

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

WRIT PETITION NO. 2691 OF 2016

**RAM NARAYAN SONTAKKE
VERSUS
MAROTI GANPATRAO GAVALE AND OTHERS**

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Advocate for the Petitioner : Shri A. G. Godhamgaonkar
Advocate for Respondent Nos. 1 and 2 : Shri N. K. Choudhari
AGP for Respondent No. 4 : Shri N. T. Bhagat

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 12th MARCH, 2019.

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PER COURT :

1. The petitioner is aggrieved by the order dated 09/02/2016 passed by the Assistant Charity Commissioner, Hingoli, by which, the dispute as regards forgery of signature and fabrication of record pertaining to the notice dated 09/03/2006 and the signature appearing on the proceedings book dated 16/03/2006, are referred to a hand writing expert.

2. I have heard the strenuous submissions of the learned Advocates for the respective sides and the learned AGP. I have gone through the grounds formulated by the petitioner in the memo of the petition and I have perused the record pertaining

to Inquiry No. 256/2007 and Inquiry No. 624/2013. The latter inquiry is pending in which the impugned order below Exhibit 83 has been passed.

3. There is no dispute that Change Report Inquiry No. 256/2007 was with regard to the elections held in 2007 and the said change report has been accepted. A Misc. Civil Application No. 384/2015 is pending before the District Judge, which is the Appellate Authority. It is equally undisputed that Inquiry No. 624/2013 is with regard to the change report pertaining to the elections held in 2013.

4. It requires no debate that the issue of membership can also be gone into while considering a change report pertaining to the elections if such members have voted in the said elections. *Ex facie*, it would, therefore, appear that as Change Report Enquiry No. 256/2007 has been adjudicated upon and the appeal is pending before the learned District Judge, normally, the said issue of membership would not be open to be inquired into in a later change report inquiry of 2013.

5. Notwithstanding the above, it cannot be ignored that this petitioner has himself produced the notice of the meeting

dated 09/03/2006, by which, a meeting was convened on 16/03/2006, in Inquiry No. 624/2013. So also, the resolutions passed in the meeting on 16/03/2006 have also been produced in this inquiry. These notice and resolutions have been exhibited before the competent authority and they are now a part of the evidence recorded, which will have to be considered in relation to the induction of three members, vide the said resolution in 2006.

6. It also cannot be ignored that this very petitioner has tendered an affidavit in lieu of examination in chief sworn on 28/11/2013, in the 2013 inquiry justifying the membership of three persons who are inducted in 2006 by the resolutions passed on 16/03/2006. This appears to have been done so as to justify the induction of three members and invite a verdict from the competent authority that these three members had a right to vote.

7. Grievance of the respondent is that the signatures appearing at Sr. No.1 of Baliram Vithalrao Madale, Sr. No. 4 Maroti Ganpatrao Gawale and Sr.No. 9 Ramdas Baliram Madale are bogus and forged. Same contention is put forth

with regard to these signatures appearing on the resolution book dated 16/03/2006. As these notice and resolutions have been brought before the competent authority in the 2013 change report inquiry, the competent authority will now have to decide the issue of the validity of the induction of three new members.

8. If the above aspect had not been brought within the ambit of the inquiry of 2013 by the reporting trustee, these respondents had no reason to rake up the issue of forged signatures by filing application Exhibit 83.

9. It requires no debate that if a piece of evidence is introduced in any proceedings, the respondents have a right to rebut that evidence, in view of the Indian Evidence Act. Since the reporting trustee brought the above aspects in the 2013 inquiry proceedings, these respondents acquired a legal right to rebut the said evidence. In the process, they have brought before the competent authority that the signatures of these three members in the notice dated 09/03/2006 and the resolutions passed on 16/03/2006, are false and bogus. If these signatures are proved to be false and bogus, the

reporting trustee would invite an order from the competent authority as regards the validity of the induction of three new members in the meeting held on 16/03/2006.

10. Considering the above, I do not find that the Assistant Charity Commissioner, Hingoli has committed any error in passing the impugned order directing the reference of the admitted signatures and the disputed signatures to the hand writing expert for its opinion. The said order, therefore, cannot be termed as being perverse or erroneous and is not likely to cause gross injustice to this petitioner. In fact, the petitioner reporting trustee has invited the said order in view of the fact situation as recorded.

11. As such, this petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-

