



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

WRIT PETITION NO.2104/2023

Shri Sheshrao Manikrao Shrirao,
aged about 84 Yrs., Occ. Retired,
R/o Pusla, Tq. Warud, Dist. Amravati. ... Petitioner

- Versus -

1. Shri Vijay Ramgopal Farsoye
(Khandelwal), aged about 74 Yrs.,
Occ. Business, R/o Pusla, Tq. Warud,
Dist. Amravati.
2. Shri Satyanarayan Bansilal Farsoye
(Khandelwal), aged about 85 Yrs.,
Occ. Nil, R/o Pusla, Tq. Warud,
Dist. Amravati.
3. Shri Salim M. Pathan,
Election Officer, Pusla Vibhag Sudhar
Samiti, Pusla Reg. No.F-164/Amravati
alias Superintendent, Office at Public
Charity Commissioner Office, Mhada
Building, 2nd Floor, Amravati.
4. Deputy Charity Commissioner,
Amravati, Office at Public Charity
Commissioner, Mhada Building,
2nd Floor, Amravati. ... Respondents

Mr. P.N. Kadu with Mr. S.N. Chikhale, Counsel for the Petitioner.
Mr. A.Z. Jibhkate, Counsel for respondent Nos.1 and 2.
Mr. Amit Madiwale, Assistant Government Pleader for Respondent
No.4.

CORAM: A.S. CHANDURKAR & MRS. VRUSHALI V. JOSHI, JJ.

DATE : 6.10.2023

ORAL JUDGMENT (Per A.S. Chandurkar, J.)

Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. Challenge raised in this writ petition is to the order passed by the learned Deputy Charity Commissioner, Amravati in proceedings under Section 41A of the Maharashtra Public Trusts Act, 1950 (for short "Act of 1950") on 28.3.2023 thereby interfering with an order passed by the Election Officer and directing acceptance of the nomination forms of respondent Nos.1 and 2 in the election of the public trust.

3. Pursuant to the directions issued in Change Report Application No.161/2017 the Inspector of the office of Deputy Charity Commissioner, Amravati published election programme for

holding elections to the Managing Committee of the public trust. The respondent Nos.1 and 2 filed their nomination forms which came to be rejected by the Election Officer on the ground that he found discrepancy in the names as indicated in the voters' list and the documents produced by the said respondents. The respondent Nos.1 and 2 challenged the said order by filing proceedings under Section 41A of the Act of 1950. Though an objection was raised by the petitioner to the tenability of the proceedings, the learned Deputy Charity Commissioner by his order dated 28.3.2023 allowed the said application and after setting aside the order passed by the Election Officer directed acceptance of the nomination forms of respondent Nos.1 and 2. Being aggrieved the said order is challenged in the present writ petition.

4. The learned counsel for the petitioner by relying upon the decision in the case of Lahudas Sambhaji Karad V/s. The State of Maharashtra and others reported in **AIR 1993 Bom 315** and Suresh Shamrao Jadhav V/s. The Assistant Charity Commissioner and others in Writ Petition No.5660/2018 decided on 11.6.2018 submits

that in proceedings under Section 41A of the Act of 1950 no interference in the election process is permitted. The challenge to any order passed by the Election Officer could be raised only at the conclusion of the election and not by invoking jurisdiction under Section 41A of the Act of 1950. According to him, though an objection was raised to the tenability of the proceedings the same has not been considered by the Deputy Charity Commissioner. The order is, therefore, without jurisdiction.

5. The learned counsel for respondent Nos.1 and 2 has relied upon the contents of Civil Application (CAW) No.1388/2023 to support the impugned order. According to him, the said respondents being life members their names figured in the primary voters' list and, therefore, rejection of their nomination forms on technical grounds was unjustified. The learned Deputy Charity Commissioner having found the order passed by the Election Officer to be illegal rightly interfered and set aside the order. It is, therefore, submitted that there is no case for interference with the order passed

by the learned Deputy Charity Commissioner especially when he had the authority to act as custodian of the legal rights of the trust.

6. Having heard the learned counsel for the parties and perused the documents on record we find that the scope of interference in election process under Section 41 A of the Act of 1950 stand settled by the decision in Lahudas Sambhaji Karad (supra) which decision has been subsequently followed in Suresh Shamrao Jadhav (supra). It has been held in clear terms that matters pertaining to elections are beyond the provisions of Section 41 A of the Act of 1950. Perusal of the impugned order indicates that despite such objection being raised, the learned Deputy Charity Commissioner entertained the application under Section 41 A of the Act of 1950 on merits and set aside the order passed by the Election Officer. We find that exercise of jurisdiction under Section 41 A of the Act of 1950 in the matter pertaining to election is not permissible. On this count the order suffers from being passed by an

authority exceeding its jurisdiction. It is, therefore, liable to be set aside.

7. For aforesaid reasons, the order dated 28.3.2023 passed by the learned Deputy Charity Commissioner in proceedings bearing Enquiry No.10/2023 is set aside.

The Election Officer shall proceed with the conduct of election from the stage where it was stayed pursuant to the interim order passed by this Court. It is clarified that respondent Nos.1 and 2 are free to challenge the outcome of the election in accordance with law if they are aggrieved by the same. Their challenge on merits is kept open. The writ petition is allowed in aforesaid terms. Rule is disposed of accordingly. Civil application is also disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)