

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

WRIT PETITION NO. 473 OF 2021

Darshanlal S/o. Nandanlal Malhotra,
aged about 56 years, Occ. : Business,
R/o. Jawahar Nagar, Bhandara,
Dist. Bhandara.

.... **PETITIONER.**

// VERSUS //

1. Manohar S/o. Shriram Harde,
Aged : Major, R/o. Sahapur,
Tah. & Dist. Bhandara,
Dist. Bhandara.
2. Bhadu Bakaram Bhure,
Aged Major,
R/o. Nandora, Post Shahapur,
Dist. Bhandara.
3. The Joint Charity Commissioner,
Nagpur.

.... **RESPONDENTS.**

Shri S.D.Abhyankar, Advocate for Petitioner.
Shri V.K.Paliwal, Advocate for Respondent No.1.
Shri N.D.Khamborkar, Advocate for Respondent No.2.
Shri A.A.Madiwale, A.G.P. 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. The learned counsel appearing for the respondent No.2 informed the Court that the respondent No.2 has expired due to COVID-19. The respondent No.2 was Inspector at whose behest the impugned order has been passed and as noted by this Court in its order passed on 25th January 2021 in the connected matter, the respondent No.2 was joined only in his official capacity of Inspector. Therefore, absence of the respondent No.2 in the present matter is not going to have any adverse impact on the merits of the matter. The amendment, therefore, be accordingly, carried out in the cause title by substituting respondent No.2 in his official capacity as “Inspector, Public Trusts Registration Office, Bhandara”.

3. **RULE.** Rule made returnable forthwith.

4. Heard finally by consent of the learned counsel appearing for the parties.

5. 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 Gram Vikas Samiti, Shahapur could be held.

6. It was noticed by the Joint Charity Commissioner and that was on the report submitted by the 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 direction 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**.

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

8. Having regard to the rival submissions, what is established as a fact on record is that the impugned order has been passed without giving any opportunity of hearing to the concerned parties and it has been passed clearly on the basis of the report submitted by the Inspector, Public Trusts Registration 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 petitioner and the respondent No.1.
- iii) The petitioner and the respondent No.1 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.)