

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8593 OF 2018
(Sambappa Trimbakappa Girwalkar Vs. Deputy Charity
Commissioner and others)

WITH
CIVIL APPLICATION NO.12824 OF 2018 IN WP
8593/2018
WITH CA NO.2222 OF 2019 IN CA NO.12824/2018
WITH CA NO.14918 OF 2018 IN WP NO.8593/2018
WITH CA NO.797 OF 2019 IN WP NO.8593 OF 2018
WITH CA NO.793 OF 2019 IN WP NO.8593 OF 2018

WITH
WRIT PETITION NO.8002 OF 2018
WITH CA NO.9252 OF 2018 IN WP NO.8002/2018

WITH
WRIT PETITION NO.8003 OF 2018
WITH CA NO.9253 OF 2018 IN WP NO.8003/2018
WITH CA NO.10591 OF 2018 IN WP NO.8003/2018
WITH CA NO.10592 OF 2018 IN WP NO.8003/2018
WITH CA NO.10590 OF 2018 IN WP NO.8003/2018
WITH CA NO.2227 OF 2019 IN WP NO.8003/2018

WITH
WRIT PETITION NO.8589 OF 2018

WITH
WRIT PETITION NO.11590 OF 2018
WITH CA NO.13254 OF 2018 IN WP NO.11590/2018
WITH CA NO.14917 OF 2018 IN WP NO.11590/2018
WITH CA NO.1363 OF 2019 IN WP NO.11590/2018
WITH CA NO.2230 OF 2019 IN WP NO.11590/2018

Mr.R.S.Deshmukh h/f Mr.S.V.Natu, Advocate for the
petitioners in WP No.8593/2018 and in WP No.8002/2018.
Mr.S.W.Munde, AGP for respondent Nos. 1 and 2.
Mr.R.N.Dhorde, Sr.Counsel h/f Mr.V.R.Dhorde, Advocate for
respondent No.3.
Mr.N.P.Patil Jamalpurkar, Advocate for the petitioner in WP
No.8589/2018 and WP No.11590/2018.
Mr.Milind Patil, Advocate for the petitioner in WP
No.8003/2018.
Mr.T.G.Gaikwad, Advocate for Caveator, respondent No.3.

Mr.S.S.Choudhary and Mr.V.D.Gunale, Advocate for the intervenors Respondent Nos.2, 6 and 7 in WP No.8002/2018 and for respondent No.2 in WP No.11590/2018.
Mr.G.L.Awale, Advocate for the intervenor.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 22/02/2019

PER COURT :-

1. I am dealing with WP No.8593/2018 alongwith CA 12824/2018, in the initial part of this order, since a decision herein would impact the result of the connected petitions.

2. By writ petition No.8593/2018, the petitioner has challenged the acceptance of the nomination of respondent No.3 and has sought the quashing of the nomination form dated 23/07/2018.

3. This Court (Coram : Sunil P.Deshmukh, J.), after hearing the learned Advocates for the respective sides, has passed the following order on 27/07/2018 :-

"1. Heard learned counsel for parties.

2. It is contended by Mr N. P. Patil Jamalpurkar and Mr S. V. Natu, learned counsel appearing on behalf of petitioners in respective writ petitions that respondent no. 3 in collusion with returning officer is fraudulently conducting election. They submit that returning officer while preparing voters list

treated respondent no. 3 as general member and while nominations had been filed, he was considered to be a patron member and had thus considered him entitled to election for the post of president of the society.

3. *They submit, while according to constitution which learned counsel purport to put across the bar, unless a member pays Rs.30,000/- he would not be patron member and while preparing voters list the very same constitution had been taken into account.*

4. *It is submitted that while it came to scrutiny of nominations, said returning officer relied on so called constitution of 1970 where under, it is being submitted by respondent no.3 that amount of Rs.30,000/- had been reduced to Rs. 1,000/- and accordingly his nomination had been validated under impugned order dated 24-07-2018 rejecting objection by petitioners to the nomination of respondent no. 3. Learned counsel submit that other members in the voters list had no idea about this aspect involved in the matter and as such quite a few candidates who would have been in election fray have lost the opportunity and their right to contest presidential election.*

5. *Learned counsel for the petitioners have relied on a decision of the supreme court in the case of Brijendralal Gupta vs Jwalaparasad, reported in AIR 1960 SC 1049 as also a decision in the case of Ramkishana Bhanudas Shinde vs State of Maharashtra, reported in LEX (BOM) 1993 4 101 = Mh.L.J. 1994 (2) 1115, particularly paragraphs no. 11 and 12 from the same.*

6. *Learned counsel Mr Jamalpurkar also referred to and*

relied on a decision in the case of Lal Babu Hussain vs. Electoral Registration Officer, reported in AIR 1995 SC 1189 and read out paragraph no. 6 therefrom.

7. *He further goes on to submit that voters list had been prepared almost two months back and litigation ensued in respect of membership and voters list. It is being submitted that voters list refers to respondent no. 3 as general member and thus not entitled to contest presidential post pursuant to constitutional provisions. He, therefore, submits that while other members have been kept in dark about this surreptitious intention underlying the voters list, opportunity may be provided to them by extending election programme and to let other candidates have opportunity and for the same elections may be stayed for some time.*

8. *On the other hand, learned senior advocate Mr R. N. Dhorde appearing on behalf of respondent no.3 in both the petitions submits that qualification and eligibility for voters list is one thing and qualification and eligibility for holding posts is quite another. Members' enrollment and characterizing their names in the voters list has no significance whatsoever while it comes to qualification and eligibility of candidature pursuant to the constitutional provisions.*

9. *For aforesaid purpose, learned senior counsel refers to and places reliance on a decision of the supreme court in the case of Durga Shankar Mehta vs Raghuraj Singh and others, reported in AIR 1954 SC 520 and particularly refers to paragraph 8 of the same and submits that no interlude in the circumstances need be caused in the election process.*

10. While there is allegation of collusion between respondent no. 3 and the returning officer and there also appears to be dispute whether there had been amendments to the constitution as contended on behalf of respondent no. 3, in such a disputed position it would not be proper for this court to indulge into request for grant of interim relief.

11. As such, issue notice to respondents returnable on 05-09-2018. Learned Assistant Government Pleader waives notice for respondents no. 1 and 2. Learned senior advocate Mr R. N. Dhorde waives notice for respondent no. 3 in both writ petitions.

12. The election would be subject to outcome of writ petition."

4. The petitioner in W.P.No.8593/2018 has filed Civil Application No.12824/2018. The applicant has prayed for production of the entire original record of Enquiry No.228/1995 and CR No.39/1973. It is further prayed that this Court should initiate action against respondent No.3 u/s 340 of the Code of Criminal Procedure for having played a fraud on the Court. The original record is thus before the Court.

5. The allegation is that the patron membership fees which was Rs.1,000/-, as per the memorandum of association in 1965 and which was increased to Rs.30,000/- in 1973 by

the amendment to the Constitution, was projected as being Rs.30,000/- in 1965 and reduced to Rs.1,000/- in 1973. By this projection before this Court, it is alleged that respondent No.3 presented himself as a patron member and therefore eligible for contesting the post of President as only a founder or patron member can be the President.

6. These matters were heard at length. Respondent No.3 was present in the Court on each date of hearing. He instructed the learned Senior Advocate representing him to make a statement that he was stepping down from the position of the President of the Trust. Those persons, who were nominated by him as office bearers of the Trust in view of the provisions in the Constitution, have also instructed the learned Senior Advocate to make a statement that they were also stepping down from their respective positions. Statements are therefore made and recorded.

7. In view of the above, WP No.8593/2018 and CA No.12824/2018 are rendered infructuous. Learned Advocate for the petitioner consents for disposing off this writ petition and the civil application, as being infructuous in view of the statements made by the respective respondents through the learned Senior Advocate.

8. Hence, WP No.8593/2018 and CA No.12824/2018 stand disposed off. Respondent No.3 and the persons nominated by him have quit their respective posts and therefore the said positions are declared as having fallen vacant. Consequentially, WP No.8589/2018 challenging the nomination for the post of President, stands disposed of. CA Nos.2222/2019, CA No.14918/2018 and CA No.797/2019 do not survive and stand disposed off.

9. In the light of the above, I have heard the learned Advocates for the respective sides at length in the connected matters. They have also submitted their brief synoptical notes on the sequence of events and their submissions.

10. There is no dispute that considering the passage of time of about 54 years of the formation of the Mahatma Basweshwar Education Society Trust, not a single patron member is alive. Out of the founder members, only 1 person namely Sambappa Trimbakappa Girwalkar is alive. There is no dispute considering the 1965 memorandum, the amendment to the Constitution of 1973 and the subsequent amendment in 1994, that there is no change in the position that only a founder member or a patron member would be

eligible for contesting the post of the President of the Trust. It is also undisputed that owing to the amendment of 1973, there was a ban on enrollment of new members.

11. As such, the controversy that needs to be looked into urgently at this stage, in the interest of the trust, is as to whether the amendment of 31/03/1994 increasing the ordinary membership to 40 members only, has been approved by the competent authority. So also, it will have to be looked into as to whether addition of 21 members, who have preferred WP No.8002/2018, claiming to have been inducted pursuant to the amendment dated 06/03/2011 as devotee members, is prima facie sustainable or not.

12. The record reveals that the General Body Meeting held on 08/03/1992 proposed an amendment to the Constitution and without the amendment being approved by the competent authority, had inducted new 40 members in the meeting held in June 1994. There is no dispute that as per the said amendment, 40 members were inducted. It is equally undisputed that they were inducted as members prior to the change report No.238/1994, pertaining to the amendment, being accepted.

13. Change report No.238/1994 under Section 22 of the B.P.T.Act (Now The Maharashtra Public Trusts Act) was filed with regard to the amendment of the Constitution. The Deputy Charity Commissioner, Latur concluded in his interlocutory order dated 04/09/2007 that he would be considering the sole issue of whether the amendment permitting induction of 40 members could be sustained. It was specifically observed that he would be considering the validity and legality of the amendment and would not consider the question of enrollment of the 40 members as that does not form a part of the said proceedings. It was further concluded that the validity of inducting 40 members was subjudice in Change Report Inquiry No.642/2006. So also, Change Report Inquiry No.688/2006 pertains to the induction of 21 devotee members and exclusion of the 40 members in the elections.

14. The abovesaid order dated 04/09/2007 was subjected to a review application Exh.365 and by order dated 05/05/2008, the earlier order was reviewed and the issue of membership was to be considered by the Assistant Charity Commissioner in Change Report No.238/1994. This was challenged in Writ Petition No.3407/2008 before this Court. However, a statement was made by respondent No.2 on the basis of an

affidavit dated 30/06/2008 that he (Mallikarjunappa s/o Sidhramappa Bidve) withdraws the application for review Exh.365. This Court, therefore, noted that the order of review dated 05/05/2008 would not survive and hence the order dated 04/09/2007 was restored. This Court then directed that the ACC shall restrict Change Report No.238/1994 only to the issue of the amendment as per his order dated 04/09/2007.

15. In Change Report Inquiry No.688/2006 wherein the issue of election dated 26/11/2006 was involved, application Exh.92 was filed by Abhimanyu Virbhadrappa Rasure seeking addition to the proceedings. One more application Exh.109 was filed by 16 members seeking addition to the proceedings. By order dated 04/06/2009, the ACC has rejected both the applications concluding that none of these applicants are the members of the society.

16. These aggrieved persons filed WP No.3862/2009 before this Court challenging the said order dated 04/06/2009 rejecting Exh.92 and 109. This Court (Coram : S.B.Deshmukh, J.), by order dated 09/02/2010 , rejected the writ petition. These applicants moved the Hon'ble Apex Court in Spl.Leave to Appeal No.5854/2010 which was dismissed by order dated

08/03/2010.

17. CR No.238/1994, with regard to the amendment of 1994 was subject matter of remand on 2 occasions. I am not referring to the earlier orders in the earlier two rounds relating to this change report as all those orders of the ACC were set aside. Finally, the ACC delivered an order 07/11/2008 and concluded that the change report introducing the amendment stands rejected. In Appeal No.61/2008, the Joint Charity Commissioner sustained the order of the ACC and dismissed the appeal.

18. This matter then reached the learned District Judge in MCA No.26/2011 and by judgment and order dated 06/12/2013 running into 36 pages, CR No.238/1994 filed u/s 22 of the Act was thus allowed and the orders of the Authorities below were quashed and set aside. It was concluded as under :-

[a] The new Constitution as per the amendment of 1970 prescribed certain qualifying conditions to be members and new membership after December 1970 was banned.

[b] The General Body Meeting dated 08/03/1992 introduced the amendment to the bye-laws and such

embargo on enrollment of new members was removed to the extent of inducting a maximum of 40 ordinary members.

[c] Though the resolution was passed, it was not acted upon immediately.

[d] The General Body Meeting Resolution dated 08/03/1992 was finally accepted for implementation in the General Body Meeting dated 31/01/1994 and hence the CR No.238/1994 proceedings were initiated.

[e] The resolutions passed on 31/01/1994 are legal, valid and proper.

19. During the pendency of the above proceedings, CR No.688/2006, by which a new election held was sought to be approved, was subject matter of adjudication. This election was said to have been held by some remaining members and by excluding those 40 members involved in the above stated proceedings.

20. The said report was accepted and an appeal was preferred. The bunch of appeal Nos.19/2010, 20/2010 and 21/2010 were rejected and these parties approached the learned District Judge in MCA No.78/2012, 79/2012 and 80/2012. Two appeal Nos.79/2012 and 80/2012 were allowed

and 78/2012 was rejected. It was concluded as under :-

[a] The Joint Charity Commissioner failed to consider the Law laid down in the case of Shobhatai Krishnarao Zoting and others Vs. Joint Charity Commissioner and others [2005(2) BCR 560].

[b] CR No.238/1994 has now been accepted and therefore holding elections in 2006 by excluding these 40 members, would amount to an illegality.

Thus, the inclusion of 40 members was accorded legal sanctity.

21. The above decision in CR No.688/2006 was subject matter of Second Appeal Nos.33/2014, 34/2014. This Court by judgment dated 05/10/2015 concluded that the Kavthale Group was not authorized to conduct the elections. Both the appeals as well as the review application were therefore dismissed.

22. As such, the situation emerging from the above record indicates that on the one hand, the amendment permitting the enrollment of 40 new members was held to be legal and valid. The challenge to the said order of the District Judge finally reached the Apex Court and the amendment was confirmed. I, therefore, have no reason to reopen the said issue.

23. On the other hand, concerning the 21 newly inducted members who claimed to be devotee members under a new category created by an amendment on 22/03/2011, the change reports which were earlier accepted, were subsequently rejected by the District Judge vide order dated 07/12/2013 and the said judgment was sustained by this Court in Second Appeal Nos. 33/2014 and 34/2014 vide judgment dated 07/02/2014.

24. In Misc.Application Nos. 89/2018 and 90/2018 under Rule 36(ii) of the Maharashtra Public Trusts Rules, 1951, the Joint Charity Commissioner delivered an order on 07/07/2018 rejecting both the applications concluding that the membership applications of such 21 persons shall be placed before an authorized managing body after the elections. This leads to two consequences. Firstly, that the elections have to be held. Secondly, these 21 devotee members cannot be permitted to participate in such elections until the amendment based on which they claim to have been inducted, is approved. The said amendment said to have been proposed in the special body meetings dated 22/03/2011 and 26/04/2011, is still pending in Change Report Nos.268/2011 and 269/2011 before the competent authorities. Until such

decision, there can be no order permitting these 21 persons to participate in the elections.

25. In CR No.642/2006, the membership issue of 40 members was involved. By order dated 23/01/2009, the ACC rejected the change report by concluding that as CR No.238/1994 proposing the amendment, has been rejected on 07/11/2008, the induction of the 40 members based on such amendment will also have to be rejected.

26. The same District Judge-2, while considering the amendment issue in CR No.238/1994 delivered a judgment on 06/12/2013 concluding that the change in view of the amendment deserves to be allowed. It concluded that the resolution with regard to the amendment was rightly passed on 31/01/1994 and the change report deserves to be accepted. The District Judge, while dealing with MCA No.83/2012, delivered a judgment on 07/12/2013 holding that unless the amendment is held to be legal, the induction of 40 members would be bad in law. Now that the 1994 amendment is held to be legal, the induction of such 40 members, has been granted legal sanctity.

27. In CR No.642/2006, the issue was with regard to the

elections held on 20/10/2006 by the rival group excluding the 40 members. The aggrieved group had approached the Joint CC in Appeal No.12/2009. It was observed in paragraph No.23 of the judgment dated 12/04/2012 that 40 newly added members had participated in the elections held on 20/10/2006. As CR No.238/1994 has been rejected, the change report No.642/2006 was not accepted. It is obvious that the District Judge lost sight of the fact, while delivering the judgment dated 07/12/2013, that CR No.238/1994 permitting the amendment to the Constitution was finally allowed on 06/12/2013. Prima facie, the foundation for inducting the 40 members vide the amendment of 1994, was sustained in Law and the path of their induction was cleared, provided that there was no other legal impediment.

28. In Review Application No.19/2016 in Second Appeal No.33/2014, the applicants made a grievance that the Second Appellate Court had made a wrong observation that '*the 40 persons who were newly added as members were not served with notice to inform them about the elections and that the elections cannot be upheld*'. It was canvassed that the 40 persons are now claiming that they are the members of the Trust. The Second Appellate Court considered the submissions of the 40 members group that '*these 40*

members could be inducted only because of the amendment of 1994 and if the amendment is held to be legal, then these 40 persons would become valid voters.' The Second Appellate Court (Coram : T.V.Nalawade, J.) concluded that there was force in the submissions of these 40 members and that, in view of the decision in Second Appeal No.32/2014 which must have been considered by this Court while deciding Second Appeal No.33/2014, the review application deserves to be rejected.

29. In view of the above, at an interim stage, I am not interfering with the order dated 07/07/2018 impugned in WP No.8003/2018.

30. As a natural consequence of the above, as the elections held by respondent No.3 Shivshankar Bidve are unsustainable in view of his statement recorded and his stepping down, I deem it appropriate to direct the Joint Charity Commissioner to conduct fresh elections and pursuant to the earlier order of this Court dated 27/07/2018, the elections held on 29/07/2018 are therefore no elections in the eyes of Law.

31. WP No.8589/2018 and 11590/2018 are therefore partly allowed. Pending civil application Nos.13254/2018,

14917/2018, 1363/2019, 2230/2019 stand disposed off. However, CA No.793/2019 shall be considered on the next date of hearing. WP No.8002/2018 is therefore disposed off. Pending CA No.9252/2018 does not survive and stands disposed off.

32. In view of the above, WP No.8003/2018 is admitted by issuing **Rule Nisi**. Respective parties waive service on Rule. No interim relief. Pending civil application Nos.9253/2018, 10591/2018, 10592/2018, 10590/2018 and 2227/2019 shall be heard alongwith WP No. 8003/2018.

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.

34. Considering the above, I am issuing the following directions to the Joint Charity Commissioner, Latur :-

[a] The Jt.Charity Commissioiner 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.

35. CA No.793/2018, in disposed off WP No.8593/2018, is posted on 01/03/2019 in "Urgent Orders Category".

36. The original papers received from the Joint Charity Commissioner under the orders of this Court are returned forthwith to the learned AGP.

(RAVINDRA V. GHUGE)

khs/d