



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

WRIT PETITION NO. 270 OF 2025

1. Sanjay Ravindra Agrawal
Aged about 60 years, Occu : Business;
Resident at – Flat No.304, Devapran, Plot
No.7, Dhantoli, Opposite Shanti Prabha
Nursing Home, Nagpur – 440 012.
2. Uma Ashokkumar Dhiran (Uma Devi
Dhiran), Aged about 68 Years; Occu :
Housewife, Resident at – 601, Lokmat
Square, Shriram Palace, Near Ajit Khan
Hospital, Mahatma Fule Bazaar, Dhantoli,
Nagpur, Maharashtra – 440 012.

... PETITIONERS

VERSUS

1. Anil Shyamsundar Agrawal
Aged about 59 Years; Occu : Business;
Resident at – Jodhraj Bhawan, Sitabuldi,
Nagpur – 440 012.
2. Rajendra Kamlaprasad Awasthi
Aged about 60 Years; Occu : Business;
Resident at – Awasthi Builders, Bhaji
Mandi, Sitabuldi, Nagpur – 440 012.

... RESPONDENTS

WITH
WRIT PETITION NO. 271 OF 2025

Sanjay Ravindra Agrawal
Aged about 60 years, Occu : Business;
Resident at – Flat No.304, Devapran, Plot
No.7, Dhantoli, Opposite Shanti Prabha
Nursing Home, Nagpur – 440 012.

... PETITIONER

VERSUS

1. Anil Shyamsundar Agrawal
Aged about 59 Years; Occu : Business;
Resident at – Jodhraj Bhawan, Sitabuldi,
Nagpur – 440 012.
2. Rajendra Kamalprasad Awasthi
Aged about 60 Years; Occu : Business;
Resident at – Awasthi Builders, Bhaji
Mandi, Sitabuldi, Nagpur – 440 012.

... RESPONDENTS

Mr. R. R. Deo, Advocate for Petitioners in both the Petitions.
Mr. S. D. Abhyankar, Advocate for Respondent No.1 in both the Petitions.
None for the Respondent No.2 in both the Petitions.

CORAM : ANIL L. PANSARE, J.
DATE : MARCH 17, 2025.

ORAL JUDGMENT

. Heard Mr. R. R. Deo, learned Counsel for the Petitioners and
Mr. S. D. Abhyankar, learned Counsel for the Respondent No.1. None appeared
for the Respondent No.2, though served.

2. The challenge is to the common order dated 18/6/2024 passed
below Exhibit Nos.3 and 4 by the Deputy Charity Commissioner, Nagpur in
Change Report Nos. 2036/2015 and 1742/2018.

3. The issue involved in both the Petitions is identical and both the
Petitions can be disposed of by common Judgment, however, for the sake of
convenience, the facts of Writ Petition No. 271/2025 are considered.

4. What transpired during the course of hearing is that the Petitioner allegedly failed to pay subscription fees for the year 2011 to 2013. In the month of August-2013, the Petitioner tendered Demand Draft of Rs.60/- towards membership fees, which is not accepted by the then President of the Society namely, 'Laxmi Devi Dhiran Kanya Vidyalaya Society', on the count that the Petitioner ceases to be a member of the Society in terms of Section 15 of the Societies Registration Act, 1860 (*hereinafter referred to as 'the Act of 1860'*), which reads thus :

“15. Member defined – Disqualified members – For the purposes of this Act a member of a society shall be a person who, having been admitted therein according to the rules and regulations, thereof, shall have paid a subscription, or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.”

5. The Hon'ble Supreme Court in the case of ***Adv. Babasaheb Wasade and Others V/s Manohar Gangadhar Muddeshwar and Others***¹ had an occasion to deal with the scope of Section 15 of the Act of 1860. The findings rendered in paragraph 24 to 26 are relevant, which read as under :

“24. It is not in dispute that all the Objectors were in arrears of their membership fee for a period of more than three months. This fact is admitted as is recorded by not only the High Court but all the three authorities. In fact, these Objectors had gone to the extent of saying that even if notices were issued to them, they will not receive it. The question is what would be the effect of such non-payment in the light of the proviso contained in Section 15 of

¹ 2024 SCC OnLine SC 63

the Registration Act. The specific language used is that such members in default of membership fee would not be entitled to vote and would not be counted as members of the Society. If they were not entitled to vote and they were not to be counted as members, there would be no illegality or for that matter any prejudice being caused by not issuing any notice as the same would be an exercise in futility.

25. It is a fact that under the bye-laws of the Society, there was no provision that a member defaulting in payment of membership fee and duly covered by the proviso to Section 15 of the Registration Act, would automatically lose his membership or in effect would cease to be a member of the Society. Be that as it may the only limited status left of such members would be that their name would continue to be in the Roll of the Society and at best by clearing of the arrears of the membership fee in addition to any penalty or fine liable to be charged for being reinstated as valid members would survive to them. Such defaulting members could have applied that they are ready and willing to pay their arrears and upon such application and payment being made, the effect of the proviso to Section 15 of the Registration Act could be considered by the appropriate officer/Committee of the Society. Till such time they would continue to remain as suspended members having no right to participate in any meeting.

26. The Executive Body or any other body competent under the bye-laws could take up their matter and give them a show cause notice and opportunity to save their membership by fulfilling their obligations failing which their membership would be terminated. When despite the same, they would not fulfill their obligations their membership would be declared to have been terminated.”

As could be seen, the Supreme Court held that where the member fail to pay the subscription of membership fee and when is in arrears for three

months, his name would continue to be in Roll of the Society and by clearing of the arrears of the membership fee in addition to any penalty or fine liable to be charged for being reinstated as valid member, such defaulting member may apply by showing their willingness to pay the arrears of fee and upon making payment, the effect of the proviso to Section 15 of the Act of 1860 could be considered by the appropriate officer/Committee of the Society. Till such time, the member would continue to remain as suspended member having no right to participate in any meeting.

6. The above observations were made in context with the bye-laws of the Society, where there was no provision that a member defaulting in payment of membership fee and duly covered by the proviso to Section 15 of the Act of 1860, would automatically lose his membership or in effect he would cease to be a member of the Society.

7. Identical are the bye-laws of the Society in the present case, so far as it relates to the aspect of payment of the subscription fee, and therefore, what follows is that if the Petitioner has made an attempt to pay arrears of subscription, there is no reason why should such attempt not succeed. In any case, the then President would not have refused to accept the subscription fee tendered by the Petitioner on the ground that he stood disqualified automatically under Section 15 of the Act of 1860.

8. As noted above, the first attempt was made by the Petitioner in August-2013 when he tendered Demand Draft of Rs.60/- which would cover the subscription fee of Rs.12/- per year for five years from the year 2011 onwards. Thus, it could be said that the Petitioner had made an attempt to pay subscription for the years 2011 to 2015.

9. At this stage, Mr. Deo, the learned Counsel for Petitioner submits that the Petitioner was not in arrears of subscription for the year 2011-2012 and by communication dated 19/8/2013 he had deposited the Demand Drafts of Rs.60/- for the year 2013 onwards. Thus, according to him, the payment of subscription was for the years 2013-2018. Thereafter in July-2019, the Petitioner had deposited Demand Draft of Rs.120/-, which would be for ten years with effect from the year 2019 onwards. The Respondent, therefore, should justify non-acceptance of the subscription fee in the light of what has been held by the Supreme Court in ***Babasaheb's case*** (*supra*) as also Section 15 of the Act of 1860 read with Bye-laws of the Society.

10. As regards the challenge to the impugned order, the Deputy Charity Commissioner held that the Petitioner is not an interested person, because he ceases to be a member of Society, having committed default of payment of annual subscription fees. Surprisingly this finding has been rendered by the Deputy Charity Commissioner by relying upon the Judgment of Hon'ble Supreme Court in ***Babasaheb Wasasde's case*** (*supra*), wherein the Supreme Court has clarified the status of a Member, who for some reason fails to deposit the subscription fees within time. The Supreme Court held that he would continue to be on Roll as Member, may be as suspended member. Thus, the fact remains that the person, who commits default would continue to be a Member, but will not be counted as a Member for the purpose of election or other purposes, as envisaged under the Act of 1860, that by itself would not mean that he would cease to be a Member for all purposes. Thus, for the purpose of Section 73-A of Maharashtra Public Trust Act, 1950, the persons like the Petitioner can be said to be a person having interest and should have been allowed to intervene in the enquiry pending before the Deputy Charity

Commissioner. The order impugned is, therefore, liable to be quashed and set aside. Hence, the following order.

ORDER

1. The Writ Petitions are allowed.
2. The order dated 18/6/2024 passed below Exhibit-3 and 4 by the Deputy Charity Commissioner, Nagpur in Change Report Nos. 2036/2015 and 1742/2018 are hereby quashed and set aside.
3. The Applications (Exhibit Nos.3 and 4) are allowed.

Both the Writ Petitions are disposed of in above terms with no order as to costs.

(ANIL L. PANSARE, J.)

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