

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2768/2021

Mohd. Sirajuddin Mohd. Israeel,
aged about 51 years, Occ. Service,
r/o Islampura, Behind Prabhat Talkies,
Darvha, Tq. Darvha, Dist. Yavatmal.**PETITIONER**

...V E R S U S...

1. Education Officer (Secondary),
Zilla Parishad, Yavatmal.
2. Assistant Charity Commissioner,
through its Superintendent,
Public Trust Registration Office,
Yavatmal, R/o Peshve Plot, Sharma Sadan,
Yavatmal, Tq. Dsit. Yavatmal.
3. Manzoor Ahemad Khan,
aged 65 years, Occ. Alleged President
of Shahid Abdul Hamid Education Society,
Darvha, R/o Killa Masjid Ward, Darvha,
Tq. Darvha, Dist. Yavatmal.
4. Nasrullakhan Sarfarajkhan,
aged 61 years, Occ. President,
Shahid Abdul Hamid Education
Society, Darvha, r/o Inamdarpura,
Tq. Dist. Amravati.
5. Ibrahim (Babuseth) Suleman Isani,
Aged 61 years, Occ. Secretary,
Shahid Abdul Hamid Education Society,
Darvha, r/o Darva, Tq.Darva,
Dist. Yavatmal.

...RESPONDENTS

Mr. P. S. Patil, Advocate for petitioner.
Mr. M. K. Pathan, A.G.P. for respondent nos. 1 and 2.
Mrs. Dr. R. S. Sirpurkar, Advocate for respondent no.3
Mr. P. A. Gode, Advocate for respondent nos. 4 and 5.

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED :- 10.08.2022

ORAL JUDGMENT (Per: Anil L. Pansare, J.)

Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The petitioner has put forth following substantive prayer:

“1. Quash and set aside the disciplinary action initiated by respondent no.3 Manzoor Ahmad Khan against the petitioner vide statement of allegation dated 25.06.2021 (Annexure-XVII), continuation thereof with specific direction to restrain from holding further any disciplinary action against the petitioner in the interest of justice.”

3. The petitioner has been appointed as Assistant Teacher in the school vide appointment order dated 02.09.1999. The appointment has been duly approved by the respondent no.1-Education Officer. The petitioner has been promoted and

is working as Head Master of the school with effect from 01.01.2003.

4. The gist of the grievance of the petitioner is that respondent no.3 is not President or even the trustee of the trust and therefore has no authority to initiate disciplinary proceedings against him.

5. We have considered the submissions made by both the sides. There are factions in the public trust. One group belonging to respondent no.3, claims that the said group is managing the affairs of the trust and respondent no.3 is the elected President. The other group belonging to respondent nos. 4 and 5 claims that they are elected trustees of the trust and that respondent no.4 is President and respondent no.5 is Secretary of the trust. It appears that three change reports being Inquiry Nos. 302/2018, 38/2020 and 39/2020 filed by the group of respondent no.3, are pending before Assistant Charity Commissioner. Whereas, a change report being Inquiry No.373/2017 filed by the group of respondent nos. 4 and 5 is also pending before the Assistant Charity Commissioner.

Thus, respondent nos. 3 and 4 both claim themselves to be Presidents of the trust.

6. The decision as to who is the President of the trust can only be taken by Assistant Charity Commissioner. The question therefore is whether respondent no.3 is empowered to initiate the disciplinary action against the petitioner. The petitioner has not challenged the action of respondent no.3 before any other forum including the Assistant Charity Commissioner, but has directly filed the present petition under Article 226 of the Constitution of India. There is a serious dispute as to whether respondent no.3 is President of the Trust namely; Shahit Abdul Hamid Education Society, Darvha. According to the petitioner, respondent no.3 is not the President.

7. In the circumstances, the appropriate remedy available to the petitioner to challenge the authority and powers of the respondents to act as President of the trust or to get a decision about who is entitled to run the affairs of the trust; lies before the Assistant Charity Commissioner. The High Court in

its jurisdiction under Article 226 of the Constitution of India, cannot decide as to who amongst respondent nos.3 and respondent no.4, is duly elected President of the trust. The petitioner has unnecessarily rushed to the High Court under Article 226 of the Constitution of India.

8. Even otherwise, the relief is sought against respondent no.3, who according to the petitioner is not even the trustee of the trust, much less the President. In the peculiar facts and circumstances, we express our doubt whether the respondent no.3 is discharging public duty and thus could be said to be “State” under Article 12 of the Constitution of India, particularly in absence of the pleading in the petition as to how respondent no.3 could be said to be “State” within the scope of Article 12 of the Constitution of India.

9. There is thus no substance in the petition. The same is, therefore, dismissed.

Rule is discharged. No order as to costs.

(Anil L. Pansare, J.)

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(Rohit B. Deo, J.)

Digitally signed by YOGESH
ARVIND KAHALE
Signing Date: 23.08.2022
13:16