

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

946 WRIT PETITION NO.7578 OF 2020

S MANJEET SINGH JAGAN SINGH AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioners : Mr. Ganesh Gadhe.
AGP for Respondent/s-State : Mr. S. B. Yawalkar.
Advocate for Respondent No.3 : Mr. Mahesh K Bhosale.

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WITH

WRIT PETITION NO.7720 OF 2020

SARDAR GURUCHARAN SINGH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioners : Mr. R. S. Deshmukh (Senior
Advocate) i/b Mr. D. R. Deshmukh.
AGP for Respondent/s-State : Mr. S. B. Yawalkar.
Advocate for Respondent Nos.1 & 2 : Mr. R. B. Bagal.

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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 11.08.2021

PER COURT :-

1. In both these petitions, the petitioners seek to challenge the order dated 28.10.2020, passed below Exh.1, in Inquiry No.806. Nobody has challenged the order passed in Inquiry

Nos.44 of 2019 and 114 of 2019.

2. We have considered the submissions of Mr. Deshmukh, the learned Senior Advocate on behalf of the petitioners in Writ Petition No.7720 of 2020 and Mr. Gadhe, the learned advocate on behalf of the petitioners in Writ Petition No.7578 of 2020. We have also considered the views of the learned AGP and the learned advocate representing the other respondents.

3. After we had gone through the impugned order, we called upon the learned Senior Advocate and the learned advocates for the respective parties to appraise us as to whether the order questioned before us, is an 'order' passed by the learned Assistant Charity Commissioner in a pending Change Report inquiry proceeding or in any such proceeding, which is pending on its file. The learned advocates for the respective sides have stated that the Hon'ble Apex Court had directed the learned Assistant Charity Commissioner to comply with the directions set out in paragraph No.32 of the judgment delivered by the Hon'ble Apex Court on 20.08.2020 in Civil Appeal No.2964 of 2020 with 2966 of 2020 and 2965 of 2020.

4. We find it apposite to reproduce paragraph No.32 of the judgment of the Hon'ble Apex Court dated 20.08.2020 here under :

"32. We accordingly dispose of the appeals by affirming the conclusion of the High Court that the notification issued by the State Government on 21 June 2019 was contrary to the provisions of Section 6(1)(viii) of the Nanded Act 1956. We direct that :

- (i) Inquiry Application No.44 of 2019 and Inquiry Application No.114 of 2019 pending before the Assistant Charity Commissioner, Nanded shall be concluded and disposed of in accordance with law within a period of three months from the date of this judgment.*
- (ii) The statutory authority to make a nomination under Section 6(1)(viii) is entrusted to the Sachkhand Hazuri Khalsa Diwan, Nanded. The Diwan signifies the entire body of members, as explained in the text of the judgment.*
- (iii) The process of making the nomination under the provisions of Section 6(1)(viii), as explained above, shall be initiated and completed within a period of three months from the date of this judgment. The Assistant Charity Commissioner, Nanded shall fix a date for the meeting of the Diwan and shall act as an observer at the meeting convened for finalising the nominations. The Assistant Charity Commissioner is entrusted with the authority to determine the members borne on the role of members of the Diwan who are entitled to vote at the ensuing meeting in accordance with the above directions. The Assistant Charity Commissioner is at liberty to adopt*

appropriate modalities for holding a meeting, including by way of a virtual meeting in view of the outbreak of Covid-19; and

(iv) If any further directions of a consequential nature are necessary to implement this judgment, the Assistant Charity Commissioner will be at liberty to move the Aurangabad Bench of the Bombay High Court for directions."

5. The learned advocates for the respective parties are united in submitting that the order dated 28.10.2020, assailed in this petition, is in deference to the direction of the Hon'ble Apex Court in Clause (iii) below paragraph No.32 reproduced above. The said order is, therefore, by way of compliance of the said direction.

6. We find from the record that there was no such pending proceeding before the learned Assistant Charity Commissioner registered as Inquiry No.806. The learned Assistant Charity Commissioner, upon noticing the direction under clause (iii) reproduced above, found it appropriate to number the said proceeding as Inquiry No.806. This inquiry is not in connection with any pending change report inquiry registered on the file of the learned Assistant Charity Commissioner. We do find that the Hon'ble Apex Court has, in Clause (iv) below

paragraph No.32 reproduced above, permitted the learned Assistant Charity Commissioner to move the Aurangabad Bench of the Bombay High Court for directions, if any further directions of a consequential nature were necessary to be issued so as to implement the directions of the Hon'ble Apex Court. It is a matter of record that the learned Assistant Charity Commissioner has not approached us under Clause (iv) for seeking any assistance or directions. His order dated 28.10.2020, is actually not a judicial or a quasi-judicial order. It is purely in the nature of a compliance upon having implemented the direction under Clause (iii) which required the learned Assistant Charity Commissioner to embark upon the process of making the nominations under Section 6(1)(viii) of the Nanded Act, 1956.

7. In the above backdrop, we put a specific question to all the learned advocates for the respective parties, as to whether the impugned order can be said to be an order passed by the Assistant Charity Commissioner under any provision of the Maharashtra Public Trust Act. Mr. Gadhe, the learned advocate submits that the Hon'ble Apex Court has already taken care of the trust by issuing necessary directions below paragraph

No.32 which can be said to be in the interest of the proper administration of the trust and, therefore, it can also be said to be directions issued under Section 41-A. The learned Senior Advocate submits that no doubt the Hon'ble Apex Court has taken care of the trust vide its direction under Clause (iii) below paragraph No.32 which is clearly in the interest of preparing of the list of nominations under Section 6(i)(viii) of the Nanded Sikh Gurudwara Sachkhand Shri Hazur Apchalnagar Sahib Act, 1956.

8. The learned AGP and the learned advocates representing the respondents submit that the order which is impugned in both these petitions, is actually not an order passed by the learned Assistant Charity Commissioner in any pending proceeding or under Section 41-A of the Maharashtra Public Trust Act. It is purely the minutes of the compliance that the learned Assistant Charity Commissioner has done in deference to the directions below Clause (iii) under paragraph No.32.

9. In view of the above, we do not find that this Court can exercise its writ jurisdiction under Article 226 of the Constitution of India in this case. The learned Assistant Charity

Commissioner, while complying with the directions issued by the Hon'ble Apex Court, has recorded the manner in which he has complied with the said directions.

10. As such, considering the fact that none of the petitioners before us have invoked Section 41-A of the Maharashtra Public Trust Act, inasmuch as, we find that the learned Assistant Charity Commissioner has taken steps as he deemed fit and proper in compliance of / deference to the directions under Clause (iii) below paragraph No.32. The learned advocates for the parties submit that they would approach the Hon'ble Apex Court to bring to it's notice that it's direction under paragraph 32 Clause (iii) has not been properly implemented.

11. In view of the above, both these petitions are disposed off. Needless to state, the ad-interim order passed earlier stands vacated.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-