

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

WRIT PETITION NO. 13572 OF 2023

1. Shivaji S/o Dnyanoba Mule,
Age : 53 years, Occu. : Service,
R/o Dawangaon, Tq. Udgir,
Dist. Latur.
2. Ravindra S/o Prakash Gambhire,
Age : 40 years, Occu. : Advocate,
R/o Mukkawar Galli, Udgir,
Tq. Udgir, Dist. Latur. .. Petitioners

Versus

1. Deputy Charity Commissioner,
Latur Region, Latur.
2. Kisan Sikshan Prasarak Mandal,
Udgir, Tq. Udgir, Dist. Latur,
Through Secretary.
3. Dnyandev Rambhau Zodge,
Age : 75 years, Occu. : Agri.
R/o At Post Shiaji Nagar, Murud,
Tq. & Dist. Latur. .. Respondents

Shri M. S. Deshmukh, Advocate h/f Shri U. L. Momale, Advocate
for the Petitioners.

Shri S. N. Kendre, A.G.P. for the Respondent No. 1.

Shri V. D. Salunke, Advocate h/f Shri Amarjeet V. Patil,
Advocate for the Respondent No. 3.

**WITH
WRIT PETITION NO. 13639 OF 2023**

Arvind Pandharinath Patil,
Age : 65 years, Occu. : Agri & Social Work,
R/o Nayi Aabadi, Udgir,

Tq. Udgir, Dist. Latur.

.. Petitioner

Versus

- 1, Dnyandev Rambhau Zodge,
Age : 45 years, Occu. : Agri.
R/o At Post Shiaji Nagar, Murud,
Tq. & Dist. Latur.
2. The Deputy Charity Commissioner,
Latur Region, Latur.
3. S. S. Jambutkar,
Age : 50 years, Occu. : Service as
Inspector from the office of Deputy
Charity Commissioner, Latur,
and the Election Officer,
For the election of the Managing
Committee of Kisan Shikshan
Prasarak Mandal Udgir,
Tal. Udgir, Dist. Latur.

.. Respondents

Shri V. D. Gunale, Advocate for the Petitioner.
Shri V. D. Salunke, Advocate h/f Shri Amarjeet V. Patil,
Advocate for the Respondent No. 3.
Shri S. N. Kendre, A.G.P. for the Respondent No. 2.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT/ORDER ON : 03.11.2023
JUDGMENT/ORDER PRONOUNCED ON : 06.11.2023

JUDGMENT :-

. Rule. Rule is made returnable forthwith. With the consent of learned counsel for respective sides heard finally at the admission stage.

2. There is common challenge in both these petitions, hence they are decided together by this common judgment. For the sake of convenience the papers of Writ Petition No. 13572 of 2023 are referred to.

3. The petitioners are challenging the judgment and order dated 09.10.2023 passed by the learned Deputy Charity Commissioner, Latur (for the sake of brevity hereinafter referred as to the “Dy. C. C.”) in Enquiry No. 538 of 2023, directing to conduct elections and simultaneously restricting the election to the members enlisted in Exhibit 46 of Change Report No. 3239 of 2018. The petitioner Mr. Arvind Patil and the respondent No. 3 participated in the proceedings before the Dy. C. C., Latur.

4. The respondent No. 2/Kisan Shikshan Prasarak Mandal, Udgir (for short ‘Trust’) is registered trust under the provisions of the Maharashtra Public Trust Act, 1950 (for the sake of brevity and convenience hereinafter referred as to the ‘Act’). The respondent No. 3 is the Secretary of the trust. The petitioners claim to be the members of the trust, though their membership is disputed. The tenure of the managing committee for the period 2017-2022 has been expired. The elections are due.

5. The respondent No. 3 and petitioner-Mr. Arvind Patil submitted applications to the Dy. C. C. for conducting elections. The application of the respondent No. 3 dated 10.04.2023 was registered as Misc. Application No. 538 of 2023. By order dated 27.07.2023 it was treated to be Suo Motu Enquiry No. 538 of

2023 under Section 41A of the Act. After conducting enquiry, impugned orders are passed. In pursuance of that on 19.10.2023, an election officer declared election programme by public notice, which is at Exhibit – I.

6. The relevant dates stipulated in the programme are as follows :

Sr. No.	Date	State
01.	25.10.2023	Publication of Provisional voters list.
02.	27.10.2023	Scrutiny of objections.
03.	30.10.2023	Publication of final voters list.
04.	31.10.2023	Filing of nomination form.
05.	03.11.2023	Scrutiny of nomination forms.
06.	06.11.2023	Publication of final list of contestants.
07.	26.11.2023	Voting and declaration of results.

7. These matters were heard on 03.11.2023, pre-emptorily, when it was a stage of scrutiny of nominations. Both the petitioners not only claim to be valid members, but elected members of the managing committee, though their status is disputed. The litigating parties have referred to different change reports and the orders passed by the competent authorities during the course of their submissions. They have made rival claims for valid list of members. To decide the controversy there is no need to go into the checkered history of the trust.

8. Following are the directions issued by the learned Dy. C. C., Latur by the impugned judgment and order :

- (i) Inspector Mr. S. S. Jambutkar shall be appointed as Election Officer.
- (ii) The election shall be completed within a period of two months from depositing of expenses.
- (iii) The election shall be conducted from valid member's list which is at Exhibit 46 in Change Report No. 3239 of 2018.
- (iv) The Election Officer is entitled to take assistance of police or any other staff.
- (v) He shall submit the report at the conclusion of the election.

9. Undisputed facts in the matter are that the tenure of the earlier managing committee was from 21.10.2017 to 20.10.2022. The respondent No. 3 submitted application dated 10.04.2023 referring to Section 41A of the Act seeking directions to conduct elections from and amongst the members who had participated in the last election. The petitioner Mr. Arvind Patil also submitted application to the Dy. C. C. on 15.10.2022 to conduct elections. There was demand from the rival parties for conducting elections for the tenure of 2022 to 2027.

10. The Change Report No. 3239 of 2018 pertains to election for the tenure 2017-2022 was approved by order dated 16.04.2019. Against that Revision Application No. 64 of 2019 was filed before the Joint Charity Commissioner and it was partly allowed by judgment and order dated 28.07.2023. Clause No. 3 of the judgment and order dated 16.04.2019 directing the newly elected body to enroll the members upto the strength of

105 is struck down by the revisional authority, however, rest of the part of the judgment is confirmed. The litigating parties have referred to the previous decision dated 03.04.2002 rendered by the Division Bench of this Court in Writ Petition No. 4104 of 2000.

11. The petitioners have referred to list of the members inclusive of old and newly enrolled members which is forwarded by the respondent No. 3 to the Dy. C. C. Latur vide letter dated 19.07.2021. The Change Report No. 480 of 2021, Change Report No. 638 of 2021, Change Report No. 430 of 2022 and Change Report No. 901 of 2020 have also been referred to show the changes occurred in the composition of the managing committee in an interregnum period from 2017 to 2022.

12. Both the learned counsels for the petitioners have made following submissions :

A. Learned Dy. C. C. has no jurisdiction U/Sec. 41A of the Act to conduct *quasi judicial* enquiry and issue directions.

B. The learned Dy. C. C. has transgressed his powers in restricting the election to the extent of members enlisted in Exhibit 46. The learned Dy. C. C. has no jurisdiction to declare the members enlisted in Exhibit 46 as valid.

C. The petitioners/members of the out going managing committee are illegally excluded from the election process, which is against the principles of natural justice.

D. The entitlement of the members to participate in the election has been decided without hearing the affected members.

E. Both the petitioners have been included in the list of the members forwarded by the respondent No. 3 on 19.07.2021, hence the respondent No. 3 is estopped from opposing the claim of the petitioners.

F. The impugned judgment is against the law laid down by the Supreme Court and this Court.

G. There is no embargo in entertaining the present petitions despite the election process has been set into motion.

H. Still the time has not been lost and the directions given earlier atleast to the extent of members to participate in election can be modified and fresh election programme can be scheduled.

I. Mr. Arvind Patil is elected member and his Change Report No. 901 of 2000 is subjudice. It is arbitrariness to exclude him from the process of election.

J. The objection raised by the petitioner Mr. Arvind Patil has not been taken into account before passing the impugned judgment and order.

K. The learned counsels rely upon the following judgments.

(i) Judgment dated 06.09.2023 rendered by the Supreme Court in the matter of Union Territory of Ladak and others

Vs. Jammu and Kashmir National Conference and another in Civil Appeal No. 5707 of 2023.

- (ii) Shahid Javed Maniyar and another Vs. Sagir Munirkhan Sarguroh (DR) and others reported in 2014(5) Mh.L.J. 823.
- (iii) Lahudas Sambhaji Karad Vs. The State of Maharashtra and others reported in 1994(1) Bom.C.R. 103.
- (iv) Shakil Musa Patel and another Vs. Dilipsing Pratapsing Patil and others reported in 2014(1) Mh.L.J. 960.
- (v) Vanmala Manoharrao Kamdi and others Vs. Deputy Charity Commissioner, Nagpur and others reported in 2012(3) Mh. L. J. 594.
- (vi) Dattatraya S/o Mahadeo Hiware and others Vs. Arjun S/o Sambhaji Shinde and others reported in 2007(1) Mh.L.J. 48.

13. The learned counsel Mr. V. D. Salunke appearing for the respondent No. 3 has made following submissions :

- a. The writ petition filed by Mr. Arvind Patil is not maintainable because for the first time in the High Court the relief in terms of para 18 (C) has been made.
- b. Both the petitions involve disputed questions of facts and are liable to be dismissed.
- c. Both the petitions cannot be entertained because the process of election has commenced and it is at advance stage.
- d. Both the petitioners are not the members and they are

unsuccessful before the Returning Officers when their objections for not including their names in the provisional voters list are rejected in previous election process as well as present election process.

e. The petitioners are estopped from challenging the impugned judgment as well as the process of election when they failed to prefer any appeal against rejection of their claims as valid voters.

f. Both the petitions are liable to be dismissed for suppression of material facts.

g. The learned Dy. C. C. has rightly exercised his jurisdiction and has power traceable U/Sec. 41B of the Act.

h. The petitioners cannot contend that they are valid members because their enrollment is without any record and without following due procedure. Their membership has not been approved.

i. In the wake of the order dated 16.04.2019 passed in Change Report No. 3249 of 2018, they are estopped from claiming to be members.

j. The impugned judgment is outcome of *quasi judicial* enquiry by exercising suo motu powers which cannot be faulted.

k. The judgments cited by the petitioners are not applicable because the impugned directions are not issued U/Sec. 41A of the

Act.

l. The petitioners have alternate remedy after completion of election process.

m. The learned counsel for the respondent No. 3 has placed reliance on the judgment of the Supreme Court in the case of ***Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahkari Dugdha Utpadak Sanstha Vs. State of Maharashtra*** reported in ***(2001) 8 SCC 509***.

14. Considering the controversy involved in these petitions and the legal position, I am restricting myself from embarking an enquiry into disputed questions of facts. The rival claims of the membership put up before me involve disputed questions of facts and cannot be adjudicated in a summary manner. The parties have alternate remedies to agitate the claims of validity of membership. There are few change reports which are awaiting adjudication. That factor has to be taken into consideration by the fact finding authority.

15. In the case in hand before adverting to the contentious issues raised by the parties, it needs to be mentioned that term of outgoing managing committee expired on or about 20.10.2022. Since then there is no election. All the parties are *ad-idem* on the point that the elections are over due. In writing the applications are already made to Dy. C. C. seeking direction to conduct the elections. Even during the course of arguments the learned counsel for the petitioners have not objected for

conducting of the elections. They are more offended by the condition incorporated by Clause No. 4 restricting the election to the list of members at Exhibit 46.

16. I have considered the submissions canvassed by the learned counsel appearing for the litigating parties. I propose to address on the following points.

- (I) Whether directions issued by the learned Deputy Charity Commissioner, Latur to conduct election are valid ?
- (II) Whether the petitioners are valid members and entitled to participate in election ?
- (III) Whether the directions to conduct election from list of members Exhibit 46 in Change Report No. 3239 of 2018 is valid ?
- (IV) Whether it is permissible to entertain the petitions at this stage of election process ?

Point No. (I) Whether directions issued by the learned Deputy Charity Commissioner, Latur to conduct election are valid ?

17. The petitioners have vehemently argued that the impugned judgment and order is unsustainable as a quasi judiciary enquiry is being conducted under the garb of powers U/ Sec. 41A of the Act. The petitioners have pressed into service various judgments referred to above to buttress that the powers U/Sec. 41A of the Act are administrative in nature. There is no dispute that the powers U/Sec. 41A of the Act are administrative

in nature. The Assistant /Deputy Charity Commissioner is empowered to direct to hold the elections U/Sec. 41A of the Act.

18. Pertinently, both the petitions were initially placed before the Division Bench of this Court. On 02nd November, 2023 an elaborate order is passed by the Division Bench holding that the impugned judgment and order is quasi judicial one. Therefore, the matters are heard by me as per the provisions of the Bombay High Court Appellate Side Rules, 1960. The impugned judgment and order is styled as judgment. The points for determination have been framed and reasons have been assigned. One of the petitioners, Mr. Arvind Pandharinath Patil and the respondent No. 3 have been heard and their submissions have been recorded. The learned counsel for the respondent No. 3 has also reiterated that it is a *quasi judicial* enquiry. I hold that the impugned judgment and order is outcome of *quasi judicial* enquiry.

19. The above quasi judicial enquiry was triggered mainly by the application of the respondent No. 3 submitted on 10.04.2023, which is on record. It refers to Section 41A of the Act for soliciting directions for conducting elections. On 15.06.2023, the learned Dy. C. C. passed order directing to register the application as Misc. Enquiry and it was directed to be kept for recording evidence. Accordingly, it is registered as Misc. Application No. 538 of 2023. On 27.07.2023 Misc. Application No. 538 of 2023 is specifically converted into Suo Motu Enquiry No. 538 of 2023 U/Sec/ 41A of the Act. Thereafter it is treated as Suo Motu Enquiry No. 538 of 2023 U/Sec. 41A of the Act. In view

of the law laid down by the Division Bench in the matter of **Vanmala Manoharrao Kamdi and others Vs. Deputy Charity Commissioner, Nagpur and others** (supra), a *quasi judicial* enquiry is impermissible for issuing directions U/Sec. 41A of the Act. The petitioners have rightly contended that the Dy. C. C. has transgressed his powers.

20. It cannot be lost sight of that, though under the garb of Section 41A of the Act the Dy. C. C. conducted quasi judicial enquiry, but it is not that he was not empowered to pass administrative orders or directions. He was having jurisdiction to invoke powers U/Sec. 41A of the Act, when the applications were made to him seeking directions. Instead of embarking into *quasi judicial* enquiry, administrative order could have been passed. It was not required to convert the proceedings into quasi judicial enquiry. A procedural irregularity has been committed by the Dy. C. C. It is not case of inherent lack of jurisdiction. In the fitness of the things, the administrative directions would have sufficed the purpose especially when there was unanimous demand of conducting election.

21. In this regard a useful reference can be made to the decision rendered by the Apex Court in the case of **Nusli Neville Wadia Vs. Ivory Properties and others** reported in **(2020) 6 SCC 557**, on following paragraphs :

"20. Jurisdiction is the power to decide and not merely the power to decide correctly. Jurisdiction is the authority of law to act officially. It is an authority of law to act officially

in a particular matter in hand. It is the power to take cognizance and decide the cases. It is the power to decide rightly or wrongly. It is the power to hear and determine. Same is the foundation of judicial proceedings. It does not depend upon the correctness of the decision made. It is the power to decide justiciable controversy and includes questions of law as well as facts on merits. Jurisdiction is the right to hear and determine. It does not depend upon whether a decision is right or wrong. Jurisdiction means power to entertain a suit, consider merits, and render binding decisions, and "merits" means the various elements which enter into or qualify plaintiff's right to the relief sought. If the law confers a power to render a judgment or decree, then the court has jurisdiction. The court must have control over the subject matter, which comes within classification limits of law under which Court is established and functions.

21. The word "jurisdiction" is derived from Latin words "Juris" and "dico," meaning "I speak by the law" and does not relate to rights of parties as between each other but to the power of the court. Jurisdiction relates to a class of cases to which a particular case belongs. Jurisdiction is the authority by which a judicial officer takes cognizance and decides the cases. It only presupposes the existence of a duly constituted court having control over subject-matter which comes within classification limits of the law under which court has been established. It should have control over the parties litigant, control over the parties' territory, it may also relate to pecuniary as well as the nature of the class of cases. Jurisdiction is generally understood as the authority to decide, render a judgment, inquire into the facts, to apply the law, and to pronounce a judgment. When there is the want of general power to act, the court has no jurisdiction. When the court has the power to inquire into the facts, apply the law, render binding judgment, and enforce it, the court has jurisdiction. Judgment within a jurisdiction has to be immune from collateral attack on the ground of nullity. It has co-relation with the constitutional and statutory power of tribunal or court to hear and determine. It means the power or capacity fundamentally to entertain, hear, and determine.

22. Jurisdiction to entertain is distinguished from merits, error in the exercise of jurisdiction or excess of jurisdiction."

22. The learned counsel for the respondent No. 3 emphasized that the learned Dy. C. C. exercised powers U/Sec. 41B of the Act. Section 41B of the Act contemplates an enquiry by the "Charity Commissioner" or the Deputy Charity Commissioner with regard to the charities or particular charity or class of charity. It is nobody's case that any enquiry pertains to charity was required. The foundational ingredients of Section 41B of the Act are absent. Therefore, I am unable to accept the submissions of the learned counsel for the respondent No. 3.

23. I find that the procedure adopted by the Dy. C. C. is defective. But for that, entire order or directions cannot be vitiated. As the concerned authority was having powers to direct to conduct election, the directions issued to that extent cannot be said to be nullity. Both the parties wanted the elections to be conducted. Therefore, I am inclined to hold that entire directions cannot be quashed. The ends of the justice would be met in permitting to go on with the election process. I therefore answer the point No. (I) in affirmative.

Point No. (II) Whether the petitioners are valid members and entitled to participate in election ?

24. The petitioners have contended that they are valid members. They are enrolled after the list Exhibit 46 which was

prepared for last election in the year 2017. They have further grievance that without extending opportunity, the petitioners and similarly situated newly enrolled members are excluded from participation in the election. As against that the respondent No. 3 vehemently points out that the petitioners are unsuccessful before the Returning Officer of last as well as present election. They failed to challenge the orders overruling their objections. The principles of estoppel are pressed into service against them.

25. The rival submissions of the parties pertaining to the membership involve disputed questions of facts. Various proceedings pending amongst them and decided in past have to be taken into account to address the issue of membership. This Court cannot embark an enquiry into hotly disputed questions of facts, namely membership in the present matter. The petitioners have alternate remedy of agitating the validity of membership either after conclusion of elections in the change report to be submitted U/Sec. 22 of the Act or independently before the competent forum. It is open for the parties to question the validity of the election, procedure adopted for the same, validity of voters as well as validity of elected candidates. A full fledged enquiry which is quasi judicial in nature is contemplated U/Sec. 22 of the Act. There are further remedies also provided under the Act after the decision U/Sec. 22 of the Act. An adequate and full fledged remedial procedure is available for the petitioners. Therefore, I prefer not to answer the validity of the membership of the litigating parties in this matter.

Point No. (III) Whether the directions to conduct election from list of members Exhibit 46 in Change Report No. 3239 of 2018 is valid ?

26. The learned counsel for the petitioners have vehemently submitted that the Dy. C. C. is not empowered U/Sec. 41A of the Act to dwell upon the membership and issue any directions restricting the right to participate in the elections. They have strong objection for directions issued in clause No. 4 of the impugned judgment and order. For that purpose they have relied upon various judgments referred to above. It is clarified that the findings recorded by Dy. C. C. that the list of members at Exhibit 46 in Enquiry No. 3239 of 2018 shall not be an impediment to reagitate them in an enquiry U/Sec. 22 of the Act or before any other competent forum. This aspect can be gone into independently. The validity of Clause No. 4 of the impugned judgment can be decided U/Sec. 22 of the Act after conclusion of the election. Considering the disputed questions of facts, availability of alternate remedy and want of affected parties before this Court, I defer to answer point No. III and relegate the parties to the alternate remedy.

Point No. (IV) Whether it is permissible to entertain the petitions at this stage of election process ?

27. The learned counsel for the petitioners have cited **judgment dated 06.09.2023 rendered by the Supreme Court in the matter**

of Union Territory of Ladak and others Vs. Jammu and Kashmir National Conference and another in Civil Appeal No. 5707 of 2023, **Ahmednagar Zilla S.D.V. & P. Sangh Ltd. and another Vs. State of Maharashtra and others** reported in **(2004) 1 SCC 133**, **Pundlik Vs. State of Maharashtra and others** reported in **2005 AIR SCW 4371**. So also the judgment of this Court in the matter of ***Chandrakant Mahadev Patole and others Vs. State of Maharashtra and others*** reported in **2010 All MR (Supp.) 457** to buttress that the powers of the High Court cannot be faltered, just because the process of election has commenced. To repel the submissions, the learned counsel for the respondent No. 3 has also cited the judgment of of the Supreme Court in the matter of ***Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahkari Dugdha Utpadak Sanstha Vs. State of Maharashtra*** (supra).

28. The judgments cited by both sides are pertaining to the elections of the Co-operative societies. The peculiar feature of the matter in hand is that the litigating sides wanted to have election. The tenure of the outgoing committee is expired long back. Besides clause No. 4, there are no serious disputes. Hence I am of the considered view that decisions cited at bar for exercise of powers of the High Court when election process has commenced may not be dilated further.

29. In the present case the election is of a trust which is to be regulated by bye-laws and/or the directions issued by the Charity Commissioner under the Act. The election process and the result are subject to the approval of the competent authority U/Sec. 22

of the Act. It is special feature of the administration of the trust under the provisions of the Act that election comes within the purview of Section 22 of the Act. It is mandatory U/Sec. 22(1) of the Act to report the change to the Deputy or Assistant Charity Commissioner within 90 days. This is a sufficient safeguard provided by the statute. Therefore, any illegality in the process of election including the membership cannot go unnoticed. They are always decided in the scrutiny of Section 22 of the Act. The election programme has progressed to advance stage. The list of contesting candidates is to be published on 06.11.2023. Thereafter the proper voting is to be conducted on 26.11.2023 and result is also scheduled on the same day. Therefore, I answer point No. IV in the negative.

30. In view of above discussion, I hold that no interference is called for in the impugned judgment and order dated 09.10.2023 passed by the learned Deputy Charity Commissioner, Latur in Suo Motu Enquiry No. 538 of 2023 as well as the election process. Both the writ petitions are disposed of with liberty to the litigating parties to agitate all the issues including validity of membership, election process, results thereof before the competent authority after conclusion of election process. Rule is discharged.

[SHAILESH P. BRAHME, J.]

bsb/Nov. 23