

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

**WRIT PETITION NO. 1098 OF 2018 WITH
CIVIL APPLICATION NO.4126 OF 2019**

**AJAY RAGHUNATH DANDVATE
VERSUS
BASAWARAJ LINGAPPA BAGHANDE AND OTHERS**

**WITH
WRIT PETITION NO.3855 OF 2018 WITH
CIVIL APPLICATION NO. 4127 OF 2019**

**RAMAKANT S/O ANNARAO ANKULGE AND ANOTHER
VERSUS
AJAY S/O RAGHUNATH DANDWATE AND OTHERS**

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Advocate for the Petitioner : Shri N. P. Patil Jamalpurkar.

Advocate for the Petitioner : Shri V. D. Salunke h/f.

Shri P. G. Rodge (in WP No. 3855/2018).

Advocate for Respondent Nos. 2, 5, 8 and 9 : Shri A. N. Sabnis.

Advocate for Respondent Nos. 3, 5, 6, 7, 9, 10, 13, 14, 16, 30,
31, 33, 34, 35, 40, 41, 43, 46, 37, 38, 39, 47, 48 (in WP No.
3855/2018) : Shri R. S. Deshmukh.

Advocate for Respondent Nos. 4 and 8 : Shri V. D. Gunale

Advocate for Respondent Nos. 1, 2, 4, 8, 11, 12, 17, 18, 19, 21,
22, 25 to 29, 32, 42, 44, 45, 49, 50 (in WP No. 3855/2018 :

Shri B. L. Sagar Killarikar

AGP for Respondent Nos. 14 and 15 : - Shri S. W. Munde

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 26th MARCH, 2019.

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PER COURT :

1. These petitions were heard earlier on 16/01/2019 and subsequently on 18/01/2019. For the sake of clarity, I am

reproducing the last order passed by this Court on 18/01/2019, which reads as under :-

"1 On 16.01.2019, I had passed the following order :-

1. I have heard Shri Patil, learned Advocate for the petitioner, who claims to be the Secretary of the Maharashtra Education Trust and who is the respondent in the second petition. I have also heard the learned Advocates for the respondents in the first petition and some of whom are the petitioners in the second petition.
2. Shri Patil submits on behalf of the trust that 51 members were appropriately inducted by a resolution dated 25.12.2006. The Executive Committee of the Trust comprises of 21 members. Since, some of them had passed away, an election was held on 24.11.2007 to fill up the vacancies. Change Report No. 564 of 2008 was submitted before the Deputy Charity Commissioner.
3. He further submits that 21 members, who are represented by the Advocates for the respondents, claim to be the members of the Trust. They have never applied for being inducted as members and have also not paid the membership fees for legalising such induction.
4. Shri Sabnis, Shri Gunale and Shri Rodge, learned Advocates appearing on behalf of the respondents in the first petition and on behalf of the petitioners and respondents in the second petition, point out the deposition of Shri Dandavate from paragraph No.49. I have perused the Marathi portion reproduced in the order of the Deputy Charity Commissioner, which indicates that

the reporting trustee Shri Dandavate does not have any knowledge, as to how the 51 members were inducted. He appears to be totally blank on whether these 51 members had submitted applications for membership or whether they were issued with receipts for having paid membership fees. In fact, it appears from the reproduced portion that the said witness, though admitted that all the proceedings books are in his custody, he declined to produce it on the next date. Advocate Shri Patil submits that the books were submitted subsequently.

5. *Considering the above, it is the contention of Advocate Shri Patil that the judgment of the Joint Charity Commissioner is unsustainable as he has concluded that out of the 21 members, belonging to the rival group, Sr.Nos. 6 to 18 have been validly inducted as members. Sr. Nos.1 to 5 and 19 to 21 are not before the Joint Charity Commissioner and hence their issue of valid membership is kept open.*
6. *I do not find that both the authorities below have considered the issue of valid membership of these 72 members. In the judgment of the Joint Charity Commissioner, it is observed that the objectors, which comprise of the 21 members, have not raised objections as regards the 51 members inducted by the rival group.*
7. *Learned Advocates for the members appearing in the second petition contends that the issue of the membership of the 51 persons was also raised and hence, the Deputy Charity Commissioner has reproduced the deposition of Shri Dandavate from paragraph No.49 onwards, which would indicate that on the date of the deposition, the said reporting Trustee Shri Dandavate had no knowledge about how 51 persons*

- were inducted as members by his group.
8. *Considering the above, I find that the record and proceedings from the Deputy Charity Commissioner need to be called for as the situation with regard to these 72 members is chaotic and there are no records before this Court to support their induction as valid members in view of the law cited in Abdul Sattar Sher Mohammad Qureshi Vs. Haji Mustaq Ahmad Sher Mohd [2009 (1) Mh.L.J. 411] and Krishnarao Kanhaiya Naidu Vs. Jeevraj Bhairavlal Agrawal [2010 (2) Mh.L.J. 31] .*
 9. *The record and proceedings concerning Change Report No.564 of 2008 decided by the Deputy Charity Commissioner Latur on 16.4.2016 shall be called for.*
 10. *At this stage Shri Gunale and Shri Sabnis contend that Shri Ajay Raghunath Dandavate is not legally empowered to file the first petition. They submit that recently fresh elections have been conducted and a new body has been elected. A Change Report No. 2181 of 2018 has been tendered to the appropriate authority.*
 11. *Shri Patil learned Advocate appearing on behalf of Shri Dandavate submits that there is already an elected body which is in charge and the Chairperson is Shri Shivraj Nakade. Shri Gunale and Shri Sabnis counter by stating that their change reports filed earlier have been rejected.*
 12. *At this juncture, learned Advocates for the respective sides prayed for keeping this matter on 18.1.2019 for passing orders, so that they may explore the possibility of a peaceful resolution to this dispute.*
 13. *S.O. to 18.1.2019 for passing further orders."*

Advocates canvassed today that there is no consensus between the parties and their efforts to explore a peaceful resolution have failed.

3 *In view of the above, since I was on the verge of completing the dictation of the order on 16.01.2019, I proceed to pass the following order :-*

(a) Issue notice to the Respondents in both the petitions returnable on 20.03.2019. The learned AGP waives service for Respondent Nos.14 and 15 in the first petition and for Respondent Nos.51 and 52 in the second petition. The Advocates, who appeared today, waive service for the respective Respondents.

(b) The learned AGP makes a grievance that the copies of the petition paper books have still not been supplied to him. The Petitioners shall supply the copies of the petition paper books to the learned AGP within one week from today.

(c) Call for the record and proceedings from the office of the Deputy Charity Commissioner, Latur Region, Latur in Change Report Enquiry Proceedings No.564/2008 decided on 16.04.2015.

(d) No interim relief for the present.

(e) The parties may note that after the record and proceeding is received, this matter is likely to be taken up for final hearing."

2. Civil Application Nos. 4126/2019 and 4127/2019 have been filed by Ajay Raghunath Dandavate, who is the original

petitioner in Writ Petition No. 1098/2018.

3. After the submissions of the learned Advocates for the respective sides were heard from 4.30 p.m. to 5.30 p.m., consensus between the parties has occurred as follows :-

(a) The learned Deputy Charity Commissioner had passed an order on 16/04/2015 in Change Report Enquiry Proceeding No. 564/2008, by which, the membership of 51 members of the Dandavate Group and 21 members of the Tondare Group, was held to be invalid. The change report was partly accepted only to the extent of permitting the deletion of the deceased members, namely, Gurbasappa Budheappa Naubadhe and Gunwantrao Patil Malkapurkar.

(b) As per the last order passed by the learned Joint Charity Commissioner dated 25/10/2017 in Appeal Nos. 25/2015 and 44/2015, 51 members, said to be belonging to the Dandavate Group and 13 members, said to be belonging to the Prakash Sharnappa Tondare Group, are held to be valid voters. Therefore, these two petitions, filed for challenging the validity of the 51 and 13 members of the rival groups, can be disposed off.

(c) Consequent to the last order passed by the learned Joint Charity Commissioner dated 25/10/2017, the membership of 51 members and 13 out of the 21 members, has been validated.

(d) 8 members of the Tondare group, have suffered invalidation of their membership by the order dated 16/04/2015, and they did not choose to approach the learned Joint Charity Commissioner by preferring an appeal. Hence, issue as regards these 8 invalidated members, is untouched by the learned Joint Charity Commissioner. These 8 persons have, therefore, suffered an order of invalidation and are yet to challenge that order before the learned Joint Charity Commissioner.

(e) There are 6 founder members surviving.

(f) From the above list of 51 members group, two members, namely Adv. Chandrakant L. Mahajan and Mrs. K. P. Pensalwar have passed away leaving 49 valid members in the Dandavate Group.

(g) All the parties are agreeable to permit 49 members from the Dandavate Group, 13 members from the Tondare Group and 6 founder members, to participate in an election to be held

under the supervision of the learned Joint Charity Commissioner within a period of 6 months from today.

4. The learned Advocates now submit, on instructions, that in view of the above consensus, both the groups would agree to accept the membership of 49 persons from the Dandavate group and 13 persons from the Tondare group, as valid members and this petition can, therefore, be disposed off.

5. In view of the above, the following order is passed by consent :-

(a) The membership of the 49 persons belonging to the Dandavate Group along with the two members, late Adv. Chandrakant L. Mahajan and Mrs. K. P. Pensalwar, shall be deemed to be valid members.

(b) 13 members of the Tondare Group are deemed to be valid members .

(c) Both these Petitions, therefore, stand disposed off.

(d) The issue of those 8 persons, whose membership has been invalidated by the order dated 16/04/2015, will not be permitted to be the voters in the ensuing elections. However,

their grievance against the order dated 16/04/2015 is left open, "if" and "as is" permissible in law.

(e) The print out copy of this order taken from the official website of the Bombay High Court, would be submitted before the learned Joint Charity Commissioner, Latur, on 01/04/2019.

(f) After a copy of this order is placed before the learned Joint Charity Commissioner, Latur, on 01/04/2019, he shall follow the due process of law for conducting the elections to the Maharashtra Education Society, Udgir, Taluka Udgir, District Latur.

(g) The learned Joint Charity Commissioner shall himself or through a senior responsible officer, not below the rank of the learned Deputy Charity Commissioner, Latur, shall hold the elections by publishing the election programme and shall declare the results of the said elections in accordance with the election programme.

(h) The learned Joint Charity Commissioner shall ensure that the elections are completed within 6 weeks from 01/04/2019 and by excluding the date of the general elections in the Latur Region.

(i) The pending Civil Applications do not survive and stand disposed off.

(j) Consequent to this order, the order dated 07/03/2019 passed in CR No. 2181/2018 shall lose its efficacy.

6. Needless to state, after the results of the elections for the new executive committee are declared, they shall forthwith take charge of the trust.

7. Any committee, that is in charge of the trust today on account of any orders passed by competent authorities, shall refrain from taking any policy decision, from causing new recruitment and from withdrawing amount in excess of Rs. 25,000/-, except expenses required for the day to day administration of the trust.

(RAVINDRA V. GHUGE, J.)

shp/-