



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13002 OF 2022

Baban Bajirao Khillari And Another
VERSUS
Sarla Pandurang Avchar And Others

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Mr. A. D. Khot, Advocate for the Petitioners
Mr. V. J. Dhage, Advocate for Respondents
Ms. K. R. Jamdhade, AGP for Respondent No. 7

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CORAM : R.M. JOSHI, J
DATE : JULY 16, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.
2. Petitioners take exception to order dated 21.10.2022 passed below Exh. 96 in application no. 68/2019 under Section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 (for short 'the Act').
3. Petitioners are the Applicants who had initiated proceedings against trustees of Vidya Prasarak Mandal. During the pendency of the said proceeding, application Exh.96 came to be moved for framing of additional charges against Respondent Nos. 1 to 3 under Section 41-D(b) & 41-D(c) of the Act. It is

alleged by the Petitioners that these Respondents without obtaining prior permission of Charity Commissioner as contemplated by Section 36A(3-A) of the Act have borrowed money and this act amounts to continuous neglect of duty, malfeasance, misfeasance and breach of trust. This application is rejected by the learned Joint Charity Commissioner with observations that applications are filed under Section 36A(3-A) for ex post fact sanction of the amount mentioned in the audit report. It is also observed that the allegations, which are sought to be leveled, were within the knowledge of the Applicants when the original proceeding was filed and at that time no such objection was raised. On these grounds, application stood rejected.

4. Learned Counsel for Petitioners submit that Section 41(D) of the Act is the only provision under which an action can be taken against erring trustees. It is his submission that act of non obtainment of the previous sanction of the Charity Commissioner before borrowing money amounts to continuous neglect of duty. To support his submissions, he placed reliance on the

judgment of this Court in FA No. 182/2014 in case of Shri Eknath Tukaramji Pise and Anr vs. Shri Rama Kawaduji Bhende and Ors.

5. Learned AGP and Counsel for Respondents supported the impugned order.

6. No doubt Section 41(D) is the only provision in respect of suspension, removal and dismissal of the trustees. The said provision reads thus:

41D. Suspension, removal and dismissal of trustees

(1) The Charity Commissioner may, either on application of a trustee or any person interested in the trust, or on receipt of a report under section 41B or suo motu may suspend, remove or dismiss any trustee of a public trust, if he,

(a) makes persistent default in the submission of accounts report or return;

(b) wilfully disobeys any lawful orders issued by the Charity Commissioner under the provisions of this Act or rules made thereunder by the State Government;

(c) continuously neglects his duty or commits any mal-feasance or misfeasance, or breach of trust in respect of the trust;

(d) misappropriates or deals improperly with the properties of the trust of which he is a trustee; or

(e) accepts any position in relation to the trust which is inconsistent with his position as a trustee;

(f) if convicted of an offence involving moral turpitude.

(2) When the Charity Commissioner proposes to take action under sub-section (1), he shall frame charges against the trustee or the person against whom action is proposed to be taken and give him an opportunity of meeting such charges of testing the evidence adduced against him and of adducing evidence in his favour. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge, with the reasons therefor.

(3) Pending disposal of the charges framed against a trustee the Charity Commissioner may place the trustee under suspension.

(4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee is the sole trustee or where there are more than one trustee and the remaining trustees, according to the instrument of trust cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and

perform the function of the trust, and such person shall hold office only until a trustee is duly appointed according to the provisions of the instrument of trust.

(5) A trustee, aggrieved by an order made under sub-section (1), may, within ninety days from the date of communication of the order of suspension, removal or dismissal, apply to the Court against such order.

(6) An appeal shall lie to the High Court against the decision of the Court under sub-section (5) as if such decision was a decree from which an appeal ordinarily lies.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final.

Undeniably, act now alleged against trustees is not covered by clauses (a), (b), (d) to (f). Owing to allegations made, the Petitioners claim this act to be covered by clause (c) i.e., neglect of duty, malfeasance, misfeasance or breach of trust.

7. It is clear from the allegation against present Respondent Nos. 1 to 3 that it is about non obtainment of previous sanction of Charity Commissioner before borrowing money for and/on behalf of trust. It is not alleged that there is misfeasance, malfeasance

or breach of trust. There is no dispute about the fact that Section 36A(3-A) of the Act permits the trust to seek ex post fact permission and admittedly such application is already filed before competent Authority. In absence of allegation of any misappropriation of funds for the reason that borrowing is done without prior sanction of the Charity Commissioner, question of malfeasance and misfeasance or even breach of trust of Trust does not arise. Judgment in case of Shri. Eknath Pise (supra) this Court has found mere non obtainment of permission under Section 36(a)(b) of the Act in-sufficient to charge trustees unless it has resulted into loss to the trust or unlawful gain to the trusts. In that case, since no findings were recorded by Charity Commissioner impugned order therein was set aside and matter was relegated back to the Charity Commissioner for its decision afresh. In the instant case, there is no allegation of misappropriation of the funds or breach of trust or loss caused to the trust of amount of borrowing without sanction of the Charity Commissioner to attract any charge against trustees under this provision.

8. Apart from this, this Court finds no reason not to accept the finding recorded by the learned Joint Charity Commissioner that allegations sought to be leveled against Respondents were well within the knowledge of Petitioners at the time of presentation of application under Section 41-D of the Act itself. However, the same were not agitated then and are placed in service at belated stage.

9. Having regard to the aforestated facts and more particularly since there is no allegation against Respondent Nos. 1 to 3 of misappropriating any amount on that count or causing loss to the trust, this is not a fit case for causing interference in the impugned order. In the result, Petition stands dismissed.

10. Needless to say that these observations are made only for the purpose of deciding the Petition and the Charity Commissioner shall not get influenced by the same while deciding the application finally on merit.

(R. M. JOSHI, J.)