

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

**906 WRIT PETITION NO.4723 OF 2022**

HEMANT VASANTRAO VAIDYA  
VERSUS  
THE DEPUTY CHARITY COMMISSIONER AND OTHERS

...  
Advocate for Petitioner : Dr. R. J. Godbole  
AGP for Respondent – State : Mr. A. R. Kale  
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**907 WRIT PETITION NO.4728 OF 2022**

BHARTIYA SHIKSHAN PRASARAK SANSTHA THROUGH ITS  
SECRETARY KARYAVAHA NITIN VIJAYKUMAR SHETE  
VERSUS  
THE DEPUTY CHARITY COMMISSIONER AND OTHERS

...  
Advocate for Petitioner : Mr. R.N.Dhorde, Senior Advocate i/b.  
Mr. Vikram R. Dhorde  
AGP for Respondent – State : Mr. S. B. Yawalkar  
Advocate for Respondents no. 26 and 27 : Mr. P. V. Barde  
...

**CORAM : R. D. DHANUKA &  
S. G. MEHARE, JJ.**

**DATE : 28-04-2022**

**ORAL ORDER :-**

By the Writ Petition no. 4728 of 2022 filed under Article 226 of the Constitution of India, the petitioner – Bhartiya Shikshan Prasarak Mandal, Ambajogai, Taluka Ambajogai, District Beed (registered trust) seeks writ of *certiorari* against the respondent no.1 to hold and declare that the impugned common Judgment and order dated 05.04.2022 passed by respondent no. 1 in Inquiry

Nos. 1246 of 2021 and 75 of 2022 to the extent of appointment of respondent no. 31 as Election Officer is illegal, arbitrary and against the provisions of the Maharashtra Public Trust Act, 1950 (in short, "the Act") and therefore, the same is liable to be quashed and set aside and allow the petitioner – trust to continue the appointment of Shri. Kishor Vithalrao Girwalkar as an Election Officer appointed by the resolution dated 28.02.2022 and for that purpose issue necessary orders.

2. By the Writ Petition no. 4723 of 2022 filed under Article 226 of the Constitution of India, the petitioner - the managing Member of respondent no. 2 - Bhartiya Shikshan Prasarak Mandal, Ambajogai, Taluka Ambajogai, District Beed, ('registered trust') is *inter-alia* praying that to hold and declare the impugned common judgment and order dated 05.04.2012 passed by the respondent no.1 in Inquiry Nos. 1246 of 2021 and 75 of 2022 to the extent of appointing respondent no. 31 as Election Officer is illegal, arbitrary and against the provisions of the Maharashtra Public Trust Act, 1950 and therefore, the same is liable to be quashed and set-aside and allow the respondent no. 2 Trust to continue the appointment of Kishor Vithalrao Girwalkar as an Election Officer appointed by the resolution dated 28.02.2022 and for that purpose to issue necessary orders.

3. The tenure of the managing committee of the petitioner-trust expired at the end of December in the year 2020. However, due to Covid-19, election could not be held within time and as per the bye laws of the trust, the period was also extended. There appears to be disputes between former managing committee members. Respondents no. 26 and 27 filed Inquiry Application no. 1246 of 2021 before respondent no. 1 for seeking orders under Section 41-A of the Act or directions to hold the elections to the managing committee of the petitioner – trust for the period 2022-2027, by appointing Election Officer from the office of the Charity Commissioner.

4. The petitioners state that on 17.01.2022 the respondent no. 28 to 30 also filed Inquiry Application no. 75 of 2022 under Section 41-A of the Act before the learned Deputy Charity Commissioner, Beed, seeking direction to hold the election as per the list of the members as on June-2021. The Petitioner was impleaded as respondent no. 4 in the said application.

5. The petitioners appeared in the said proceedings and filed detailed reply informing that the steps have already been taken for holding the elections to the Managing Committee of the petitioner – trust. The applicants have not opposed the name of Advocate Kishor Vithalrao Girwalkar as Election Officer in the said

applications. The Deputy Charity Commissioner, Beed, passed order appointing respondent no. 31 as Election Officer on 05.04.2022. It is submitted that the order appointing new Election Officer under Section 41-A of the Act was without jurisdiction.

6. Mr. Dhorde, learned Senior counsel submits that, managing committee of the petitioner - trust passed the resolution on 09.01.2022 for taking steps to hold the general body meeting for holding the election, by finalizing the valid voters' list and thereby appointing Shri. Kishor Vithalrao Girwalkar, Advocate as an Election Officer. He strongly relies on the provisions under Section 41-A of Act and would submit that the applications filed by respondents no. 26 & 27 and 28 to 30 under Section 41-A of Act for direction to hold elections as per the list of members, were not maintainable.

7. In support of this submissions, he relied on the Judgment of Single Bench of this Court, in a case of ***Lahudas Sambhaji Karad Versus State of Maharashtra and others, 1993(2) Mh.L.J. 1056***, wherein it is held that, *Joint Charity Commissioner has no powers to interfere with the process of election of the governing council of Public Trust under Section 41-A or 41-E of the Act.* He placed reliance particularly on paragraphs no.25, 27, 37, 38, 40 and 44 thereof.

8. Mr. Godbole, learned counsel for the petitioner, in writ petition no. 4723 of 2022, adopted the submissions made by Mr. Dhorde, learned senior counsel for the petitioner in writ petition no. 4728 of 2022. In addition to the arguments advanced by learned senior counsel Mr. Dhorde, Mr. Godbole, learned counsel for the petitioner submits that, the authority had no jurisdiction to pass any order under Section 41-A of the Act. He would submit that the election officer has already been appointed by trust and as such, there was no need to appoint another election officer. The said order is without jurisdiction. Upon raising a query as to whether the election officer appointed by the trust continues as on date, learned counsel pointed out that, in view of the threats given by the Deputy Charity Commissioner, he has stopped acting as Election Officer.

9. Mr. Barde, learned counsel for the respondents no. 26 and 27 invited our attention to the agenda of the meetings held by the petitioner-trust and states that only agenda of the meeting was to remove some of the members and not for holding any election. He would submit that under Section 41-A of the Act, the Charity Commissioner has power to issue directions to the trustees of public trust or any person connected therewith, to ensure that the

trust is properly administered. He would submit that since there was a dispute between management, the petitioner trust was not being administered properly. Since the tenure of the committee of the petitioner - trust expired in the month of December 2020, the authority was justified in appointing election officer by exercising the powers under Section 41-A of the Act.

10. Learned counsel for respondents no. 26 and 27 would submit that the election officer appointed by the respondent no. 1 has already issued election programme. He submits that most of the steps prescribed under the said election programme are also over. He invited our attention to the application filed by the petitioner before the election officer appointed by the respondent no. 1 and would submit that the petitioner has given up his right to conduct the election through Mr. Kishor Vithalrao Girwalkar as election officer by requesting him to change the election officer in place of respondent no. 31.

11. Learned counsel for respondents no. 26 and 27 tendered a letter dated 26.04.2022 addressed to the trust by Advocate Kishor Vithalrao Girwalkar, who was appointed by trust as election officer expressing his inability to continue to act as an election officer.

12. Learned counsel for the respondents no. 26 and 27 distinguished the judgment delivered by the Single Judge in case of ***Lahudas Sambhaji Karad's*** case (*supra*) and would submit that the said judgment of this court was delivered on the facts of that case which were totally different. The election programme was already issued by the election officer. Application was filed under Section 41-A of the Act before the Deputy Charity Commissioner. The matter reached the High Court. In that context, this Court held that the Deputy Charity Commissioner has no power under Section 41-A of Act to interfere in the election process. Learned counsel for respondents no. 26 and 27 strongly opposed the allegations made by the petitioner that there was any threat given to the election officer appointed by the Deputy Charity Commissioner.

13. Mr. Godbole, learned counsel for the petitioner in writ petition no. 4723 of 2022, in his rejoinder arguments submits that, the Deputy Charity Commissioner has no jurisdiction to entertain the application under Section 41-A of the Act.

14. A perusal of the record clearly indicates that there was a dispute between members of the trust *inter-se*. The tenure of the

managing committee expired in the month of December-2020. There was no fresh election held due to Covid-19. Respondents no. 26 to 30 filed applications under Section 41-A of the Act before the Deputy Charity Commissioner for an order and directions to hold the election. The said two applications were opposed by the petitioners. The Deputy Charity Commissioner, after considering the facts and record, held that there was a dispute between members of the petitioner-trust and exercised power under Section 41A of the Act and appointed respondent no. 31 as election officer.

15. A plain reading of Section 41-A (1) of the Act clearly indicates that subject to the provisions of the said Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered and for various other purposes. In our view, the learned counsel for the respondents no. 26 and 27 is right in contending that since no election was held after expiry of the tenure of earlier committee, the said trust was not properly administered.

16. The Deputy Charity Commissioner is empowered to issue direction to hold election and to appoint an election officer by

exercising powers under Section 41-A of the Act. A perusal of the record further indicates that the document annexed with affidavit-in-reply in Writ Petition 4728 of 2022 (Exhibit-"R-5") was not on record before the election officer appointed by the Deputy Charity Commissioner.

17. In our view, there is no substance in the submissions made by the learned counsel for the petitioners that the Deputy Charity Commissioner under Section 41A of the Act has no jurisdiction to issue any direction for the purpose of appointment of an election officer. A perusal of the Judgment delivered by a learned Single Judge of this Court in case of ***Lahudas Sambhaji Karad*** (*supra*) indicates that, the election officer was already appointed and had already issued directions to conduct the election process. An application was made by one of the rival party under section 41-A and 41-E of the Act before the respondent-authority to interfere with the said election process. In this context, the learned single Judge observed that respondent no.1 – authority has no jurisdiction to interfere with election process. In our view, the said judgment delivered by the learned single Judge in case of ***Lahudas Sambhaji Karad*** (*supra*) would not apply to the facts of the present petitions.

18. Perusal of the letter dated 26.04.2022 addressed to the said Trust by Advocate Kishor Vithalrao Girwalkar, who was appointed as election officer clearly indicates that he has expressed his inability to continue to act as election officer. We are not impressed with the submissions made by Mr. Godbole, learned counsel for the petitioner in Writ Petition no. 4723 of 2022 that there was threat given by the election officer appointed by the Deputy Charity Commissioner and in view of such alleged threat, the election officer appointed by the petitioner – trust has declined to act as election officer. In our view, both the Writ Petitions are being devoid of merit and are accordingly dismissed.

**( S. G. MEHARE )**  
**JUDGE**

**( R. D. DHANUKA )**  
**JUDGE**

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