

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SMITA
RAJNIKANT
JOSHI

WRIT PETITION NO. 8701 OF 2024

Chetan Ramesh Patil

.. Petitioner

Versus

Joint Charity Commissioner
& Others

.. Respondents

Mr. A. V. Anturkar, Sr. Advocate i/b. Mr Yuvraj Narvankar,
Advocate for the Petitioner.

Ms. S.D. Vyas, Addl. G. P. with Ms. S. S. Bhende, AGP for
Respondent Nos. 1 & 2.

Mr. Ajit Tamhane with Mr. Ashish Ghadge, Mr. Rohan Tamhane
and Gunjan Tamhane i/b. Tamhane & Co., for Respondent No.5.

Mr. Suhas Paranjape, Observer-cum-Election Officer appointed by
the Court also present.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JUNE 25, 2024**

P. C.

1. The above Writ Petition is filed seeking a writ of Mandamus to the office of the Charity Commissioner to immediately decide the representations of the Petitioner dated 20th June 2024 and to issue appropriate directions for postponement/ deferment of the selection process of two trustees scheduled on 22nd June, 2024.

2. The impugned representations dated 20th June 2024, in a nutshell, state that the notice for the selection of two trustees of the 5th Respondent Trust is given on 19th June 2024 and the selection process is to be held on 22nd June 2024. This is too short a period for the aspiring candidates. Secondly, these representations state that five candidates [mentioned in the letter dated 20th June 2024 – Exh. ‘H’ to the Petition] ought to be disqualified as they have a political connection, and such candidates are prohibited from participating in the selection process as per the order passed by a Division Bench of this Court on 24th August 2023 in Interim Application No.14605 of 2023 in disposed of Writ Petition No.5243 of 2018.

3. This matter has a slightly chequered history. Originally, Writ Petition No. 5243 of 2018 was filed by one Anant V. Tare and Others. That Writ Petition was disposed of by an order dated 4th September 2018. In the disposed of Writ Petition, the present Petitioner filed Interim Application No.14605 of 2023. The relief sought in this Interim Application was *inter alia* to direct Respondent No.13 [the Observer-cum-Election Officer appointed by this Court] to conduct the selection process of two trustees by way of secret ballot to assess the number of votes to be received by the Board of Trustees by maintaining confidentiality. This Interim Application was disposed of by

this Court vide its order dated 24th August 2023. This Court, passed the following order:-

- “1 ***There shall be allotted by each of the members from the Interview Panel separate marks to each of the candidates including the panel of 7 elected trustees and records of the same shall be maintained by them.***
- 2 ***The average of the marks allotted to each of the members to each of the candidates shall be arrived at and its records shall also be maintained by the Interview Panel.***
- 3 ***The selection shall be made by the Interview Panel in accordance with the marks allotted to each of the candidates, starting from the highest marks allotted to candidates and which shall ensure that there are no criminal cases pending against the candidates proposed to be selected by the Interview Panel and the selected candidates are otherwise true devotees of Devi Ekveera and has no individual political aspirations and ambitions.***
- 4 ***The Minutes of the proceedings shall be recorded by the Interview Panel in the presence of the Observer and the Election Officer, which shall be signed by each of the members of the Interview Panel and shall be countersigned by Observer and Election Officer.***
- 5 ***The copy of Minutes of Proceedings shall be made available in public domain.***
- 6 ***We direct the Superintendent of Police of Pune Gramin to provide adequate police bandobost for the purpose of election of these two trustees on the date and at the time indicated to him in writing by the Observer and Election Officer, i.e. learned Additional Registrar, O.S./Additional Prothonotary and Senior Master of this Court, at the expenses of the State.***
- 7 ***In order to find out the criminal antecedents of the candidates whose interview is going to be conducted by the Interview Panel, their police verification reports***

*shall be called for and on the basis of those reports, it shall be decided by the Interview Panel about the clean or tainted past of the candidates, in terms of the notings made in the police verification report. **Needless to say that any candidate having criminal antecedents shall disqualify himself from the selection process. Similarly, any candidate having any connection with any of the local body as its elected members, may also not be considered as a proper candidate for being selected in the selected process, and this is for the reason that the emphasis here is upon the true devotees of Devi Ekveera and need for keeping affairs of the Trust free from any political interference.***

- 8 *The Police Verification reports shall be called for of the candidates forthwith by the Interview Panel by sending a communication in that regard to Superintendent of Police, Pune (Gramin) and also Commissioner of Police, Pune and these Authorities shall ensure that said verification reports are sent to the Panel of Interviewers within a period of seven days.*
- 9 *Since this process is going to take some time, we direct that now the interviews shall not be held on 29 August 2023 and they are postponed to a date to be fixed by the Panel of the Interviewers. The Panel of the Interviewers shall conduct the interview of the short listed candidates and duly qualified candidates within seven days of receipt of last of individual's police verification report.*
- 10 *The Interim Application is disposed of in above terms."*

(emphasis supplied)

4. As can be seen from this order, it was directed that each member of Interview Panel (namely – the 7 elected trustees) would award separate marks to each candidate and a record of the same would be maintained by them. Thereafter, the selection of candidates would be done by the Interview Panel in accordance with the marks allotted to each of the candidates,

starting from the highest marks allotted. The said order further stipulated that the Interview Panel shall ensure that there are no criminal cases pending against the candidates proposed to be selected by the Interview Panel and the selected candidates are otherwise devotees of Devi Ekveera and have no individual political aspirations and ambitions. To find out if any of the candidates have any criminal antecedents, their police verification report was also to be called for, and on the basis of those reports, it would be decided by the Interview Panel about the clean or tainted past of the candidates. It was clarified that any candidate having criminal antecedents would be disqualified from the selection process. Similarly, any candidate having any connection with any local body as its elected member, may also not be considered as a proper candidate for being selected in the selection process, was the direction given in the said order. This was inter alia for the reason that the affairs of the Trust are to be kept free from political interference. This was, in a nutshell, the directions given by this Court on 24th August 2023.

5. This order of 24th August 2023 [passed by this Court] was subjected to an Appeal by the 5th Respondent Trust herein by filing a SLP before the Hon'ble Supreme Court. This SLP is pending admission. However, the Hon'ble Supreme Court, whilst issuing notice, by its order dated 15th

September 2023, directed that if the date of selection of trustees is scheduled, the selection shall be done by way of a secret ballot. For the sake of convenience, the order passed by the Hon'ble Supreme Court, is reproduced hereunder:-

"Mr. Anand Dilip Landge, learned Advocate on Record accepts notice on behalf of respondent no.16. Hence, issue of formal notice to the said respondent is dispensed.

Issue notice to the remaining respondents.

In the meanwhile, it is made clear if the date for selection of the trustees is scheduled, the same shall be done by way of secret ballot to assess the number of votes to be received by the Board of Trustees."

(emphasis supplied)

6. We must mention for completeness that after the order of the Hon'ble Supreme Court was passed on 15th September 2023, some of the trustees of the 5th Respondent Trust, moved an Interim Application before the Hon'ble Supreme Court, seeking a clarification that the selection of the two trustees [as ordered on 15th September 2023] shall be only by a secret ballot, to be conducted by the already seven elected trustees in consonance with the constitution of the Trust Deed of the temple. This Interim Application was disposed of by the Hon'ble Supreme Court by its order dated

29th April 2024, stating that the prayers made in the application for clarification does not warrant any consideration at this juncture.

7. The real issue before us, and which was canvassed by Mr. Anturkar, was how is the selection process to go forward. In other words, is it to go forward by giving marks to each candidate and thereafter selecting the candidates with the highest marks as stipulated in the order dated 24th August 2023 passed by this Court, or is it by way of a secret ballot as ordered by the Hon'ble Supreme Court. In our view, Mr. Anturkar correctly submitted that two methods of selection cannot stand together/be reconciled for the simple reason that a candidate with the highest marks can still not be selected if the selection is done by a secret ballot.

8. The learned Counsel appearing on behalf of the 5th Respondent Trust, in fact, agreed with Mr. Anturkar on this aspect and also submitted that the two cannot stand together and the selection process now, pursuant to the order passed by the Hon'ble Supreme Court on 15th September, 2023 has to be done by a secret ballot. The learned Counsel appearing for the 5th Respondent Trust, in fact, brought to our attention the Interim Application filed by the Petitioner herein [i.e. Interim Application No. 14605 of 2023], and which was disposed of by order dated 24th August 2023, to contend that

it was the specific case of the Petitioner herein that the selection process of the two trustees must be done by a secret ballot.

9. We have heard the learned Counsel for the parties at some length and we have also perused the papers and proceedings of the above Writ Petition. As mentioned earlier, the real question before us is how the selection process of two trustees has to take place. As noted above, this Court, by its order dated 24th August 2023, had *inter alia* directed that the selection of the two trustees shall be made by the Interview Panel (which are the seven already elected trustees) in accordance with the marks allotted to each candidate starting from the highest marks. The order further contemplated that the candidates proposed to be selected by the Interview Panel, are true devotees of the Trust and have no criminal case pending against them or are in any way connected with any local body as an elected member. This was to ensure that the affairs of the Trust are free from any political interference. When this order was subjected to an Appeal before the Hon'ble Supreme Court, the only thing that the Hon'ble Supreme Court (by way of an interim order dated 15th September 2023) stated was that the selection process shall be done by a secret ballot. When we read these two orders together [i.e. the order passed by this Court and the order passed by the Hon'ble Supreme Court], we are of the considered view that the Hon'ble Supreme Court has, in

fact, done away that the concept of giving marks and selecting the candidates on that basis. We say this because the concept of selecting trustees by awarding marks and also by a secret ballot cannot stand together. This is for the simple reason that even if a candidate gets the highest marks, he may not be selected, if the selection is done by a secret ballot. It is, therefore, at least in our view, clear that the Supreme Court, by its interim order dated 15th September 2023, directed that the selection process of the two trustees must be by way of a secret ballot only.

10. Once this clarification is given by us, we do not see any reason to further postpone the selection process of the two trustees. We must mention that we had directed the 5th Respondent-Trust not to hold the selection process on 22nd June 2024 and had indicated that we shall fix the date on which the selection process can be done.

11. We, accordingly, direct that the selection process of the two trustees shall be held on 6th July 2024 from 10.00 a.m. onwards. At the time when the selection process takes place, Mr. Paranjape, the Observer-cum-Election Officer appointed by this Court, as well as Mr. Suraj H. Parche, Election Officer of the Charity Commissioner, shall observe and supervise the selection process of two trustees and file a report in this Court. The costs to

be paid to Mr. Paranjape, will be fixed subsequently after he submits his report to this Court.

12. It is needless to clarify that before the selection process takes place by a secret ballot, the Interview Panel shall ensure that the other conditions set out in the order dated 24th August 2023 are complied with. In other words, the Interview Panel shall not vote on any candidate that has criminal antecedents or is connected with a local body as an elected member, as more particularly stated in the order dated 24th August 2023.

13. With these directions and observations, we dispose of the Writ Petition. Though we have disposed of the above Writ Petition, in order to enable the Court Observer to file his report in this Court, we place the above Writ Petition on 15th July, 2024.

14. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]