

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2780 OF 2011
WITH
WRIT PETITION NO.2784 OF 2011
WITH
CIVIL APPLICATION NO. 563 OF 2016
IN WP/2784/2011
WITH
CIVIL APPLICATION NO. 4747 OF 2023
IN WP/2784/2011
WITH
CIVIL APPLICATION NO. 6864 OF 2015
IN WP/2784/2011

Sadhana Dharmaraj Vishwekar and Another
VERSUS
State Of Maharashtra And Ors

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Advocate for the Petitioners : Mrs. M.A. Kulkarni
AGP for Respondent/State : Mrs. M.L. Sangit
Advocate for Respondent No.3 : Mr. S.S. Jadhavar

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CORAM : S.G. MEHARE, J.

DATED : FEBRUARY 26, 2024

PER COURT:-

1. Civil Application No.4747 of 2023 is allowed. Title clause be corrected forthwith.
2. The respondent raised an objection that the writ petition is not maintainable in the individual capacity, and there was no explanation for the delay of around four years. Both lawyers argued the matter on this point. However, when the Court put a question to the learned counsel for the petitioners, was it pleaded in the pleading the capacity in which the petitioners have filed the petition and how

there was delay? Intelligently, she pointed out that this matter has not yet been admitted. She was seeking leave to amend the writ petition.

3. Learned counsel for the respondent raised an objection that Sadhana, the President of the Society, was not a party to the original proceeding. There is no explanation at all as to how she was authorized to file the writ petition. The Secretary of the Society was the party to the proceeding along with the trust/society. There was no explanation why the Secretary of the Society had not preferred the writ petition promptly after 2007. He also submitted that the writ petition does not bear with the resolutions of the society, giving authorization to the petitioners to impugn the judgment dated 20.03.2007. On this point, the petition deserves to be dismissed.

4. Learned counsel for the petitioners would reply that the explanation for delay has been pleaded in para 11 of the writ petition. It has been pleaded that when the impugned order was passed, the President of the Society was suffering from illness, and the then President of the School Committee Shri Appasaheb Kale, had filed Writ Petition No.1371 of 2008 in June 2007 challenging the impugned judgment and order of the learned Tribunal. He withdrew the said writ petition on 10.02.2010. She further argued that in 2011, the earlier Secretary was also deleted. The petitioner was recorded as the President in Public Trust registers on 24.10.2010. She would submit that she wanted to amend the petition. She has already

submitted whatever she wanted to amend by the oral submissions. Her orally proposed amendment may be considered for deciding the locus of both petitioners.

5. The first point to note is that the then-president challenged the impugned order in Writ Petition No.1371 of 2008. However, he withdrew it. The petitioners did not state whether he withdrew that petition with the liberty to file afresh. In the absence of such assistance, it would be presumed that the said petition challenging the impugned order was unconditionally withdrawn. There is no whisper in the writ petition under what circumstances the present petition has been filed after the withdrawal of the said writ petition. Therefore, on this sole ground, the writ petitions could not be entertained. The record reveals that the President was not the party before the learned Tribunal. The Secretary was the party. Assuming that the present Secretary, Mr. Dharmaraj Vishwekar, was appointed as a Secretary on 11.01.2011, the fact reveals that till that date, the earlier Secretary was in power. There are no allegations against the earlier Secretary for not impugning the order. No word has been pleaded in the writ petition as to why the Secretary wanted to prefer the writ petition. There is no limitation to prefer the writ petition. In the case of Bithika Muzumdar and Anr v Sagar Pal and others, the Hon'ble Supreme Court observed that the delay should be duly and satisfactorily explained. The explanation is not satisfactory.

Even taking a liberal view to condone the delay, the petitioner did not state that the same order was impugned before this Court by the then person competent, and it was withdrawn. In the facts and circumstances of the case impugning the same order again is impermissible. The necessary resolution of the society allowing this petitioner to file the writ petition has also not been placed on record. For the above reasons, both writ petitions stand dismissed.

6. Pending civil applications stand disposed of.

(S.G. MEHARE, J.)