is convinced about the above stated factors, it could direct the production of the relevant documents and failure to produce them would then create a situation wherein the concerned Court may draw an adverse inference.

7. Since none of the above factors have been thought of and as the impugned order is totally silent as to why the documents are being directed to be produced, the said order is rendered perverse and erroneous.

8. This petition is, therefore, allowed. The impugned order dated 10/05/2016 is quashed and set aside. Application Exh.8 is remitted

to the concerned authority for a fresh decision. The litigating sides are at liberty to canvas their submissions and after the conclusion of the same, the concerned authority shall consider the above stated factors and pass a reasoned order.

9. Rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)