

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

WRIT PETITION NO.2612 OF 2023

Sagar Sudhakar Khanorkar and others

vs.

The Election Officer (Adv Nitin Deshmukh) Jain Kalar Samaj, Nagpur and others.

Shri S. P Bhandarkar, Advocate with Shri Manish Shukla, Advocate for petitioners.
Shri Tejas Patil, Advocate for respondent no.3.
Shri Anand Parchure, Advocate for respondent nos. 6, 13.
Shri S.D.Abhyankar, Advocate for respondent nos.9, 12, 15.
Shri P.D.Sharma, Advocate a/w Shri P. Sharma, Advocate for respondent nos. 10,14,
17, 18, 19, 23, 24 and 25.

CORAM :- A.S.CHANDURKAR AND M. W. CHANDWANI, JJ.

DATE :- 21st APRIL, 2023

The challenge raised in this writ petition is to the order passed by the Deputy Charity Commissioner, Nagpur, on 13.04.2023 in proceedings under Section 41 A of the Maharashtra Public Trusts Act, 1950 (for short, the said Act). By that order, an application preferred by the petitioners under Section 41 A of the said Act praying that the Election Officer should discontinue the process of election since his appointment itself was illegal has been rejected.

2. Shri S.P. Bhandarkar, learned counsel for the petitioners submits that in the light of the interim directions issued on 10.01.2023 in the said proceedings the counting of votes as well as re-counting of said votes was directed to be kept in abeyance since the elections are stated to have been held on 25.12.2022. However, while deciding the proceedings under Section 41 A of the said Act on 13.04.2023 these interim directions have not

been considered and the proceedings have been dismissed on the ground that the elections were held in which the petitioners had also participated. Reliance is placed on the decision of this Bench in *Vanmala Manoharrao Kamdi and others vs. Deputy Charity Commissioner, Nagpur and others [(2012) 3 Mh.L.J. 594]* to urge that the proceedings under Section 41 A of the said Act ought to have been adjudicated in the light of the prayers made therein.

3. The learned counsel for the respondents submit that pursuant to the elections held on 25.12.2022 in which the petitioners had participated, a change report under Section 22 of the said Act has now been filed reporting the change. It is thus submitted that the petitioners are free to challenge the validity of the change as reported.

4. We find that the eligibility of the Election Officer to conduct elections was subject matter of challenge in proceedings under Section 41 A of the said Act. In the backdrop of the elections having been held on 25.12.2022, the interim directions dated 10.01.2023 came to be issued by the learned Deputy Charity Commissioner. While deciding the proceedings under Section 41 A of the said Act, it has been held that as the election process had been completed, it was not possible to issue any further directions since the petitioners had participated in the elections.

5. We find that the elections having been held and the change report having been filed, it would be open for the aggrieved parties to challenge the change as reported, in accordance with

law. By clarifying that the observations made in the impugned order dated 13.04.2023 by the learned Deputy Charity Commissioner would not come in the way of the aggrieved parties in the proceedings filed by the reporting trustees, it is directed that the change report shall be decided on its own merits without being influenced by what has been observed in the impugned order.

The change report proceedings be decided expeditiously in accordance with law. All questions are kept open.

6. With these observations, the writ petition is disposed of.
No costs.

(M. W. CHANDWANI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.