

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

950 WRIT PETITION NO.6711 OF 2022

Kalyan s/o Sahebrao Patil,
Age 52 years, Occ. Business,
R/o. Opp. Maruti Mandir, Dhule
Road, Amlner, Tq. Amalner,
Dist. Jalgaon.

... **Petitioner.**

VERSUS

- 1) Returning Officer of Khandesh Shikshan Mandal, registered public trust No. F-22
Shri. Pandit s/o Ramchandra Choudhary,
Age 60 years, occ. Social work, Pratap College premises, Amalner, Dist. Jalgaon.
- 2) Khandesh Shikshan Mandal,
registered public trust No. F-22
Pratap College premises, Amalner, Dist. Jalgaon
Through its President.
- 3) Shri. Niraj s/o Dipchand Agrawal,
Age 35 years, Occ. Business,
R/o. New Plots, Opp to HDFC Bank,
Amalner, Dist. Jalgaon.
- 4) Shri. Pradeep s/o Kundanlal Agrawal,
Age 35 years, Occ. Business,
R/o. Saraf Bazar, Amalner, Dist. Jalgaon.
- 5) Dr. Sandesh s/o Bipin Gujrathi,
Age 55 years, Occ. Doctor,
R/o. New Plot, Opp to post office,
Amalner, Dist. Jalgaon.
- 6) Shri. Yogesh s/o Madhusudan Mundade,
Age 52 years, Occ. Business,
R/o. Bombay Galli, Amalner, Dist. Jalgaon.
- 7) Shri. Vinod s/o Rajdhar Patil,
Age 62 years, Occ. Business,
R/o. New Plot, Amalner, Dist.

Jalgaon.

- 8) Dr. Anil s/o Natthu Shinde,
Age 62 years, Occ. Doctor,
R/o. Yashwant Nagar, Patwari
Colony, Amalner, Dist. Jalgaon.
- 9) Shri. Hari s/o Bhika Wani,
Age 74 years, Occ. Business,
R/o. Pimpale Road, Amalner, Dist.
Jalgaon.
- 10) Shri. Jitendra s/o Mohanlal Jain,
Age 37 years, Occ. Business,
R/o. New Plot , Punjab National
Bank, Building, Amalner, Dist.
Jalgaon.
- 11) Shri. Pravin s/o Ramlal Jain,
Age 58 years, Occ. Business,
R/o. New Plot, Near Global School,
Amalner, Dist. Jalgaon.
- 12) Shri. Kamal s/o Asakran Kochar,
Age 34 years, Occ. Business,
R/o. Saraf Bazar, Amalner, Dist.
Jalgaon.
- 13) Bharat s/o Ghewarchand Kothari,
Age 42 years, Occ. Business,
R/o. Vardhaman Xerox, Opp to
Civil Court, Amalner, Dist.
Jalgaon.
- 14) Prabhakar s/o. Shankar Kothawade,
Age 62 years, Occ. Business,
R/o. New Plot, Opp to Court
Amalner, Dist. Jalgaon.
- 15) Dr. Baburao s/o Shridhar Patil,
Age 72 years, Occ. Doctor,
R/o. Navinya Hospital, Near Rane
Xerox, Amalner, Dist. Jalgaon.
- 16) Gulabrao s/o Hilal Patil,
Age 58 years, Occ. Judicial Service

r/o. Dheku Road, Deshmukh Nagar,
Amalner, Dist. Jalgaon.

- 17) Hemant s/o Bhaskarrao Pawar,
Age 52 years, Occ. Business,
R/o. Gulab Sadan, Station Road,
Amalner, Dist. Jalgaon.
- 18) Prasad s/o Rameshchandra Sharma,
Age 47 years, Occ. Service,
R/o. Near Bhagini Mandal School,
Amalner, Dist. Jalgaon.
- 19) Shri. Kisan Deoram Patil,
Age 58 years, Occ. Agriculturist,
R/o. Lon Bk. Tq. Amalner, Dist.
Jalgaon.
- 20) Shri. Vikram s/o Bipin Shah,
Age 40 years, Occ. Business,
R/o. New Plot, Shani Galli,
Amalner, Dist. Jalgaon.
- 21) Shri. Jitendra s/o Shantilal Zabak,
Age 42 years, Occ. Business,
R/o. Opp. Urban Bank, Arihant
Furniture, Amalner, Dist. Jalgaon.
- 22) Shri. Jitendra s/o Prabhakar Deshmukh,
Age 52 years, Occ. Business,
R/o. Near Om Shany Centre, Patwari
Colony, Amalner, Dist. Jalgaon.
- 23) Smt. Madhuri w/o Pramod Patil,
Age 47 years, Occ. HH
R/o. New Plot, behind Court
Amalner, Dist. Jalgaon.
- 24) Shri. Sandeepkumar s/o Kewalchand Jain,
Age 50 years, Occ. Business,
R/o. Bhandarkar Compound, Station road,
Amalner, Dist. Jalgaon.
- 25) Smt. Vasundhara w/o Dashrath Landage,
Age 51 years, Occ. Service,
R/o. Near Swami Samarth Mandir,

Patwari Colony, Amalner, Dist. Jalgaon.

26) Shri. Santosh s/o Baburao Patil,
Age 52 years, Occ. Journalist,
R/o. Bahaddarwadi, Tq. Amalner,
Dist. Jalgaon.

27) Shri. Naginchand s/o Gyanchand
Lodha, Age 58 years, Occ. Business,
R/o. Dheku Road, Opp to Amadar
Gulabrao Patil, Amalner, Dist. Jalgaon.

28) The Assistant Charity Commissioner,
Jalgaon, Ganesh Colony, Jalgaon.

... Respondents

...

Advocate for the Petitioners : Mr. Waramma B.R.
Advocate for Respondent Nos. 1 & 2 : Mr. S. P. Brahme
Advocate for Respondent Nos. 3 to 9 : Mr. M. N. Navandar
A.G.P. for the Respondent No. 28 : Mr. S.B. Yawalkar

CORAM : **MANGESH S. PATIL &
Y. G. KHOBRAGADE, JJ.**

DATE : **22.11.2022.**

PER COURT :

We have heard both the sides.

2. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. The petitioner who is the member of a Public Charitable Trust is seeking following reliefs :

A) To hold and declare that impugned election results dt. 04.04.2022 of R-2 Khandesh Shikshan Mandal, (No. F-22) declare by R-1 are unlawful, illegal, unsustainable in law and in breach of directions issued on 11/2/2022 by Hon'ble High

Court in W.P No. 296/2022 as well as decision dt. 24/3/2022 rendered in Change Report No. 734/2019 by the Assistant Charity Commissioner, Jalgaon and R-28 be directed to hold election afresh as per approved rules of elections

In the alternative

B) R-1 and R-28 be directed to count 243 illegally rejected votes in which less than 8 votes casted by voters to the candidates contested for the posts of member of executive committee of R-2 and to declare afresh results of R-2.

C) R-28/ACC Jalgaon be directed to assume charge of R-2 Trust/F-22 till holding of afresh elections as per approved rules and scheme.”

4. The learned advocate Mr. Waramma would submit that even while a change report pertaining to the change in the rules and regulations for holding the elections were pending adjudication before the Deputy Charity Commissioner, the elections were being held for electing the members of the Managing Committee. The petitioner had approached this Court in Writ Petition No. 296/2022 and by the order dated 11.02.2022 this Court had issued following directions :

“(i) The voting scheduled on 13th February, 2022 may be held, however, the results of the elections shall not be declared unless the orders are passed on Change Application No. 734/2019 by the office of the Deputy Charity Commissioner, Jalgaon.

(ii) The Deputy Charity Commissioner, Jalgaon shall endeavour to decide the said Change Application No. 734/2019 within one month.

(iii) The petitioner and respondent nos. 2 and 3 shall appear before the office of the Deputy Charity Commissioner, Jalgaon on 17th February, 2022.

(iv) The further steps in the elections may be conducted in tune with the orders that may be passed in Change Application No. 734/2019.

(v) Needless to state, we have not observed anything on merits of the amendment of the bye-laws. It is for the office of the Deputy Charity Commissioner to take decision on its own merits.”

5. The learned advocate for the petitioner would submit that pursuant to such a direction of this Court and particularly clause No. (iv) the further steps in the election were taken after the Change Application No. 734/2019 was decided by the Deputy Charity Commissioner. He would point out that while the Deputy Charity Commissioner had allowed that change to take effect, clause 22A was not approved of and to that extent the change was rejected. He would submit that that clause mandated casting of eight votes by every member for electing the managing committee since it comprises of eight members. However, he would submit that while conducting the elections the Returning Officer has invalidated 243 votes applying the same clause which was in violation of the change refused to be incorporated by the order of the Deputy Charity Commissioner. He would, therefore, submit that the petitioner is entitled to invoke the powers of this Court under article 226 of the Constitution and this Court can recall the result of the election and in the alternative direct the Returning Officer to undertake a fresh counting by reversing his decision to invalidate the 243 votes.

6. The learned advocate Mr. Waramma would refer to the following decisions to buttress his submission that in an appropriate case, even in election matters, this Court can invoke the powers under article 226 of the Constitution in the interest of justice :

(1) Baburao Kalu Koli Vs. State of Maharashtra and others; 2008 (2) Mh.L.J. 203.

(2) K. Venkatachalam Vs. A. Swamickan; 1999 AIR (SC) 1723.

7. Lastly, Mr. Waramma would submit that the term of the Managing Committee is three years out of which already one year is over. The statutory remedy of raising all the issues before the Assistant Charity Commissioner before whom the Change Report Enquiry would now go pursuant to the disputed election would take time in deciding the change report and the petitioners would be left in lurch.

8. Learned advocate Mr. Brahme for respondent Nos. 1 and 2 would submit that the petitioner is entitled to raise all the issues which he is now raising before the Assistant Charity Commissioner in the pending change report submitted pursuant to the disputed election. He would submit that the petitioner can very well point out that the elections have not been held strictly in accordance with the directions of this Court. There is nothing on record to demonstrate that the votes were invalidated on the sole ground of clause 22A which change was not approved by the Deputy Charity Commissioner. In fact, already a change report has been filed and even the decision of the Deputy Charity Commissioner in the Change Report Enquiry No. 734/2019 has been challenged before the appellate authority. He would submit that in view of availability of such alternate and efficacious remedy in the form of enquiries before the Officers of the Charity Office who are entitled to go into all the disputed questions of facts, this Court should not exercise the jurisdiction under article 226 of the Constitution. He would submit that the decisions cited on behalf of the petitioner were rendered in the peculiar facts and circumstances of the case which are conspicuously absent in the matter in hand.

9. It does appear that in spite of the pendency of the matter before the Deputy Charity Commissioner for amending the rules of the Trust for holding the elections, the elections were proceeded with and the petitioner had to approach this Court in Writ Petition No. 296/2022. It is in that

peculiar facts and circumstances, the aforementioned directions were given by the Court of holding the elections in accordance with the decision in the Change Application No. 734/2019. Pertinently, this Court had nowhere expressed its inclination to indulge and monitor the elections. Consequently, except directing the elections to be held post decision of the Change Application No. 734/2019 this Court had not expected anything more. If at all the elections have been held strictly in accordance with the rules and regulations governing the Trust is a pure question of fact and we are afraid, this Court cannot indulge into, investigate and decide all those disputed questions of facts. There is nothing for us to jump to a conclusion that 243 votes were invalidated merely on the ground that those were not in accordance with clause 22A which was specifically refused to be altered by the Deputy Charity Commissioner while deciding the Change Application No. 734/2019.

10. In the aforementioned decisions, the Courts have invoked the article 226 of the Constitution in the peculiar facts and circumstances of those matters. In the matter of **Baburao Kalu Koli (supra)**, it was noticed that even the State Election Commission had formed an opinion that there was interpolation in the final notification issued by the Collector regarding formation of wards and some officers from the department were the culprits. It was in the peculiar circumstances as indicated in paragraph No. 17 that this Court had invoked the powers under article 226 and directed holding of a fresh election by quashing and setting aside the earlier one. In the matter of **K. Venkatachalam (supra)**, the High Court had held the elected candidate disqualified by reaching a conclusion that he was insolvent even when there was no proceeding appropriately holding him to have incurred such disqualification under the relevant statute.

11. In our view, no such peculiar facts and circumstances are available to be seen to warrant invocation of powers under article 226 of the Constitution in the matter in hand.

12. We, therefore, dismiss the writ petition giving a liberty to the petitioner to agitate all the issues which he intends to raise in a pending Change Report Enquiry. We direct the enquiry to be decided expeditiously.

(Y. G. KHOBRADE, J.)

(MANGESH S. PATIL, J.)

mkd/-