

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

WRIT PETITION NO.3829 OF 2017

1. Nana Rambhau Tayde
 Age – 63 years, Occ- Agriculturist,
 R/o Medshi, Tq. Malegaon, Dist. Washim.

2. Yadav Raoji Wankhade
 Age – 85 years, Occ- Agriculturist,
 R/o Warangi, Tq. Malegaon,
 Dist. Washim.

...PETITIONERS

---VERSUS---

1. Pundlik Hiranman Ingole
 Age – 68 years, Occ – Nil,
 R/o I.U.D.P. Colony, Washim, Tq. and
 Dist. Washim.

2. Dnyanba Shankar Wankhade
 Age -75 years, Occ- Agriculturist,
 R/o Ekamba, Tq. Malegaon,
 Dist. Washim.

3. Murlidhar Kondaji Gudadhe
 Age – 65 years, Occ – Agriculturist,
 R/o Khamgaon, Gajanan Colony,
 Tq. Khamgaon, Dist. Amravati.

...RESPONDENTS

 Shri P.S. Patil, Advocate for the petitioner.

Shri R.M. Mardikar, Advocate for respondent nos.1 and 2.

CORAM : AMIT BORKAR, J.
DATED : 14th JUNE, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule is made returnable forthwith.

2. By this writ petition under Article 227 of the Constitu-

tion of India, the petitioners are challenging the order dated 08.04.2017 passed in Civil M.J.C. No.86 of 2012 passed by the learned Member of Panel of Lok-Adalat passing the award on the basis of consent of parties.

3. The relevant facts giving rise to the present petition are as under:

Vidarbha Shikshan Prasarak Mandal, Malegaon, District Washim is registered as a trust under the Maharashtra Public Trusts Act (for short, "the said Act"). Respondent no.1 was Secretary of the said Trust and headmaster of the school and was dismissed from his post by exercising power under Section 41D of the said Act. Aggrieved thereby, respondent no.1 preferred an appeal before the learned District Judge. During the pendency of the said appeal, respondent no.1 entered into a settlement with some of the trustees of the trust. The said settlement was recorded before the Lok-Adalat under the Legal Services Authority Act, 1987. The petitioners who are trustees of the said trust have challenged the order of award by consent.

4. The learned Advocate for the petitioners has relied upon the Division Bench of this Court in the case of **Rajabhau Damodar Raikar Vs. Assistant Charity Commissioner, Pune**¹. According to him, the order under Section 41D of the said Act could not have

1 2015(4) MhLJ 275

been passed on the basis of a compromise entered into on behalf of some of the trustees and the respondent no.1. The authorities under the Maharashtra Public Trusts Act are enjoined to adjudicate upon the issue of disqualification of the trustee.

5. The learned Advocate for respondent no.1 supported the award, stating that the award passed by consent of the parties by Lok-Adalat under the provisions of the Legal Services Authorities Act had all powers to pass an award by consent of the parties.

6. Rival submissions fall for consideration in this petition.

7. Section 41D of the said Act empowers the Charity Commissioner, either *suo motu* or on an application by trustee or person interested, to suspend, remove or dismiss any trustee of public trust if contingencies, as stated in sub-sections of the said Section, are made out. Sub-section 2(a) of the said section requires *prima facie* satisfaction about sufficient material against the trustee. The said section requires Charity Commissioner to issue a notice and hold an enquiry.

8. Sub-section (5) of Section 20 of the Legal Services Authorities Act provides that where no award is made by the Lok-Adalat on the ground, no compromise or settlement could be reached between the parties.

9. The Division Bench of this Court, in the case of **Rajabhau** (supra) in paragraph 15, held as under:

“15. On plain reading of the said Act of 1987, we find that, the Lok Adalat has no power to make an adjudication by following the procedure which is required to be followed in case of trial of suits. Considering the peculiar scheme 22 of the said Act of 1950, a change report cannot be allowed even by consent without holding an inquiry and without recording reasons.”

10. In my opinion, while exercising power under the said section, the Charity Commissioner was required to hold an enquiry and adjudicate upon disqualification of a trustee recording satisfaction about the fulfilment of sub-section (a) to (f). If this is so, such adjudication having the effect of removal of trustee on the ground of misconduct could not have been permitted to be settled before Lok-Adalat by consent of some of the trustees. As the issue is related to the management of the public trust, it is necessary for the finding of disqualification on the grounds of misconduct to be adjudicated by the authorities under the Maharashtra Public Trusts Act. Finding of misconduct cannot be permitted to be set aside by way of compromise at the instance of some of the trustees. Therefore, in my opinion, the learned Members of Lok-

Adalat were not justified in recording a compromise, thereby setting aside the order under Section 41D of the said Act. Therefore, in my opinion, the disqualification of respondent no.1 needs to be adjudicated on merits in an appeal filed by respondent no.1. The proceedings are, therefore, required to be remanded back to the Appellate Authority. I, therefore, pass the following order:

11. The impugned order passed below Exh.1 in Civil M.J. C. No.86 of 2012 passed by the Panel of Lok-Adalat on 08.04.2017 is quashed and set aside, and the matter is remanded to the District Judge, Washim.

12. District Judge, Washim shall decide the said appeal on merits without influencing the observations made in the present order.

13. Rule is made absolute in the above terms. Pending civil application (s), if any, stand disposed of.

JUDGE

Wagh