

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION (WP) NO.982 OF 2020

PETITIONERS

(Orig. Non-Applicants)

- : 1. Smt. Ushakiran Wd/o. Arun Thute,
age about 66 years, Occ. Retired,
President of Gram Vikas Sanstha,
Hinganghat,
2. Shri Janrao Chandrabhanji Raut,
aged about 75 years, Occ. Retired,
R/o Kangaon, hinganghat, Dist. Wardha
3. Baba Chandrabhan Shegaonkar,
aged about 70 years, Occ. Social Work
4. Shri Vitthal Govindrao Awachat,
aged about 65 years, Occ. Retired
5. Rajaram Ganpat Kumbhalkar,
aged about 62 years, Occ. Retired,
R/o. Madgaon, Samudrapur, Distt.
Wardha.
6. Smt. Suman Manohar Patil,
aged about 67 years, Occ. Retired,
R/o.Ramnagar, Hinganghat, Distt.
Wardha.
7. Ajay Babarao Rithe,
aged about 52 years, Occ. Service,
R/o Matamandir Ward, Hinganghat,
Distt. Wardha
8. Aashirwad Arun Thute,
aged about 45 years, Occ. Service,

Nos.1, 3, 4 and 8 are R/o. Sant Tukdoji
Maharaj Ward, Hinganghat, District
Wardha.

--VERSUS--

RESPONDENTS

- : 1. Joint Charity Commissioner,
Near G.P.O., Civil Line, Nagpur

Resp. Nos.2, 3, 4, 6, 7
are deleted as per

2. Smt. Shobhatai Krishnarao Zoting,

Court's order dated
02.02.2020.

aged 84 years,

3. Sau. Asha Prakash Raut,
aged about 64 years
4. Vinayakrao Suryabhanji Bonde
aged about 79 years,
R/o. Master Colony, Hinganghat, Distt.
Wardha
5. Dr. Nisha Krishnarao Zoting,
aged about 59 years

Nos.2, 3 and 5 R/o. Now Malika
Apartment, Shivaji Nagar, Nagpur

Resp. Nos.6 and 7 are
original applicants.

6. Dr. Sudha Sanjay Sakhare,
R/o. Ram Nagar, Hinganghat, Tah.
Hinganghat, Distt. Wardha
7. Shri Pandurang Dadaji Dakhore (Dead)

Shri. V. K. Paliwal, Advocate for the Petitioners
Ms. T. H. Khan, Asst. G.P. for the Respondent No.1
Shri. S. D. Abhyankar, Advocate for the Respondent No.5.

CORAM : **N. B. SURYAWANSHI, J.**
RESERVED ON : **22.07.2021**
PRONOUNCED ON : **21.08.2021.**

JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the parties.

3. This petition challenges the order dated 21.11.2019 (Annexure-H) passed by the Respondent No.1 Joint Charity Commissioner, Nagpur below Exh-16 in Application No.214 of 2016, thereby rejecting the prayer of the Petitioners to delete the name of the Respondent No.5 from the application.

4. The Petitioner No.1 is elected President of Gramin Vikas Sanstha, Hinganghat, District Wardha, a Trust registered in the year 1962. The Trust is running Educational Institutions in Wardha District. The Petitioners are the Trustees and Executive Committee Members of the said Trust in pursuance of acceptance of Change Report No.388 of 2014.

5. An application under Section 41-D of the Maharashtra Public Trust Act, 1860 (for short, "the said Act") was filed before the Respondent No.1 by the Respondent No.5 and three others, thereby praying to dismiss the Non-Applicant Nos.1 to 11 from Trusteeship of the Trust, with a further prayer to appoint persons named in Para 18 of Enquiry No.214 of 2016 (Annexure-D) as fit

persons during the pendency of the proceedings. The Respondent No.1 rejected the said application, hence the present petition.

6. In the said inquiry, some of the Respondents filed application seeking permission to delete the name of Applicant No.4 Dr. Nisha Krishnarao Zoting (Respondent no.5) from the array of the Applicants, claiming that she was never enrolled as a member of the Trust and therefore, she has no locus to file the application under Section 41-D of the said Act. She does not come within the definition of Section 2(10)(d) of the said Act, therefore her name be deleted.

7. The Respondents strongly opposed the application claiming that the application is filed to prolong the matter, the Applicant No.4 is involved in a series of litigations with respect to the Trust in question since long. The Trial Court rejected the application. The rejection order is challenged in this writ petition.

8. Heard the learned Advocate for the Petitioners and the learned Advocate for contesting Respondents and

the learned Assistant Government Pleader.

9. The learned Advocate for the Petitioners submitted that the Respondent No.1 has committed an error in rejecting the application (Exh-16). The Trust is governed by the Executive Committee. The members of the Trust elect the members of the executive committee. The Respondent No.5 was never enrolled as a member of the Trust and she was never a member of the General Body of the Society/Trust, and therefore, she has no locus to file application under Section 41-D of the said Act. The Respondent No.1 has failed to appreciate the contentions of the Petitioners properly and has erred in rejecting the application seeking deletion of the name of the Respondent No.5 on the ground of locus standi.

10. On the other hand, the learned Advocate for the Respondents submitted that Section 41-D of the said Act does not require that a Trustee has to file the application, any person interested in the Trust is entitled to file proceeding under Section 41-D. He further submitted that since long, the Respondent No.5 is contesting various

litigations of the Trust. She was a member of the ad-hoc body appointed by the Joint Charity Commissioner, when the Executive Committee of the Applicant No.2 was dismissed after holding inquiry. He therefore submitted that no fault can be found with the order passed by the Respondent No.1.

11. The learned Assistant Government Pleader supported the order passed by the Respondent No.1.

12. The record indicates that the Respondent No.5 alongwith others had filed proceedings under Section 41-D of the said Act against the present Petitioners and others. In that proceedings, on completion of inquiry, the Petitioners were dismissed from the Trusteeship and an ad-hoc body was appointed by the Respondent No.1. The Respondent No.5 was member of that ad-hoc body. The Respondent No.5 has been contesting various litigations of the Trust since long. The change report filed by the Petitioner No.1 in respect of election the Executive Committee was strongly contested by the Respondent No.5 and it was rejected by the Assistant Charity Commissioner.

It was thereafter accepted by the Joint Charity Commissioner, Nagpur. Any interested person can file application under Section 41-D of the said Act. Therefore, it is clear that the Respondent No.5 was entitled to file the proceedings under Section 41-D of the said Act. .

13. The Respondent No.1 in the impugned order has observed that the name of the Applicant No.4 (Respondent No.5) was included as ad-hoc Trustee in the ad-hoc body. The order of appointing ad-hoc body was not set aside by this Court and since a long time, the Petitioners and the Respondents were contesting the matter regarding the management of the said Trust. Therefore, the Respondent No.1 has passed a reasoned order and was justified in coming to the conclusion that at this stage, it cannot be held that the Respondent No.5 has no locus to file the proceedings, as she is contesting litigations since long. The impugned order needs no interference in writ jurisdiction. Writ petition, is therefore, **dismissed** with no order as to costs. Rule is discharged.

JUDGE