

Dattugir Vs. State of Maharashtra and Others

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Court : Mumbai

Decided On : Aug-13-1993

Reported in : AIR1994Bom372; 1994(1)BomCR476

Judge : V.V. Kamat and;A.A. Halbe, JJ.

Acts : [Constitution of India](#) - Article 226; Bombay Public Trust Act, 1950

Appeal No. : Writ Petition No. 1994 of 1993 and Writ Petition No. 2358 of 1993

Appellant : Dattugir

Respondent : State of Maharashtra and Others

Advocate for Def. : S.B. Bhapkar, Adv.;A.B. Naik and;V.D. Gunale and;V.G. Sakolkar, Advs.

Advocate for Pet/Ap. : S.B. Talekar and;V.D. Sapkal, Advs.

Judgement :

ORDER

Kamat, J.

1. Mud slinging, and that also in indecent and non-legal language, frequently resorting to slang has a consequence of forfeiture of the right of the petitioner to the very hearing in Court in a Writ Petition.

2. It is a situation of antiquity, when the Royal Charter was enacted in 1774, that the writ is a prerogative and the Writ Court is a Court of request. This was when for the first time the then Supreme Court came to be established in the charter of High Courts.

3. In a transfer application one of us (Coram: Kamat, J.-- Civil Revision Applications Nos. 1141/92, 1096/92 and 1155/92 --unreported dated November 26, 1992) had an occasion to observe that the personality of an Advocate, both for the dignity of the profession and for better quality of service to the public is built upon certain standards. Analysing the relationship of an Advocate and his client it is observed that it is essentially of a fiduciary character -- a representative and not as a mouthpiece of the client. As a corollary this relationship rules out reckless and wild allegations even if suitable to the success of the litigation. The relationship has to be understood in the process of justice to uphold the dignity and decorum of the institution as well as to prevent its disrepute as a consequence.

4. No doubt if the Writ Court comes across proceedings depicting the above features, the consequence is that both the petitioner as well as his counsel lose their right of hearing. More so when certain aspects are placed in the petition in a language which is not known to the Court of law as a language to be used, the Court is left only with the duty in its larger aspect to control itself and withdraw from the proceedings with regard to its hearing aspect. The Allahabad High Court, : AIR1960 All164 , Harbans Lal Arora v. Divisional Supdt. Central Railway, Jhansi had an occasion to observe that the petitioner gets disentitled to be heard on merits in the event of the petition containing statements rendering the petitioner to the said consequence. It is observed that false accusations or misleading statements come on the record through verification of the petitioner, some of which are sworn to be true to the personal knowledge of the petitioner. In this connection it is observed and we endorse that on occasions it becomes necessary for counsel to discharge his duty to the client and point out to the Court that the action taken against him is vitiated, but in these there is an obligation on the counsel to take every possible care and precaution to ensure that the allegations are true. It becomes the duty of the Court to protect officials against unfair attacks, insinuations tending to be of scandalous character.

5. Much has been said about the responsibility of the counsel. It is in the spirit that there is no other profession in the world which touches human life at so many points and it is because the legal profession guards two precious things in life -- justice and liberty and it is this -- responsibility of guardianship that makes the profession honourable with roots in its long and established traditions.

6. The trust conducts Education Institutions. Education gets concerned with an assemblage of learned men brought together by familiar intercourse for the sake of intellectual peace. It is a place for a pure and clear atmosphere of thought, which the students also breathe. The students profit by an intellectual tradition, which is independent of particular teachers, the tradition that guides him in the choice of subjects, the great outlines of knowledge and the principles on which it rests. There is total prohibition of any kind of intention of quarrelling and there is an occasion for opening the hearts, if not, the intellect, surrounding the whole circle of truth.

7. These are some of the aspects which we will have to consider while dealing with these writ petitions.

8. Indeed the logical conclusion would have been to refuse to hear the petitioner through his counsel and the counsel also. There is other side of the picture which is equally important. Allegations are levelled against respondent No. 2 the Joint Charity Commissioner, Aurangabad (Shri P. N. Karadkar). At the outset we want to note, because this aspect would go a long way in considering the allegations against him. It must be stated that the Joint Charity Commissioner, who is in charge of the Marath-wada region as the superior head came to be appointed in December, 1992. He is a Judicial Officer with a clean and satisfactory record. Only exception is that he worked as Civil Judge (Senior Division) and then Additional District Judge, at Beed for less than a period of 2 years in the first post and for about 9 months in the subsequent promotional post. He has no roots in the region and, therefore, can be stated to be occupying this post of the Joint Charity Commissioner, quite independently and this would also be established from the examination of the proceedings. Unfortunately he has been made a target by the common use and frequent abuse of the position and attitude of responsibility both

of the petitioner as well as his counsel (Shri S. B. Talekar) by the words which are not only derogatory in common parlance but un-disputably should be scrupulously avoided in the language of the petitioner. It is for this reason, because we sincerely feel that it is our duty, we will also proceed to consider the merits to clear the character which is sought to be assassinated in these proceedings.

9. The proceedings relate to the educational institution (respondent No. 3) Kisan Shikshan Prasarak Mandal, Udgir. It is registered Public Trust at Udgir. This Court presided over by one of us (KAMAT, J.) had an occasion to deal with a batch of proceedings, containing writ petitions as well as contempt petitions which were decided on the basis of consent terms filed by the parties by the order dated December 2, 1992 (Exh. A to Writ Petition No. 1994/93). Necessary factual prolegomena which is already available in the said order will have to be referred to for completion of this judgment.

10. The Trust is registered in 1962 as an Educational Institution and runs various Educational Institutions and three Hostels. It has a Constitution to regulate its affairs. The elections are to be held as specified in the said Constitution. The electorate consist of members of the said Trust. The said proceedings related to disputes with regard to the alleged mismanagement and functioning of the then Managing Committee of the said Trust. The main dispute being with regard to the manner of holding elections and compliance with the Constitution of the trust by the Managing Committee. Before the Assistant Charity Commissioner, the Joint Charity Commissioner as well as this Court, there was a spate of Court proceedings. The petitions before this Court related to the right of membership of the trust, raising a contention on the basis of the membership receipts as documents of entitlement to membership. On the basis of terms of consent filed by the parties, the main question was considered to be the proper Constitution of the electorate of the trust. All the parties to the said proceedings agreed upon this basic nut-shell, on the basis of which it was observed that the electorate consisting of lawful and valid members of the trust is a must in the first instance and most of the disputes pending relate to this basic question of ascertaining of electorate of the trust. The parties arrived at a compromise which is reproduced in the said judgment as follows :--

'5. As per the Compromise Purshis it is agreed as follows :

1. Shri P. G. Patil and Shri Kishanrao Deshmukh shall act as representatives of the litigating parties and shall unanimously finalise the list of members of the trust.
2. The finalisation of the list for the said trust shall be done by the above two representatives after giving notice to the petitioners in Writ Petitions Nos. 722, 799, 932 and 1911 of 1992 and by publication of notice in news-papers of wide circulation in Latur and Bidar Districts.
3. During the pendency of the process of finalisation of list, no new members shall be enrolled by any of the parties.
4. After finalisation of list by the two representatives final list shall be published in the aforesaid newspapers.
5. We hereby withdraw all the proceedings pending before this Hon'ble High Court, the Joint Charity Commissioner and the Assistant Charity Commissioner.'

It was specifically ordered that the two gentlemen Shri P. G. Patil and Kishanrao Deshmukh, were to act as representatives of the litigating parties to finalise the list of the members of the trust. Certain requirements were also agreed upon. It was on the basis of these terms of consent, the parties agreed to withdraw all the proceedings pending not only in this Court, but also before the Joint Charity Commissioner and the Assistant Charity Commissioner. By this order the parties agreed to abide by the formation of the electorate by the two gentlemen referred to above which were agreed upon.

11. This was the order of this Court taking the consent terms on record and disposing of the proceedings not only of this Court but also the proceedings pending before the two authorities referred to above under the Bombay Public Trust Act, 1950.

12. Yet, thereafter, it is not possible to know and comprehend the parties approached this Court by Civil Application No. 1233/92. None of the parties to the present proceedings were able to satisfy us in law as to under what provision the

said Civil Application No. 1233/93 came to be filed and also how the orders could be obtained. Proceedings that are disposed of by an order of this Court cannot be reviewed by a Civil Application and that too by presenting the same before the Hon'ble Judge, other than the one who had decided the writ petitions. Be that as it, may, in civil application this Court passed an order dated April 29 1993. In the said order in paragraph (3 -- xi) it is observed as follows:--

'3(xi) -- It is clarified that the dispute to be decided by the Joint Charity Commissioner is in respect of the members who were covered by the decision in Writ Petitions Nos. 722/ 1992, 799/1992 and 1911/1992, and any new members shall not be allowed to be enrolled by any of the parties or by the Joint Charity Commissioner.'

So that a new prohibition is incorporated when the matter was left to the two persons and it is to this effect that any new member shall not be allowed to be enrolled by any of the parties or by the Joint Charity Commissioner.

13. It is in this background that the petitioner (W.P. No. 1994/93) Shri Tondchirkar presented the petition as the member of the said trust. The petitioners (W.P. No. 2358/93 -- Bhagwanrao and Vithalrao Patil) in their capacity as the trustees and founder members respectively of this trust.

14. Both the petitions challenged the declaration of results of the Board of Trustees of the said trust by the Returning Officer --the Joint Charity Commissioner himself, which was on June 22, 1993.

15. As a result of this declaration respondents Nos. 5 to 19 (in W.P. No. 1994/93) were declared elected as the members of the Board of Trustees of the said trust. It is alleged that this was not as per the directions of this Court dated April 29, 1993 in Civil Application No. 1233/93. The ground is that the General Meeting was already postponed by the Returning Officer -- the Joint Charity Commissioner.

16. It is specifically averred in the petition that this was--

'a mockery of democratic process and a classic example of high-handedness of the Returning Officer in holding the election of the Board of Trustees.'

It is further averred--

'that the Returning Officer who was no other than the Joint Charity Commissioner, Aurangabad (respondent No. 2) acted in the most arbitrary manner leaving the process of election to the winds and showing utmost disregard to the directions issued by this Hon'ble Court.'

17. What actually took place as alleged is available from the averments in paragraph 15 of the petition, it would be apt to quote the relevant averments :

'The petitioner submits that he came to know from some of the members of the trust who were present at the place of the meeting that respondent No. 5 with the help of the respondents Nos. 20, 21 and 22 took a march with a strong and violent mob of about 400 to 500 persons who were otherwise available at the beck and call of the respondents Nos. 5, 20, 21 and 22 only late in the evening on 22-6-1993. The petitioner submits that the respondent No. 19 is the President of the Municipal Council, Udgir and is very influential and powerful local leader whereas the respondent No. 21 is M.L.A. of Ahmedpur and Ex-Minister also has a good following in Udgir town. The respondent No. 21 is the brother of M.L.A. of Biloli constituency and Ex-Minister and a close relative of the respondent No. 5. The petitioner submits that the respondents Nos. 5, 20, 21 and 22 used the political influence at their command and mustered the strength of about 400 to 500 strong men. The petitioner submits that the respondent No. 5 accompanied by respondents Nos. 20, 21 and 22 and a mob of 400 to 500 persons took a march to the Office of the respondent No. 3 Trust located at Shivaji College, Udgir at about 11 a.m. The petitioner submits that the learned Jt. Charity Commissioner though had expressed his inability to hold the election stating that it was not possible for him to hold the election after having postponed the same and was rather reluctant to hold the election was pressurised by the mob and which was otherwise violent. The learned Joint Charity Commissioner was threatened to such an extent that ultimately he succumbed to the pressures exerted by the respondents Nos. 5, 20, 21 and 22 and their musclemen. The petitioner submits that the learned Joint Charity Commissioner being a gullible and susceptible to pressures had to reverse his earlier order. The petitioner submits that the learned Joint Charity

Commissioner passed an order at about 2.00 p.m. on 22-6-1993 directing to hold the election as per the scheduled programme. The petitioner submits that actual polling was to be held between 2 and 4 p.m. on 22-6-1993. The petitioner submits that the respondent No. 5 collected about 40 members most of whom were belonging to his group and made show of the meeting being held at about 4 p.m. The petitioner submits that the respondent No. 5 collected the signatures not only of those members who were present at the time of the so called meeting held at 4-30 p.m. but even of those members who had already left the place of the meeting and were not present at the so-called meeting of the General body of the respondent No. 3 -- Trust. The petitioner submits that the respondent No. 5 persuaded several members who were not present at the meeting either by use of pressures, threats, personal rapport to sign the minute book kept for the purpose of recording proceedings of meeting much after the so-called meeting of the general body had over. The petitioner submits that the respondent No. 5 put bogus signatures of about 8 to 10 members so as to show that majority of the members were present, at the meeting of the General Body.'

18. It would appear that the allegation is that the Returning Officer -- the Joint Charity Commissioner was pressurised to the extent that he stated or rather expressed his inability to hold the election after having postponed the same or was rather reluctant to hold the election was pressurised by the mob which was otherwise violent.

19. The averments also show that the Joint Charity Commissioner succumbed to the pressure exerted by respondents Nos. 5, 20, 21 and 22 and their musclemen. It is further averred that the learned Joint Charity Commissioner being gullible and susceptible to pressures had to reverse his earlier order.

20. Thereafter, it is also averred in paragraph 23 of the petition which is as follows:--

'23. The petitioner submits that the learned Joint Charity Commissioner was either acting under the pressures or acting under extraneous considerations in directing to hold election as per the schedules programme much after most of the members had left the place of the meeting thinking that the elections were, in fact,

postponed. The petitioner submits that he has no means to know as to what prompted the learned Jt. Charity Commissioner to hold the election after having postponed the meeting of the General Body. The petitioner submits that the Joint Charity Commissioner became the victim of well planned strategy by the respondent No. 5 and his henchmen. The petitioner submits that die was cast and the conspiracy was hatched by the respondent No. 5 so as to create confusion regarding the meeting of the general body and thereby reduce the strength of his opponents.'

It is clear that it is alleged that the Joint Charity Commissioner was either acting under the pressures or acting under extraneous considerations in directing to hold election as per the Scheduled programme much after most of the members had left the place of the meeting thinking that the elections were in fact, postponed. It is alleged that in this connection something which cannot be ascertained, prompted the Joint Charity Commissioner to hold the election even after postponing the meeting of the General body. The petitioner has averred that the Joint Charity Commissioner became a victim of well planned strategy by respondent No. 5 and his henchmen.

21. Finally in the process of submissions it is averred as follows :

'The petitioner submits that the election of the Board of Trustees was reduced to a sheer mockery by the learned Joint Charity Commissioner, Aurangabad. The Joint Charity Commissioner Aurangabad being at the helm of the affairs, was responsible to hold the election of the Board of Trustees as per the directions given by this Hon'ble Court. The Joint Charity Commissioner not only failed to comply with the directions issued by this Hon'ble Court but acted in the most haphazard manner.'

It is more than clear that what is alleged is that the whole process was reduced to a sheer mockery and was conducted in the most haphazard manner by the Joint Charity Commissioner.

22. The conduct of the Joint Charily Commissioner is also described as a 'cock and bull affairs.'

23. On the basis of these averments the petitioners pray for quashing and setting aside the order dated June 22, 1993 directing to hold election as per the Schedule as well as declaring respondents Nos. 5 to 9 elected as members of the Board of Trustees by issuance of an appropriate writ.

24. During the course of the hearing when we went through the averments it was brought to our notice that the petitioner is himself a legal practitioner as it is so described in the title of the petition. We must make a record that the petition was argued by Shri S. B. Talekar, who is a senior counsel of this Bar having put in substantial experience at the Bar and known to be appearing in numerous matters at this Bench. Reading the petition especially with reference to the use of the words, we must say that we were at pains to appreciate the language of the petitioner, the manner of making allegations which could not be the subject matter of a writ petition under Article 226 of the [Constitution of India](#).

25. Although, we have reproduced the averments above it is necessary to record certain instances of abuse of language. The averment stating that the process of election is left to the winds cannot be said to be a language of a Court of request. Free and frequent use of the words such as henchmen, musclemen and strongmen, only for the purpose of showing the use of pressure is not known to the language of the Court. Not-content with this the Joint Charity Commissioner has been described as 'gullible' person who is susceptible to pressures. His conduct has been described as reducing the allegation to a sheer mockery, acting in haphazard manner reducing it to be a cock and bull affair. We must state that this annoyed us more than once, so much so that during the course of the hearing out of disgust not only of the language but also of the manner in which the learned Counsel tried to defend himself, we left the dias about 25 minutes before the schedule. While rising we hold the learned Counsel and the petitioner because the petitioner is himself an advocate to consider the situation over-night,

26. This was because, during the course of the hearing we asked the learned Counsel as to what he meant by the use of the word 'gullible' with reference to the Joint Charity Commissioner. The learned Counsel replied what that he meant by word 'gullible' being synonymous with the word powerless. We are helpless if this

is what the learned Counsel means by word 'gullible'. At other stage in the context of the use of the words, false, frivolous and 'incorrect'. We also asked the learned Counsel the meaning of the word 'frivolous'. The answer was it means 'false'. It is well settled that what was in the mind of the writer of transaction or the speaker is a situation of total irrelevance. What is really important is what the person who wrote it or the person to whom it is addressed would understand thereby. Surely, reference to Webster's dictionary 'Vol. I', the word frivolous means a gay and light-hearted person lacking in proper seriousness and the word 'gullible' means 'the one who can be easily deceived or cheated'. We have already observed that Shri P. N. Karadkar, the Joint Charity Commissioner by describing him as a person who is gullible, whose method of conducting is frivolous and who becomes pressurised by a mob which includes muscle-men, strongmen and henchmen would result into a black tarnish of his reputation acquired over these years. We have already stated that the Joint Charity Commissioner has acquired promotion and has been appointed to the post of the Joint Charity Commissioner with an unblemished record. The reputation has to be acquired not only by one's own conduct but reputation which is a heritage also continues to be the heritage of a person. There is no other precious thing with the human being than the reputation acquired and available to him. It is not for us to observe that the petitioner as well as his counsel had no business of any kind to tarnish and blacken what the Joint Charity Commissioner had achieved by his dint of merit.

27. We must record our experience that the Joint Charity Commissioner acting as the Returning Officer for the election of a trust is an exceptional situation. Probably and verily the Joint Charity Commissioner decided to be the Returning Officer in this case looking at the two consecutive orders of this Court to be an occasion to be responsibly handled. The allegations that are made on the basis of which these adjectives are addressed to him are not acceptable per se. We must note that it has become a fashion of the litigation to brand Administrative and Executive Officers acting under the influence of a Minister. Such accusations are intended to pass off as mala fides per se whereby, the parties persuade the Court to obtain reliefs. Considering the fact that the present Joint Charity Commissioner had no connection whatsoever and looking to the aspect that he has achieved this post by dint of merits, we feel that it is our duty not to be strangers to the situation and if

necessary, which we feel it to be so, to clear character at least from these proceedings. We have to record that the petitioner as well as his senior counsel are quality of remiss in using these words which are not the words in the language of the writ petition and which are also not the words of describing anyone in levelling the attack in a writ petition. With a sense of responsibility we record that the manner in which the petition is presented containing the language which is not the language of the Court, both the petitioner as well as his counsel have dwelt upon a situation of impropriety. We fully endorse the observations of the Allahabad High Court supra which we ourselves lay down not only in the context of the petition but also with advantage to others concerned that it is the duty of the counsel to be satisfied beyond all reasonable doubt that the charge is true. The very immunity enjoyed by the counsel places upon him a self-imposed standard of care much higher than in normal cases just as a gentleman is supposed to pay off his debts of honour before he satisfies those enforceable in law. The code of chivalry at the bar must be higher, and never lower than that prevailing elsewhere. If the self-imposed discipline fails, it becomes the duty of the Court to protect the officials against unfair attacks and insinuations of this kind, As cases of reckless allegations like the present are not as rare as I would like them to be. It is suggested that the rules of the Court ought to be amended and the Court should insist that in every case where a serious allegation of misconduct against an official or person in authority has been made in a writ petition, learned Counsel moving the petition should certify that he has satisfied himself that the accusation appears to be true. This is particularly necessary in writ petitions which are decided by affidavits and there is scope for mud flinging with impunity and without incurring the risk of cross-examination. It is not a very pleasant experience for a Judge of this Court who has been elevated from the bar to comment upon the conduct, of learned counsel who has always shown him the utmost courtesy and respect in every case and who has advanced effective and unanswerable arguments in this case. The Court cannot be a stranger to its own,code of duty to do justice without fear or favour and protect innocent officials from the consequences of mud-flinging. We make and endorse these observations of the Allahabad High Court with a fervent hope as regards the use of a language of responsibility keeping in mind that the writ Court is a Court of request.

28. It is now necessary to turn to the overnight position on the next day (August 12, 1993). When the matter was taken up both the petitioner as well as his counsel submitted separate applications.

29. The learned Counsel (Shri S. B. Tale-kar) requested to withdraw the words such as 'gullible', 'henchmen', 'musclemen', 'cock and bull' used in the petition. We have carefully seen the application and we regret to note that there is not a semblance of attitude of repentance for using the words with reference to the Joint Charity Commissioner. We are sure, rather more than sure that the Joint Charity Commissioner must have been hurt after reading these adjectives attempted to be pasted on his spot-less career. The learned Counsel has shown no attitude of tears for the occasion which is hurting the Joint Charity Commissioner except by stating that he had no intention to attribute any motive to the Returning Officer.

30. It is already observed by the Supreme Court In Re : S. Mulgaonkar, AIR 1978 SC 727 that although the question whether an attack is malicious or ill intentioned, may be often difficult to determine yet, the language in which it is made, the fairness, the factual accuracy, the logical soundness of it, the care taken in justly and properly analysing the materials before the maker of it are important considerations. The observations in the nature of criticism to establish mala fides, if every step limits by deflating vulgar denunciation that has to be assessed on the basis of the proper meaning. Factually this can be appreciated from yet another aspect. The petitioner through his learned counsel on August 12, 1993 tendered affidavit of rejoinder of respondents Nos. 2 to 4 which was already prepared. It must be noted that the learned counsel sought to tender it on the earlier day. We told him to consider the situation overnight. We also told him that we will consider the question of taking rejoinder on record on the next day after the Court assembles after intervening night. Along with two applications referred to above the learned Counsel tendered the affidavit of rejoinder. The said affidavit of rejoinder not only justifies the stand of allegations but also is supported by 5 affidavits of various persons. It is for this additional reason that we are compelled to observe that there is no attitude of remorse. We have already said that on these factual aspect we prefer the word of the Joint Charity Commissioner who has no semblance of any connection and not even a whisper to state that he could have

been the victim of a well planned conspiracy.

31. The ringing tone of the application is reiterating the same stand as to what the learned Counsel understood to be the meaning of the words above. Similar is the position with regard to the affidavit of the petitioner himself. It shows no regrets for the hard words and language used in the petition re-emphasizing that the statements, averments and factual submissions are as per his instructions which he believes to be true. In this context it is important to make a note that the petitioner styles himself as a legal practitioner in the petition and chooses to call himself agriculturist in the said application. There is yet another aspect. The petition is concerned with reference to paras 1 to 34 on the basis of personal knowledge, whereas the application specifies that the instructions are believed to be true and not from personal knowledge.

32. These observations get strengthened as unjustified when one looks at the affidavit of the Joint Charity Commissioner -- Shri P. N. Karadkar filed in the proceedings on August 6, 1993. Dealing with the affidavit would require a postulate. When these petitions appeared for the first time before this Court, reading the allegations and the strong words used in regard thereto, this Court directed Shri Bhapkar, the learned Assistant Government pleader appearing for the Joint Charity Commissioner, to file an affidavit of return in view of the fact that there are personal allegations of scandalising character against him.

33. It has to be stated that the Court gives weight to the sworn affidavit of the Officer, much less when the Court finds that the Officer is known for his dint of merit and achievement in the cadre. In the affidavit of return reference is necessary to the averments in para 9 (page 94) which are as follows :

'I further say and submit that though election of the respondent No. 3 society was postponed by this respondent at 8-30 a.m. but neither notice nor order to that effect was displayed on the notice board by the respondent No. 3 Trust by this respondent thereupon. It is incorrect to say that because of displaying notice on the notice board of the respondent No. 3 news was spread over in respect of postponement of the election of the respondent No. 3 society. It is incorrect to say that, therefore, petitioner and other got confused. It is incorrect to say that

petitioner met to this respondent to ascertain news in respect of postponement of the election. It is also incorrect to say that the petitioner and other members who wanted to contest election from the Panel of the petitioner left place as there was no point in waiting at the place. I further say and submit that immediately after passing said order and before publication of the notice or order to that effect on the notice board one application has been moved by the respondent No. 5, taking strong objection over postponement of the election, therefore, no notice to that effect has been displayed on the notice board as subsequent application filed by the respondent No. 5 was under consideration before this respondent. Rest of the contentions are denied by this respondent.'

Reference is also necessary to the averments in para 13 which are as follows:--

'I say and submit that it is incorrect to say that time is written in respect of receipt of the application of the postponement of election. I say that time of the order is mentioned and not receipt of the application. Therefore, contentions of the petitioner that time is written on the application submitted by Bhagwanrao and no time is written on the application submitted by P. G. Patil is incorrect and denied by this respondent. It is incorrect to say that the order regarding holding election is passed by this respondent 2-00 p.m. on 22-6-1993 as same is imaginary and incorrect one. I say and submit that order of holding election is before 10.00 a.m. and not after 10.00 a.m. on 22-6-1993. I say and submit that bona fide mistake is committed by this respondent in respect of postponing election is rectified by this respondent immediately for the reason that no reasonable opportunity was given to the respondent No. 5 and the other members in the matter of postponement of election. Therefore, after receipt of the application of the respondent No. 5 applicants in earlier application regarding the postponement were called upon, but they had chosen to remain absent. Therefore, after hearing applicant's objection petition bona fide mistake committed by this respondent was rectified by passing order for holding election on the same day before 10.00 a.m. and therefore, rest of the contentions are denied by this respondent. I further say and submit that the respondent No. 5 brought facts to the notice of this respondent. The mandamus given by the Hon'ble Supreme Court which is reported in AIR 1988 SC 615 under the circumstances I was satisfied that at no circumstances after process is started

no election should be postponed or stopped. I say and submit that decision of the continuation of the proceeding of the election has been taken by this respondent in presence of the petitioner and the members of the respondent No. 3 Society.'

On facts of these proceedings we would prefer to accept the affidavit of return for the above reasons and observe that the Joint Charity Commissioner gets a clear certificate with regard to his conduct in the proceedings in question.

34. The election is already held. The learned Joint Charity Commissioner in the order dated June 22, 1993 has acted on the correct and sound principle that the process of election is to be carried out in the meeting of the general body itself and has ordered the process of election by his order dated June 22, 1993. In regard to this aspect the Joint Chantey Commissioner with reference to the order has averred in paragraph 2 as follows :--

'It is true that General Body meeting of respondent No. 3 was held on 22-6-1993 in which respondents Nos. 5 to 19 are elected as members of the Board of Trustee of the respondent No. 3. I say and submit that it is true that preparation and finalisation of the voters list of 105 members and publication thereof on 29-5-1993 has been done by this respondent. This respondent states that it is pertinent to note that the petitioner and other members like Kishanrao Deshmukh filed compromise petition and thereby corrected finalisation of 105 as valid members of the said election. Said compromise petition has been signed by the persons named above. I say and submit that after hearing parties all concerned parties had left and after perusal of the entire relevant documentary as well as oral evidence placed before this respondent by the. respondent NO. 3 Society and the respective parties this respondent was pleased to accept list of 105 members which is enclosed with the compromise petition and samewas finalised as valid members ot the trust. Copy of the same compromise petition is enclosed herewith and marked as Exh. R-1.'

It is on the basis of this situation it will have to be said that the Joint Charity Commissioner, acted in the most bona fide manner and in the spirit of the situation. For the above reasons although, the petitioners have no right to be heard on merits, it is not possible to exercise our powers of exercising writ

jurisdiction.

35. Before parting with this Judgment it is necessary to consider one more aspect. The petitioners through their counsel have polluted the atmosphere of this Court in these proceedings. Their subsequent conduct is far away from a feeling of remorse as observed above. Unjustifiably they have casted aspersions of disparaging character, so much so that the reputation of the Joint Charity Commissioner is tarnished. All this has to be seen not only with reference to the Joint Charity Commissioner himself but also with an attitude of deterrence. Keeping these aspects before us, we feel that this is a petition wherein the petitioner should be saddled with costs of a deterrent character, so that others situated similarly should take lesson therefrom. The petitioners are liable to pay costs to the Joint Charity Commissioner. We have heard the learned Assistant Government Pleader on the matter of costs. The learned Govt. Pleader suggest that cost of Rs. 5000/- as costs of the Joint Charity Commissioner are necessary on the facts of this case. Shri Talekar, the learned counsel for the petitioner, we failed to understand, has left the question of cost to us without making any submission. In these circumstances, we direct that the petitioner Dattugir Ratnagir Tondchirkar shall personally pay costs of Rs. 5000/- as costs of the Joint Charity Commissioner, Aurangabad. We direct him to deposit the said cost in this Court on or before August 20, 1993. The petition be placed before us to show compliance. Both these petitions stand disposed of as dismissed accordingly.

36. We would like to end the judgment with a pious hope that the parties are concerned with the affairs of a Public Trust established for Educational purposes. We hope that the parties would keep in mind the following observations of this Court Writ Petition No. 2000/92, Bhimrao S/o Ranba Arbad v. State of Maharashtra and others (Coram : V. V. Kamat and S. S. Dani, JJ.) --Decided on September 24, 1992 (Unreported) in the Judgement dated September 24, 1993 in paragraph 35 to the following effect :

37. The aim of education and intellectual capacity, as observed by John Ruskin in his lectures under the caption 'Sesame and Lillies' is acquisition of knowledge and necessary character. The aim of knowledge is in search of truth and life. It is not

for getting into good society or a gratification for the trust for applause. Even according to the Mahatmaji, there are three curses of humanity knowledge unaccompanied by necessary character; science unaccompanied by necessary consideration of humanity; and money unaccompanied by requisite labour. We hope that the affairs of the Trust are not bodily shifted to this Court in the same spirit, but if required, be brought before the Court within the four corners of the law as would be available in the matter.

Petitions dismissed.

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