

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12809 OF 2017

Subhash Karbasappa Tadkale and another ...Petitioners

versus

The Assistant Charity Commissioner and others ...Respondents

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Mr. N.P. Patil Jamalpurkar, advocate for the petitioners

Mr. S.N. Kendre, A.G.P. for respondent Nos. 1 and 2.

Mr. P.R. Katneshwarkar, h/f Mr. P.B. Gapat for intervenor.

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CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 09.11.2017**

**Date of pronouncing
the Order: 16.11.2017**

PER COURT :-

1. By this writ petition, the petitioners are challenging the order dated 24.10.2017 passed by the Inspector, serving in the office of Assistant Charity Commissioner, Solapur Region, Solapur, appointed as an administrator on "Ashta Shikshan Sanstha, Ashta (Kasar), Tq. Lohara, District Osmanabad".

2. Brief facts giving rise to the present writ petition are as follows:-

a) This pertains to the election of board of trustees of the Trust viz. "Ashta Shikshan Sanstha, Ashta (Kasar), bearing registration No. F-73 (Osmanabad) (hereinafter for the sake of brevity referred to as the "Trust"). This Court vide common judgment and order dated 19.11.2007 passed in First appeal Nos. 272 of 2006 and 299 of 2006 set aside the scheme approved by the Assistant Charity Commissioner, Osmanabad under Section 50 of the Maharashtra Public Trust Act, 1950 in respect of the Trust and further directed to hold the elections of the public trust under the control and supervision of the Administrator, to be appointed by the Assistant Charity Commissioner till the elections. The said judgment and order dated 19.11.2007 was subject matter of challenge before the Apex Court in Special Leave to appeal (C) No. 3305-3306/2008. Initially, the Apex Court, vide order dated 18.2.2008 stayed the effect of said judgment and order dated 19.11.2007, however, ultimately on 9.5.2017 the Apex Court found no merits in the said special leave to appeal and thus dismissed the said appeal and all pending applications therein. The Apex Court has further ordered that the directions contained in para 32 of the impugned judgment in first appeal No. 272 of 2006 and 299 of 2006 will now be given effect to. The petitioners and one Mohammad Chandsab Ladaf submitted an application before the Assistant Charity Commissioner, Solapur through respondent No.2 Administrator for inclusion of names of 170

persons, including the petitioners, in the voters list being the members of the public Trust and for exclusion of names of some persons, as they are not members of the public trust. Respondent No.2 Administrator has issued a notice in the local newspaper directing the petitioners and to all concerned to remain present before him for hearing on 12.10.2017 on the application submitted by the petitioners.

b) The petitioners after knowing that the respondent administrator himself is deciding the application/objection submitted by them, filed objection before respondent No.1 Assistant Charity Commissioner stating therein that respondent No.2 Administrator, who is serving as Inspector in the office of Assistant Charity Commissioner, is not at all competent to adjudicate the issue of membership and as such application submitted by the petitioners are liable to be decided by respondent No.1 Assistant Charity Commissioner himself. The said application is still pending. However, respondent No.2 Administrator by order dated 24.10.2017 has decided those applications by holding that the petitioners are not the members of the Trust. Hence, this writ petition.

3. Learned counsel for the petitioners submits that the petitioners and other persons have submitted their applications/objections

before respondent Nos. 1 and 2 when preliminary voters list has been published by respondent No.2 on 19.9.2017. The names of 170 persons, who are members of the Trust since 1992 onwards, are not included in the preliminary voters list prepared and published by respondent No.2. In fact, the said applications/objections are addressed to respondent No.1/Assistant Charity Commissioner, Solapur. Respondent No.1 vide order dated 18.8.2017 directed respondent No.2 to prepare a preliminary voters list of members of public trust and invite objections thereon. Learned counsel submits that respondent No.2 Administrator, who is serving as an Inspector in the office of respondent No.1, is not competent at all to adjudicate the issue of membership and therefore, applications submitted by the petitioners were required to be decided by respondent No.1 himself. However, respondent No.2, under political influence and pressure exerted by the rival group, has decided the applications/objections vide impugned order dated 24.10.2017.

4. Learned counsel for the petitioners submits that respondent No.2 Administrator is not judicial or quasi judicial authority to adjudicate the issue of membership. The powers to adjudicate the issue of membership are vested with the Assistant Charity Commissioner. The common judgment and order dated 19.11.2007 passed by this Court in first appeal Nos. 272 of 2006 and 299 of

2006 was the subject matter of challenge before the Apex Court in above mentioned Special Leave to Appeal and the Apex Court, initially by order dated 12.8.2008 stayed the effect of said common judgment and order dated 19.11.2007, however, subsequently, confirmed the said judgment and order. Thereafter, respondent No.1 passed an order for holding the elections to the managing committee of the Public Trust on 7.7.2017 and the said order was challenged by the petitioners by filing writ petition No. 8830 of 2017 in this Court. This Court vide order dated 24.7.2017 allowed the said writ petition No. 8830 of 2017.

5. Learned counsel for the petitioners submits that respondent No.2 Administrator has decided the application/objection submitted by the petitioners in contravention with the directions given by this Court by common judgment and order dated 19.11.2007 in first appeal Nos. 272 of 2006 and 299 of 2006 and the order dated 24.7.2017 in writ petition No. 8830 of 2017. Learned counsel submits that the petitioners and other persons have submitted voluminous documents in respect of membership alongwith their objections and even assuming that respondent No.2 Administrator has the jurisdiction, power and authority to decide the said application, respondent No.2 Administrator has even not looked into the applications and passed very cryptic order, which is impugned in

this petition. Learned counsel submits that the status of 170 persons, including the petitioners are required to be considered in ensuing elections for electing the managing committee members in its proper perspective and therefore, the said controversy ought to have been resolved by the judicial authority i.e. the Assistant Charity Commissioner.

6. Learned counsel for the petitioners submits that the final order of the Supreme Court dated 9.5.2017 has activated the directions in the judgment of this Court dated 19.11.2007 and as such, those directions are required to be implemented. However, though the objections raised by the petitioners in this regard turned down by the Assistant Charity Commissioner by common judgment dated 7.7.2017 in Misc. application (Enquiry) No. 1077 of 2017, in Misc. application (Enquiry) No. 1152 of 2017 and Misc. application (Enquiry) No. 1179 of 2017. The learned Assistant Charity Commissioner has erroneously held that the election process need not be started afresh after decision of the Supreme Court dated 9.5.2017 and the election process shall be resumed from the stage where it was stayed by the then Assistant Charity Commissioner, by his order dated 3.9.2015. The learned Assistant Charity Commissioner also held that there is no need to change earlier Administrator. The aforesaid common order passed by the Assistant

Charity Commissioner dated 7.7.2017 was the subject matter of challenge before this Court in writ petition No. 8830 of 2017. Learned counsel submits that respondent nos. 1 and 2 have not followed the directions given by this Court in the aforesaid writ petition No. 8830 of 2017, scrupulously.

7. Learned A.G.P. for respondent Nos. 1 and 2 submits that the respondents have rightly undertaken the election process in compliance with the directions of this Court, particularly in para 32 of common judgment and order dated 19.11.2007 in the aforesaid first appeals. The learned A.G.P. submits that this Court by order dated 24.07.2017 in writ petition No. 8830 of 2017 directed to go ahead with the election process as per the directions given by this court in para 32 of common judgment and order delivered in the aforesaid first appeal and thus set aside the order passed by the Assistant Charity Commissioner dated 7.7.2017 to that extent. This Court in the aforesaid writ petition No. 8830 of 2017 has further directed the Administrator appointed by the Assistant Charity Commissioner to proceed ahead pursuant to paragraph 32 of the judgment and order in first appeal Nos. 272 of 2006 and 299 of 2006 and the process be initiated and completed expeditiously. The rest of the order declining change in administrator is not disturbed. Consequent to the said direction, respondent No.2 has proceeded with the election process

afresh.

8. The learned A.G.P. submits that it is interesting to mention here that the petitioners in aforesaid writ petition No. 8830 of 2017 have questioned the election process undertaken by the Administrator on the ground that as per the directions of this Court in para 32 of aforesaid common judgment in first appeals, the work of preparation of voters list, including the provisional one or preliminary one, is assigned to the Administrator and learned Assistant Charity Commissioner has misguided himself and exceeded the powers having regard to para 32 of the judgment and order, as aforesaid. By way of this writ petition, the petitioners are now challenging the election process undertaken by the Administrator on the ground that he is not the person competent to decide the issue of membership and prepare voters list, including the provisional one or rather preliminary one. Learned A.G.P. submits that it appears that this action of the petitioners is nothing but to obstruct the election process. Learned A.G.P. submits that there is absolutely no substance in the writ petition and writ petition is liable to be dismissed.

9. Learned counsel for the intervenor submits that the respondent No.2 has dealt with the objection applications filed by the petitioners

and passed detail order on 23.10.2017 and rejected the same. However, the petitioners conveniently have not placed the said order on record. The petitioners are aware of all earlier proceedings and the orders passed therein. This itself shows that the petitioners are not the members and/or trustees of the Trust. Now the entire record of the trust is in the custody of Administrator who has been appointed on 5.6.2015. The petitioner No.1 has prepared bogus and fabricated letter heads and stamps of the trust and made complaint by using letter heads and stamp of the Charity Commissioner posting himself as Secretary of the Trust. After appointment of the Administrator, the petitioners on 29.9.2015 have prepared a bogus list of members. Learned counsel submits that this act of petitioners is nothing but amounting to contempt of order passed by the Courts of law.

10. I do not find any substance in this writ petition. Respondent No.2 has undertaken the election process in strict compliance of directions given by this court by order dated 19.11.2007, particularly in para 32 of the judgment delivered in first appeal Nos. 272 of 2006 and 299 of 2006 and the order dated 24.7.2017 passed in writ petition No. 8830 of 2017. It further appears that the petitioners have taken different stand so far as the writ petition No. 8830 of 2017 and the present writ petition are concerned. It is also a part of record that respondent No.2 has considered the applications/objections raised

by the petitioners and after giving an opportunity of being heard, decided those applications/objections by a reasoned order. Even this Court while deciding first appeal Nos. 272 of 2006 and 299 of 2006, by common judgment and order dated 19.11.2007 in para 16 of judgment, has observed that present petitioner No.1 appears to have been master minded the subsequent application preferred by the original applicants. Not only he represented in the said applications as an advocate before the Assistant Charity Commissioner but he also suggested the first committee of trustees, wherein name of his wife conspicuously appears. This Court has also observed that there are various documents to show that some of the persons, including present petitioner No.1 S.K. Tadkale, advocate who is not original member of the Trust and is desired to enter in the trust and take over the management. The first attempt failed when enquiry application No. 118 of 1992 came to be dismissed. This Court has also observed that all preparatory work was made while filing the said application to take over the management of the trust by seeking appointment of new committee of the trustees. The Court has observed that filing of Enquiry application No. 140 of 1999 was the result of scheming, which was master minded by present petition No.1 Shri S.K. Tadkale, advocate.

11. Apart from this, respondent No.2 Administrator has perused

the record and observed that there is no evidence about membership of the present petitioners. There are no receipts about fees paid in respect of their membership. Nor there is any evidence about approval to their applications seeking membership in the meeting of the managing committee. Even though respondent No.2 Administrator has given sufficient opportunity of hearing, the petitioners remained absent before the Administrator. The learned Administrator has considered the contents of objection petitions, framed the points for determination and recorded the finding to the points in negative by reasoned order.

12. In view of above discussion, I do not find any substance in the writ petition. The writ petition is therefore, hereby dismissed.

(V. K. JADHAV, J.)