

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1686 OF 2012

Venkatrao s/o Mukundrao Nemanniwar,
Aged: 61 years, Occ: Business,
R/o. Welmapura, Kinwat, Tq. Kinwat,
Dist. Nanded.

...Petitioner

versus

1. The State of Maharashtra,
The Department of Public Trusts,
Govt. of Maharashtra, Mantralaya,
Mumbai-32, Through the
Secretary.
2. The Joint Charity Commissioner,
Aurangabad Division, Aurangabad.
3. Narayan s/o Mukundrao Nemmaniwar,
Aged: 66 years, Occ: Business & Agri.,
R/o. Welmapura, Kinwat, Tq. Kinwat,
Dist. Nanded.
4. Ramlu s/o Shankar Nilawar,
Aged: 71 years, Occ: Business,
R/o. Kinwat, Taluka Kinwat,
District Nanded.
5. Saraswati Shikshan Sanstha, Kinwat,
District Nanded,
Through the Secretary.

...Respondents

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Mr. A.G. Godhamgaonkar, Advocate for petitioner.
Mr. D.R. Korde, A.G.P. for respondent Nos. 1 & 2.
Mr. S.V. Adwant, Advocate for respondent Nos. 3 to 5.

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CORAM : N.W. SAMBRE, J.

DATE : 15TH APRIL, 2015

ORAL ORDER :

The present petition is by non-applicant to Application No.11 of 1995 pending on the file of Joint Charity Commissioner, Aurangabad. The said application is preferred by respondent Nos. 3 and 4 herein, under Section 41-D of the Bombay Public Trusts Act, 1950 (for short, 'the Act') alleging therein violation and sought disqualification of present petitioner.

2. In the said application, the petitioner - non applicant moved an application for dismissal of the said application under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, as according to the petitioner, no cause of action is pleaded. The said application preferred under Order 7 Rule 11 of the Code of Civil Procedure came to be rejected by an order passed by the Joint Charity Commissioner, Aurangabad Region, Aurangabad on 17/12/2011. As such, present writ petition.

3. Mr. Katneshwarkar, learned Counsel for the petitioner-original non applicant would urge that, perusal of the application preferred under section 41-D of the Act bearing Application No. 11 of 1995 does not disclose any specific cause of action. In support of his contention, he has invited my attention to the pleadings made in the said application.

4. In addition to above, he would urge that this Court on two occasions i.e. Writ Petition No.2410 of 1996 and Writ Petition No. 4174 of 1996 has directed the Joint Charity Commissioner to frame the issues afresh, as according to him, the pleadings in the application under Section 41-D of the Act were too vague to frame the specific issue.

5. In addition to above, he has also invited my attention to certain factual matrix, such as status of present petitioner and decision taken by the trust, so as to canvass that the petitioner individually cannot be blamed for the decision (wrong if any) of the trust. He would add that the respondents, who were earlier trustees and Secretary of the trust and custodian of the record have not produced the record and though were in possession of the record, have not come out with specific case. In support of his contention, he has relied upon the pleadings raised by him in the application Exhibit-52 in relation to the respondents herein, according to the petitioner, the respondents have made illegal demands. According to him, as overall reading of Application No. 11 of 1995 since does not disclose any cause of action, the application should have been allowed by the Joint Charity Commissioner in the light of provisions of Order 7 Rule 11(a) of the Code of Civil Procedure.

6. Mr. Adwant, learned Counsel for the respondent-complainant would urge that present petitioner is trying to scuttle the proceedings initiated under Section 41-D of the Act and has sought to place reliance upon the judgment delivered by this Court in above referred two writ petitions. He would further urge that after orders passed in above referred two writ petitions, specific issues are raised, which are not under challenge. He would further submits that present petitioner, being the President of the trust, is custodian of the record and there is regular defaults on the part of present petitioner in not holding the elections and also under the provisions of Section 41-A, C, and D of the Act. In support of his contention, he has invited attention of this Court to the pleadings raised in the application under Section 41-D of the Act.

7. Upon considerations of the contentions raised by the respective parties, this Court is required to first consider the very object and scheme of Section 41-D of the Act. The said section provides for suspension, removal and dismissal of the trustee and provides for complete procedure thereto to be followed. It also speaks of clause/head under which such suspension, removal or dismissal can be ordered. Application No. 11 of 1995 preferred under section 41-D of the Act if perused, the respondents-applicants who

are claiming to be member of respondent No. 6 trust has come out with certain accusations against present petitioner. Perusal of the said application also reflects few of the specific instances which are, in my opinion, sufficient for the Joint Charity Commissioner to frame the charges after orders to that effect were passed by this Court in writ petitions referred supra.

8. Once the Joint Charity Commissioner having noticed that requirement of cause of action as is contemplated while deciding the application under section 41-D of the Act was already established, in my opinion, the Joint Charity Commissioner was right in rejecting the said application.

9. If the order passed by the Joint Charity Commissioner rejecting the application is perused, the Joint Charity Commissioner was confident of the fact about status of present petitioner, pleadings made in the application in support of disqualification sought under Section 41-D of the Act and certain instances of the year 1995 in relation to disbursement of rent, borrowing of loan without any prayer from the competent authority under the Act.

10. Having regard to the reasons narrated by the Joint Charity Commissioner in his order, I am of the view that no illegality

is committed. As such, the writ petition fails, same stands dismissed.

11. It is reported that the application under section 41-D of the Act i.e. Application No. 11 of 1995 is pending since last 20 years. Request is made by Mr. Adwant that hearing of the application be expedited.

12. The above referred request, in my opinion, needs to be considered and granted. The Joint Charity Commissioner, Aurangabad Region, Aurangabad as such, is directed to decide the application under section 41-D of the Act bearing Application No. 11 of 1995 within one year from today.

[N.W. SAMBRE, J.]