

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3277/2018

Shri Shashikant Landge & anr.

..VS..

Shri Anantrao Tripathi & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI AND
Z.A.HAQ, JJ.

DATED : 06/08/2018

1] Heard Advocate Abhyankar, Advocate Parchure, Advocate Thakare, Advocate Dandwate and Ms. Mrunal Barabde, learned AGP.

2] Contention of petitioners is as elections have already been held on 25/05/2017, the direction given under Section 41-A of Bombay Public Trusts Act to conduct elections again is unsustainable.

3] Advocate Parchure has submitted that earlier elections were held in April, 2014 and hence the regular general elections should have been conducted in April-May, 2017. As such elections was not conducted, grievance was made under Section 41-A by filing a proceeding on 27/11/2017.

4] According to learned advocate for petitioners, the impugned order itself shows that holding elections on 25/05/2017 was communicated to the office of Assistant Charity Commissioner in August, 2017.

5] After perusal of records, we find that authority has not accepted the fact of holding of elections and therefore has directed holding of elections by invoking its powers under Section 41-A.

6] Order dated 11/05/2018 in para no. 11 mentions submission of petitioner no. 2 that the elections were conducted by Executive Body properly on 25/05/2017 and change report was given to authority for guidance vide trust letter dated 29/08/2017. Order however adds that copy of said letter dated 29/08/2017 alongwith two page change report in Schedule-III has been filed on record.

7] This para therefore only reproduces contention of said petitioner no. 2. The letter as produced is also perused by authority and contention there that election has taken place is taken note of.

8] Petitioners have however filed a change report also on 07/05/2018 before very same authority. The application under Section 41-A moved by respondents was fixed for orders by said authority on 10/05/2018 and it is in that backdrop that said change report was filed on 07/05/2018. The authority has found that it was tendered only with a view to avoid further directions in the matter.

9] In this situation, burden was upon petitioners to show that general elections conducted in May, 2017 and change report resulting there from was communicated to respondent no. 13/authority within time. When impugned order did not accept the communication of change report vide letter dated 29/08/2017, petitioners ought to have

challenged that finding by raising appropriate grounds in present petition. That finding has not been even touched in writ petition.

10] Petitioners could have pointed out to this Court bank details and communication showing out come of the election and its information to concerned banks. That also has not been done.

11] Only contention before this Court is when change report pertaining to 25/05/2017, election is pending, direction under Section 41-A could not have been issued. We find petitioners making an attempt to only take advantage of technicality. They did not make election dated 25/05/2017 public till 07/05/2018. It was informed to respondent no. 13/authority on that date because respondent no. 13/authority was to pass final orders on Section 41-A on 10/05/2018.

12] In this situation and in present matter, we are not required to conclude either way on contention of present petitioners. If election dated 25/05/2017 has taken place, when change report in relation there to is taken up for trial, that election can be established. Elections conducted in view of Section 41-A direction can be only to fill in lacunae i.e. till a regularly elected body in general elections assumes charge. Order dated 11/05/2018 impugned herein and election conducted in pursuance there to cannot in present facts therefore operate to the prejudice of petitioners if they can succeed in demonstrating that elections have been conducted on 25/05/2017.

13] We therefore find challenge in present petition misconceived.

14] However, we only clarify that election conducted in furtherance of impugned direction dated 11/05/2018 shall not in any way prejudice adjudication and out come of change report in relation to election dated 25/05/2017.

15] Needless to mention that interim orders stand vacated. Petition is accordingly disposed of. No costs.

JUDGE

JUDGE

Ansari