

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

WRIT PETITION NO.3885 OF 2020

1. Ramrao s/o Ganpatrao Padul
Age: 66 years, Occu: Agriculture,
R/o: At Samangaon Post Kajala,
Tal. & Dist. Jalna.
2. Rajendra S/o Bhanudas Kawale
Age: 49 years, Occu: Agri.
3. Baburao S/o Umaji Kawale
Age: 58 years, Occu: Agri.,
4. Tukaram S/o Baburao Kawale (Dead)
5. Trimbak S/o Nana Kawale (Dead)
6. Vishnu S/o Tukaram Kharat
Age: 55 years, Occu: Agri.
7. Devidas s/o Bhanudas Jige
Age: 45 years, Occu: Agri.

R/o: At Mathpimpalgaon Post
Golapangari Tq. & Dist. Jalna.
8. Bhimrao s/o Dharuba More
Age: 65 years, Occu: Agri.
9. Shivaji S/o Eknath More
Age: 60 years, Occu: Agri.
10. Pralhad S/o Pandit More
Age: 49 years, Occu: Agri.
11. Dnyaneshwar S/o Tulsiram More
Age: 51 years, Occu: Agri.,

R/o: Petitioner Nos.2, 3, 6 & 8 to 11
are residing at Golapangari,
Tq. & Dist. Jalna.

... Petitioners

Versus

1. The Joint Charity Commissioner, Aurangabad.

2. The Assistant Charity Commissioner, Jalna.

3. Sampatrao S/o Bhagaji More
[President (Dead)]

4. Babasaheb S/o Jijaba More
Age: Major Year, Occu: Vice-President

5. Dattatraya S/o Keshavrao More
Age: Major Year, Occu: Secretary

6. Sakharam S/o Yemaji Khadekar
Age: Major Year Occu: Treasure

7. Pralhad S/o Kishan More
Age: Major Year, Occu: Director

8. Ramkishan S/o Sakharam More
Age: Major Year, Occu: Director

R/o: Respondent Nos.4 to 8 are residing
at Golapangari Tq. & Dist. Jalna.

9. Sopan S/o Dhondiba More [Dead]

10. Pandurang S/o Baburao Bagal
Age: Major Occu: Director.

R/o: Bathan Post, Dudhana Kalegaon,
Tq. & Dist. Jalna.

11. Golapangari Shikshan Prasarak Mandal,
Golapangari, Tq. & Dist. Jalna
Through authorized person.

... Respondents

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Mrs. Bharti B. Gunjal, Advocate for Petitioners
Mrs. V. S. Choudhari, AGP for Respondent Nos.1 & 2/State
Mr. V. J. Dhage, Advocate for Respondent Nos.4 to 8 & 10, 11

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 11th January, 2022

ORAL JUDGMENT:

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

2. This petition is directed against the order passed by the respondent No.2/Assistant Charity Commissioner, Jalna in Inquiry No.72/2010 dated 05//01/2015, confirmed by respondent No.1/Joint Charity Commissioner, Aurangabad.

3. The petitioners claim to be members of respondent No.11/trust and according to them, elections were conducted behind their back in the year 2009 and Change Report No.72/2010 was accepted. The petitioners filed an application in the said change report seeking intervention being interested party, which came to be allowed. The petitioners, opposed the change report, after hearing the petitioners, the Change Report No.72/2010 was accepted. The petitioners challenged the order passed by respondent No.2 by filing Appeal No.7/2015 before respondent No.1, which came to be dismissed. Hence, the present petition.

4. Heard the learned advocate for the petitioners, learned advocate for the respondent Nos.4 to 8, 10 & 11 and learned Assistant Government Pleader for respondent Nos.1 & 2-State.

5. The learned advocate for the petitioners strenuously urged that while allowing the application filed by the petitioners for adding them as party in change report No.72/2010, the respondent No.2 has prima facie accepted their contentions that they are members of respondent No.11/trust. The petitioners paid membership charges and since 1988, they are the members of respondent No.11/trust. However behind their back, the elections were conducted in the year 2009 and change report was accepted by respondent No.2. She submits that she is only pressing prayer clause 'E' and the matter may be remanded back to the respondent No.2 for fresh consideration on merits. She further submits that the membership receipts submitted by the petitioners are not considered by both the authorities. So also the illegalities pointed out by the petitioners are not taken into consideration. By pointing out the inquiry report placed on record at Page-78 of the paper book, she submitted that in the said inquiry, the deposit of Rs.251 by the petitioners is reflected. However, the cash book of 1988 was lost as per statement of the President and therefore, on the basis of xerox receipts, the petitioners have to be treated as valid trustees of the trust. She, therefore, submits that the impugned orders may be quashed and set aside and the matter may be remanded back for fresh consideration on merits to respondent No.2.

6. Per contra, the learned advocate for the respondents supported the impugned orders by pointing out the observations of the respondent Nos.1 and 2 in the impugned orders, he submitted that

both the orders are well reasoned orders and the petitioners have failed to make out any case to warrant interference in the extraordinary jurisdiction. He, therefore, submits that the writ petition may be dismissed.

7. In reply, the learned advocate for the petitioners submitted that since the original record of the trust of the year 1998 in the form of cash book is destroyed, the xerox receipts of the payment of membership fees of the petitioners need to be accepted.

8. The respondent No.2 while allowing the Inquiry No.72/2010 has observed that out of objection petitioner Nos.12 to 22, only objection petitioner No.13 has challenged the report. The objection petitioner has avoided to plead specifically the type of his membership. He tried to lead secondary evidence to prove his membership. By reproducing the categories of membership and after considering the record, he has come to the conclusion that the objection petitioner has failed to state as to which type of member he is. By enumerating the admissions given by the objection petitioner that, "he has not filed any receipt either in this matter or any other matter relating to the society. So also he has not filed the notice or resolution or any certificate for proving his membership". The respondent No.2 rightly held that the objection petitioner has failed to prove his membership. It is further observed by respondent No.2 that merely by paying an amount of membership fee (Rs.251/-) that by itself does not confer status of member on the objection petitioner. In terms of Clause 6 (5) of the Rules and Regulations of the Society, the petitioner/objection petitioner was not granted any membership. There is no resolution passed in favour of the petitioner conferring

him the membership of the trust. Mere payment on the part of the petitioner does not entitle him to claim membership.

9. Though the respondent No.2 has taken into consideration that due to the death of original reporting trustee during the pendency of change report, there are certain irregularities, which aspect is emphasized by the learned advocate for the petitioners, however the respondent No.2 has further observed that the reporting trustees have proved the notice dated 20/10/2009 and the resolution dated 17/11/2021, in which elections were conducted. Since the objection petitioners were not valid members. There was no need of service of notice on them. The respondent No.2 was therefore justified in accepting the change report inquiry No.72/2010.

10. The respondent No.1 while dismissing the appeal filed by the petitioners has recorded a finding that as per the admissions given in the cross-examination of objector Rajendra Bhanudas Kawale, he is not having any receipt of enrolling him as a member. He was not present for any meeting as no notice was ever issued to him. He became member in the year 1998 and he came to know about the membership for the first time in the year 2000. The respondent No.1 has further noted that the materials relied upon by the petitioners i.e. extract of cash book and ledger book are not on record and the extract was referred to the expert and expert has given opinion about interpolated subsequent entries.

11. Even if it is accepted that an amount of Rs.251 was paid by the petitioners towards membership that by itself is not sufficient to confirm membership upon them in absence of any resolution passed

accepting them as members. In this behalf, the learned advocate for the respondents was justified in placing reliance in **Smt. Damyanti Naranga Vs. The Union of India & Ors.** reported in AIR 1971 SC 566, **Krishnarao Kanhaiya Naidu & Ors. Vs. Jeevraj Bhairavlal Agrawal & Ors.** reported in 2010 (1) ALL MR 95 and **Abdul Sattar Sher Mohammad Qureshi & Ors. Vs. Haji Mustaq Ahmad Sher Mohd. & Ors.** reported in 2009 (1) Mh.L.J., wherein it is held that enrollment of new members has to be approved by Managing Committee, simply because somebody pays a sum of money, one cannot become a member and he cannot foist his membership on those who desire not to be associated with him. What is required to be shown is approval of such membership by the executive committee or by the general body meeting.

12. Since the petitioners were never approved to be as members of the trust, it is not possible to accept their contentions that the elections were conducted behind their back.

13. Both the impugned orders are well reasoned orders. No illegality or perversity is found in the orders impugned in the present writ petition. The petition being devoid of merits is dismissed. Rule is discharged. No costs.

(NITIN B. SURYAWANSHI, J.)