



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.8101/2019

Babanrao Damduji Jawade (dead) and anr. .Vs. Dnyaneshwar Ramaji Bhoyar and Ors.

AND

WRIT PETITION NO.159/2020

Babanrao Damduji Jawade (dead) and anr. .Vs. Dnyaneshwar Ramaji Bhoyar and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V. K. Paliwal, Advocate for petitioners.
Mr. A. Z. Jibhkate, Advocate for respondent No.1.
Mr. O. A. Ghare, Advocate for respondent Nos. 2 to 6.
Ms D. V. Sapkal, A.G.P. for respondent Nos. 11 and 12.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 25, 2025

Learned counsel for the petitioners submits that respondent No.6 has expired. He seeks permission to delete his name.

2. Permission is granted. Name of respondent No.6 be deleted forthwith.

3. Heard learned counsel for the parties.

4. By these two petitions, the petitioners have challenged common judgment and order dated 27.09.2019 passed by District Judge – 1, Bhandara in Misc. Judicial Case Nos. 59/2014 and Misc. Judicial Case No. 70/2014.

5. Having heard both sides and having gone through the record, it appears that the issue revolves around induction of 22 members, who have participated in the meeting dated 15.10.2005 held for election of the executive committee. Petitioner No.2 is elected as Vice President. Along with him, other members of the executive committee were also elected. The change was reported to the Assistant Charity Commissioner in terms of Section 22 of the Maharashtra Public Trusts Act, 1950 (hereinafter referred to as the,

“Act of 1950”), which came to be registered as Inquiry No.935/2005. The Assistant Charity Commissioner, by order dated 14.07.2011, approved the change. The respondents approached the Joint Charity Commissioner, against the said order. Joint Charity Commissioner, vide order dated 18.09.2014, found merit in the appeal and accordingly set aside the order passed by Assistant Charity Commissioner. The petitioner, therefore, approached District Court under Section 72 of the Act of 1950. The learned District Judge, dismissed the applications and confirmed the order of Joint Charity Commissioner.

6. The Joint Charity Commissioner as well as District Judge were of the view that induction of 22 members is not in accordance with the Constitution/bye laws of the Trust.

7. It appears that in the meeting held on 08.08.2004, these 22 members were inducted. The President of the Trust was said to be at Mumbai and, therefore notice of meeting could not be served on him. The meeting was shown to be presided over by respondent No.1 as President of the Trust when, in fact, he was not. Interestingly, the Vice President of the society namely; Bhaurao Dudhkar (petitioner No.2 herein) was shown present in the meeting. Clause 10 (e) of the Constitution of the Trust provides that in absence of President, the Vice President, would act on behalf of the President of the Trust. If that be so, there appears no reason why petitioner No.2 did not preside over the said meeting.

8. The Joint Charity Commissioner noted that notice of this meeting was not served upon the President of the Trust namely, Madhukarrao and thus the 22 members were inducted in his absence. He further noted that the meeting was shown to be presided over by respondent No.1, though petitioner No.2 was present in the meeting. The Joint Charity Commissioner, further noted that respondent No.1

had not signed the proceeding nor were proceeding signed by other two persons namely, Dnyaneshwar and Pushpa who were shown to be present in the meeting. Accordingly, the Joint Charity Commissioner held that presence of these persons was doubtful.

9. In fact, it was the case of respondent No.1 and other two persons that their presence was shown only to create document against them and, in fact, they were not present in the meeting.

10. Considering the above discrepancy, the Joint Charity Commissioner so also District Judge held that the induction of 22 persons as members was not in consonance with the rules of meeting so also provisions of the Constitutions of the Trust.

11. In context with the above, a specific query was made to petitioner's counsel as to how could and what for respondent No.1 is shown to have presided over the meeting, particularly when the petitioner No.2, the Vice President, was present in the meeting. There is no answer coming forth to justify the said act. As regards absence of their signature, counsel for the petitioner submits that though respondent No.1 and other two persons were present in the meeting, they left the meeting without signing the proceeding. In this regard, the Joint Charity Commissioner has referred to evidence of one witness who admitted that the members present in the meeting used to put their signatures in the proceeding book as soon as the meeting has commenced.

12. To my mind, with this evidence, the theory put forth by petitioners that respondent No.1 and other two persons have left the meeting without putting signatures, appears to be an after thought. If the procedure followed was that the members who are present in the meeting would sign the proceeding at the commencement of the meeting, which normally is the procedure to mark presence of the

members, there appears no reason to deviate from the said procedure in the meeting held on 08.08.2004.

13. It is further surprising that the meeting was held in absence of regular President inasmuch as induction of members is not an act of urgent nature that would require urgent attention without waiting for the president to come back from Mumbai. To say it differently, the meeting could have been easily postponed for few days.

14. Considering the above, there are good reasons to believe that the case put forth by respondents is correct viz. that respondent No.1 and other two members were not present in the meeting and the document dated 08.08.2004 showing induction of 22 persons as members of the Trust, is a document which is unreliable. The Joint Charity Commissioner as well as District Judge have rightly held that the induction of these persons as members is illegal. Consequently, their participation in meeting dated 15.08.2005 to elect executive committee would vitiate the entire election.

15. The order passed by the Joint Charity Commissioner and District Judge appears to be in consonance with the material placed before it. No interference, therefore, is called for in the impugned judgment passed by the District Judge. The petitions are accordingly dismissed. No order as to costs.

(Anil L. Pansare, J.)