

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

**WRIT PETITION (WP) NO.6295 OF 2017**

**PETITIONERS**

**(Ori. Plaintiff)**

- : 1. Vinayak Ganpatrao Borale,  
Aged about-71 years, Occu-Retired, R/o  
Near Ice Factory, Jatharpeth, Akola,  
Taluka and District Akola
2. Tejrao Haribhau Kalmegh,  
Aged about-65 years, Occu-Retired, R/o  
Near Rashtriya School, Umari, Akola,  
Taluka and District Akola
3. Ramchandra Suryabhan Ghatе,  
Aged about-75 years, Occu-Retired, R/o  
Near Rashtriya School, Abhawadi,  
Umari, Akola, Taluka and District Akola
4. Sheshrao Laxmanrao Jadhav,  
Aged about-88 years, Occ-Retired, R/o  
Near Rashtriya School, Abhawadi,  
Umari, Akola, Taluka and District Akola
5. Sudhakar Narhar Joshi,  
Aged about-72 years, Occu-Retired, R/o  
Near Rashtriya School, Abhawadi,  
Umari, Akola, Taluka and District Akola
6. Vasantrao Rambhau Bhatkar,  
Aged about-73 years, Occu-Retired, R/o  
Dhanvantari Nagar, Engineering  
Colony, Mothi Umari, Akola, Taluka and  
District Akola
7. Mahadeo Tulshiram Mahalle,  
Aged about-82 years, Occu-Retired, R/o  
Keshav Nagar, Akola, Taluka and  
District Akola.

**--VERSUS--**

**RESPONDENTS**

**(Ori. Defendant)**

- : 1. Assistant Charity Commissioner, Akola,  
Taluka and District Akola.

2. Kashinath Sundraji Chaudhari,  
Aged about-68 years, Occu-Retired, R/o  
Court Colony, Near Rashtriya School,  
Mothi Umari, Akola, Taluka and District  
Akola
3. Shankar Shriram Tapre,  
Aged about-62 years, Occu-Retired, R/o  
Near Engineer's Colony, Mothi Umari,  
Akola, Taluka and District Akola.

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Shri. A. R. Deshpande, Advocate for the Petitioners  
Shri. K. L. Dharmadhikari, Asst. G. P. for the Respondent No.1  
Shri. S. M. Vaishnav, Advocate for the Respondent No.2

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**CORAM** : **N. B. SURYAWANSHI, J.**  
**DATE** : **17.08.2021.**

### **ORAL JUDGMENT**

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

2. This petition takes exception to the order dated 10.08.2017 passed by the Respondent No.1 Assistant Charity Commissioner, Akola on application (Exh-216) thereby allowing the application filed by the Respondent No.2 for discarding/striking out portion of his cross-examination, which was not relevant to the subject matter. The Petitioner has also challenged the orders passed below Exh-220 and Exh-222

respectively seeking review of the order passed below Exh-216 or in the alternative clarification of the said order.

3. An inquiry in Change Report Inquiry Case No.1247 of 2007 under Section 22 of the Maharashtra Public Trust Act, 1950 (for short, "the said Act") pertaining to the elections of the year 2007 of the Public Trust namely "Tilak Rashtriya Saraswati Mandir" is before the Respondent No.1. The Respondent No.2 is the reporting trustee, who has stepped in the shoes of the Respondent No.3, who was the earlier reporting trustee in the said change report. The Petitioners are objectors in the said change report. During the course of inquiry, the Respondent No.2 led evidence, he was cross-examined by the petitioners objectors. The Respondent No.2 moved an application (Exh-216) seeking to discard/strike out the para of cross-examination, which is on the aspects other than the subject matter and prayed that the said portion of cross may not be taken while passing the judgment.

The Petitioners resisted the said application stating that it is not maintainable, relevant and important questions were asked in the cross-examination of the Respondent No.2, and therefore, claimed that the application be rejected. By the impugned order, the Respondent No.1 allowed the application (Exh-216). Thereafter, the Petitioners moved an application (Exh-220) seeking review of the said order. By filing application (Exh-222), the Petitioner sought clarification of the order, as to which portion of the cross-examination needs to be related, may be clarified. Both these applications were rejected. The Petitioners are aggrieved by the orders passed below Exh-216 and common order below Exh-220 and Exh-222.

4. Heard the learned Advocate for the Petitioners, the learned advocate for the Respondent No.2 and the learned Assistant Government Pleader for the Respondent No.1.

5. The learned advocate for the Petitioners submitted that the application filed by the Respondent No.2 was vague and it does not specify under which provisions, the same was filed. The impugned order was passed by the Respondent No.1 without taking into consideration the fact that it has no authority to pass such order, no relevant provision is quoted under which the Respondent No.1 has exercised jurisdiction while passing the impugned order. The impugned order does not specify as to which specific portion is to be treated as irrelevant and has to be discarded from the cross-examination of the Respondent No.-2. He further submits that the order passed below Exh-220 and Exh-222, is also liable to be quashed and set aside, as the same fails to consider the arguments and contentions of the Petitioners in the proper prospective.

6. On the other hand, the learned advocate for the Respondent No.2 supports the impugned orders contending that the elections were held in the year 2007 and the inquiry in Change Report Inquiry Case

No.1247 of 2007 is in respect of the said elections. A lengthy cross of 148 pages was conducted by the Petitioners, which continued for a period of one year and several irrelevant questions were asked, which were not pertaining to the elections held in the year 2007. In spite of objections having been raised by the learned Advocate for the Respondent No.2, the cross-examination was continued by the learned Advocate for the Petitioners. Therefore, the Respondent No.1 has rightly passed the impugned order. He states that the Respondent No.1 was justified in passing the order and the petition being meritless be dismissed. In support of his arguments, he relied in *Rajendra Singh Chhatrasal Singh Kushwaha .vs. Jitendra Singh Rajendra Singh Kushwah and others, 2013(6) Mh.L.J. 802.*

7. Perusal of the impugned order shows that the Respondent No.1 has observed in the impugned order that no provision is quoted by the Respondent No.2, while filing the application (Exh-216). He then

proceeded to observe that many questions were put by the counsel of third party objection petitioner to the reporting trustee during the cross-examination, are irrelevant with the subject matter. The proceedings pertain to the meetings dated 16.11.2007 and 22.11.2007, the Respondent No.1 further observed that the proceedings also depend on the order of the previous authority under Section 41-A of the said Act. Then he proceeded to observe that the objection petitioner have put may questions, which are not related to the subject matter. He therefore proceeded to observe that “therefore, it is necessary to discard and strike out above said subject matter in the cross-examination of Shri. Kashinath Chaudhari which is are irrelevant only with subject matter and it is needs to be discard in the interest of natural justice.” Considering these aspects, he therefore partly allowed the application (Exh-216).

8. The impugned order is passed by the Respondent No.1 without referring any provision. The

impugned order is as vague as it could be, it does not indicate which questions were irrelevant, and therefore, which part needs to be discarded. Non-application of mind on the part of the Respondent No.1 in passing the impugned order is reflected from the observations that the application is legal and valid in the eye of law and needs to be allowed in the interest of natural justice. The impugned order, is therefore, unsustainable on the ground of erroneous reasoning given by the Respondent No.1.

9. The proper course to be adopted by the Respondent No.1 in such situation was to consider the relevancy and admissibility of the questions asked in the cross-examination, at the time of final decision of the matter. In *Rajendra Singh Chhatrasal Singh Kushwaha* (supra), this Court was considering the provisions of Order 18 Rule 4 of the Code of Civil Procedure in respect of production of evidence, this Court held that "Court cannot permit the party to lead an irrelevant evidence." In the instant case, the cross-

examination of the Respondent No.2 is already over. Since the facts of the present case are different, the said ruling does not help the case of the Respondents.

10. For the aforestated reasons, the impugned orders cannot sustain and the same are hereby quashed and set aside. The Respondent No.1 is directed to decide the relevancy and admissibility of the material in the oral evidence of the Respondent No.2, at the time of final decision of the Change Report Inquiry Case No.1247 of 2007. As this proceeding is pending since 2007, the Respondent No.1 shall decide the same within a period of three months from today. The parties are directed to cooperate in the expeditious disposal of the proceedings. With these directions, the writ petition is **disposed** of.

**JUDGE**