

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 24 OF 2021

1. Shri Manohar S/o. Shriram Harde,
aged about 66 years, Occ. Retired,
2. Shri Dynoba Raghobaji Bodkhe,
aged about 69 years, Occu.: Retired,
R/o. Bhandara, Tq. and Dist. Bhandara
441902.
3. Madhav S/o. Devaji Tirpude,
aged about 72 years, Occ.: Retired,
Bhandara.
4. Narendra Babanrao Palandurkar,
aged about 6 years, Occ. Retired,

Nos. 4 & 5 R/o. Shahapur,
Tq. and Distt. Bhandara- 441 906.

.... **PETITIONERS.**

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1. Joint Charity Commissioner,
Nagpur Region, Civil Lines,
Nagpur.
2. Shri Pradip P. Gaikwad,
aged adult, Occ. : Service,
C/o. Assistant Charity Commissioner,
Near Muslim Library, Bhandara,
Tq. and Dist. Bhandara – 441 902.

3. Gram Vikas Samittee,
through its Secretary,
Shri Darshanlal Nandlal Malhotra,
aged adult, Occu.: Business,
R/o. Petol Pump, Thana,
P.O. Jawahar Nagar, Distt. Bhandara.

.... **RESPONDENTS.**

Shri V. K.Paliwal, Advocate for Petitioners.
Shri A.A.Madiwale, A.G.P. for Respondent No.1.
Shri S.D.Abhyankar, Advocate for Respondent No.3.

CORAM : **SUNIL B. SHUKRE AND**
 ANIL S. KILOR, JJ.

DATED : **JULY 28, 2021**

ORAL JUDGMENT : (Per : Sunil B. Shukre, J.)

1. Heard.
2. **RULE.** Rule made returnable forthwith.
3. Heard finally by consent of the learned counsel appearing for the parties.
4. While deciding Appeal No. 36 of 2009, the learned Joint Charity Commissioner directed that fresh elections shall be held and

Inspector Shri Sahare working in the office of Assistant Charity Commissioner, Bhandara shall be appointed for the purpose of holding of the fresh elections. This order was confirmed by the superior courts. However, till date no elections to the Managing Committee of the respondent No.3 could be held.

5. It was noticed by the Joint Charity Commissioner and that was on the report submitted by the concerned Inspector, that the respondent No.3 Trust failed to produce relevant record regarding existing members of the Trust and therefore, by invoking his powers under Section 41-A the learned Joint Charity Commissioner by order passed on 24/12/2020 issued various directions, one of the directions being of publication of public notice in widely circulated daily Marathi newspaper inviting applications for enrollment of the members in different categories as enumerated in the Bye-laws of the Trust within a period of one month. Other directions issued by the impugned order dated 24/12/2020 were consequential to the main direction regarding inviting fresh applications for enrollment of the members. According to the learned counsel for the petitioners, such an order could not have been passed without hearing the petitioners inasmuch as there is no power available under Section 41-A of the Maharashtra Public Trusts

Act, 1950 for the Joint Charity Commissioner to take any decision regarding enrollment of fresh members of the Trust. Reliance has been placed on the judgment rendered in the case of *Gram Vikas Samitee vs. Darshanlal Nandlal Malhotra*, reported in **2009(5) Mh.L.J. 457**.

6. According to the learned A.G.P, appropriate orders in the matter may be passed.

7. The learned counsel for the respondent No.3 agrees with the submissions made on behalf of the petitioners.

8. Having regard to the rival submissions, what is established as fact on record is that the impugned order has been passed without giving any opportunity of hearing to the concerned parties, including the petitioners and the respondent No.3, and it has been passed clearly on the basis of the report submitted by the Inspector, Public Trusts Office, Bhandara. The order has serious consequences not only on the working of the Trust but also the elections that are required to be held for constitution of the Managing Committee and therefore, it was necessary for the learned Joint Charity Commissioner to have given an opportunity of hearing to the concerned stake-holders which is not the case here.

9. Then the impugned order does not show any consideration of the objection that no order regarding enrollment of new members could be passed by invoking powers under Section 41-A of the Maharashtra Public Trusts Act, 1950. Thus, on both the counts stated above, the impugned order does not stand to the scrutiny of law. Hence, the following order:

- i) The impugned order is hereby quashed and set aside.
- ii) The matter is remanded back to the learned Joint Charity Commissioner for its fresh consideration and decision in accordance with law for which purpose due opportunity of hearing shall be granted to the petitioners and the respondent No.3.
- iii) The petitioners and the respondent No.3 shall appear before the Joint Charity Commissioner, Nagpur on 2nd August 2021 at 11:00 a.m.
- iv) The learned Joint Charity Commissioner shall take appropriate decision in the matter within two weeks from the date of appearance of the concerned parties before him.

Rule is made absolute in the above terms. No order as to costs.

(ANIL S. KILOR, J)

(SUNIL B. SHUKRE, J.)

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