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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5660 OF 2018

Suresh Shamrao Jadhav alias
Suraj Shamra, Jadhav

.....Petitioner

V/s.

1. The Assistant Charity Commissioner
2. The Tahasildar
3. Sunil Jaisingrao Jadhav

.....Respondents

Mr. Vikrant V. Parashurami for the petitioner.
Mr. A. I. Patel Addl. G. P. for respondent nos. 1 & 2.
Mr. Ashutosh M. Kulkarni for respondent no. 3.

**CORAM : SHANTANU KEMKAR AND
NITIN W. SAMBRE, JJ.**

DATE : JUNE 11, 2018.

ORAL ORDER: (PER: NITIN W. SAMBRE, J.)

Heard.

2 Rule. Rule made returnable forthwith. By consent of the parties, matter is heard finally.

3 This petition pertains to elections to Shri. Sevagiri Maharaj Devasthan, a Public Trust registered under the Maharashtra Public Trust Act. The election for the post of six trustees of the said Trust was held and results were declared on 24/10/2016. As a consequence of above change, the change report under section 22 of the Maharashtra Public Trust Act, 1950 (Hereinafter referred to as 'the Act' for the sake of brevity) should have been filed.

4 Respondent no. 3, feeling aggrieved by results of the election held on 23/10/2016, based on alleged procedural irregularity, preferred an application before respondent no. 1 Assistant Charity Commissioner under section 41A of the Act on 08/11/2016, making a prayer for recounting. The petitioner raised a preliminary objection to the said application wherein a prayer for recounting of the votes was made as not maintainable as grant of such relief can not be considered within scope of section 41A of the Act. The respondent authority overruled the same vide impugned order dated 21/10/2017 directed recounting of votes *qua* respondent no. 3

including that of re-verification of 229 invalid votes. As such, this petition.

5 The learned counsel for the petitioner would urge that once the election result was declared, the only remedy available to respondent no. 3 was to approach the Assistant/Deputy Charity Commissioner by way of an objection in inquiry to be caused in an application preferred under section 22 of the Act. According to him, section 22 provides for the change to be recorded, if so occurred, after the elections of a Public Trust and in case of any objection to such change, the Statute contemplates an inquiry. According to petitioner, it is always open for the respondent who was applicant in application under section 41A of the Act to raise relevant reasonable objection in Change Report proceedings. According to him, in an eventuality like the one canvassed and decided, the powers under section 41A of the Act cannot be invoked. The learned counsel would invite the attention of this Court to the Division bench Judgment in the matter of **Mahavir Jain Vidyalaya and Others V/s. Assistant**

Charity Commissioner (1) and Ors¹ so as to substantiate his aforesaid contentions. According to him, section 41A of the Act cannot be invoked for interfering in the election results.

6 *Per contra* the learned counsel for the respondent would urge that if the elections of Public Trust are due, it is always open for the member of such Trust who is a voter to approach the Assistant Charity Commissioner with an appropriate prayer of issuance of directions to hold elections. He would then add that if the Statute contemplates power on Assistant Charity Commissioner to issue directions to hold the elections, such powers also includes power to interfere in the process of election. The learned counsel would draw support from the judgment of this Court in the matter of **Prabhakar Waktuji Sapate V/s. Narayan Baburao Dhakate and others²**. According to him, powers under section 41A can be invoked for issuance of directions for holding of election, particularly in the background of the fact that such powers of issuance of directions are administrative. He would also draw support from judgment of

1 2012 (5) ALL MR 731

2 [2016 (4) Mh.L.J. 866]

Gujarat High Court in the matter of **Rashmikant Chaganbhai Patel V/s. Joint Charity Commissioner, Vadodara**³ so as to substantiate his contentions on the above line.

7 Considered rival submissions. Section 41A of the Act provides for powers to issue directions for proper administration of Trust. The said section reads thus.

“41A Power of Commissioner to issue directions [for proper administration of the trust]

(1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person if he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of.

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1).

8 The object with which the said section is brought into the

³ [AIR 2006 GUJARAT 99]

Statute is to streamline the administration of a Public Trust and to ensure the implementation and enforcement of the provisions of the Act keeping in mind the object of the Trust. The issue of holding of elections is based on a democratic way of administration of a Trust and such provisions for holding of elections is regulated by tenure of the body so elected as provided in the bylaws of the Trust. If the elections are due and still such elections are not held, in spite of efforts of the members of the trust, it is always open for the member of such Trust to approach the Assistant Charity Commissioner for invoking provisions of section 41A of the Act. Such provisions can be invoked in an eventuality of non holding of election which were due, as the directions to hold election can be read to mean part of administration of the Trust as provided under section 41A of the Act.

9 The said powers under section 41A of the Act are exercised by the Charity Commissioner in an eventuality of mismanagement of the Trust property, improper administration, income of the Trust not properly accounted for or appropriated and if the trustees are acting contrary to the aims and objects of the Trust. The invoking of section

presupposes that the Trustees or the Trust are acting contrary to the Statutory provisions or the aims and objects of the Trust and as such directions can be issued to the Trustee or the Trust including that of a person connected with the Trust. Powers under section 41A can be exercised in one more eventuality and i.e. the property of the Trust is in danger of being vested, damaged, alienated or wrongfully sold, removed or disposed of.

10 Plain reading of the section speaks of powers under section 41A being administrative in nature.

11 Another object which can be read in the section 41A is, the Charity Commissioner, in fiduciary capacity as a representative of the State Government, is required to supervise the administration of the Trust. The said powers are conferred, keeping in view the nature of supervisory powers exercised by the Authorities under the Act *qua* the Trust.

12 If, in the light of the aforesaid object of provisions of section 41A of the Act are analyzed *qua* the order impugned, it is really difficult to accept that in an election process, it is open for the Charity Commissioner or respondent no. 3 to cause interference.

13 Though the High Court of Gujarat in **Rashmikant Chaganbhai Patel V. Joint Charity Commissioner, Vadodara**⁴ has held that when the Trust deed provides for periodical election of the Trust and its Trustees and body is not constituted in terms of the Trust deed, powers under section 41A can be invoked to give directions to hold elections and such powers include power to postpone.

14 This Court in the matter of **Prabhakar Waktuji Sapate** [*cited supra*], while dealing with similar position, has held that the administrative orders passed by the Assistant Charity Commissioner under section 41A of the Act, by issuing directions to hold fresh elections to the Executive Committee of the Trust can be read in section 41A.

4 [AIR 2006 GUJARAT 9]

15 The point that is sought to be canvassed in the present petition before this Court is whether it is open for the Charity Commissioner to exercise powers under section 41A of the Act after the elections were held and a prayer for recounting is made. The impugned order passed by respondent no. 3 speaks of the recounting and re-appreciation of invalid votes.

16 Order of directing elections and order of recounting are two different issues and cannot be equated under law of elections.

17 It is to be noted that the Apex Court has consistently taken a view in the case of **N. P. Ponnuswami and Ors vs. Returning Officer, Namakkal Constituency and Ors**⁵ and recent Judgment in the matter of **Supreme Court Bar Association and others vs. B. D. Kaushik and Ors**⁶ that once the election process has started, the Court should not ordinarily interfere with the process of granting injunction, may be a mandatory injunction like ordering recounting.

5 [AIR 1952 SC 64]

6 [(2011) 13 SCC 774]

18 Needless to clarify that the counting of votes or recounting of votes is an integral part of election process and there cannot be any second opinion about it. The learned counsel for the petitioner, in the aforesaid eventuality has rightly relied upon the Division Bench Judgment of this Court in the matter of **Mahavir Jain Vidyalaya and Others** [*cited supra*].

19 In the aforesaid background of legal position, if we consider the status of the petitioner as not a Trustee who was not already elected or who is now defeated in the present election of the Trust, it is to be noted that the petitioner is an unsuccessful candidate *qua* the Trust in question. His claim that he is remedy-less cannot be accepted for the reason that if there is Civil wrong, there has to be a remedy and such remedy is required to be looked into the Statutory provisions.

20 In the aforesaid background, if we appreciate the scheme of section 22 of the Act, it is required to be noted that this Court in the matter of **Lahudas Sambhaji Karad vs. The State of Maharashtra and Others** ⁷ was dealing with an eventuality wherein the powers

⁷ [1993 MhLJ 1056]

under section 41A were exercised *qua* election process. This Court while dealing with submissions as are made by the learned counsel for the respondent in this petition in para nos. 25, 38 & 40 has held as under.

25. This would show that the main safe guards that have to be kept in mind by the Charity Commissioner or the Joint Charity Commissioner are in respect of the property and other affairs of society. If there is negligence in the management of affairs of the society, directions could be issued but the scope of Section [41-A](#) would certainly not cover the interference with the process of election and also interference in respect of the members entitled to vote. They are the disputes which can be corrected by filing change reports after the elections under Section [22](#) of the Act. 1, therefore, feel that the Joint Charity Commissioner should not have entertained the application No. 3/92 filed by Halge and Deshmukh. They had the remedy to approach the Assistant Charity Commissioner questioning the change report. Merely because no further action was likely to be taken on the part of the society or others to challenge the voters' list, the Charity Commissioner did not acquire any powers to look into these affairs and rectify them by virtually stalling the election.

38. My attention was drawn to in the case of Jagat Narayan Singh Chithre v. Swarup Singh Education Society. In that case, it was observed by the Court that enquiries under S. [22](#) of the Bombay Public Trusts Act, 1950 are in the nature of judicial enquiries and the person affected must be noticed and heard. This has been clearly breached in this case and that the enquiry by the Joint Charity Commissioner has been totally vitiated on that count also. I am, therefore, of the view that the grievance made by the petitioner-President that the

list submitted by the respondents of 483 members has not been signed by the petitioner; that in fact the list of 834 members has been signed by the President and Election Officers and it was this list which was available for the forthcoming elections of the Governing Council, appears to be truthful.

40. In the conclusion, therefore, I find that the order of the Joint Charity Commissioner has to be set aside in view of the fact that he could not held enquiry under S. 41A of the Bombay Public Trusts Act, 1950 in relation to the election process and the membership; that he failed to give adequate opportunity to the petitioner to produce the record and that the list has been approved at the Governing Council meeting on 19-2-1992 Which was attended by few members and not by majority of members because of the impending dispute and the impending conduct of non-co-operation, was the approved list. The parallel meetings were held by other members of Governing Council and this is clearly borne out by the register produced on record. Hence the order of the Joint Charity Commissioner to be set aside and the process of election should start from the stage at which it has been stopped. The 483 members have already cast their votes. They were eligible to vote in the election of 21-6-1992 as per the programme tendered by Election Officer Dhele. The supplementary elections will have to be held in respect of the newly added members namely 362 members as per Exh. A in Writ Petition No. 1304/1992.

21 In the background of the Judgment in the matter of **Lahudas Sambhaji Karad** [cited supra] it is required to be noted that section 17 of the Act provides for maintaining a register and section 22 of the Act provides for change which may occur in any of the entries

recorded in such register.

An application is required to be made within 90 days from the date of occurrence of such change and in case if such change is reported, sub-section 2 of section 22 of the Act empowers Deputy or Assistant Charity Commissioner to hold an inquiry for verifying the correctness of the entries in the registered kept under section 17 for ascertaining whether any change has occurred.

If in case, if change is found to have been occurred in any of the entries recorded in the register kept under section 17 of the Act, the authority like respondent no. 3 is required to record finding with reasons. The above position aptly clear from the Judgment of the Apex Court in the matter of **Church of North India vs. Lavajibhai Ratanjibhai and Ors.**⁸ It is also required to be noted that if such change is reported to the authority under the Act, and if same is objected, an inquiry is contemplated and of-course the present respondent has every remedy to object such change. While dealing with such objections/inquiry, what is contemplated is compliance of principles of natural justice as the authority is required to consider

⁸ [(2005) 10 SCC 760]

the oral and documentary evidence.

22 In the aforesaid background, since the change *qua* result of election of the respondent Trust is required to be brought to the notice of respondent no. 3, for taking appropriate entry in the register maintained by the said authority under section 17 of the Act, respondent has every remedy to approach respondent no. 3 in the said proceedings under section 22 of the Act.

23 As such, for the aforesaid reasons, both these orders which are impugned in the petition viz. one passed under Exhibit 1 overruling objections of the petitioner vide order dated 23/10/2017 and impugned order dated 28/03/2018 are not sustainable as amounting to interference in the election process, are hereby quashed and set aside.

24 Rule is made absolute in the above terms.

25 Petitioner is granted liberty to approach the authority by lodging objection under section 22 of the Act, in case, if change is reported pursuant to the provisions of section 22 of the Act.

26 Petition stands allowed in the above terms.

[NITIN W. SAMBRE, J.]

[SHANTANU KEMKAR, J.]