

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4954 OF 2025

Sagar Marsayya Yelle and Anr. ..Petitioners
VS
Akhil Padmashali Samaj Bhiwandi & Ors. ..Respondents

Mr. S. C. Wakankar with Ms. Aishwarya Bapat, for the Petitioners.
Ms. Savita A. Prabhune, AGP for the State.
Mr. Raju Suryawanshi, for Respondent Nos.1 to 4.

**CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

DATE : 17 APRIL 2025

P.C.:

1. Affidavit of Mr. Vyankatesh T. Chitiken is tendered and taken on record.
2. This petition under Article 226 of the Constitution of India is filed
praying for the following reliefs:

A) For a Writ of Certiorari or a Writ in the nature of
Certiorari or for any other appropriate Writ, Direction or Order -

- i. To quash and set aside the Election program published by
the Respondent No.4 on 06/04/2025, the same being bad in law
and against the Constitution of the Respondent No.1 Trust;
- ii. To forthwith restrain the Respondent No.4 from acting
on the basis of the Election program dated 06/04/2025 and to
take any decision relating the elections of the Respondent No.1
Trust;
- iii. To forthwith restrain Respondent No.3 from taking any
decision or giving effect to the decisions taken in contravention
to the scheme of the Respondent No.1 Trust.

B) In the alternative, For a Writ of Certiorari or a Writ in the
nature of Certiorari or for any other appropriate Writ, Direction
or Order -

- i To direct the Respondent No.5 to consider and decide the

application filed by the Petitioners, in a time bound manner, and pass appropriate orders with respect to the Election Program declared by the Respondent No.4.

C) Pending the hearing and final disposal of the present Petition, Respondent No.4 be restrained by an order of Injunction from taking any action in pursuant to the Election program dated 06/04/2025 with respect to the Respondent No.1 Trust;

D) Ad interim relief in terms of prayer clause (c) above may kindly be granted;

E) for such further and other reliefs as the nature and circumstances of the case may require.”

3. On the earlier occasion (i.e. 16 April 2025) after hearing the parties on the present petition, we had passed the following order:-

“1. Let the reply affidavit to the petition be filed.

2. We have perused the impugned notice dated 6 April 2025 notifying the election program which is surprisingly in two phases. In the first phase, elections would be held for the the post of President, Secretary and Treasurer and other posts. In the second phase, there would be general elections to elect the members of the Managing Committee. *Prima facie* this is putting the cart before the horse. According to the petitioner, this is objectionable, as the office bearers are required to be elected only from those who would be elected on the Managing Committee.

3. *Prima facie*, we find substance in the contentions as urged on behalf of the petitioner, as the office bearers like President, Secretary, Treasurer are required to be appointed from amongst the elected members of the governing body. We are not shown any rule or provision under which a pattern as notified in the election program can be held to be acceptable. We are accordingly of the opinion that an appropriate election program needs to be notified so that the elections are held in accordance with law. However, if the respondents intend to contest this position, they shall file an affidavit on or before the returnable date. Let the same be served on the petitioners and the other parties and we shall take up the proceedings for hearing.

4. Accordingly in our *prima facie* view, defective or unlawful elections under such pattern cannot be permitted to be held. In view of this, we are inclined to stay the election. Ordered

accordingly.

5. We, however, clarify that in the event the respondent intends to proceed and hold a proper election and in the manner as the law would mandate, they are free to do so. Accordingly, the program already notified of such elections is permitted to be modified so as to hold the elections of the managing committee of Trustees/governing body and thereafter from the elected members, office bearers can be appointed and in accordance with law. If this is acceptable to the respondents, let appropriate steps in that regard be notified by tomorrow.

6. Stand over to **17 April 2025 at 2.30 p.m.”**

4. In pursuance of the aforesaid order, on behalf of respondent No.4 – Election Committee an affidavit is placed on record *inter alia* stating that a notice is issued in local newspapers dated 17 April 2025 in which a fresh election programme has been published. We have perused the notice declaring the elections and the steps which would be taken in that regard. We find that in the context of the observations as made in the order dated 16 April 2025, and the procedure earlier adopted and as commented in the Court’s order, which was required to be rectified, has not been considered and/or rectified so as to conduct the elections as per the Constitution of Respondent No.1.-Trust, as clearly seen from such notice issued by the Election Officer. We have perused the relevant Rules which form part of the Constitution of Respondent No.1-Trust placed on record at Exhibit A to the petition. In the context of the elections in question, insofar as constitution of an Executive Committee is concerned, the following has been provided:

Official Translation of Marked Portion, written in Marathi

“The Chairman shall have exclusive powers to select other Office Bearers, except the Executive Chairman and Treasurer, from among the members elected on the Managing

Committee and shall announce his selection within 7 (seven) days from assuming his post.”

5. In this view of the matter, we are of the opinion that it was incumbent on the Election Officer to notify the election of the members of the Executive Committee and that the members of the Committee elected on the Executive Committee would be eligible for appointment of the Working Chairman, Treasurer and other Office bearers, it cannot be otherwise.

6. In this view of the matter, we are of the opinion that it is in the larger interest of Respondent No.1 and considering that a free and fair election is held, the Joint Charity Commissioner, Thane Division – respondent No.5, appoints an Election Officer so as to undertake the said elections and in accordance with the Constitution of respondent No.1-Trust. As the elections were already notified and were to take place in the immediate future, it is appropriate that expeditious steps are to be taken to conduct the elections by issuing a fresh election programme. Learned Counsel for the petitioner as also learned Counsel for respondent No.4 are agreeable for such course of action. In this view of the matter, we are inclined to dispose of this petition in terms of the following order:-

ORDER

- i. The election programme as notified on 17 April 2025 be not acted upon.
- ii. The Joint Charity Commissioner is directed to appoint a competent person as an Election Officer on or before 22 April 2025 to conduct the elections of the Managing Committee of respondent No.1-Trust, which shall be

undertaken in accordance with the Constitution and the Rules.

iii. A fresh election programme be notified within two weeks from the date of appointment of the Election Officer, for the election of the members of the Executive Committee. Further, from amongst the elected members of the Executive Committee, the Working Chairman as also the Secretary, Treasurer and other office bearers be appointed.

7. In this view of the matter, the writ petition would not require further adjudication. The petition is disposed of in terms of the aforesaid directions, however, keeping open all contentions of the parties on any issues on the elections or otherwise.

8. Disposed of. No costs.

9. Parties as also the Joint Charity Commissioner to act on the authenticated copy of this order.

10. Learned AGP to forward a copy of this order to the Joint Charity Commissioner, Thane Division.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]