

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

WRIT PETITION NO. 2833 OF 2022

Darshanlal Nandanlal Malhotra,
Aged bout 56 years,
Occupation – Business,
R/o Jawahar Nagar, Bhandara,
District – Bhandara.

.... **PETITIONER**

VERSUS

- 1) Rajeshwar S. Harshe,
Election Officer/Inspector,
Public Trust Registration Office,
Bhandara.
 - 2) The Joint Charity Commissioner,
Nagpur.
 - 3) Shri Mukund Deorao Fedarkar,
Age – Adult, Occupation – Retired,
R/o Vidya Nagar, Bhandara.
 - 4) Shri Madhav Devaji Tirpude,
Age – Major,
R/o Pragati Colony, Bhandara.
 - 5) Smt. Mangla Manohar Harde,
Age – Major, Occupation – Retired,
 - 6) Shri Rajesh Anand Khobragade,
Age – Major,
 - 7) Sau. Smita Narendra Palandurkar,
Age – Major, Occupation – Housewife,
- Nos. 5, 6, 7 R/o Shahpur, District -
Bhandara – 440 906.

.... **RESPONDENTS**

Mr. S.D. Abhyankar, Counsel for the petitioner,
Mrs. K. Deshpande, A.G.P for respondents 1 and 2,
Mr. V.K. Paliwal, Counsel for respondents 3 to 7.

CORAM : ROHIT B. DEO & Y.G. KHOBRADE, JJ.
DATED : 6th JANUARY, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Petitioner-Darshanlal Nandanlal Malhotra claims to be a trustee of the Gramin Vikas Samiti, Shahpur which is registered under the Maharashtra Public Trusts Act (Act).

2. The Public Trust is not impleaded as party respondent. The petitioner initially sought direction to respondent 2-Joint Charity Commissioner, Nagpur to decide Application 3/2022 expeditiously. Application 3/2022 appears to be an application preferred under Section 41-A of the Act seeking a direction that non-applicant Rajeshwar Harshe who is the Election Officer, be directed to supply copies of the documents filed by the parties, and that a further direction be issued that the Election Officer shall conduct the election in transparent manner. The alternative relief is for removal of the Election Officer and appointment of any other Inspector working at the establishment of the Joint Charity Commissioner, as the Election Officer.

3. It appears that during the pendency of the petition, Application 3/2022 is rejected by the authority vide order dated 10-6-2022, and therefore, the petitioner amended the petition seeking quashment of the said order. It further appears that respondents 3 to 7 are impleaded in view of their contention that the election is held on 20-6-2022 and that the Change Report 154/2022 is filed along with supporting documents, and that the elected executive committee is managing the affairs of the trust. Respondents 3 to 7 claim to have been elected to the executive committee in the said election.

4. The order dated 10-6-2022 which rejects the application under Section 41-A of the Act preferred by the petitioner considers the grievance of the petitioner as regards the manner in which the Election Officer was discharging the duty, thus :

“6. The present applicant in this case, has sent many complaints to this office against Non-applicant Shri Harshe, Election Officer that he is not proceeding to hold election of said trust in legal manner. I called the election programme issued by Non-applicant Shri Harshe, Election Officer to know about the election programme fixed by him. It is informed by the Non-applicant Shri Harshe, Election Officer that as per the order passed by the then Joint Charity Commissioner, Nagpur on 12-01-2012 in Appeal No.36/2009, he has to prepare first membership list after considering the proceeding book, membership register, cash-book etc. It is informed that after this stage is completed; the election programme will be declared. This letter dated 06-6-2022 received from Non-applicant Shri Harshe, Election Officer reveals that he has first started confirming the legal membership of said trust and

after this confirmation; he will declare the election programme.

The above stated facts would show that Non-applicant, Shri Harshe, Election Officer is taking steps as per the directions given by my learned predecessor on 12-01-2012 in Appeal No. 36/2009. In the present application, the applicant pleaded that Non-applicant is not conducting election programme in accordance with the order passed by the Hon'ble High Court as well as by this authority. It is further submitted that, Non-applicant has refused to supply the copy of documents filed by the parties. He also stated that, he has filed relevant documents with the Non-applicant. It is pertinent to note that applicant has not specifically mentioned about which copies of documents he is referring. According to applicant, he is apprehending that Non-applicant, Election Officer may not be conducting election of said trust fairly. I find that the applicant is seeking directions in this application merely on the ground of apprehension. As stated above, the Non-applicant, Election Officer has informed this office that he is confirming the legal membership first.

7. I already stated above that Non-applicant, Election Officer was seriously warned that he should not commit any illegality or mistake while conducting election. This authority cannot interfere further in the matter of election to the trust in question as it is prerogative of Election Officer to take steps for conducting election in legal manner. If the applicant feels that if any injustice was caused to him while confirming the issue of legal membership as stated above, he has at liberty to move the proper judicial forum to challenge the decision taken by Election Officer. Thus, the above facts discussed will show that this authority discharged its duty fully as per the directions given by the Hon'ble High Court. This authority also find that the present applicant is filing applications for giving directions one after another and also filing complaints against Non-applicant, Election Officer just to prolong the election which is to be completed within time limit. I do not find any justifying ground or reason to issue any notice in this proceeding to the Non-applicant Shri Harshe, Election Officer who has already set in motion his action to first decide the legal membership and then, to hold election."

5. We are not inclined to delve deeper simply because every grievance of the petitioner, including the objection to the list of members can be agitated and decided in the enquiry in Change Report 154/2022. The present petition was initially filed since the petitioner was aggrieved by the alleged non-supply of certain documents by the Election Officer. The election is held and the change report is filed. The grievance of the petitioner ultimately touches the legality of the election, and while considering the change report the authority shall undoubtedly address the grievance and render appropriate finding on the basis of the evidence which may be adduced.

6. Keeping all contentions open, we dismiss the petition with the clarification that the petitioner shall be at liberty to agitate the grievance in the change report enquiry.

(Y.G. Khobragade, J.)

(Rohit B. Deo, J.)

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