

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11598 OF 2022
WITH
INTERIM APPLICATION NO. 19421 OF 2022
WITH
INTERIM APPLICATION NO. 3596 OF 2023
WITH
INTERIM APPLICATION NO. 7704 OF 2023**

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Dr. Ravindra Moreshwar Sarnaik ...Petitioner
Versus

Indian Chest Society and ors. ...Respondents

**WITH
WRIT PETITION NO. 14449 OF 2022
WITH
INTERIM APPLICATION NO. 3597 OF 2023**

Dr. Rajesh Swarnakar ...Petitioner
Versus

The Ld. Assistant Charity Commissioner V,
Mumbai and ors. ...Respondents

Mr. Shriram Radij, a/w Akash Kotecha, for the Petitioner in
WP/11598/2022.

Mr. Sharan Jagtiani, Senior Advocate, a/w Aayesh Gandhi
and Madahv Ved, i/b Wadia Ghandy & Co., for the
Petitioner in WP/14449/2022.

Mr. Ritvik Joshi, for Respondent No.3 in Both Writ Petitions.

Mr. Karl Tamboly, a/w Luckyraj Indorkar, i/b Argus Partners
in IA/3596/2023.

Mr. P. P. Pujari, AGP for the State.

Mr. Suraj Chakor, for the Intervenor in IA/19421/2022.

CORAM: N. J. JAMADAR, J.

DATED : 26th JUNE, 2023

ORDER:-

1. Heard the learned Counsel for the parties.

2. The challenge in Writ Petition No.11598 of 2022 is to an order dated 15th September, 2022 passed by the learned Assistant Charity Commissioner – V, Mumbai, on an application, purportedly preferred under Section 41A of the Maharashtra Public Trusts Act, 1951 (“the Act, 1951”), whereby the learned Assistant Charity Commissioner declined to grant ad-interim relief.

3. In Writ Petition No.14449 of 2022, the challenge is to an order dated 26th August, 2022, seeking interim relief in respect of the election to the Governing Body of Indian Chest Society, passed by the learned Assistant Charity Commissioner, Mumbai. By the said order the learned Assistant Charity Commissioner declined to interfere with the election process and grant interim relief.

4. Both these petitions have their genesis in the election to the Governing Body of the Indian Chest Society, a Public Charitable Trust. In Writ Petition No.11598 of 2022, Dr. Ravindra Sarnaik claimed to be a member of the Indian Chest Society and the President – elect in the elections held for the Governing Body 2022 - 2023. The petitioner preferred an application purportedly under Section 41A of the Act, 1950 seeking *inter alia* direction to Dr. D. J. Christopher – respondent

No.2 not to proceed with the election programme as per the circular dated 2nd September, 2022 and not to act as the returning officer/election officer as the election to the Governing Body of the Indian Chest Society were already held, and declared on 26th August, 2022, and also to direct respondent No.1 Trust not to declare, notify, continue any fresh election/re-elections and act in any manner prejudicial to or invalidate the elections that was duly held on 26th August, 2022 by Dr. D. Behra – respondent No.3, the returning officer.

5. In the said application, the applicant prayed for ad-interim relief.

6. By the impugned order, the learned Assistant Charity Commissioner was persuaded to reject the prayer for interim relief as the election programme had commenced with effect from 3rd September, 2022.

7. When the matter was listed on 10th October, 2022, this Court, after noting that re-election was held pursuant to the circular dated 2nd September, 2022 and results were declared on 7th October, 2022, restrained the new Governing Body of the society from taking charge from the body elected on 26th August, 2022 as this Court found that the respondents could not have

commenced re-election process without first challenging the final result declared on 26th August, 2022.

8. Dr. Rajesh Swarnakar the petitioner in WP/14449/2022 and who has been arrayed as the Secretary, Indian Chest Society, respondent No.1 in WP/11589/2022, preferred the petition seeking to quash and set aside an order dated 26th August, 2022 passed by the learned Assistant Charity Commissioner in Application No. ACC/V/60/2022, whereby the petitioner prayed for stay to the election to the Governing Body of Indian Chest Society commenced in the month of August, 2022. The petitioner asserted that Dr. D. Behra - respondent No.3, therein was removed as a returning officer and yet respondent No.3 illegally proceeded with the election.

9. At the heart of the controversy is the legality and validity of the election processes commenced on 16th August, 2022 and 3rd September, 2022. In the petitions, which assail the orders dated 26th August, 2022 and 15th September, 2022, whereby the learned Assistant Charity Commissioner declined to grant interim relief as the respective election process had already commenced, intervention/interim applications have been filed.

10. In WP/11598/2022, the Indian Chest Society through Dr. Rajesh Swarnakar - respondent No.1, has preferred

IA/19421/2022 to vacate, *inter alia*, ad-interim relief granted by this Court by an order dated 10th October, 2022. The applicant contends the said relief was allegedly obtained without serving the applicant though the applicant had filed caveat on 26th September, 2022.

11. Dr. Deepak Talwar has preferred IA/3596/2023 seeking to intervene in the said petition and also for ad-interim order restraining the Governing Body of the Indian Chest Society for the year 2021 – 2022 from interrupting and/or interfering in the conduct of National Conference of Pulmonary Diseases (“NAPCON”) 2023 scheduled to be held at Hyderabad during 30th November, 2022 to 3rd December, 2023. The applicant asserts that the applicant was duly elected as Secretary in the election held on 26th August, 2022.

12. IA/7704/2023 is taken out by Dr. Ravindra Sarnaik seeking to restrain the Governing Body 2021 – 2022 from interfering with the day to day management and the affairs of the Indian Chest Society.

13. In WP/14449/2022 also Dr. Deepak Talwar has taken out an IA/3597/2023 seeking impleadment and interim relief as sought in WP/15598/2022.

14. Evidently, in these writ petitions and interim applications the parties are seeking reliefs as they would in the Court/Authority of the first instance. The questions raised in the interim applications are rooted in facts and the Court would be required to delve into the thickets of facts, which is not permissible in exercise of supervisory writ jurisdiction. What is under challenge in both the petitions is the legality and validity of the order passed at an ad-interim stage. The main applications purportedly preferred under Section 41A of the Act, 1951 are still pending before the learned Assistant Charity Commissioner. It would, therefore, be expedient that the pending applications are decided by the learned Assistant Charity Commissioner.

15. Mr. Jagtiani, the learned Senior Advocate for the petitioner in WP/14449/2022, would urge that ad-interim order passed by this Court in WP/11598/2022 needs to be vacated as it was obtained without serving the applicant in IA/3596/2023 despite being on caveat and caveat having been served on the petitioner.

16. In the light of the view which this Court is persuaded to take and since the ad-interim relief is in operation since 10th October, 2022, I am inclined to continue the said ad-interim

relief till the learned Assistant Charity Commissioner decides the pending applications in a time bound manner.

17. Mr. Tamboly, the learned Counsel for the applicant in IA/3596/2023 submitted that the applicant be permitted to take out appropriate application for intervention and reliefs as sought in the interim application in these petitions and the learned Assistant Charity Commissioner may decide all the issues, keeping open the rights and contentions of the parties, as to the locus, tenability and merits of the application.

18. The applicants in IA/3596/2022 and IA/7704/2023 may file an appropriate application before the Assistant Charity Commissioner in the pending proceedings within a week's time.

19. The parties who wish to oppose such application shall file reply thereto within a week thereafter.

20. The learned Assistant Charity Commissioner shall decide the pending applications as well as the applications which may be preferred as expeditiously as possible and preferably within six weeks thereafter.

21. The interim order passed by this Court on 10th October, 2022 shall continue to operate till the Charity Commissioner decides Application No.ACC/V/60/2022.

22. The parties shall appear before the Assistant Charity Commissioner on 30th June, 2023.

23. No separate notice is required to be issued to the parties and the applicants in the interim applications.

24. It is hereby made clear that all contentions of all the parties are kept open for the consideration and this Court may not be understood to have expressed any opinion on the merits of the matter including the locus of the parties and tenability of the applications.

25. The writ petitions stand disposed.

26. In view of disposal of the petitions, IA/19421/2022, IA/3596/2022, IA/7704/2023 and IA/3597/2023 stand disposed.

[N. J. JAMADAR, J.]