



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

WRIT PETITION NO. 725 OF 2025

Vidarbha Youth Welfare Society,
Amravati, PTR No.F-
242/ Amravati, having its
registered address at Chaitanya
Building, 36 Ganediwal Layout,
Camp, Amravati, Through its
Secretary.

....PETITIONER

....VERSUS....

1. Shri Sandip S/o Ram Meghe,
Aged: 67 Year, Occ: Businessman,
R/o. Gulmohar Colony, Camp,
Amravati, Tah. & Dist. Amravati.
2. Shri Shekhar S/o Dinkarrao
Deshmukh, Aged: 67 Year, Occ:
Agriculturist, R/o. Vrindavan
Colony, Sai Nagar, Amravati, Tah.
& Dist. Amravati.
3. Dr. Shirish S/o Santoshrao Gode,
Aged: 70 Year, Occ: Agriculturist,
R/o. Adarsh Colony, RV Road,
Wardha, Tah. & Dist. Wardha.
4. Sau. Archana W/o Shekhar
Deshmukh, Aged: 56 Year, Occ:
Service, R/o. Vrindavan Colony,
Sai Nagar, Amravati, Tah. & Dist.
Amravati.

....**RESPONDENTS**

Shri R.D. Bhuibhar, Advocate Assited with Shri N.J. Patil, Advocate for petitioner
Shri S.G. Jagtap, Advocate for respondents

CORAM : SMT. M.S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 05/04/2025

DATE OF PRONOUNCING THE JUDGMENT: 08/04/2025

JUDGMENT

. Rule. Rule made returnable forthwith.

2. Heard learned Counsel for petitioner, learned Counsel for respondents.

3. The present petition is filed challenging the order passed by learned Deputy Charity Commissioner, Amravati Division, Amravati, dated 23/01/2025 in Enquiry Case No. 305/2024. Whereunder the intervention application filed by the respondents came to be allowed. The petitioner is an Education Society, registered under provisions of Maharashtra Public Trust Act, 1950, as well as Society registered under the provisions of Maharashtra Societies Registration Act, 1860. The Election of the petitioner/Society for the term 2024-2029 was held on 01/04/2024

and pursuant thereto the change report proceedings under Section 22 of the Act of 1950, was filed before the learned Charity Authority on 15/04/2024, for the purposes of reporting the change which has occurred on account of the election of the Society and to take note of the same in record maintained by the Charity Authority under the Act. The respondents herein on 19/08/2024, filed an application under Section 73A of the Act of 1950, before the learned Charity Authority to join the respondents as an objector/non-applicant in the change report proceeding filed by the Society. The respondent sought impleadment as an objector in the aforesaid change report on the ground that they are the life members of the petitioner/Society and therefore entitled to be impleaded as an objector.

4. It is the contention of the learned Counsel for the petitioner that respondents were removed from the life membership of the Society vide resolution dated 17/11/2014 and 03/03/2015. This also averred by the respondents in their intervention application. The said removal was challenged by the respondents in Regular Civil Suit (RCS) No. 178/2015 and learned Civil Court vide its judgment dated 30/01/2020 decreed the suit.

It is the contention of the respondent that therefore, respondent continued to be life members of the petitioner/Society. The appeal carried out by the present petitioner bearing Regular Civil Appeal (RCA) No. 48/2020, also came to be dismissed and order of Trial Court was maintained.

5. It is further contention of the respondent that Second Appeal No. 226/2022, filed by the Society against the judgment of Trial Court and First Appellate Court is pending before this Court, in which on 30/06/2022, the order of status quo was passed and it is contended that the respondents continued to be the life members of the Society and therefore entitled to participate in the election of the petitioner/Society held on 01/04/2024. As they were not permitted to participate in the said election, the entire election process stood vitiated and therefore, they are entitled to object in the capacity of an objector in the change report.

6. As against this, petitioner/Society had strongly denied the status of the respondent as the life member. It is also contended that they are not person having interest in the affairs of the Society as provided under Section 2 (10)(d) of the Act of 1950.

7. The learned Counsel for the petitioner drawn my attention to the various orders passed after judgment and decree in RCS No. 178/2015 and the judgment dated 30/01/2020, passed in RCA No. 48/2020, filed by the petitioner before the learned District Judge - 2, Amravati, and the order passed in Second Appeal No. 226/2022, thereby directing to maintain status quo. Though, RCS No. 178/2015, came to be decreed on 30/01/2020. The 5th Jt. CJSD, Amravati on the application filed by the petitioner to stay the effect, operation and execution of the judgment and decree passed by the said Court to enable the petitioner Society to file an appeal against the judgment and decree stayed its effect, operation and execution. The Court to enable the petitioner/Society to file an appeal against the judgment and decree and to obtain appropriate orders from Appellate Court, was pleased to stay the effect, operation and execution of the judgment and decree dated 30/01/2020, passed by it till 28/02/2020. The applicant/objectors failed to mention these orders in their application. During the period of stay granted by the Trial Court to its own order, the petitioner/Society filed RCA No. 48/2020, before the learned District Judge, Amravati.

8. During the pendency of the said RCA interim stay of the judgment and decree of the Trial Court was in operation. The Trial Court granted stay till 28/02/2020, prior to that the interim order of stay of the judgment of learned Trial Court passed by the learned First Appellate Court. During the pendency of the First Appeal, the respondent could not have claimed the status of life members of the Society. The RCA came to be dismissed on 06/05/2022, on the same day, the Society applied to suspend the effect and operation of the judgment and decree passed on 06/05/2022. The learned Appellate Court vide its order dated 06/05/2022, was pleased to further suspend the effect and operation of the judgment and decree of the learned Trial Court as well as judgment and decree of the First Appellate Court by allowing the application filed by the petitioner/Society for a period of eight weeks from 06/05/2022, so as to enable the petitioner to approach this Court. The petitioner/Society before the expiry of period of eight weeks, preferred the Second Appeal No. 226/2022, before this Court against the judgment passed by the learned Trial Court as well as learned First Appellate Court. The second appeal listed on 30/06/2022 and this Court directed the parties to maintain status quo till 01/07/2022.

9. It is the contention of the petitioner that the said order was continued time to time by extending the status quo. As such, it is submitted that intervention application is not maintainable as respondents are removed from life membership.

10. As against this learned Counsel for the respondent submitted that status quo order cannot be said to be a stay to the order passed by the learned Trial Court or learned Appellate Court. Learned Counsel across the bar placed on record copy of Civil Application No. 192/2024, in Second Appeal No. 226/2022. The said application was filed for seeking permission to hold election of the applicant No.1, Trust, without calling the non applicants for General Body Meeting for holding election. The said application, however, came to be withdrawn. The respondent filed application before the Election Officer, Vidarbha Youth Welfare Society, Amravati, on 01/04/2024, to allow the respondent to participate. The Election Officer, passed order on 01/04/2024, and rejected the application.

11. The learned Counsel for respondent relied on judgment in Writ Petition No. 1905/2017, along with other

connected matters *Mr. Harshal Uddhav Aarvikar Vs. Shri Jagjeetsingh Gurusharan Singh and another*, in Writ Petition No.1905/2017, in support of his contention that proviso of Section 73A of the Maharashtra Public Trust Act is wide enough to include if the persons who were not the members of the Trust. *Mr. Harshal Uddhav Aarvikar (supra)*, wherein this Court held in paragraph No. 5 as under:

"5. It is not in dispute that Change Report No.219 of 2009 was filed on the basis of the change which occurred on 17-2-2009, and the date of 10-2-2009 mentioned in the order impugned, is factually incorrect. The learned counsels appearing for the parties agree that no change occurred on 10-2-2009. The change occurred on 17-2-2009, and in the said meeting, the petitioner-intervenor as well as the respondent No.1, the contesting party, were enrolled as members in the proceedings, a copy of which is annexed on page 73 of this petition. The name of the respondent No.1 appears at serial No.3, whereas the name of the petitioner-intervenor appears at serial No.33. Subsequently, the changes occurred during 2009 to 2012, when the petitioner-intervenor was a member of the Trust. The petitioner was, therefore, a person having interest when these change reports were filed. The petitioner had filed the applications under Section 73A of the said Act for intervention. The petitioner was also co-opted as an Administrator over the Trust by an order dated 19-5-2016 passed by the Joint Charity Commissioner."

. However, the learned Counsel for petitioner also relied on the same judgment and drawn my attention to paragraph No. 7 as under:

"7. The definition of "person having interest", provided under Section 2(10) of the said Act, contemplates that if any person, who has interest in the Trust, then such person is entitled to claim intervention in the proceedings of the Trust. The provision of Section 73A of the Maharashtra Public Trusts Act is wide enough to include even the persons who were not the members of the Trust on the date of filing of the change report, provided they satisfy other criteria available, to be called as the person having interest in the Trust."

12. Learned Counsel for petitioner also placed reliance in the judgment in *Satish Vasant Salpekar and others Vs. Ashwin Ghatate and others, in Writ Petition No. 2324/2017* and other connected matters, wherein, this Court made it clear, about its own judgment in *Harshal's case* in paragraph No. 4 as under :

"4. In the decision of this Court in Harshal's case, cited supra, the petitioners were found to be enrolled as members of the trust on 17.02.2009 and the change report was filed on 20.02.2009. Thus, the undisputed position was that prior to filing of change report, the petitioners were actually enrolled as the members. They were, therefore, held to be the persons having interest in the trust. The observations of this Court that the provision of Section 73A of the said Act is wide enough to include even the persons who were not the members of the trust on the date of filing of the change report is, therefore, surplusage and does not constitute a ratio of the decision. The said decision. does not, therefore, help the petitioners in these petitions."

13. On perusal of the impugned order passed by the Deputy Charity Commissioner, Amravati, the impugned order passed only on the basis of judgment in *Harshal Aarvikar* (supra),

though, Deputy Charity Commissioner taken into account all the orders in paragraph No. 11 and also observed that in view of these orders, at present intervenors are not appearing to be members of the Society and therefore they are also not the person having interest in the Society. However, relying on the *Harshal's* judgment, that even if, the person is not member, the provision of Section 73A of MPT Act, is wide enough to include even the persons who were not the members of the Trust on the date of filing of the change report. However, as referred above this position is clarified by this Court only in *Satish Vasant Salpekar* (supra), held that the observation by this Court that the provisions of Section 73A of the said Act is wide enough to include even the persons who were not the members of the Trust on the date of filing of the change report, is therefore, surplusage and does not constitute a ratio of the decision. The said decision does not therefore help the petitioner in this petition.

14. In the judgment in *Harshal's* case there were peculiar facts, the change report was filed on the basis of change which occurred on 17/02/2009, and the date mentioned in the order i.e. 10/02/2009, was factually incorrect. Parties agreed that no change

occurred on 10/02/2009 and it was occurred on 17/02/2009 and in the said meeting, the petitioner intervenor as well as the respondent No.1 contesting party were enrolled as members in the proceeding. Therefore, petitioner was having interest when change reports were filed which was filed on 20/02/2009. In view of this legal position, the impugned order passed by the learned Deputy Charity Commissioner, allowing the application on the basis of judgment of this Court in *Harshal's* case which was further clarified in *Satish Salpekar* (supra), is unsustainable. As such, impugned order is liable to be quashed and set aside. Accordingly, I proceed to pass the following order :

ORDER

- i) The writ petition is allowed.
- ii) The order dated 23/01/2025, passed by learned Deputy Charity Commissioner, Amravati Division, Amravati below Exh. 6, in Enquiry No. 305/2024, is hereby quashed and set aside.
- iii) The application Exh. 6 in Enquiry No. 305/2024 is rejected.
- iv) The Deputy Charity Commissioner, is hereby directed to proceed with the enquiry.

The Writ Petition stands disposed of in the above terms. No order as to the cost.

(SMT. M.S. JAWALKAR, J.)

Jayashree...