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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4825 OF 2022

Adv. Anil Bhagwanrao Tidke and Others PETITIONERS

VERSUS

The State of Maharashtra and Others RESPONDENTS

....

Dr. R. J. Godbole, Advocate for the petitioners
Mr. P. N. Kutti, AGP for respondent - State
Mr. P. V. Barde, Advocate for respondents No.3 and 4

....

WITH
RIT PETITION NO.4826 OF 2022

Anand Gopalji Mundada and Others PETITIONERS

VERSUS

The State of Maharashtra and Others RESPONDENTS

....

Mr. Girish V. Wani, Advocate for the petitioners
Mr. S. N. Kendre, AGP for respondent - State
Mr. P. V. Barde, Advocate for respondents No.5 and 6

....

WITH
RIT PETITION NO.4829 OF 2022

Vishal Hanumantrao Dharmadhikari and Others PETITIONERS

VERSUS

The State of Maharashtra and Others RESPONDENTS

....

Mr. Sailesh P. Brahme, Advocate for the petitioners
Mr. P. N. Kutti, AGP for respondent - State
Mr. P. V. Barde, Advocate for respondents No.5 and 6

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th APRIL, 2022

ORDER :

1. Since common question of law and fact are involved in these petitions, they were heard together and are being disposed of by this common order.

2. These petitions, filed under Article 227 of the Constitution of India, challenge orders passed by the Returning Officer thereby allowing the objection filed by respondents - Dilip Rangnathrao Kulkarni and Avinash Prakbhakar Tawnikar.

3. Elections of the managing committee of the respondent – Trust for the term from 2022 to 2027 were declared by the Election Officer. Accordingly, provisional voters' list was published. Dilip Rangnathrao Kulkarni and Avinash Prakbhakar Tawnikar took objection to the inclusion of names of the members who were inducted after 2015, on the ground that these members are illegally inducted, without following procedure prescribed in the scheme of the Trust and they are not the valid members of the Trust. The petitioners are inducted as members in the Trust after 2012.

4. The election / returning officer, after hearing the

concerned, allowed said objection and held that the list of the members published for the previous elections, on 4th December, 2014 is valid list and the election shall be conducted by taking the said list into consideration. The petitioners are aggrieved by this order.

5. Learned advocates for the petitioners strenuously contended that the petitioners are validly inducted members of the Trust, who are conferred the membership, by following the procedure prescribed in the scheme of the Trust. The Executive Committee has recommended their names for membership and the General Body, by passing resolutions, has conferred membership on them. They have deposited their membership fees with the Trust. Income tax documents in the form of balance sheet and profit and loss accounts are also relied upon by the petitioners to contend that membership fees deposited by the petitioners is reflected in the accounts of the Trust. According to the petitioners, therefore, *prima facie,* they have proved from the record that their enrollment is valid and proper. They contend that, the returning officer has exceeded his jurisdiction while passing the impugned orders. Further submission is that before holding that the petitioners are not valid members of the Trust, no opportunity of hearing was given to them.

6. Per contra, learned advocate for respondents - objectors, opposed the petitions contending that the documents placed on record and relied upon by the petitioners appear to be creation of the outgoing managing committee. By pointing out the discrepancies in the membership fee receipts, he submits that the membership is conferred on the petitioners earlier and thereafter they have deposited the membership fees. The receipts do not contain signature of the person who has received the membership fees. The resolutions passed by the managing committee as well as by the general body are handwritten and they do not contain any stamp or counter signature of the authorities from the office of the Charity Commissioner and, therefore, they cannot be relied on. Further submission is that unless and until membership fees is deposited, no membership can be conferred on the petitioners. He, therefore, supports the impugned orders and contends that there is no substance in the writ petitions.

7. Learned Assistant Government Pleader contends that several disputed questions of facts are involved in the present petitions, which may not be gone into, in extraordinary writ jurisdiction. He supports the impugned order.

8. Perusal of the documents relied on by the petitioners in support of their claim of membership, *prima facie,* do not inspire confidence. The resolutions are handwritten and do not bear any stamp or counter signature of the officers from the Charity Commissioner's office. The receipts do not bear signature of the person receiving membership fees. *Prima facie*, it appears that the membership fees allegedly deposited by the petitioners is not reflected in the balance sheet or income tax documents of the Trust.

9. The Returning Officer is the Inspector from the office of the Assistant Charity Commissioner. In the impugned order, he has held that the Trust has not kept updated record and there are irregularities in maintaining the record of the membership. There are irregularities in maintaining the record of membership. Though the Executive Committee, by various resolutions, granted membership to 312 members, however, there are irregularities in the receipts by which membership fee is allegedly deposited by these members. So also, there are irregularities in the receipt book maintained by the Trust. The membership fees are not reflected in the balance sheet of the Trust in the respective years, there is no clarity as to whether membership fee is deposited in the account of the Trust or not.

It is further held that, it appears that new members are deliberately given membership and, therefore, technically, they are not proper members of the Trust and hence, they are not entitled to vote in the election of the Trust for the period 2022-2027.

10. The Returning Officer appears to be justified in recording *prima facie* findings on the basis of record available before him. There is no illegality or perversity in the orders passed by the Returning Officer.

11. In view of aforesaid and since these petitions raise disputed questions of facts, this court is not inclined to entertain the petitions by exercising the extraordinary writ jurisdiction. The writ petitions are, therefore, dismissed.

12. The petitioners are at liberty to contest the issue of validity of their membership, by filing appropriate proceedings as permissible in law. In case such proceedings are filed, the same shall be decided on its own merits, without being influenced by the *prima facie* observations of this court in the present order.

[NITIN B. SURYAWANSHI]
JUDGE