

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2324 OF 2022

Bhaveshwari Shikshan Prasarak Mandal

... Petitioner

Versus

Ananda Maruti Farakate and Ors.

... Respondents

.....

Dr. Uday Warunjikar a/w. Mr. Siddesh Pilankar, Advocate for the Petitioner.

Mr. Surel Shah, Senior Advocate a/w. Mr. Saakshat Relekar i/b. Mr. Rahul Kasbekar, Advocates for Respondent Nos. 1 to 7.

CORAM : R. M. JOSHI, J.

DATED : 6th AUGUST, 2024.

P.C. :

1. At the outset, learned counsel for the petitioner placed on record Additional affidavit filed on behalf of the petitioner wherein it is agreed by the Managing Committee that henceforth the election shall be conducted in accordance with the scheme of the Trust. The Affidavit is taken on record, statement made therein to make effect is accepted.

2. Mr. Dadasaheb Ishwara Madavkar, Trustee of Shri Bhaveshwari Shikshan Prasarak Mandal, Tal : Bhudragad, District : Kolhapur seeks to take exception to the order dated 30.01.2020 passed by the Adhoc District Judge, Kolhapur in Civil Misc. Application No. 271 of 2017 under Section 72 of Maharashtra Public Trust Act, 1950 (for short "**the Act**").

3. It is the case of the petitioner that petitioner is a registered Trust

under the Act and a change took place in respect of the Executive Committee for the tenure of 2008-2011. It is claimed that in the Annual General Meeting dated 17.08.2008 a resolution bearing No. 5 came to be passed and on the basis of which Change Report came to be submitted on 20.10.2008. Objection was raised to the said change report by the respondents and after considering their objections Assistant Charity Commissioner, Kolhapur passed order on 05.02.2016 allowing the Change Report, the change was accepted. Being aggrieved by the said order, an appeal came to be filed under Section 70 of the Act before the Joint Charity Commissioner who allow the appeal and set aside the order accepting the Change Report. Being aggrieved by the said order Civil Misc. Application No. 271 of 2017 came to be filed before the District Court, Kolhapur. Adhoc District Judge rejected the said application by passing impugned order dated 30.01.2020.

4. Learned counsel for the petitioner submits that going to the scheme of the Trust, there cannot be dispute with regard to the fact that the Executive Committee of the Trust is duly elected by the general body. He made submission that even assuming for the sake of arguments that the election of the office bearers i.e. President, Vice President, Secretary and Treasurer is concerned, even if it is accepted that they were not elected by the General Body as contemplated by the scheme, their election to this post

can at the most be challenged and not their election for the post of the Executive Committee which consists of 11 members.

5. This submission is opposed by the learned counsel for the respondent Nos. 1 to 7. It is his contention that having regard to Clause No. 7B of the scheme, the Executive Committee as well as the office bearers are expected to be elected simultaneously by the General Body. He has further submitted that once the election is held not to be in accordance with the scheme, entire election needs to be set aside. He also drew attention of the Court to the findings recorded by the District Court with regard to the non issuance of the notice to the outgoing Trustees while deciding the Change Report No.1367 of 2008.

6. The learned Joint Charity Commissioner has accepted the challenge to the order passed by the Assistant Charity Commissioner accepting the Change Report essentially on the ground that the notice was not issued to the outgoing trustees and that they are denied the opportunity of hearing. If it is so, it was incumbent on the part of the Joint Charity Commissioner to relegate back the said matter for the consideration by the Assistant Charity Commissioner by issuance of notice to these Trustees. As far as the election of the Executive Body is concerned, paragraph No. 9 of the order passed by the learned Joint Charity Commissioner indicates that the election of the Executive body is in accordance with the scheme of the

Trust. However, the fault was found with regard to the election of the office bearers. There is no finding recorded by this authority to hold that since part of the election of the said entire process is faulted with, the entire election needs to be declared as void resulting into non acceptance of the Change Report. In absence of any such findings recorded, this Court finds it difficult to record such findings for the first time in this Writ Petition. Only option left is to relegate back the Change Report for its decision to the Assistant Charity Commissioner, who is expected to decide all the issues taking into consideration the objections raised by the outgoing Trustees as well as the contention of the petitioner herein.

7. As a result of this discussion, order passed by Assistant Charity Commissioner, the District Court as well as Joint Charity Commissioner stand set aside. Change Report No. 1367 of 2008 is relegated back to the Assistant Charity Commissioner for decision afresh.

8. Considering fact that change is of year 2008; Assistant Charity Commissioner is directed to decide the said proceeding within a period of three months from knowledge of this order.

9. Writ petition is disposed of in the above terms.

(R. M. JOSHI, J.)