



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2704 OF 2024

1. Shri. Balwantrao Jaywantrao Wagh
2. Shri. Suresh Sitaram Salunkhe
3. Shri. Balasaheb Sitaram Salunkhe ...Petitioners

Versus

1. The Hon'ble Deputy Charity
Commissioner Jalgaon at Jalgaon
2. The President,
Girna Vidya Prasarak Mandal
Mehunbare Taluka Chalisgaon
Dist. Jalgaon
3. The Secretary,
Girna Vidya Prasarak Mandal
Mehunbare Taluka Chalisgaon
Dist. Jalgaon ...Respondents

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Mr. D. B. Thoke, Advocate for the Petitioners
Mr. V. M. Kagne, AGP, for the Respondent No. 1
Mr. S. H. Tripathi, Respondent Nos. 2 and 3

...

CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ
RESERVED ON : MARCH 12, 2024
PRONOUNCED ON : MARCH 19, 2024

ORDER (PER R. M. JOSHI, J)

1. This Petition takes exception to the order passed by the Deputy Charity Commissioner to conduct the election of the Trust. It is alleged that the election program has been declared and in haste, the

list of the voters is finalized without giving opportunity of raising objection etc.

2. Petitioners claim themselves to be the members of Girna Vidya Prasarak Mandal, a trust registered under the Maharashtra Public Trusts Act, 1950 (for short '**the Act**'). It is further case of the Petitioners that the term of office bearers of the trust came to an end on 28.02.2024 and hence, an application was filed before the Deputy Charity Commissioner, Jalgaon (for short '**DCC**') under Section 41-A of the Act seeking multiple directions including decision on the issue of determination of validity of 233 members and further to conduct free, fair and impartial elections in presence of Inspector Public Trust Registration Office, Jalgaon. The said application filed by the Petitioners came to be rejected by DCC by impugned order dated 01.02.2024. It is alleged that the Respondent Nos. 2 and 3 are in hurry to conduct the election, which would be paper election only and without due procedure of law and, therefore, it is necessary to appoint independent and impartial Election Officer from the office of DCC which has not been done. It is also alleged that Respondent

No. 3 – Secretary of the Trust has been convicted for a criminal offence and hence, he is disqualified to be the member of the trust. On these averments, Petition came to be filed seeking quashing of the impugned order as well as direction to appoint any responsible Officer from the office of DCC to conduct elections of the trust.

3. The learned Counsel for the Petitioner submits that the manner in which the election is being conducted shows that there is haste in conduct thereof and as such, the election cannot be allowed to be conducted by the present Election Officer. He submits that Officer from the Charity Commissioners' Office needs to be appointed for the purpose of the same.

4. Respondent Nos. 2 and 3, by filing affidavit of Mr. Balasaheb Deshmukh, opposed the Petition. It is the contention of these Respondents that the Petitioners are not the members of the trust and as such, they have no *locus standi* to prefer present Petition seeking any order. *Inter alia*, issues regarding maintainability of the Petition for non-joinder of necessary parties, *res judicata* as well as

appropriate Forum, are sought to be raised. These Respondents have given history of the litigation and various orders passed in respect of the change report nos. 1168/2014 and 311/2019. It is contended that the said reports are accepted and as such, on the basis of said reports, the validity of the members for casting votes is determined.

5. The learned Counsel for the Respondents raised objection about the maintainability of the Petition by submitting that since the election process has already begun, in view of the settled position of law, the same cannot be interfered with. In this regard, he placed reliance on the judgment in case of Shaji K. Joseph v. V. Viswanath and Others, (2016) 4 SCC 429. He also drew attention of this Court to the order passed by the DCC in respect of objection raised by the Petitioners. By referring to the orders in respect of acceptance of change reports, it is submitted that for period 2014 to 2019 and 2019 to 2024, the change reports have been accepted and the conducting of election on the basis of said orders recognition of members is not illegal.

6. The impugned order is passed by the DCC under Section 41(A) of the Act. For ready reference, Section 41(A) of the Act reads thus:

41A. Power of Charity Commissioner to issue directions for proper administration of the trust –

(1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith , to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person if he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of.

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub section (1).

7. The above provision shows that it is an extraordinary power of the Charity Commissioner in order to issue appropriate directions from time to time to any Trustee of the Trust or any person connected therewith to ensure that trust is properly administered. This direction does not mean to exercise of any power under Section 41(A) of the Act and such powers are required to be exercised with

circumspection.

8. It is settled position of law that the order passed under Section 41(A) of the Act is akin to administrative order and as such, amenable to the jurisdiction of this Court. Perusal of the impugned order shows that after taking into consideration the orders passed in respect of change reports of the year 2014 and 2019 and considering the validity of membership of trust, the contention of the Petitioners was negatived. By referring to the provisions of Section 41(A) of the Act, it is observed by DCC that the authority has power to issue direction to any trust or concerned person to ensure that the trust is properly administered, however, application to direct the opponents to provide documents as mentioned in clauses 13 and 17 of the application, is held to be beyond the scope of Section 41(A). Even in respect of exercise of other powers as sought, it is rightly held the same to be beyond purview of said provision.

9. Having regard to the facts and circumstances of the case, we do not find any perversity in the impugned order passed by DCC.

10. As far as the contention of the learned Counsel for the Petitioners about the appointment of any responsible Officer from the office of DCC, Jalgaon for conducting of ensuing election of the trust is concerned, nothing is shown to us from the constitution of trust that election cannot be conducted by an Advocate, as Election Officer. Thus, there cannot be any impediment in conduct of election by Election Officer already appointed. We, therefore, find no reason to consider the request made on behalf of Petitioner.

11. Having regard to these facts, we find no substance in the Petition. Hence, the **Writ Petition stands dismissed.**

(R. M. JOSHI, J)
Malani

(RAVINDRA V. GHUGE, J)