

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9179 OF 2019

Daivadnya Shikshan Samaj (Boarding)
Kolhapur & Others. ... Petitioners.

V/s.

Chandrakant @ Dilip Gajanan
Chodankar and Others. ... Respondents.

Mr. Venkatesh A. Shastry, Advocate for the Petitioners.
Mr. Kedar Pralhad Lad, Advocate for Respondent Nos. 1
to 10.
Mr. A. B. Kadam, AGP for the State-Respondent No.11.

CORAM : UJJAL BHUYAN, J.

DATE : NOVEMBER 18, 2019.

PC :

1 Heard Mr. V.A.Shastry, learned counsel
appearing for the Petitioners; Mr. Kedar P. Lad, learned
counsel appearing for Respondent Nos. 1 to 10; and Mr.
A. B. Kadam, learned AGP for the State-Respondent
No. 11.

2 Challenge made in this Writ Petition is to the
order dated 11.07.2019 passed by the Joint Charity
Commissioner, Kolhapur Division, Kolhapur in Appeal
No. 14 of 2019 filed by the Respondent Nos. 1 to 10.

3 Matter relates to Change Report of the public trust called "Daivadnya Shikshan Samaj (Boarding), Kolhapur". Change Report No. 1291 of 2017 was necessitated due to changes in the Executive Committee of the trust in the Annual General Body meeting held on 19.08.2017. Petitioners were the original applicants in the said change report submitted before the Deputy Charity Commissioner, Kolhapur Division, Kolhapur where Respondent Nos. 1 to 10 were objectors. After hearing the matter, Change Report No.1291 of 2017 was accepted by the Deputy Charity Commissioner, Kolhapur on 01.03.2019. This was assailed by the Respondents in an appeal before the Joint Charity Commissioner, Kolhapur Division, Kolhapur in Appeal No. 14/ 2019. By order dated 11.07.2019 the appeal was allowed by setting aside the order of Deputy Charity Commissioner dated 01.03.2019 and by directing that the election should be held for the further period from amongst the total 1800 members till 1991 and in this connection help from the Inspector in the office of the Joint Charity Commissioner, Kolhapur, should be taken, if necessary.

4 Learned counsel for the Petitioners submits that though there are serious infirmities in the order dated 11.07.2019, he would not persist with his

grievance in view of fresh election ordered since the period is over. However, direction given to hold election for the further period from amongst 1800 members till 1991 with the help of the Inspector in the office of the Joint Charity Commissioner is contrary to the amended Constitution of the trust. As per clause 52 of the amended Constitution, the Executive Committee is required to appoint Election Committee of five members from amongst members of the trust for the purpose of election of Executive Committee.

5 On a query by the court, learned counsel for the Petitioners submits that Election Officer was appointed on 22.10.2019 and he is expected to declare the election schedule any time now.

6 On the other hand, learned counsel for the Respondents submits that as on date, there is no Executive Committee. Therefore, question of Executive Committee appointing Election Committee does not arise.

7 Submissions made by the learned counsel for the parties have been considered.

8 As already noticed above, Petitioners are not aggrieved by setting aside of the order passed by the

Deputy Charity Commissioner; since the tenure of the earlier Managing Committee is over. Only grievance appears to be regarding conduct of election through the Election Officer in view of clause 52 of the amended Constitution.

9 However, this grievance of the Petitioners appears to be misplaced. If the tenure of the earlier Committee is already over, question of there being any Executive Committee holding office does not arise. If the Executive Committee is not in existence, question of appointing Election Committee by the Executive Committee would also not arise. Be that as it may, from the order of the Joint Charity Commissioner what is noticeable is that while setting aside acceptance of the Change Report by the Deputy Charity Commissioner, he had directed holding of fresh election. Court finds no error or infirmity in such direction of the Joint Charity Commissioner. That apart, Election Officer is an independent person. However, it is needless to say that while holding election, the Election Officer shall ensure that the same is conducted in accordance with the amended Constitution to the extent the provisions are enforceable.

10 Subject to the above, Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

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