

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

WRIT PETITION NO. 14728 OF 2023

**DR. LAV S/O. BHAGWANRAO PANSAMBAL
VERSUS
THE ASSISTANT CHARITY COMMISSIONER AND OTHERS**

...
Advocate for Petitioner : Mr. Shripad S. Kulkarni
AGP for Respondent No. 1 : Mr. S.M. Ganachari
Advocate for Respondent Nos. 24 & 25 : Mr. A.D. Khot
Advocate for Respondent No. 27 : Mr. P.D. Bachate
...

CORAM : SHAILESH P. BRAHME, J.

DATE : 04th DECEMBER, 2023

PER COURT :

1. Heard learned counsel Mr. Kulkarni for the petitioner, learned AGP Mr. S.M. Ganachari for respondent no. 1, learned Advocate Mr. Khot for respondent nos. 24 and 25 and learned Advocate Mr. Bachate for respondent no. 27.

2. The petitioner is challenging common order dated 23rd November, 2023, passed below Exhibit 944 and 956 in enquiry no. J-4/761 of 2018 by learned Assistant Charity Commissioner, Aurangabad. The petitioner is the objector to the change report. His application Exhibit 944 seeking direction to the reporting Trustee to produce document is rejected. Hence, this petition is filed.

3. Marathwada Shikshan Prasarak Mandal, Aurangabad, is a registered Trust. For the period 2018 to 2023, an election was conducted. The respondent no. 5 is the reporting Trustee. The respondent no. 2 to 23 are the newly elected office bearers. Respondent nos. 24 to 25 are outgoing Trustees, petitioner and respondent nos. 26 to 31 are objectors / intervenors. Change report no. J-4/761 of 2018 is instituted before Assistant Charity Commissioner.

4. Though there is chequered history of litigation, I propose to refer to proceedings which are relevant for deciding the controversy. On 08.01.2023, General Body Meeting was conducted and a Resolution was passed comprising of five subjects. Subject No. 5 A pertains to the prohibition of enrolling new members by the Execution Council without seeking sanction of General Body Meeting. Violating the said stipulation, the respondent no. 6 enrolled new members from 2014 – 2017. These new members participated in the meeting of election convened on 04.06.2018. In pursuance of the election results change report no. 761 of 2018 is filed.

5. The petitioner's case is that respondent no. 6 Mr. Satish Bhanudasrao Chavan, who is the Secretary was instrumental in enrolling new members in violation of the Resolution passed on 08th January, 2023. The petitioner has placed a copy of resolution on record.

However, to secure the original copies of the minutes of meeting, proceeding book and attendance register of meeting dated 08.01.2023, application Exhibit 944 was submitted to direct the reporting trustee or the respondent no. 6 Mr. Satish Chavan to produce the original document before the Court. The application was objected by the respondents. The petitioner submitted another application at Exhibit 956 along with the list of the documents, seeking permission to produce documents on record. By the impugned order application Exhibit 956 is allowed.

6. Learned counsel for the petitioner submits that the original documents which are sought to be produced on record are in the custody of respondent nos. 5 and 6. They are vital documents to demonstrate that members are being enrolled illegally. Learned counsel submits that a copy of Resolution dated 08.05.2023, which is at page no. 195 of paper book purported to be of Resolution dated 08.01.2013, is bogus and manipulated. The subject no. 5 A is strategically missing.

7. Learned counsel for the petitioner submits that the contesting respondents are taking inconsistent stands and dogging to produce original documents. He would point out the order dated 26.03.2014, passed in enquiry application no. 1229 of 2013 especially paragraph nos. 16 and 17 that the record and the proceeding were with erstwhile Secretary Mr. Madhukar Mule. Thereafter, it was forcibly

taken into possession of the respondent nos. 5 and 6, which is evident from paragraph no. 115 of order below Exhibit 2 of Appeal nos. 75, 76, 81 of 2015. Thus, the respondent nos. 5 and 6 are estopped from denying the custody of the original record or to deny to produce the same on record.

8. Learned counsel has vehemently submitted that the contesting respondents have taken inconsistent and misleading stand in respect of production of the document which are :

- (a) The relevant record is with Mr. Mule, earlier Secretary.
- (b) No meeting on 08.01.2013 is ever held.
- (c) The typed copy produced on record does not show subject no. 5 A.
- (d) The original record is not at all available.

9. Learned counsel for the petitioner further has produced on record application Exhibit 902 and order passed thereon to buttress that the original documents are necessary to be produced on record.

10. Learned counsel for the respondent nos. 24 and 25 supported the petitioner. He would submit that the typed copy of the Resolution dated 08.01.2013, produced by the respondent no. 6 on record should not have been marked as Exhibit 905. The exhibition is *de hors* the procedure of law. He seeks reliance on judgment rendered in

the matter of *Rekha Ramrao Bhujang Versus Smt. Subhadrabai W/o. Keshvrao Bunage and others*, **2012 (3) ALL MR 509**.

11. Learned Assistant Charity Commissioner considered the submissions of the parties at length and rejected application Exhibit 944 but allowed application Exhibit 956. It is held that the minutes of the meeting dated 08.01.2013, is exhibited subject to the objections of the parties to be decided during the course of hearing. The litigating parties have the opportunity of cross-examining the witnesses to elucidate the over the probative value of documents. No prejudice would be caused to the parties.

12. Pertinently, Change Inquiry no. 761 of 2018 has been expedited by the orders passed by this Court on 10.03.2023, in Writ Petition No. 5041 of 2023. An order is placed on record at Exhibit 'H'. High Court has directed to decide it within twelve weeks. Though the stipulated period is over, proceedings are yet to be concluded. In view of the directions, an endeavor needs to be made by the litigating parties and the Presiding Officer to conclude the proceedings.

13. The petitioner wants respondent nos. 5 and 6 to produce original documents on record. They have filed reply and taken their stand. The petitioner has objection for inconsistent plea taken by the

contesting respondent. Having expressed inability to produce documents on record by the contesting parties, it is open for the petitioner to make submissions in this regard at the time of final hearing of the matter.

14. I am of the considered view that it is open for the petitioner to agitate the conduct of the respondents, to request the Court to draw adverse inference, to challenge the documents which is wrongly marked as Exhibit 905. These are the matters of submissions open for the petitioner to be pressed into service.

15. If the respondents come with a case that the original record as contemplated by the application Exhibit 944 is not in the custody of the litigating respondents or the minutes of the meeting, Exhibit 905 is the only valid document, then there is no point in compelling the respondents to produce the documents as sought for. It is a matter of inference and appreciation of evidence as well as conduct of the parties.

16. I do not find that the learned Assistant Charity Commissioner has committed any illegality or perversity. A plausible view has been taken in holding that no prejudice would be caused and the litigating parties would get opportunity to make submissions. I do not find any case is made out to cause interference.

17. The submissions of learned counsel for the respondent nos. 24 and 25 are misconceived at this juncture when I am dealing with the order passed below Exhibit 944 and 956. Whether the document is rightly exhibited or wrongly exhibited or it is to be de-exhibited cannot be the part of enquiry. The objections for exhibiting the document and the probative value can be gone into at the time of final hearing. I do not, therefore, see any merit in referring to the judgment cited by the learned counsel in the matter of *Rekha Ramrao Bhujang* (supra), at this juncture.

18. For the reasons stated above, there is no merit in the petition. Writ Petition is dismissed. However, the parties are at liberty to agitate objections, grievance and submissions at the time of final hearing as observed in above paragraphs.

[SHAILESH P. BRAHME, J.]