

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1<sup>st</sup> DAY OF JULY 2003

PRESENT

THE HON'BLE MR JUSTICE P VISHWANATHA SHETTY

AND

THE HON'BLE MR JUSTICE AJIT J GUNJAL

**WRIT APPEAL NO. 698/2000**

**BETWEEN:**

Vijay Parashuram Nandihalli,  
Major, No 1664, Alwan Galli,  
Shahapur, Belgaum

**APPELLANT**

(BY Sri R G Hegde, Adv)

**AND:**

1 Ramabhau  
s/o Kumanna Kutre,  
aged about 52 years,  
Occ:Service, 10A  
Adarshnagar, 4<sup>th</sup> cross,  
Hindwadi,  
Belgaum

2 The Charity Commissioner,  
Court Compound, Belgaum

3 The Assistant Charity  
Commissioner, Belgaum  
Division, Court Compound,  
Belgaum

4 Ramachandra Sahadev  
Wangekar, major,

R/o No 189, Narvekar Galli,  
Shahapur, Belgaum

5 Sri Kolligavar,  
Superintendent,  
Office of the Assistant  
Charity Commissioner,  
Court Compound, Belgaum  
/Returning Officer.

. **RESPONDENTS**

(BY Sri Jayakumar S Patil, Adv for R1,  
Sri G.B.Shastry, Adv for R4,  
Smt Ranta N Shivayogimath, GP  
For R2, 3 and R5)

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This Writ Appeal is filed under Sec 4 of the  
Karnataka High Court Act praying to set aside the  
order passed in W P.No.30721/1998 dated  
24 9 1999

This Writ Appeal coming on for hearing this  
day, P Vishwanatha Shetty J , made the following:

**JUDGMENT**

In this appeal, the appellant has called in  
question the correctness or otherwise of the  
order dated 24 9 1999 passed by the learned  
Single Judge in WP No.30721/1998

2 Few facts which are not in serious  
dispute and which may be relevant for the



disposal of the appeal may be stated as hereunder:

The appellant and the 4<sup>th</sup> respondent were claiming that each one of them was the president of one Vishwabharati Seva Samithi, a trust which was registered under the provisions of the Bombay Public Trust Act 1950 (hereinafter referred to as "the Act" for short). The third respondent - Assistant Charity Commissioner by order dated 28 4 1998, directed the appellant to hold election to the Trust. This was called in question by the fourth respondent in Appeal No 13/1998 before the second respondent - Charity Commissioner, Belgaum. In the said appeal, the second respondent - Charity Commissioner granted an interim order of stay of the order passed by the third respondent - Assistant Charity Commissioner. Aggrieved by the said order, the appellant had filed WP No 21409/1998 before this Court. In the said writ petition, this Court by means of its order dated 4 8 1998, a copy of which is produced as Annexure-F to this writ appeal, directed the third respondent - Assistant Charity Commissioner to appoint a Returning

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Officer to hold elections to the Trust in accordance with law and in accordance with byelaws of the Trust. It is useful to extract the relevant portion of the interim order passed by this Court which reads as hereunder:

"Rule nisi

Interim directions are issued to Assistant Charity Commissioner, Belgaum to appoint a Returning Officer to hold elections to Viswabharathi Seva Samithi, Belgaum - a Public Trust, in accordance with law and in accordance with byelaws of the Trust

The returning officer so appointed by the Assistant Charity Commissioner, Belgaum shall not publish the results of the elections without the leave of the Court

The Assistant Charity Commissioner will take necessary steps in this regard as expeditiously as possible"

In the light of the interim order passed by this Court, the third respondent - Assistant Charity Commissioner appointed the 5<sup>th</sup> respondent who is a Superintendent in the office of the Assistant Charity Commissioner, Belgaum as the returning officer. Further, he has also prepared

a list of voters, eligible to vote in the election for the Managing Committee of the Trust, which is produced as Annexure - G1 to G4 to this writ appeal. The learned Single Judge in the impugned order, quashed the order at Annexure-G and the voters list - Annexures G1 to G4 mainly on two grounds. Firstly on the ground that the third respondent - Assistant Charity Commissioner has exceeded his authority in preparing the list as the direction given by this Court was only to appoint a returning officer, and secondly, on the ground that the list was prepared without giving an opportunity to all the members and the life members of the Trust, including the first respondent. Aggrieved by the said order, as noticed by us earlier, this writ appeal is filed

3 Sri R G Hegde, learned Counsel appearing for the appellant challenging the correctness of the impugned order made two submissions. Firstly, he submitted that since the 4<sup>th</sup> respondent who was claiming that he was the President of the Trust as against the claim made by the appellant, he was heard by the third



respondent - Assistant Charity Commissioner before passing the order at Annexure-G and thereafter, he had prepared the voters list in terms of Annexure-G1 to G4, the 4<sup>th</sup> respondent cannot have any grievance. Secondly, he submitted that the petitioner who was set up by the 4<sup>th</sup> respondent should not be allowed to nullify the election process since the election has already taken place and ballot papers are directed to be kept sealed in safe custody. Thirdly, he submitted that since the dispute between the parties can be legitimately sorted out in an enquiry u/s 22 of the Act, this is not a fit case for this Court to conduct an enquiry with regard to the correctness of the voters list published by the third respondent - Assistant Charity Commissioner. He submits that the third respondent having been satisfied on the basis of the materials available before him as to who are the members of the Trust and who are entitled to be in the voters list, had prepared the voters list and in that background, the learned Single Judge should not have interfered against the



impugned order Annexure-G and nullified the voters list Annexures-G1 to G4

4. However, Sri Jayakumar S Patil, learned Counsel appearing for the first respondent strongly supported the impugned order. It is his submission that since the preliminary voters list was not published and the first respondent and other members of the Trust were not given an opportunity to have their say with regard to the correctness of the list prepared by the third respondent - Assistant Charity Commissioner, the learned Single Judge was fully justified in quashing the voters list. It is his further submission that since the the third respondent - Assistant Charity Commissioner, in terms of the interim order, was only directed to appoint a returning officer, he had no authority in law to prepare the voters list. According to the learned counsel, there is no power conferred on the third respondent - Assistant Charity Commissioner to prepare the voters list under the byelaws of the Trust; and therefore, he could not have proceeded to finalise the voters list unless



there was specific direction given to him by this Court. Therefore, he submitted that the learned Single Judge having considering these questions, had passed the order impugned and there is absolutely no justification to interfere with the said order

5 Having heard the learned Counsel for the parties, we are of the view that there is no merit in this appeal. As rightly pointed out by the learned Counsel appearing for the first respondent, this Court had only directed the third respondent - Assistant Charity Commissioner to appoint a returning officer and there was no specific power reserved to the third respondent - Assistant Charity Commissioner to prepare the voters list. Sri.Hegde, learned Counsel for the appellant is not able to show to us any power conferred on the third respondent to prepare voters list of the Trust in case there is dispute between the members of Managing Committee of the Trust in terms of the Byelaw of the Trust. Under the circumstances, as rightly held by the learned Single Judge, we are of the view that the third





respondent - Assistant Charity Commissioner had no authority in law to prepare the voters list. Further, the learned Single Judge has quashed the order at Annexure-G and voters list at Annexures-G1 to G4 on the ground that there was no public notice issued and the parties likely to be affected were not heard. The first respondent in para-8 of the writ petition had made a specific grievance that the members of the Trust were not heard. It is useful to refer to the said allegation which reads as hereunder:

"That the respondent No 1 even assuming has any authority to decide about the membership/voter list for the purpose of election to be held in pursuance of Annexure-F, could not have passed the order - Annexure-G without notifying all the members of the trust, without hearing or giving an opportunity to the members of the trust to file their objections with regard to the alleged voter list prepared at the instance of respondent No 3. The order



Annexure-G is passed and a list of voters as per Annexures-G1 to G5 has been prepared by respondent No 2 on the list given by respondent No 3 without notifying any of the members. The entire action of respondent No 2 in passing the impugned order is totally illegal and arbitrary"

Though the first respondent made a specific grievance, the same has not been specifically denied in the writ petition. It is also not in serious dispute that no public notice was issued before preparation of voters list and he has finalised the voters list only after obtaining the records from the appellant. At this stage, it is relevant to point out that the order passed by the third respondent permitting the appellant to continue in the office for a period of one year and proceed to hold election was the subject matter of dispute in appeal filed by the 4<sup>th</sup> respondent before the 2<sup>nd</sup> respondent - Charity Commissioner and in the said appeal, the 2<sup>nd</sup> respondent - Charity Commissioner had granted



interim order staying the operation of the order passed by the third respondent - Assistant Charity Commissioner Under these circumstances, if the third respondent - Assistant Charity Commissioner had prepared the voters list on the basis of the information submitted by the appellant, in our view, the grievance made by the appellant that this would seriously prejudice the rights of the first respondent is fully justified. It is needless to point out that the success to the election of the Managing Committee of the Trust would depend upon the voters list and excluding any voter to participate in the election would naturally have direct bearing on the complexion of the members of the Managing Committee which would in turn, have both positive and negative effect on the administration of the Trust. Under these circumstances, since the list was prepared by the third respondent - Assistant Charity Commissioner on the basis of the materials supplied only by the appellant and without hearing the other members of the Trust including the first respondent and as there was no paper publication issued on that behalf, we



are of the view that the learned Single Judge was justified in quashing the order at Annexure-G and voters list at Annexures-G1 to G5. We do not find any justification to interfere with the order passed by the learned Single Judge. It is submitted by Sri Hegde, learned counsel for the appellant that the 5<sup>th</sup> respondent has now been transferred. Therefore, we are of the view that liberty has to be reserved to the third respondent to appoint an officer who is not below the rank of Superintendent in the office of the third respondent - Assistant Charity Commissioner as returning officer and in case, no such officer is available in the office of the third respondent, the third respondent is at liberty to appoint Tahsildar, Belgaum taluk as the returning officer.

6. However, having regard to the long lapse of time and keeping in mind the interest of the Trust, we are of the view that it is necessary to give certain directions to the returning officer so appointed. In the light of the discussion above, we pass the following order:



i) This writ appeal is rejected confirming the order passed by the learned Single Judge;

ii) The third respondent is reserved liberty to appoint an officer who is not below the rank of Superintendent in the office of the third respondent as the returning officer and in case, such an officer is not available, to appoint the Tahsildar, Belgaum taluk as a returning officer. The returning officer shall be appointed by the third respondent - Assistant Charity Commissioner as directed above, within two weeks from the date of receipt of a copy of this order;

iii) The returning officer so appointed shall publish a provisional list of members of the trust who are eligible to vote in the election proposed to be held by him to the Managing Committee

of the Trust, giving 30 days notice to the persons aggrieved to file their objections to the provisional list so published; and thereafter he should publish the final list within 30 days from the date of receipt of objections by him;

iv) The objections called for to the provisional list by the returning officer, shall be published in kannada daily . . . . . newspaper "Samyukta Karnataka" and marathi daily newspaper "Shri Ranzunzar" as agreed by both the counsel for the appellant and the first respondent. He shall also <sup>Publish</sup> ~~publish~~ the <sup>provisional</sup> ~~final~~ list in the office of the Trust and the third respondent - <sup>Assistant</sup> ~~Assistant~~ Charity Commissioner;

v) Within a week from the date of publication of the final list, the returning officer shall issue calender of events for the election to be held



Subject to the directions given above, this writ appeal is disposed off

7 Smt.Ratna Shivayogimath, learned Govt Pleader is permitted to file memo of appearance within four weeks from today

Sd/-  
Judge

sm/-

Sd/-  
Judge