

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

WRIT PETITION NO.13806 OF 2017

VYANKATESH S/O GANGADHAR KAKADE AND OTHERS.

-VERSUS-

LAXMANRAO EKNATHRAO MANAL AND OTHERS

WITH

WRIT PETITION NO.13808 OF 2017

NAGORAO MANIKRAO SAROWAR

VERSUS

LAXMANRAO EKNATHRAO MANAL AND OTHERS

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Advocate for the Petitioners : Shri S.V.Deshmukh h/f Shri Salunke V.D.

Advocate for Respondent : Shri S.R.Choukidar.

Advocate for Respondents 3, 4 and 5 : Shri S.V.Dixit.

Advocate for Respondents 6 to 8 : Shri S.C.Arora.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th June, 2018

Per Court:

1 In these petitions, the Petitioners are aggrieved by the orders dated 30.06.2017 passed in Miscellaneous Application Nos.119/2017 and 120/2017 by which, the said Miscellaneous Applications have been rejected whereby, these Petitioners are not permitted to intervene in the hearing of Change Report No.159/2016. Insofar as Change Report No.159/2016 is concerned, all these Petitioners stand identically placed as

they claim to be life members of the Trust, namely, Bhartiya Sanskruti Sanvardhan Shikshan Prasarak Mandal, Aurangabad.

2 I have heard the learned Advocates for the respective sides for quite sometime on this aspect.

3 It is not in dispute that one limb of the litigation originating from the removal of the Secretary and Joint Secretary in 2004 had reached the Honourable Supreme Court in SLP No.21504/2008. The removal of these two office bearers was accepted by the Charity Commissioner. The revision filed by the aggrieved office bearers was dismissed. An appeal filed by them was allowed. The matter was then carried in First Appeal No.1247/2008 before this Court and the said appeal was dismissed. The matter reached the Honourable Supreme Court in SLP No.21504/2008.

4 In the above backdrop, after hearing the litigating sides, the Honourable Supreme Court, by its order dated 08.01.2016, accepted the statement of the Petitioners that originally there were 11 trustees, three have passed away and hence, only 08 trustees survive. The Honourable Supreme Court directed the Joint Charity Commissioner to convene a meeting of only 08 trustees, who were believed to be on the electoral roll for conducting the election. The Honourable Supreme Court further directed that whosoever amongst these 08 trustees get elected in such a meeting, they shall be the office bearers of the Trust.

5 For the sake of clarity, relevant paragraphs in the order dated 08.01.2016 passed by the Honourable Supreme Court are reproduced as under :-

"It is also brought to our notice by the learned counsel for the petitioners that originally eleven trustees were there, among them three are no more, hence, at present there are only eight trustees.

Having regard to the facts and circumstances of the case, it would be just and proper for this Court to direct the Joint Charity Commissioner, Aurangabad Region, Aurangabad to convene a meeting of the eight Trustees on the electoral roll for conducting election and, whosoever, gets elected in such meeting, shall be the office bearer(s) of the Trust. Till the elections are held, as directed by us, the petitioners shall not take any policy decision.

The Registry is directed to communicate a copy of this order to the Joint Charity Commissioner, Aurangabad Region, Aurangabad forthwith. The Joint Charity Commissioner, Aurangabad is directed to ensure compliance of this order and submit the compliance report within four weeks."

6 Pursuant to the above directions of the Honourable Supreme Court, the elections were held on 18.02.2016. Change Report No.159/2016 was submitted to the appropriate authority. Three persons claiming to be the trustees, namely, Nagorao Manikrao Sarovar (Petitioner in WP 13808/2017), Kalyan Sadashiv Nalawade (Petitioner No.2 in WP 13806/2017) and Sanjay Mahadeo Bhatade moved the applications on 28.01.2016, which is before the elections were held, seeking leave to be impleaded as the applicants/ respondents in the disposed of SLP. The said

applications were registered as Interlocutory Application Nos.4/2016 and 5/2016. In the lengthy applications filed, it was contended that the information supplied to the Honourable Supreme Court was not factually correct. After the three trustees passed away, new three trustees were inducted. Similarly, two original Petitioners filed the application bearing Interlocutory Application No.6/2016 praying for modification in the order of the Honourable Supreme Court.

7 By order dated 18.02.2016, the Honourable Supreme Court noted that the elections have been held pursuant to its order dated 08.01.2016 and the said result shall be subject to the result of the proceedings before the Honourable Supreme Court. The non applicants were permitted to file their objections to these three interlocutory applications.

8 Pursuant to the above, the Honourable Supreme Court, as per the contentions of the litigating sides, heard the applicants on their applications and finally, dismissed the said interlocutory applications by order dated 03.03.2017.

9 Now, the contention of these Petitioners, who tried to intervene in Change Report No.159/2016, which is based on the directions of the Honourable Supreme Court, is that they have every right to participate in the said hearing under Section 73-A of the Maharashtra Public Trusts Act. They are interested parties and the law enables them to

point out how few out of these 08 trustees have never deposited their fees and therefore, have no right to participate in the elections and have no right to be elected.

10 The learned Advocates for the Respondents have opposed these petitions by contending that the Honourable Supreme Court found it fit and proper to allow only 08 trustees to participate in the elections of 2016. All subsequently inducted trustees were specifically kept away from the election. The Joint Charity Commissioner was directed to conduct the elections only from amongst these 08 persons and was further directed that those who are elected will alone be the office bearers of the Trust. It is, therefore, canvassed that when none of these Petitioners were permitted to contest the said election and were kept away from the said election, they do not have any right to participate in the hearing of the change report, which is restricted to the election conducted under the orders of the Honourable Supreme Court. It is further canvassed that only 08 trustees were available when the order of the Honourable Supreme Court dated 08.01.2016 was implemented by the Joint Charity Commissioner.

11 I find from the record that some of these Petitioners had approached the Honourable Supreme Court in Interlocutory Application No.6/2016 in the disposed of SLP intending to convey to the Honourable Supreme Court that these trustees have been surreptitiously left out. Some

of the 08 trustees could not have been elected as office bearers for lapses on their part, which would disentitle them to contest the elections and in order to bring these aspects before the Honourable Supreme Court, the interlocutory application was pressed. I find that the Honourable Supreme Court passed an order on 08.02.2016 that the elections held on 18.02.2016, would be subject to the result of the interlocutory applications. Thereafter, the Honourable Supreme Court has dismissed the said interlocutory applications on 03.03.2017.

12 In this backdrop, I am of the view that once the identically placed three purported trustees out of which, the sole Petitioner in Writ Petition No.13808/2017 and Petitioner No.2 in Writ Petition No.13806/2017 are before this Court, have canvassed all the above contentions as have been contended before this Court, before the Honourable Supreme Court seeking leave to be impleaded in the matters and when the Honourable Supreme Court initially passed an order on 08.02.2016 and then, finally dismissed the interlocutory applications on 03.03.2017, these Petitioners can be said to be specifically kept away from the elections held on 18.02.2016 pursuant to the directions of the Honourable Supreme Court dated 08.01.2016. After considering the interlocutory applications when the Honourable Supreme Court did not find it appropriate to modify or review its earlier order dated 08.01.2016, it, therefore, means that the Honourable Supreme Court did not desire

any change in it's order dated 08.01.2016 and therefore, sustained the election held on 18.02.2016.

13 A valiant attempt is made by the learned Advocate for the Petitioners to contend that Petitioner No.1 and Petitioner Nos.3 to 18 in Writ Petition No.13806/2017 are not identically placed as like the sole Petitioner in Writ Petition No.13808/2017 and Petitioner No.2 in Writ Petition No.13806/2017. I am not impressed by the submissions of the learned Advocate for the Petitioners since each of these Petitioners are identically placed, each of them claim to be a life member of the Trust when the Honourable Supreme Court delivered it's orders on 08.01.2016 and 03.03.2017. If identically placed three persons, who had approached the Honourable Supreme Court, were kept away from the elections held on 18.02.2016, I do not find that other Petitioners, who are identically placed, would get this right indirectly by seeking impleadment in the hearing of Change Report No.159/2016. If they were so permitted, it would practically amount to allowing them indirectly to question the elections held in pursuance to the directions of the Honourable Supreme Court, which the Honourable Supreme Court did not allow them to directly participate in the said elections.

14 In this fact situation, the impugned orders to the extent of these Petitioners disallowing them to participate in the hearing of Change Report No.159/2016 cannot be termed as being perverse or erroneous.

Both these petitions are, therefore, dismissed.

15 In view of the above and in order to ensure that the directions of the Honourable Supreme Court dated 08.01.2016 are taken to a logical end, the Deputy Charity Commissioner at Aurangabad shall decide Change Report No.159/2016 as expeditiously as possible and preferably on or before 31.10.2018.

kps

(RAVINDRA V. GHUGE, J.)