

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

WRIT PETITION 615 OF 2023

1. Adv. Ghanshyam s/o. Shyamrao Kapgate,
Aged about 66 yrs, Occ. Legal Practitioner,
r/o. At Post Tahsil Sakoli, District Bhandara

2. Murlidhar s/o. Bhairaji Kapgate,
Aged about 72 yrs, Occ. Agriculturist,
r/o. At Post Tahsil Sakoli, District Bhandara

3. Rajendra s/o. Sadashiv Lanje,
aged about 72 yrs, occ. Legal Practitioner,
r/o. At post Kaotha Barabhati Post: Tehsil
Arjuni Morgaon, District Gondia

.....PETITIONER

..V E R S U S..

1. Assistant Charity Commissioner
Bhandara, Waghmare Building,
Rajgopalchari Ward, Miskin Tank,
Mahal Road Bhandara

2. The Election Officer Inspector-3
Secondary Education Sakoli,
Public Trust Office Bhandara

..RESPONDENTS

Mr. M.M. Sudame, counsel for petitioners.
Mrs. K.R. Deshpande, AGP for respondent 1/State.
Ms. N.P. Thete with Mr. R.D. Karode, counsel for
intervenor in CAW 305/2023.
Mr. S.D. Abhyankar, counsel for intervenor in CAW 307/2023
Mr. V.N. Morande, counsel for intervenor in CAW 314/2023.

CORAM:- ROHIT B. DEO & Y.G. KHOBRAGADE, JJ.
DATE : 03.02.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. The petitioners are seeking a declaration that respondent 1 – Assistant Charity Commissioner is the only authority empowered to verify the membership of the Secondary Education Society, Sakoli in view of the directions issued by the Hon'ble Supreme Court in Civil Appeal 9600/2010.

3. The other substantive prayer which is that the list of members dated 4.1.2023 which is published by respondent 2 – Election Officer be quashed.

4. Pertinently, while the prayer that the list of members dated 4.1.2023 be quashed is a substantive prayer, in essence, the said prayer seeks a consequential relief as a sequitur to the declaratory relief.

5. In essence, the limited grievance in the petition is that the verification of membership by the Election Officer is

contrary to the letter and spirit of the direction issued by the Hon'ble Supreme Court.

6. We may extract the order dated 11.8.2022, rendered by the Hon'ble Supreme Court in Civil Appeal 9600/2010, in verbatim:

“It appears the supervening circumstances have made the present appeal infructuous as the ad hoc body has been constituted by the High Court in the year 2018. The only thing which survives is that the said ad hoc body continues as there were no further directions to hold the elections.

Learned counsel for both the parties state that the Assistant Charity Commissioner is required to hold elections after verifying the electorate. It appears that in these multiple proceedings that aspect appears to have got lost.

We thus, consider appropriate to dispose of this appeal as largely infructuous except to the extent that the Assistant Charity Commissioner, Bhandara to initiate the process of holding the elections after verification of members (as the two parties are contesting that aspect which will have to be determined) and complete the process within a period of six months from today.

The appeal stands disposed of in the above terms”.

7. The submission is that the Hon'ble Supreme Court directed the Assistant Charity Commissioner, to initiate the process of holding the elections after verification of members and complete the process within a period of six months. (*emphasize supplied*)

8. The grievance appears to be that without verifying the membership of the trust, the Assistant Charity Commissioner initiated the process of election, and delegated the power of verification of membership to the Election Officer, who is an inspector on the establishment of office of the Charity Commissioner.

9. On behalf of the petitioners, reliance is placed on several provisions of the Maharashtra Public Trust Act ("Act") to buttress the submission that verification of membership must be done, in accordance with the provisions governing the mode and manner of conducting an enquiry. It is further submitted that the exercise is of *quasi judicial* power, which in any event the inspector could not have exercised.

10. We are not inclined to delve deeper in the broader questions raised. Prima facie, we are of the view, that the Assistant Charity Commissioner could not have left the issue of verification of membership to the Election Officer, considering the directions issued by the Hon'ble Supreme Court.

11. In our considered view, interest of all the stakeholders can be protected, if respondent 1- Assistant Charity Commissioner is directed to conduct *post facto* verification of the list of members prepared by the Election Officer – Inspector in a time bound manner.

12. We therefore, direct respondent 1 to verify the list of members which is prepared by the respondent 2 – Election Officer, after hearing the stakeholders and then proceed to conduct the elections by fixing a revised election programme.

13. We direct all the stakeholders to appear before

respondent 1 on 07.02.2023 and to place on record every relevant material.

14. Respondent 1 shall conclude the verification of membership within two weeks from the date of appearance of the stakeholders.

15. Respondent 1 shall, immediately after the finalization of the list of members, publish revised programme for conducting the elections, and shall ensure that the elections are conducted on or before 20.2.2023.

16. While we are conscious of the fact that the six months period within which the Hon'ble Supreme Court expected that the elections be conducted expires on 10.2.2023, since there is no compliance with the first part of the order of the Hon'ble Supreme Court which directs that the process shall be initiated after respondent 1 verifies the list of members, we are constrained to pass the instant order.

17. Petition is disposed of in the aforestated terms.
18. All the civil applications are disposed of.
19. Steno copy granted.

(Y.G. Khobragade, J.)

(Rohit B. Deo, J.)

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