

(WPL 7218 of 2017)

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) No. 7218 OF 2017

Shri Milind Purshotom Jahangirdar & Ors.Petitioners
Vs.
Sarvajanik Vachanalaya and Ors.Respondents

Mr. Sandip K. Shinde a/w. Satyajeet P. Dighe for the Petitioners

Mr. P.B. Shah i/b. Shah Kayval P. for Respondent Nos.1 and 3

Mr. Sandip Babar -AGP for Respondent No.2

**CORAM : V.M. KANADE &
A.S. GADKARI, JJ**

DATE : MARCH 15, 2017

P.C. :

1. Heard Shri Shinde, learned counsel appearing on behalf of the Petitioners, learned AGP for Respondent No.2 - State and Shri Shah, learned counsel appearing on behalf of Respondent Nos. 1 and 3.

2. By this petition, which is filed under Article 226 of the Constitution of India, the Petitioners are seeking an appropriate writ, order and direction, directing Respondent No.2 to set aside the removal of the Petitioners from the

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list of the life members and for other consequential reliefs.

3. A preliminary objection is raised by Shri Shah, learned counsel appearing on behalf of Respondent Nos. 1 and 3 regarding maintainability of the petition. It is submitted that writ against a trust is not maintainable.

4. The learned counsel for the Petitioners submits that he is seeking a direction against an authority viz. The Assistant Charity Commissioner (Respondent No.2), which is constituted under the provisions of the Bombay Public Trust Act, 1950(for short 'the said Act'), to exercise his powers under the said Act and allow the Petitioners to participate in the election for the term 2017-21 and also to accept their forms for contesting the election.

5. In our view, there is some substance in the submissions made by the learned counsel appearing on behalf of Respondent Nos. 1 and 3. It is not in dispute that Respondent No.1 Trust is a private entity and, as such, it is not amenable to the writ jurisdiction. This Court, at the highest, can issue a writ of certiorari against an order passed by one of the authorities constituted under the said Act, which is adverse to the interest of the Petitioners. However, we cannot issue a writ or direction to Respondent No.2 in the nature of mandamus, directing him to reverse his decision.

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6. The Petitioners have already filed a suit and an application before the Assistant Charity Commissioner on 9.3.2017.

7. We are, therefore, of the view that it will not be possible for us to entertain this petition on the ground that it is not maintainable against the private entity. Reserving the right of the Petitioners to pursue an alternate remedy which is available in law, the writ petition is disposed of. However, we direct the Assistant Charity Commissioner to decide the application filed by the Petitioners dated 9.3.2017 within two weeks, after giving hearing to them. The Petitioners shall not prolong the hearing of the said application. If an application is filed by the Petitioners under section 41 [d] of the said Act, the same shall be decided by Respondent No.2 expeditiously. All the contentions raised by all the parties in this petition are kept open.

[A.S. GADKARI, J.]

[V.M. KANADE, J.]