

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6369/2019

(AKHADNATH PUNNANATH NANOTKAR & OTHERS **VERSUS** THE LEARNED JOINT CHARITY
 COMMISSIONER, NAGPUR & ANOTHER)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri A.P. Thakare, counsel for petitioner.
 Shri A.M. Kadukar, A.G.P. for R-1.
 Shri S.D. Abhyankar, counsel for R-2.

CORAM : A.S. CHANDURKAR, J.

DATE : SEPTEMBER 18, 2019.

The challenge raised is to the interim order passed by the learned Joint Charity Commissioner in the appeal preferred by the respondent no.2 herein challenging the acceptance of Change Report No.2525 of 2014.

By that change report the elections that were held on 23.11.2014 have been held to be valid and the body elected therein has been directed to be taken on Schedule-I of the Trust. In the appeal preferred by the respondent no.2, the application for stay of that order has been allowed by observing that though in Writ Petition No.4045 of 2013 this Court had stayed the observations made in paragraph 11 of the order passed by the Deputy Charity Commissioner on 16.08.2011, four persons had participated in that election though they were not entitled to participate therein. Another ground that has found favour is non-participation of the founder members in the said election.

Shri A.P. Thakare, learned counsel for the petitioners submits that this Court in the interim order dated 16.04.2014 passed in Writ Petition No.4045 of 2013 did not prevent the said four persons from participating in the elections. What was stayed

was the observation that they were members of the Society by virtue of paying the membership fees on 05.10.2000. He further submits that the respondent no.2 is not a founder member and therefore his participation in the elections held on 23.11.2014 was not necessary. The learned Joint Charity Commissioner has therefore misread the order passed by this Court in Writ Petition No.4045 of 2013. He thus submits that the impugned order is liable to be set aside.

Shri S.D. Abhyankar, learned counsel for the respondent no.2 while supporting the impugned order submits that by the observations made in paragraph 7 of the order dated 02.05.2013 passed by the Deputy Charity Commissioner the said four persons were shown to have been inducted as members. As those observations were stayed, the said four persons could not have participated in the elections that were held on 23.11.2014 when the said order was operating. He also refers to the bye-laws of the Society to indicate necessity of the founder members to be part of the Managing Committee.

Heard learned counsel. At this stage, it is not necessary to finally adjudicate the aforesaid contentions. The appeal filed by the respondent no.2 is pending before the learned Joint Charity Commissioner. A possible view of the matter has been taken by considering the effect of the interim order passed in Writ Petition No.4045 of 2013. Similarly, the manner in which the bye-laws have to be construed also requires final adjudication. It is found that a *prima-facie* view of the matter has been taken by the learned Joint Charity Commissioner by assigning reasons. Any observation on merits made at this stage could cause prejudice to either of the parties. In that view of the matter, I do not find it necessary to interfere with the impugned order. However in the facts of the

case, the proceedings in Appeal No.187 of 2019 are expedited. The learned Joint Charity Commissioner shall decide the said appeal by the end of December-2019 on its own merits without being influenced by any observations made in this order.

The Writ Petition is disposed of in aforesaid terms. No costs.

The points raised on merits are kept open.

JUDGE

APTE