

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7829 OF 2017

Motilal Jaddu Yadav ... Petitioner
Vs.
Ld. Assistant Charity Commissioner and others ... Respondents

Mr. D. Singh i/b. Lawfin & Associates for Petitioner.
Mr. A. B. Kadam, AGP for Respondent No.1.
Mr. Vineet Sukumaran for Respondents Nos.2, 3, 5, 6, 9 and 10.
Ms Reshma Ravi i/b. K. P. Ravi for Respondent No.7.

CORAM : UJJAL BHUYAN, J.
DATE : OCTOBER 22, 2019

P.C. :

Heard Mr. Singh, learned counsel for the petitioner, Mr. Kadam, learned AGP for respondent No.1-State, Mr. Vineet Sukumaran, learned counsel for respondent Nos.2, 3, 5, 6, 9 and 10 and Ms Reshma Ravi, learned counsel for respondent No.7.

2. This case was heard on 10.10.2019 and today is fixed for delivery of order. Accordingly, order is being dictated.

3. By filing this Petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 02.12.2016 passed by the Assistant Charity Commissioner, Greater Mumbai Region, Mumbai and seeks a direction to the respondents to appoint an election officer to conduct free and fair elections in the Yadav Sangh in terms of the previous order of the Assistant Charity Commissioner dated 09.04.2013.

4. Case of the petitioner as projected in the writ petition is that he is a life member of the Yadav Sangh, Mumbai, a public trust registered under the Maharashtra Public Trusts Act, 1950 (briefly the Public Trusts Act hereinafter). Respondent Nos.2 to 10 are also life members of the

Yadav Sangh (Trust hereinafter).

5. Petitioner preferred an application dated 06.10.2015 under Section 41-A of the Public Trusts Act for implementation of the order dated 09.04.2013 of the Assistant Charity Commissioner, Mumbai Region, Mumbai (Assistant Charity Commissioner hereinafter). Respondent No.11 also filed a similar application. Both the applications were rejected by the Assistant Charity Commissioner vide the impugned order dated 02.12.2016.

6. Aggrieved, present writ petition has been filed.

7. Contention of the petitioner is that the last free and fair elections in the Trust were held for the year 2011-2012. Thereafter, all the elections were manipulated. As a result, management of the Trust and its finances have been severally compromised.

8. Following the last free and fair elections held for the year 2011-2012, tenure of the managing committee which was elected ended on 27.02.2012. Thereafter, an application was filed by a life member of the Trust Shri Indraj C. Yadav under Section 41-A of the Public Trusts Act. This application was heard and disposed of by the Assistant Charity Commissioner on 09.04.2013 in the following terms:

“1. The Applicants as per the Constitution of trust should hold the elections of the office bearers of the trust within three months, and the relevant Change Report be filed within the prescribed time.

2. For the Ensuing elections officer be appointed and as per the provisions of the constitution and the election rules the Agenda for the Election Schedule be declared so as the same be known to all.

3. On the day of the elections Mr. Dhawhale and Mr. Shinde of this Office shall act as the Observers for the elections.

4. No order as to costs.

5. The order be communicated to all the concerned.”

9. It is the contention of the petitioner that this order of the Assistant Charity Commissioner was not implemented and subsequent elections in the Trust were held in a very haphazard and irregular manner resulting in complete absence of free and fair elections. It is further stated that elections held thereafter were all bogus and illegal. Nine change reports relating to such elections submitted by rival groups are pending before the Assistant Charity Commissioner.

10. In the light of the above, petitioner filed the related application seeking a direction to hold elections to the Trust under supervision of the Assistant Charity Commissioner and till such time the elections were held, to appoint an ad-hoc committee. Similar application was also filed by respondent No.11 but the two applications were not at all considered in the proper perspective and erroneously rejected by the impugned order.

11. Respondent No.7 has filed affidavit in reply contending that the related application filed by the petitioner was totally frivolous and was rightly rejected by the Assistant Charity Commissioner. It is contended that the fact that change reports have been filed and are pending is a clear indication that elections were held regularly every year in the Trust. The fact that petitioner's choice of members did not get elected does not mean that elections were not held or that elections held were not free and fair. It is the function of the Assistant Charity Commissioner to decide on such aspects while considering the change reports.

12. It is contended that the members whose names figure in Schedule-I sought to be appointed as ad-hoc members were members who were elected in the year 2012. Many elections have been held thereafter; therefore to seek that the members who were elected in the year 2012 should oversee conduct of fresh elections is wholly untenable.

13. Referring to Section 41-A of the Public Trusts Act, it is contended that the said Section does not envisage interference by the Assistant Charity Commissioner with the process of elections in a Trust. The said provision can be invoked only for proper functioning of the Trust. That apart, when change reports are pending for adjudication, no direction can be issued under Section 41-A to hold elections.

14. It is also contended that the Trust, which is a necessary party, itself has not been added as a party to the present proceeding which, therefore, suffers from non-joinder of necessary parties. Contending that the impugned order is just, proper and legal, respondent No.7 seeks dismissal of the writ petition.

15. Petitioner has filed rejoinder affidavit contesting the stand taken by respondent No.7 and reiterated the averments made in the writ petition. It is however clarified that the related application under Section 41-A was filed by one Shri Rajkumar Yadav and 3 others and not by the petitioner.

16. Submissions made by learned counsel for the parties are on pleaded lines; therefore, a detailed reference to the same is considered not necessary. However, the submissions so made have received the due consideration of the Court.

17. Since the order dated 02.12.2016 has been impugned, the same may be adverted to at the outset. A perusal of the said order would go to show that Assistant Charity Commissioner noted that altogether 8 change reports relatable to the Trust are pending on his file. Referring to Section 22 of the Public Trusts Act, Assistant Charity Commissioner held that each of the change reports needs separate judicial inquiry to see as to whether the change reported is legal and valid or not. If the directions sought for in the application were to be granted, this would amount to pre-judging the change reports pending in the file of Assistant

Charity Commissioner without holding any inquiry or adjudication.

18. Referring to Section 41-A of the aforesaid Act, Assistant Charity Commissioner held that though there are divergent decisions of the jurisdictional High Court, nonetheless, a view could be taken that this provision could not be invoked to direct holding of elections to a Trust more so when change reports are pending adjudication and decision before the Assistant Charity Commissioner. Therefore, Assistant Charity Commissioner was of the view that the two applications had no merit and accordingly rejected the same.

19. While rejecting the applications, it was also ordered that the pending change reports should be expedited and all should co-operate in this regard.

20. On due consideration, Court is of the view that no error or infirmity is discernible in the order dated 02.12.2016. It is not necessary to delve into the issue as to whether under Section 41-A of the Public Trusts Act, direction can be issued by the Assistant Charity Commissioner for holding election in a public trust. Moreover, when according to the petitioner he had not filed the related application before the Assistant Charity Commissioner, his locus to file the present writ petition assailing the order of rejection of the above application becomes highly questionable. Therefore, no interference is called for.

21. However, considering the fact that as many as 8 change reports are pending in the file of the Assistant Charity Commissioner including those relatable to the year 2013, it is necessary that those change reports are decided one way or the other within a fixed time frame expeditiously.

22. Accordingly, Assistant Charity Commissioner, Greater Mumbai Region, Mumbai is directed to expedite hearing of the change reports

pending in his file relatable to the Trust in question and decide the same in accordance with law within a period of 4 months from the date of receipt of an authenticated copy of this order.

23. Subject to the above and without expressing any opinion on merit, writ petition is disposed of.

(UJJAL BHUYAN, J.)

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