

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

1. Sahebrao Savalaram Panhalkar
Age-Major, Occ - Agriculture
R/o Vihamandva, Taluka-Paithan,
District – Aurangabad

APPELLANTS

VERSUS

2. Dr. Keshavrao Dattatraya Kulkarni,
Age- Major, Occ - Agriculture
R/o Vihamandva, Taluka – Paithan,
District – Aurangabad

3. Yusuf Badshah Pathan,
Age- 42 years, Occ-
R/o Rangarhatti, Taluka – Paithan,
District – Aurangabad

4. Janardhan Dhondiba Tambe,
Age-Major, Occ- Agriculture
R/o Hiradpuri, Taluka – Paithan,
District – Aurangabad

5. Sampat Jivraj Dugad,
Age – Major, Occ- Business,
R/o Vihamandva, Taluka – Paithan,
District – Aurangabad

6. Amanullakhan Hussainkhan Pathan,
Age – Major, Occ – Agriculture
R/o Vihamandva, Taluka – Paithan,

District – Aurangabad

7. Pandurang Narayan Bodkhe,
Age- Major, Occ- Agriculture
R/o Vihamandva, Taluka – Paithan ,
District – Aurangabad
8. Dadasaheb Veduji Shejul

DISMISSED

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Mr. R. L. Kute h/f Mr. B. G. Deshmukh, Advocate for appellants
Mr. S. V. Natu h/f Mr. S. V. Adwant, Advocate for R-2 to 6
Appeal dismissed against respondent No.8
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WITH
FIRST APPEAL NO.84 OF 1999

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| <ol style="list-style-type: none"> 1. Jagdamba Shikshan Prasarak Mandal
Vihamandva, Taluka-Paithan,
District – Aurangabad 2. Dr. Keshavrao Dattatraya Kulkarni,
R/o Vihamandva, Taluka – Paithan,
District – Aurangabad 3. Yusuf Badshah Pathan,
Age- 48 years, Occ-Head Master
R/o Rangarhatti, Taluka – Paithan,
District – Aurangabad 4. Janardhan Dhondiba Tambe,
Age-Major, Occ- Agriculture
R/o Hiradpuri, Taluka – Paithan,
District – Aurangabad 5. Sampat Jivraj Dugad,
Age – Major, Occ- Business,
R/o Vihamandva, Taluka – Paithan,
District – Aurangabad 6. Amanullakhan Hussainkhan Pathan,
Age – Major, Occ – Agriculture
R/o Vihamandva, Taluka – Paithan, | <p>APPELLANTS</p> |
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District – Aurangabad

VERSUS

- | | |
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| 1. Sahebrao Savlaram Panhalkar
Age-Major, Occ - Agriculture | RESPONDENTS |
| 2. Dattatraya Bapurao Thombre,
Age- Major, Occ- Agriculture | |
| 3. Pandurang Narayan Bodkhe,
Age- Major, Occ- Agriculture | |
| 4. Dadasaheb Veduji Shejul
Age-Major, Occ- Agriculture | |

All R/o Vihamandva, Taluka-Paithan,
District – Aurangabad

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Mr. S. V. Natu h/f Mr. S. V. Adwant, Advocate for appellants
Mr. R. L. Kute h/f Mr. V. R. Dhorde Advocate for R-1 and R-2
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[CORAM : M. T. JOSHI, J.]

DATE : 18th FEBRUARY, 2015

ORAL JUDGMENT :

1. Heard both the sides.
2. Aggrieved by the decision of the learned District Judge in an application under section 72 of the Bombay Public Trusts Act, 1950 directing removal of original petitioners as well as respondents from the trust, by disqualifying them, present

appeals are preferred by the respective parties.

3. During pendency of the present proceedings, one of the original petitioners, namely Sahebrao, died and proceedings have, therefore, abated as against him.

4. Deceased petitioner Sahebrao, along with three others had filed an application under section 41 (d) of the Bombay Public Trusts Act, 1950 for removal of 5 respondents therein, from the trusteeship of original respondent No.1 Jagdamba Shikshan Prasarak Mandal, Vihamandva. Learned Joint Charity Commissioner framed eight charges against original respondents, viz., for contravening provisions of clause "E" of section 41 (d) of the Bombay Public Trusts Act, for committing breach of trust, for misappropriation of funds, for preparation of false audit report, for not accounting for proceeds of charity exhibition of feature film "Gandhi", for continuously neglecting duties, of non payment of rent of the building to petitioner No.1 and respondent No.3 accepting the position in relation to the trust inconsistent with his position and lastly calling non members of the trust to attend meeting of the trust.

5. Evidence was lead by both the sides. The Joint Charity Commissioner, unfortunately, however, did not specify on which

evidence he had relied and only conclusion was given in the judgment and it was found that not only the respondents, but the original petitioners have also indulged into similar misconduct and, therefore, vide judgment dated 2nd December, 1993, learned Joint Charity Commissioner has removed the respondents as well as petitioners from the trusteeship by permanently debarring them and the Deputy Director of Education was appointed as an administrator.

6. In the circumstances, both, the petitioners and the respondents took the matter to the District Judge, as appeal u/s 41 (d) (5) of the Bombay Public Trusts Act. Learned District Judge, concurred with the arguments that the learned Joint Charity Commissioner did not appreciate evidence on record, however according to learned District Judge, the charges are proved and appreciation of evidence was made. This appreciation of evidence, however was qua only two charges i.e. (I) non accounting of proceeds of exhibiting feature film Gandhi and (II) issuing notices to the non members to attend meeting of the trust.

7. Taking into consideration the long history of the case, i.e. original application was filed in the year 1991, appeals were

preferred in the year 1993 and now we are dealing with the matter in the year 2015, I do not think it fit to remand the proceedings either to the Joint Charity Commissioner or to the District Judge, for recording findings, qua each of the charges.

8. Mr. Nattu, learned counsel holding for Mr. Adwant, submits that the findings of the learned District Judge are improper. In fact, the cross examination of the relevant witnesses would show that they had applied for membership of the trust, they had even deposited necessary fees and thereafter notices were issued. As regards non accounting of the proceeds of the feature film, it was submitted that in fact, the deceased petitioner was proprietor of the theater and he was instrumental in arranging the exhibition of the feature film and he himself has not accounted for the same. It was further submitted that for the period 1985 to 1992, no action was initiated by any of the petitioner and only due to the fact that dispute has arisen, belated action is sought.

9. On the other hand, Mr. Kute, learned counsel for original petitioner No.2 Dattatray, submits that while the judgment of the Joint Charity Commissioner is vague, the reasoning of the learned District Judge would show that only deceased petitioner

No.1 Sahebrao had committed misconduct, if any. He further submits that without issuing any notice, without framing any charges, suddenly, during delivery of the judgment, by both the authorities below, it was held that the original petitioners had indulged into similar misconduct and, therefore, they were held liable for removal.

10. On the basis of this material following points arise for my determination.

POINTS

I) Whether the petitioners were liable to be removed from the board of trusteeship?

II) Whether the charges, as framed by the learned Joint Charity Commissioner against the respondents are proved?

11. My finding to point No.1, is in the negative and to point No.2 partly in affirmative. In the circumstances, first appeal No. 185 of 1999 is allowed without any order as to costs, while first appeal No. 84 of 1999 is dismissed without any order as to costs, for the reasons to follow -

REASONS

12. It should be noted that petitioners initiated action against respondents for their removal from trusteeship, as per provisions of section 41 (d) of the Bombay Public Trusts Act. During pendency of the proceedings, the Joint Charity Commissioner never did think it fit to take any *suo motu* action by issuing notice to original petitioners, for their removal and suddenly during delivery of the judgment, action is taken. It has now been established that the charges to be framed under section 41 (d) of the Bombay Public Trusts Act, stand at par with the charges to be framed in any criminal case. Since stigma is attached to the proof of such charges, the charges are even required to be proved by applying test of appreciation of evidence above the preponderance of probability, akin to the proof required in criminal case. In these circumstances, the direction of removal of any of the petitioner either by the Joint Charity Commissioner or by the District Judge cannot be upheld.

13. As regards, the case of removal of the respondents, as discussed earlier, while the learned Charity Commissioner did not discuss or appreciate evidence on record, qua any of the charge, the learned District Judge has partially undertaken the task of

appreciation of evidence, as regards two charges, as detailed above. The evidence on record in this regard would show that the persons to whom notices were issued by the respondents were not accepted as members of the trust. On some point of time, they had merely applied for membership and deposited certain amount, but admittedly no resolution was passed by accepting them as members, still notices were issued to them, which ultimately resulted into filing of a change report in favour of some of the respondents, which eventually was rejected in the revision. It is thus, clearly proved by statement of witness Murlidhar and Rambhau that they had merely applied for membership, still they got notice to remain present in the meeting of the trust.

14. As regards the non accounting of proceeds of exhibition of charity show, cross examination of petitioners' witness No.2 Bhivaji would show that he is father in law of deceased petitioner No.1 Sahebrao, however, further cross examination would show that the show was organized jointly by the petitioners as well as by some of the respondents and there was no accounting of the proceeds of said show. In that view of the matter, these two charges are proved against the respondents.

15. In the result, following order -

- i) First Appeal No. 185 of 1999 is allowed without any order as to costs.
- ii) First Appeal No. 84 of 1999 is hereby dismissed without any order as to costs.
- iii) Civil Application No. 1585 of 1999, therefore, does not survive and is disposed of accordingly.

[M. T. JOSHI, J.]

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