

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10851 OF 2015

1. Vitthal s/o Kisanrao Dalve
Age: 62 years, Occ, Advocate,
R/o Vakilwadi, Tq. Kaij, Dist. Beed
2. Tatyasaheb s/o Rangnath Deshmukh
Age: 70 years, Occ. Agril,
R/o Varapgaon, Tq. Kaij, Dist. Beed ...Petitioners

Versus

1. The Assistant Charity Commissioner,
Beed.
2. Lakshman s/o Shivaji Bhosale
Age: Major, Occ. Agril,
R/o. Vakilwadi, Tq. Kaij, Dist. Beed.
3. Ravsaheb s/o Kalyan Deshmukh
Age: Major, Occ. Agril,
R/o. Varapgaon, Tq. Kaij, Dist. Beed
4. Bhausahab s/o Nilkanthrao Deshmukh
Age: Major, Occ. Agril,
R/o Varapgaon, Tq. Kaij, Dist. Beed
5. HBP Shriram Bhagwan Maharaj
Age: Major, Occ. Agril,
R/o Vida, Tq. Kaij, Dist. Beed. ...Respondents

...

Mr. A. R. Tapse h/f D. N. Suryawanshi, Advocate for
petitioners

Mr. V. D. Salunke, Advocate for respondents no. 2 to 5

Mr. S. P. Tiwari, Assistant Government Pleader for
respondent no. 1

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[CORAM: SUNIL P. DESHMUKH, J.]
Date: 05th June, 2017

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. Petitioners are applicants in proceedings bearing Inquiry no. 1844 of 2008, pending before Assistant Charity Commissioner, Beed filed for modifying scheme for appointing trustees. In said proceedings, it appears, no response had been earlier filed by the respondents. While affidavit of examination-in-chief had been filed by applicants, an application for setting aside no response order had been moved which is stated to have been allowed. Thereafter, it appears that the matter had been posted for cross-examination of witnesses of the applicants. However, neither counsel for the applicants nor the applicants were present before the Assistant Charity Commissioner nor did they file any application for adjournment. In the circumstances, order dated 21st April, 2015 came to be passed against the applicants-petitioners

observing that applicants are not ready to cross-examine applicants' witnesses.

3. Application dated 8th July, 2015 had been filed on behalf of applicants for recall of aforesaid order dated 21th April, 2015, referring to the circumstances in which their counsel remained absent and the order was passed.

4. Learned counsel on behalf of present respondents contends that the reasons given under the application dated 8th July, 2015 are not substantiated by production of any documents, nor any affidavit has been filed and said application dated 8th July, 2015 has been rejected by the Assistant Charity Commissioner by an order dated 21st September, 2015, observing that although counsel might not have been present on 21st April, 2015, yet, it was incumbent that the applicants ought to have been present and further observing that the order has been passed before seeking permission for deferring proceedings one month back.

5. Learned counsel Mr. Tapse submits that order dated 21st September, 2015, passed by the Assistant Charity Commissioner has been cursorily passed. He points out

that while order of no response had been set aside, thereafter proper opportunity had not been given to the petitioners.

6. On the other hand, learned counsel for the respondents purports to point out that while order dated 21th April, 2015 was passed, application for the same had been moved only after long time in July, 2015 and that delay has not been accounted for.

7. Learned Assistant Government pleader purports to subscribe arguments for respondent.

8. In the circumstances, there may be a little delayed movement for making application for setting aside order dated 21st April, 2015, yet, having regard to the background, it may not be construed otherwise and proper opportunity may be afforded to the petitioners. Inconvenience caused to the otherside in the process may be appropriately considered.

9. In view of aforesaid, it is deemed expedient in the interest of the parties that order dated 21th September, 2015, is set aside by awarding costs. As such, petition is allowed in terms prayer clause (C), subject to payment of

costs of Rs.8,000/-. The amount of costs be deposited before the Assistant Charity Commissioner for equitable disbursement among the present respondents except respondent no. 1, within a period of four weeks from the date of receipt of writ of this order. Thereafter, it is expected that the Assistant Charity Commissioner would proceed with the matter as expeditiously as possible and dispose of the same preferably within a period of six months from 3rd July, 2017. Writ petition is disposed of.

10. Rule made absolute accordingly.

[SUNIL P. DESHMUKH, J.]

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