

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

916 WRIT PETITION NO.5311 OF 2019

1. Ashok S/o Sharanappa Upase,
Age – 55 years, Occu. - Business,
R/o. Pochamma Galli, Latur,
Tq. & Dist. Latur. Petitioner.

Versus

1. The Jt. Charity Commissioner,
Latur Division, Latur.
2. The Deputy Charity Commissioner,
& Election Officer for Election of
Governing Council of Trust, namely
Mahatma Basweshwar Shikshan
Sanstha, Latur, Tq. & Dist. Latur.
3. Shivkumar S/o Mallikaarjun Bidwe,
Age 62 Yrs, Occ : Business,
R/o Lokhand Galli, Latur,
Tq. & Dist. Latur.
4. Shidramappa S/o Nagappa Alure,
Age – 85 Years, Occu. - Agri,
R/o. Antur, Tq. Tuljapur,
Dist. Osmanabad.
5. Kashinath S/o Gunwantappa Sakhare
Age – 60 years, Occu. - Advocate,
R/o Ausa Road, Latur,
6. Basweshwar S/o Mallikaarjun Bidwe,
Age – 45 years, Occu : Agri,
R/o. Lokhand Galli, Latur,
Tq. & Dist. Latur.
7. Prabhuappa S/o Shivlingappa Patne
Age – 68 Yrs, Occu : Agri,
R/o Near Bus Stand Devni,
Tq. Devni, Dist. Latur.

8. Shivshankar S/o Vaijinathappa Khanapure,
Age – 80 years, Occu : Retired Headmaster,
R/o Adarsh Colony, AUSA Road, Latur,
Tq. & Dist. Latur.
 9. Subhashchandra S/o Kashinath Mande
Age – 55 years, Occu : Business,
R/o Kochamma Galli, Latur,
Tq. & Dist. Latur.
 10. Manmath S/o. Mallikarjunappa Yerate
Age – 58 Yrs, Occ : Business,
R/o. Near Garad Garden Barsh Road,
Latur, Tq. & Dist. Latur.
 11. Mahatma Basweshwar Shikshan
Sanstha, Latur, through its
Administrator, Latur,
Tq. & Dist. Latur.
- Respondents.

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Mr. Girish L. Awale, Advocate for the Petitioner;
Mr. R.N. Dhorde, Senior Counsel h/f Mr. T.G. Gaikwad, Advocate for
Respondent Nos.3 to 10.

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CORAM : V.L. ACHLIYA, J.

DATED : 03rd MAY, 2019

PER COURT:-

By this petition filed under Article 226 and 227 of
Constitution of India, the petitioner has claimed the following
reliefs :-

“B] By issuing appropriate writ or direction like
nature to direct the Election Officer to restrain
the respondent no.3 to 10 for contesting

election of Shri. Mahatma Basweshwar Shikshan Sanstha i.e. respondent no.11 and set aside order dated 29.04.2019.

C] Pending hearing and final disposal of this writ petition the further election process published by election officer of Shri. Mahatma Basweshwar Shikshan Sanstha i.e. respondent no.11 may kindly be stayed.

2. Heard the learned Counsel for the petitioner and the learned Senior Counsel representing the Respondent Nos. 3 to 10. Perused the order dated 22.02.2019 (Coram : Ravindra V. Ghuge, J.) passed in Writ Petition No.8593/2018 and other companion matters. So also perused the scheme of the Trust.

3. In brief, it is the contention of the learned counsel for the petitioner that the Respondent Nos. 3 to 10 are not eligible to become the members of General Council of the Respondent No.11 – Trust, still the election officer has accepted their nominations and allowed them to participate in the process of election scheduled to be held on 05.05.2019. By referring the clause 1 of scheme of the Trust, which provides Constitution of Governing Council of the Trust, the learned counsel submits that the person to become member of Governing Council must have a standing of minimum 5 years as a member of the Trust. It is submitted that the Respondent Nos. 3 to 10 are seeking election

to the Governing Council from the category of "patron member". They are admitted as members in the category of patron members by virtue of order dated 22.02.2019. They have not fulfilled the criteria of minimum 5 years as the members of Governing Council from the category of patron member to participate in the election process so as to elect them as the members of Governing Council. In this background, the learned counsel submits that the acceptance of the nomination of the Respondent Nos. 3 to 10 for Governing Council is *per se* illegal and contrary to the scheme of the Respondent No.11 – Trust.

4. It is submitted that by virtue of the order dated 22.02.2019, only liberty has been granted to the members in the general category to become a patron member on deposit of requisite fees. The grant of liberty itself not amounts to override the constitution of the Trust and make them eligible to become members of the Governing Council of the Trust, without fulfilling the eligibility criteria of minimum 5 years tenure as the member of Trust.

5. On the other hand Mr. R.N. Dhorde, the learned Senior Counsel appearing for the Respondent Nos. 3 to 10 opposed the petition with contention that the petition is not maintainable in view of alternate remedy available for the petitioner to raise the

objection under Section 22 of the Maharashtra Public Trust Act. It is further submitted that the process of election has started w.e.f. 16.04.2019. The nomination papers are already submitted and scrutinized, and final list of contesting candidates have been published. Except the voting to elect the members of the Governing Council, which is scheduled to taken place on 05.05.2019, the entire process of election is over. In support of the submission that the process of election is not to be interfered once the election process is initiated, the learned Senior Counsel has referred and relined upon the decision of the Apex Court in the case of ***Shaji K. Joseph Vs. V. viswanath and ors*** reported in ***AIR 2016 SC 1094***.

6. So far as the merit of the matter is concerned, the learned Senior Counsel submits that the petition filed is devoid of merit and substance therein. By referring the checkered history of the matter, the learned Senior Counsel submits that in view of the peculiar facts and situation and long standing disputes amongst the trustees, this Court in group of petitions decided by order dated 22.02.2019 (Coram : Ravindra V. Ghuge, J.), issued the following directions:

“[a] The Jt. Charity Commissioner shall take charge of the trust forthwith.

[b] The said authority shall issue a notice to be served upon the existing members including the 40 members and excluding the 21 members, indicating that the members would be at liberty to apply for patron membership in between 01/03/2019 till 15/03/2019.

[c] The said authority would scrutinize the applications in between 16/03/2019 till 30/03/2019 as per the eligibility under the amended Constitution of 1994.

[d] The list of patron members would therefore be declared on 01/04/2019 alongwith the valid voters' list.

[e] The said authority shall then proceed to hold the elections to all the posts of the Trust in accordance with the Constitution and the bye-laws by deputing a competent person(s) not below the rank of Assistant Charity Commissioner for conducting such elections.

[f] After the new governing council is elected, the 21 devotee members are permitted to approach the governing council for considering their membership applications filed earlier on the basis of the amounts that they have deposited. Needless to state, this is an option which these 21 members may ignore if they intend to pursue the litigation pertaining to the amendment of 2011 and their induction as devotee members, before the appropriate Forum."

7. It is further submitted that in order to overcome the peculiar situation that not a single patron member of the Trust is

alive and only one founder member is alive, allowed the ordinary member of the Trust to become a patron member by depositing Rs.30,000/- as a fees to become a patron member so as to make them eligible to contest the election for the post of the President etc. In this context, the learned Senior Counsel invited attention to the judgment and order dated 22.09.2019. It is submitted that the Respondent Nos.3 to 10 are the members of the Trust from the year 1992. By virtue of order dated 22.02.2019 passed by this Court to allow them to convert their membership from general category to category of patron members by depositing the requisite fees of Rs.30,000/-, the Respondent Nos.3 to 10 become a patron members of the Trust. It is further submitted that as per the scheme of the Trust providing constitution of the Governing Council, the only criteria provided to become a member of Governing Council is that the person must be member of the Trust/Society for not less than 5 years. It is pointed out that the scheme of the Trust nowhere provides the minimum criteria of 5 years for the patron members to become the member of Governing Council. Since the Respondent Nos. 3 to 10 are the members of the Trust from the year 1992 and they fulfill the requisite criteria to become a member of the Governing Council. There is no merit in the contention of the petition that they are not eligible to contest the election for Governing Council.

8. On due consideration of the submission advanced in the light of scheme of the Trust and the order dated 22.02.2019 passed in the matter, which is claimed to be confirmed by the Apex Court, I am not inclined to interfere with the process of election to elect the Governing Council of Respondent No.11. In para 33 of the order dated 22.02.2019, the Court (Coram : Ravindra V. Ghuge, J.) has observed as under:-

"33. Since I find that not a single patron member is alive today and only one founder member is available, it would be a mockery of democracy to permit an election of the Trust since the said founder member would stand elected without any contest. Moreover, there is no embargo on the number of patron members. An ordinary member can become a patron member by depositing Rs.30,000/- as his patron membership fees and he would be eligible to contest the elections to the post of President etc. Since none of the members can aspire to be founder members in view of the definition, and since only one founder member is alive, ends of justice would be met and the interest of the Trust would be secured if the general members are permitted to become patron members in view of there being no prohibition in Law."

9. It is an admitted position that the Respondent Nos. 3 to 10 are the members of the Trust since the year 1992 and by virtue of the aforesaid order, they got converted their membership from

the general category of members to the category of the "patron members" of the Respondent No.11 – Trust on deposit of requisite fees in terms of order passed by this Court. As per the scheme of the Trust, the general council of the Respondent No.11 – Trust to consist of 15 members and provides that to become a member of the Governing Council, the person must have a standing of 5 years as a member of the Respondent No.11 – Trust. Clause No.1 of the scheme of the Trust providing for constitution of Governing Council reads as under:-

"1) The Governing Council of the Society shall consist of 15 members and **only those members of the Society who have a standing of 5 years will be eligible for membership of the Governing.**"

10. Thus, the eligibility criteria provided under the scheme of the Trust to become a member of the Governing Council, only put restriction that the person to become a member of governing council must have a standing of 5 years as a member of the Trust/Society. It nowhere specifies that to become a member of governing council, a member must have a standing of 5 years from particular category i.e. "patron member". The Respondent Nos. 3 to 10 are undisputedly members of the Respondent No.11 – Trust from the year 1992. In that view, *prima facie*, it cannot be said that the Respondent Nos. 3 to 10 are not eligible to

become a member of the general council of the Respondent No.11 – Trust.

11. Apart from the merit of the case, the process of election has started w.e.f. 16.04.2019. The polling for electing the members of Governing Council of the said Trust is scheduled to be held on 05.05.2019. In that view, the process of election cannot be interfered in exercise of writ jurisdiction of this Court. Petitioner have a remedy to object to the change report in case the Respondent Nos. 3 to 10 or any of them got elected as a member of Governing Council in the election to be held on 05.05.2019. In the event the change report is filed before the concerned authority. In that view, the petitioner cannot said to be remediless. In this context, the learned Counsel for respondents has rightly placed reliance upon the decision of the Apex Court in the case of **Shaji K. Joseph Vs. V. Viswanath and ors** (supra), wherein the the Apex Court in para 14 has observed as under:

“14. In our opinion, the High Court was not right in interfering with the process of election especially when the process of election had started upon publication of the election program on 27th January, 2011 and more particularly when an alternative statutory remedy was available to Respondent No.1 by way of referring the dispute to the Central Government as per the

provisions of Section 5 of the Act read with Regulation 20 of the Regulations. So far as the issue with regard to eligibility of Respondent No.1 for contesting the election is concerned, though *prima facie* it appears that Respondent No.1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the High Court should not have interfered with the election after the process of election had commenced. The judgments referred to hereinabove clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without court's order. Very often, for frivolous reasons candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforesaid reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election."

12. In view of the discussion made as above, I am of the view, no case is made out to entertain the petition and to interfere with the process of the election. I am, therefore, not inclined to entertain the petition. Accordingly the petition is dismissed. However, *it is made clear that the dismissal of the petition, shall

not come in the way of the petitioner to invoke the remedy available under the law to challenge the election of the Respondent Nos. 3 to 10 before the appropriate/competent authority, after the elections of Respondent No.11 – Trust are concluded.

(V.L. ACHLIYA)
JUDGE

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