

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1997 OF 2023

NARAYAN LALSING JADHAV
VERSUS
LAHU RUPLA JADHAV AND ANOTHER

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Advocate for the Petitioner : Mr. Sachin S. Deshmukh
A.G.P. for the Respondent/State : Mr. S.B. Yawalkar

CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.
DATE : 17.02.2023

PER COURT :

Heard the learned advocate for the petitioner.

2. The petitioner is objecting to the administrative directions issued by the learned Deputy Charity Commissioner under Section 41A of the Maharashtra Public Trust Act, 1950 (the Act) permitting the respondent No. 1 herein who is the Secretary of the public trust to conduct the elections and to submit a change report.

3. The learned advocate for the petitioner submits that there is a serious dispute regarding the membership. At least two earlier change reports are *sub judice* before the appellate court. Even an attempt to get the scheme modified by resorting to the provisions of Section 51A of the Act has resulted in dismissal. In spite of the self-same authority having decided the scheme proceeding, and in spite of being alive to the factual scenario regarding dispute as to the membership, by the impugned order the self-same authority has permitted the elections to be held which would be an exercise in futility. Persons who are not legally enrolled would participate in the election and the process of election should be halted.

4. There is no independent provision which enables the authorities

under the Maharashtra Public Trust Act to undertake any scrutiny as to the legality or otherwise of the enrollment of members. All the disputes touching the membership of an individual have to be raised and decided in the Change Report Enquiries under Section 22 of the Act if and when they participate in the elections resulting in filing of a change report.

5. Conspicuously, even while deciding the proceeding under Section 50-A(1)(3) of the Act, the learned Deputy Charity Commissioner has specifically observed that the issue regarding enrollment of new members cannot be gone into in that enquiry and will have to be considered in a change report enquiry under Section 22. This makes it abundantly clear that even the learned Deputy Charity Commissioner has taken care to observe that he was not committing himself regarding the enrollment of new members. He has kept that issue open.

6. If this is the state of affairs, when the learned Deputy Charity Commissioner according to his wisdom and for the reasons mentioned in the impugned order has permitted the respondent No. 1 who happens to be the Secretary, on account of the post of President and Vice-President being vacant as they are dead, has permitted him to conduct the elections, this Court in exercise of the powers under Article 226 of the Constitution of India should not indulge.

7. Needless to state that it would always be open for the petitioner to raise all the issues regarding enrollment of members and the members participating in the election if and when the change report pursuant to such election is filed.

8. The Writ Petition is dismissed.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

mkd/-