

(2007) 10 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No's. 1295 and 3346 of 2007

Subhash Margamwar and Others

APPELLANT

Vs

Shri Jagdamba Shikshan Prasarak Mandal and Another

RESPONDENT

Date of Decision : 06-10-2007

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 72

Citation : (2008) 2 MhLj 99

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : S.V. Kurundkar, in W.P. No. 1295 of 2007 and V.D. Gunale, in W.P. No. 3346 of 2007, for the Appellant; Vivek Dhage and D.V. Tele, A.G.P. for respondent No. 2 in W.P. No. 1295 of 2007 and D.V. Tele, A.G.P. for respondent No. 1, A.J. Deshpande and Vivek Dhage, for respondent Nos. 2 and 4 in W.P. No. 3346 of 2007, for the Respondent

Judgement

V.R. Kingaonkar, J.—Rule. Rule made returnable forthwith and heard by consent of the parties.

2. Heard Counsel for the parties.

3. The grievance of the petitioners in both these petitions is that they are the life members/patron members of the educational Trust called "Shri Jagdamba Shikshan Prasarak Mandal, Mahur". They contended that they were kept away from the election process though they are the members and eligible to participate in the election of the members of the Managing body. It appears that in earlier Writ Petition (W.P. No. 4994 of 2006), by order dated 17-10-2006, the Assistant Charity Commissioner was directed to decide as to who are the members/Trustees of the said educational Trust. Thereafter, the election programme was to be set out by appointing an Election Officer. The Assistant Charity Commissioner heard concerned parties and decided the issue regarding membership. He came to the conclusion that there are 26 members of the Trust and would be eligible to participate in the election process.

4. It appears that petitioner Nos. 1 to 3 had filed an application dated 15-2-2007 after passing of the impugned order dated 8-2-2007 by the Assistant Charity Commissioner. Their application was disposed of for the reason that the election process had been set in motion. It is the contention of the petitioners that they were patron members in accordance with the resolution rendered in the meeting held on 29-11-1987. They have also produced xerox copy of the resolution dated 5-5-1987 and a copy of the donation register for 1986-87. There is dispute regarding correctness of the record produced by them.

5. So far as the petitioners in writ petition No. 3346 of 2007 are concerned, though petitioner No. 1 - Anandrao was a party in earlier writ petition, yet he did not go before the Assistant Charity Commissioner with record to prove his case regarding the membership. They also claim that they were regular members of the Trust. In addition to the prayers made in the Writ Petition No. 1295 of 2007 as regards declaration of the membership of the petitioners, further prayer is added after the elections are over, challenging the election itself.

There cannot be duality of opinion that unless the claim of the petitioners regarding their life membership or membership as patrons is duly established, they cannot impugn the election, which is already over. The petitioners in Writ Petition No. 1295 of 2007 were allowed to participate in the election as voters but their votes were not counted.

6. Considering the aforementioned difficulty, it is necessary to first ascertain from the original record and on basis of other evidence as to whether these petitioners, of both the above petitions, are in fact, the patron members/life members/Trustees of the education Trust. In the interest of justice, I direct the Assistant Charity Commissioner to allow the petitioners to produce the relevant record and to decide, after hearing the parties, as to whether the petitioners are patron members/life members/Trustees of the educational Trust in question. The Assistant Charity Commissioner shall also consider evidence by calling the record of the Trust, as may be deemed fit and may also enquire regarding due admission of the petitioners as patron members/life members/Trustees by virtue of resolutions that may be relied upon by them. The parties would be at liberty to produce the necessary evidence. The Assistant Charity Commissioner to complete the enquiry within a period of four months. If the matter goes to the Joint Charity Commissioner by way of appeal/revision, then the Joint Charity Commissioner also shall decide the same within a period of further four months. The expeditious hearing of the entire matter is expected to come to an end within period of nine (9) months at the most, including the Courts of appeals and application u/s 72 of the Bombay Public Trusts Act, 1950. The petitioners would be at liberty, if they would succeed in proving their claim as patron members/life members/Trustees to agitate the question of validity of election. The petitions are accordingly disposed of.

Rule is made absolute in above terms. No order as to costs.