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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.148 OF 2009
WITH
PUBLIC INTEREST LITIGATION NO.144 OF 2013

<u>PIL NO.148 OF 2009</u>

Shri. Sharad Patil
Adult, Occupation Business,
R/o. Babu Park, At Bahirewadi,
Post Warna Nagar, Taluka Panhala,
District Kolhapur … Petitioner

Versus

1] The State of Maharashtra.

2] The Collector, District Kolhapur.

3] District Superintendent of Police,
Kolhapur Region, Kolhapur.

4] Shri. Vinay Vilas Kore,
Adult, Occ.- People Representative
A/P – Warna Nagar, Taluka Panhala,
District Kolhapur.

5] Shri. Warana Sahakari Bank Ltd.,
Warananagar, Taluka- Panhala,
Dist.- Kolhapur 416113.

6] Tatyasaheb Kore Warna Co-operative
Sugar Factory Ltd.

7] Shri. Warana Sahakari Dugdh Utpadak
Prakriya Sangh Ltd.

8] Warana Bazar operated by
Shri. Warana Vibhag Sahakari
Grahak Mandal Ltd., Warananagar
Taluka – Panhala, Dist.-Kolhapur 416113

9] Tatyasaheb Kore Institute
of Engineering & Technology Warananagar
operated by Mandal Warananagar
Taluka – Panhala,
Dist.- Kolhapur 416113

10] Warana Vidya Mandir, Warananagar
operated by Shri Warana Vibhag
Shikshan Mandal Warananagar,
Taluka – Panhala,
Dist.- Kolhapur 416113

11] Tatyasaheb Kore Military Academy,
Vinaynagar, At-Nave Pargaon,
Taluka – Hatkangale,
Dist.- Kolhapur 416113

12] Warana Bhartiya Sena Madat Nidhi
At- Warananagar, Taluka – Panhala,
Dist.- Kolhapur 416113.
A Public Trust, registered under
Bombay Public Trust Act

13] Union of India,
(through Ministry of Defence,
Defence Mantralaya, New Delhi) … Respondents

Mr. Ashish Mehta a/w Ms. Trishla Yelve, for Petitioner.
Mr. N.V. Bandiwadekar, Amicus Curiae.
Mr. Nitin P. Deshpande, AGP, for Respondent Nos.1 to 3.
Mr. S.S. Patwardhan, for Respondent No.4.
Mrs. S.V. Bharucha a/w Mr. D.A. Dube, for Respondent No.13.

PIL NO.144 OF 2013

Justice D.G. Deshpande (Retd.) … Petitioner
Versus
The State of Maharashtra … Respondent

Ms. Deepa Chavan, Amicus Curiae.
Mr. Nitin P. Deshpande, AGP, for Respondent.

CORAM : A.S. OKA & A.S. GADKARI, JJ.

JUDGMENT RESERVED ON : 2nd DECEMBER, 2014

JUDGMENT PRONOUNCED ON : 23RD APRIL, 2015

JUDGMENT (PER A.S. OKA, J.):-

. Very important issues have been raised by these two Public Interest Litigations. By these Petitions attention of the Court is invited to various illegalities and irregularities committed while collecting the donations/ funds/articles for the benefit of the persons affected by the natural and other calamities. PIL No.149 of 2009 invites attention of the Court to alleged large scale fraud committed by some of the Co-operative Sugar Societies Factories and other entities while collecting funds for Kargil war heroes and for the families of the deceased soldiers in Kargil war, in the name of "Warna Bharatiya Sena Madat Nidhi".

2. As far PIL No.148 of 2009 is concerned, it will be necessary to make a reference to orders passed by this Court from time to time. Paragraphs 1 of order dated 21st January, 2010

> "1. The petitioner by the present petition has drawn attention of this Court to collection of monies by various co-operative institutions in the District of Kolhapur for the Kargil martyrs. According to the petitioner, the said money, though collected has not been accounted for. In the light of that, the Collector of District Kolhapur and the Joint Registrar, Co-operative Societies, Kolhapur, to file an affidavit explaining

> firstly whether the monies had been collected by (1) Shri Warana Sahakari Bank Ltd., (2) Tatyasaheb Kore Warna Co-operative Sugar Factory Ltd., (3) Shri Warana Sahakari Dugdh Utpadak Prakriya Sangh Ltd., (4) Warana Bazar, (5) Tatyasaheb Kore Institute of Engineering & Technology Warananagar, (6) Warana Vidya Mandir, Warananagar, (7) Tatyasaheb Kore Military Academy, Vinaynagar and (8) Warana Bhartiy Sena Madat Nidhi and secondly, what amounts collected and the amounts disbursed, if any."

Paragraph 2 of order dated 25th March, 2010 reads thus :-

> "2] The case of the petitioner in the present petition is that respondent No.12 has collected substantial amount from respondent Nos.6,7 and 8 for donating the same to Soldiers who suffered during Kargil war and the said amount collected has not been given to the Defence Authority for the said purpose."

The twelfth Respondent in PIL No.148 of 2009 is Warna Bharatiya Sena Madat Nidhi.

3. On the basis of order dated 25th March, 2010, the twelfth Respondent deposited a sum of Rs.91,81,633.94/- with the Registry. In the order dated 16th August, 2013, there is an observation made that the twelfth Respondent has collected monies in the name of the widows of Kargil Martyrs and the money has not been utilized for the purpose for which the same was collected. In fact, the said order takes a note of the stand taken by the twelfth Respondent on oath that the said funds would be utilized for setting up hostels and schools for the children of

soldiers, for establishing base camps for training of NCC cadets and other such purposes. Paragraphs 2 and 4 of the said order dated 16th August, 2013 read thus :-

> "2. **The Petition highlights the dangers of allowing private entities to collect moneys in the name of laudable social objectives without regulation. Those who donate moneys do so in the hope that the donations will be used in furtherance of those objectives. However, in the absence of any regulatory mechanism provided by the State, this prima facie becomes a device for the generation of funds from the public and for their utilization for completely extraneous purposes.** The Fourth Respondent was, in fact, at the material time, a member of the Legislative Assembly and was a Minister in the State Government. The State Government cannot allow such a state of affairs to come to pass by turning a blind eye to the collection of funds, ostensibly, in the name of laudable national purposes such as to rehabilitate the victims of natural calamities or, as in the present case, war widows. As a matter of fact, the moneys are diverted for other purposes.
>
> 4. Since the moneys have now been deposited in Court, we direct that the Registrar (Judicial-I) shall, upon making due enquiries with the Secretary in the Union Ministry of Defence, remit a cheque drawn in favour of the appropriate fund which has been constituted by the Union Government for the benefit and rehabilitation of the Kargil war widows. Since Counsel for the Petitioner has not indicated to the Court the name of the specific fund which has been constituted by the Union Government, we have requested the Registrar (Judicial-I) to ascertain the exact name of the fund from the

> Secretary in the Union Ministry of Defence for expeditious transmission."
>
> (emphasis added)

4. Paragraph 6 of the said order reads thus :-

> "6. As regards the activities of the Twelfth Respondent, we direct the Charity Commissioner to forthwith cause an audit to be carried out of the activities and accounts of the Twelfth Respondent and to file a report by the next date of hearing. The Charity Commissioner shall consider whether any case has been made out for invoking the provisions of Section 41D of the Bombay Public Trusts Act, 1950. This exercise shall be completed by the next date of hearing. We stand over the further hearing to 18 October 2013 on which date the Court shall be apprised of what regulatory mechanism has been put into place by the State Government and what steps the State Government intends to take against the Twelfth Respondent. In the event that the facts indicate a penal violation that should also be indicated to the Court by the next date of hearing."

5. In further part of the said order, this Court directed the Charity Commissioner of the State of Maharashtra to forthwith cause an audit to be carried out of the activities and accounts of the twelfth Respondent Trust and to file a report in this Court. By order dated 11th April, 2014, this Court directed that the aforesaid amount deposited in this Court shall be transferred to "Armed Forces Flag Day Fund" of the Ministry of Defence, Government of India, New Delhi. Ultimately, the said amount has been transferred to "Armed Forces Flat Day Fund" together with interest accrued thereon. The issue which now survives

for consideration in PIL No.148 of 2009 is as regards action to be taken against the wrong doers.

6. As far as Suo Motu PIL 144 of 2013 is concerned, the same was initiated on the basis of a letter dated 28th June, 2013 addressed by Shri Justice D.G. Deshpande, a retired Judge of this Court. On 26th March, 2014, this Court passed an order in Suo Motu PIL No.144 of 2013. Clauses 2 and 3 of the said order read thus:-

> "2. The learned Retired Judge of this Court has pointed that in case of various national calamities many private originations, NGOs, and even news papers collect donations from the members of the public. However, there is no machinery set up to ensure that the amounts collected by them for the benefit of the people affected by national calamities are properly utilized for their benefit. Therefore, a suggestion is made that the State should set up a Disaster Relief Fund Controlling Scheme with a view to ensure that the funds collected even by the private organizations for helping the people affected by national calamities are appropriately channelized for the use and benefit of those who deserve help and assistance.
>
> 3. We direct the State to look into this aspect and take appropriate decision. We direct appropriate officer of the State to file an Affidavit placing on record the decision taken by the State on this aspect. Appropriate decision shall be taken by the State on or before 13 June, 2014. Place the Petition under the caption for "fresh matters" on 18 June 2014. The affidavit shall be filed on or before 16 June, 2014."

7. This Court appointed Ms. Deepa Chavan, learned counsel as amicus curiae to assist the Court in PIL No.144 of 2013. Shri N.V.Bandiwadekar was appointed as amicus curiae to assist the Court in PIL No.148 of 2009.

8. The learned counsel appointed as amicus curiae in both the Petitions, learned Government Pleader and the learned counsel representing the parties to PIL No.148 of 2009 held joint meetings with the learned Charity Commissioner essentially for finalizing the draft of the Rules to be framed for effective implementation of the provisions of Section 41C of the Maharashtra Public Trusts Act, 1950 (for short "the said Act of 1950").

9. Before we deal with the wider issues arising in these two Petitions, it is necessary to make a reference to the controversy in PIL No.148 of 2009. We have already made a reference to earlier orders of this Court under which an amount of Rs.91,85,633.94 with interest accrued thereon has been transferred to "Armed Forces Flag Day Fund".

10. The Respondent No.12 Warna Bhartiya Sena Madat Nidhi has filed affidavit of Shri Babasaheb Balwant Chougule, its Honorary

Secretary. In the said affidavit, the objects of the twelfth Respondent which is a registered Trust under the said Act of 1950 have been set out. He has stated that funds have been provided to the twelfth Respondent by sixth, seventh and eighth Respondents (Tatyasaheb Kore Warna Co-operative Sugar Factory Ltd , Shri. Warana Sahakari Dugdh Utpadak Prakriya Sangh Ltd and Warana Bazar operated by Shri. Warana Vibhag Sahakari Grahak Mandal Ltd. respectively). It is stated that the said Respondents collected voluntary contributions from its employees. Various activities of the twelfth Respondent have been set out. In the said affidavit, the total amount collected is not disclosed but in paragraph 15, it is stated that the funds collected have been deposited with the fifth Respondent – Bank and the said funds will be used for the purpose of setting up a training center for NCC. It is contended that there is no illegality or irregularity committed by the twelfth Respondent.

11. There is an affidavit filed by Dr. Anand Balvantrao Jogdand, Divisional Joint Registrar of Co-operative Societies. It is pointed out that the Fifth Respondent – Bank did not collect any amount for the victims of Kargil war. However, an organization of the employees of the said Bank collected a sum of Rs,48,000/-. It is pointed out that the sixth, seventh and eighth respondents collected the

amounts which have been deposited in the account of Warna Bharatiya Sena Madat Nidhi. Paragraphs 1 to 4 of the said affidavit read thus :-

> "1. I say and submit that, Shri Warna Sahakari Bank Ltd. had not collected any amount for Kargil Nidhi. However, it is seen from the record that Shri Warna Sahakari Bank Karmachari Sarvajanik Mandal had collected Rs.48000/- and this amount is deposited with Warna Bhartiya Sena Madat Nidhi on 29/4/2002.
>
> 2. I say and submit that Tatyasaheb Kore Warna Co-operative Sugar Factory Ltd. had collected Rs.8,58,386/- and this amount is deposited with Warna Bhartiya Sena Madat Nidhi alongwith interest thereon Rs.2,84,165/- on 31/3/2002.
>
> 3. I say and submit that Shri Warna Sahakari Dugdh Utpadak Prakriya Sangh Ltd. had collected Rs.25,99,954/- and this amount is deposited with Warna Bhartiya Sena Madat Nidhi alongwith interest thereon Rs.2,04,865/-.
>
> 4. I say and submit that Shri Warna Bazar had collected Rs.43,747/- and this amount is deposited with Warna Bhartiya Sena Madat Nidhi."

12. Mr. Laximikant Vasantrao Deshmukh, the then Collector of Kolhapur filed an affidavit. In the said affidavit, it is contended that fourth respondent – Shri Vinay Vilas Kore who runs the fifth to twelfth Respondents collected an amount of Rs.35,50,087/- through fifth to twelfth Respondents from local residents, employees and general public. Shri Deshmukh stated that this amount collected in the name of Kargil war fund has not been handed over to the State Government. He

stated that a sum of Rs.6,51,000/- has been disbursed by the fourth Respondent to some persons who suffered losses during the Kargil War. Paragraphs 4 to 6 of the said affidavit reads thus :-

> "4. I say that my office by letter No. Desk-12/3/RR-55/2006 dated 15/03/2006 directed the Respondent No.4 and Chief Trustee Warna Sena Relief Fund, Warananagar, Taluka Panhala that the entire amount collected in the name of Kargil War be deposited in the "Chief Minister Relief Fund" (Kargil) with interest by Demand Draft and produce the receipts. As far as my information goes, the Respondent No.4 has not complied with this direction.
>
> 5. I state that Respondent Nos.4 to 12 has collected fund in the name of Kargil War Fund without permission of Government and the said amount is not handed over to the State Government till today. It is pertinent to note that by letter dated 04/04/2006 written to my office, the Respondent No.4 has informed that the funds so collected is being utilized for Military Training Institute and they are seeking permission from Defence Ministry and Secretary of Law and Judiciary. Hereto annexed and marked as "Exhibit-2" is the copy of the said letter.
>
> 6. I say that all in all the Respondents 4 to 12 have unauthorizedly collected huge amount in the name of Kargil Relief Fund and have refused to account for it in the manner it ought to have been done."

13. As per the directions of this Court issued issued on 16th August, 2013, the learned Joint Charity Commissioner, Kolhapur submitted a report. The report submitted by the Joint Charity Commissioner has been annexed to the affidavit of Shri V.G. Bisht, Legal Advisor-cum-Joint Secretary to Government of Maharashtra. The Joint Charity Commissioner appointed the Superintendent and an Inspector in his office to carry out an audit of the accounts and the activities of the 12th Respondent recorded that no major illegalities or irregularities were found in the accounts of the twelfth Respondent. In the report, it is stated that according to the Trustees, the object of Warna Bhartiya Sena Madat Nidhi duly registered as a Trust under the said Act of 1950 has come to an end on deposit of the sum of Rs.91,85,633.94 in this Court. Therefore, an application has been filed by the said Trust to the Deputy Charity Commissioner at Kolhapur seeking a direction for closure/ dissolution of the Trust. The report of the said two officers was examined by the Deputy Charity Commissioner, Kolhapur. There is a report submitted by the Deputy Charity Commissioner at Kolhapur dated 15th October, 2013 stating that there was an unauthorised collection of funds which was regularised subsequently. He noted that the 12th Respondent has violated the Rules in respect of the selection of committee members and holding of meetings. He has claimed that there is a violation of “Section 41(d)(c)” of the said Act of 1950. However, nothing is stated about any legal action initiated for the breach of provisions of the said Act of 1950. The reference to Section 41(d)(c) appears to be probably to clause (c) of Sub-Section 1 of Section 41D. It is important to note here that the Learned Joint Charity Commissioner at Kolhapur has not applied his mind to the fact finding reports. He has merely forwarded the same to the learned Charity Commissioner. He has not directed any action to be taken as regards the illegalities noticed. We propose to direct the learned Joint Charity Commissioner to examine the Report submitted by his officers and to direct initiation of appropriate action in accordance with law against the Trustees/Office bearers of the 12th Respondent who are responsible for the illegalities.

14. In the affidavit, Shri Bisht pointed out that there is already a direction issued by this Court to the Union of India and the State Government to come together and formulate a policy for regulating the collection of funds by private entities. He has made a reference to order dated 16th August, 2013 passed by this Court. He pointed out that a draft has been prepared for consideration of the State Government for amending the Bombay Public Trust Rules, 1951 (the said Rules of 1951) by incorporating Rule 25AAA dealing with the procedure to be followed for implementing Sub-Section 41C of the said Act of 1950. He invited our attention to 191st report of the Law Commission of India on the regulation of funds collected for calamity

relief. He relied upon circulars issued by the then the Charity Commissioner Shri V.G. Nirgude for dealing with implementation of Section 41C.

15. The learned counsel Ms. Deepa Chavan appointed as Amicus Curiae has made detailed submissions. She pointed out the manner in which the existing Section 41C is working. She pointed out that considering the Section as it stands, there is no requirement of law of obtaining any prior permission under the provisions of the said Act of 1950 for collecting money, subscription, donation or other property for religious or other charitable purposes. She pointed out that Sub-Section (1) may require a person (not being a Public Trust registered under the said Act of 1950) collecting any such money to inform the Charity Commissioner in writing of such collection and the purpose for which collection is being made. It is only on receipt of such information that the Charity Commissioner may permit such collection to be continued subject to conditions as he may deem fit. He may even direct the person to stop making of such collection. She pointed out that in case of collection of funds by persons other then registered Trusts, there is no provision which empowers the Charity Commissioner to take action for ensuring that the funds collected by the person concerned are utilized for the particular charitable object for which the

same are collected. She pointed out that there is no prescribed format of information to be furnished. There is no provision of maintaining a register of such information.

16. She pointed out on the basis of various decisions of the Apex Court, the role which can be played by a Writ Court when there is an absence of proper statutory provisions. She pointed out that there is no power vesting in this Court akin to the power of the Apex Court under Article 142 of the Constitution of India. She, however, pointed out that merely because there is a lack of proper legal framework, this Court may not be completely helpless. She submitted her suggestions in respect of the draft of the proposed Rule 25AAA. The suggestions submitted by the learned counsel are on record along with her written submissions.

17. The learned counsel appearing for the Petitioner in PIL No.148 of 2009 has made extensive submissions on facts as well as on the wider issue involved. He has also made his suggestions on the proposed Rule 25AAA. The learned counsel Shri Bandiwadekar appointed as amicus curiae and Shri Patwardhan have also made their suggestions to the draft Rules and have made submissions on other legal issues. The draft Rules which are on record along with the

suggestions of Ms. Deepa Chavan is a creation of joint efforts of the learned counsel appearing in these two matters with the active participation of the learned Charity Commissioner and the learned GP.

18. As pointed out earlier, the issues arising in both the Petitions are of a great deal of importance. In the cases of natural calamities such as floods, earthquakes, extreme drought conditions, etc., large funds are required for rehabilitation of the affected persons. The machinery of the State always faces cash crunch for the work of rehabilitation. Therefore, citizens are willing to come forward and offer their help for rehabilitation work in the form of money/articles such as clothes, medicines etc. Not only in case of natural calamities, but in the event of wars such as 1965 and 1971 Indo-Pak wars or recent Kargil conflict, citizens are willing to come forward to make their contribution to relief work. There is a Prime Minister's National Relief Fund. There is a Chief Minister's Relief Fund,Maharashtra. Collection of funds is also made by registered public Trusts which are registered under the said Act of 1950, by leading newspapers, media houses, various organisations and individuals. Shri Justice D.G. Deshpande, a retired Judge of this Court invited attention of this Court to the fact that there is no statutory machinery or regulatory mechanism available to regulate large activity of collection of funds and to ensure that every

rupee collected by various agencies is utilized for the purpose for which it is collected. He has pointed out that there are cases where funds collected in the name of national disaster/ calamity have been appropriated for some other purposes. He has pointed out that elaborate machinery needs to be created to make people who collect such funds accountable and to make the funds reach the beneficiaries for whom it is collected. He has proposed a model scheme in the name of "Disaster Relief Fund Controlling Scheme".

19. There is a great deal of substance in what the learned Judge has expressed. As far as misuse of such funds is concerned, the facts of the case in PIL No.148 of 2009 is an apt example. However, under the orders of this Court, substantial funds have been retrieved and the same are placed with an organization of Army which can properly use the same. The issue which survives in the said PIL is of taking legal action against those who are responsible for misappropriation or any illegalities. We must note here that in the report submitted by the Charity Commissioner, it is not found that the funds collected by the 12th Respondent in the said PIL were misappropriated. However, it was brought on record that the funds were not used for the purpose for which the same were collected and were sought to be utilized for some other purposes.

20. The issue which arises has many facets. One contingency is when funds are collected by a Trust duly registered under the said Act of 1950. There are elaborate provisions under the said Act of 1950 which require a registered Public Trust to submit annual budget and to submit its audited accounts. The authorities under the said Act of 1950 have some control over the activities of such registered Trusts. There are various penal provisions which can be invoked in case of malfeasance by the Trusts and any other persons associated with the Trust. However, there may be cases where large funds are collected by such Trusts from the members of the public for helping the victims of natural calamity or disaster which are accounted for but are not utilized for the purpose for which the same are collected. The Trusts may divert the funds to some other use . There is no statutory mechanism to force the Trustees to use the funds for the purposes for which the same were collected.

21. The second contingency will be in a case where persons or organisations which are not registered as a Public Trust under the said Act of 1950 make collection of funds for the benefit of the victims national disasters or calamities. In such cases, there is a complete absence of effective statutory mechanism except what is provided in Section 41C of the said Act which reads thus:

> "**41C. Persons (other than public Trusts) collecting moneys etc. for religious or charitable purpose to inform Charity Commissioner of such collections forthwith etc.** – (1) Any person (not being a public trust registered under this Act) collecting any money, subscription, donation or other property for religious or charitable purpose shall forthwith inform the Charity Commissioner in writing of such collection and the purpose for which such collection is made.
>
> (2) On receipt of such information, the Charity Commissioner may, on making such inquiry as he deems fit, permit such collection to be continued subject to such conditions as he deems fit, or may, after recording his reasons in writing in that behalf, direct such person to stop making such collection forthwith, and require such person to render an account of the collections made by him.
>
> (3) It shall be the duty of every such person to comply with the directions or any order made by the Charity Commissioner under subsection (2)."

22. Section 41C applies to persons other than registered Public Trusts. On plain reading of Sub-Section (1), the same does not put any embargo on any person commencing the collection any money, subscription, donation or other property for religious or charitable purposes. It enjoins such a person who commences collection to forthwith inform the Charity Commissioner in writing of such collection and the purpose for which such collection is being made. Only after receiving the information, the Charity Commissioner is under an obligation to make an inquiry. He can either permit the collection subject to suitable terms and conditions or direct such person to stop

making such collection forthwith. Thus, in a case where the Charity Commissioner is required to direct the person to stop collection, till the inquiry is concluded, the person will merrily continue to collect the amounts. There is no time limit on the conclusion of inquiry. If the inquiry is delayed, the person concerned may freely continue to make collection for a long time. In a case where a direction is issued to stop collection of the amount, the statute does not confer any power in the Charity Commissioner to issue a direction for ensuring that the amount collected is used for the purpose for which it was collected. While permitting collection to be continued, the Charity Commissioner can impose suitable conditions. Normally, such suitable conditions will be :

A] of maintaining accounts;

B] of filing accounts in the office of the Charity Commissioner after periodical intervals along with the details of the utilization of the amounts or property collected for which the permission is being granted;

C] of issuing receipts to the donors in a particular form and of keeping them informed about the utilisation of the amounts or property collected;

D] of providing an outer limit in terms of time for making collection;

E] of giving inspection of accounts and records to the officers nominated by the Charity Commissioner;

F] of submitting a certificate of utilization of the funds collected.

The above list is not exhaustive. It is only by way of illustration. The Charity Commissioner while permitting collection can impose various conditions depending upon the facts of each case keeping in mind the object of the statutory provision.

23. Another issue is what are the legal consequences if any person commits breach of the Section 41C or of the order of the Charity Commissioner under Sub-Section (2) thereof. It will be necessary to consider the penal provisions under the said Act of 1950. The only penal provision which is applicable is Section 67 which reads thus:

> "**67. Other offences**: Whoever contravenes any of the provisions of this Act or the rules for which no specific penalty has been provided by this Act or fails without reasonable cause to comply with any order passed or direction issued under any of the provisions of this Act

> by the Charity Commissioner, Joint Charity Commissioner or Deputy or Assistant Charity Commissioner shall on conviction, be punished with fine which may extend to Rs.10,000/."

Therefore, in the event any breach is committed of the conditions imposed by the Charity Commissioner while permitting collection by passing an order under Sub-Section (2) of Section 41-C or if someone continues the collection notwithstanding an order under Sub-Section (2) of stopping the collection, he can get away with only the fine of Rs.10,000/-. The object of Section 41C is to regulate and control the activities of any person other than a registered Public Trust of collecting money, subscription or property for religious or charitable purposes. In our view, the object sought to be achieved is not really fulfilled by the existing statutory provisions and therefore, the legislature will have to immediately step in.

24. Perhaps, it is for this reason that a Division Bench of this Court on 16th August, 2013 issued directions in terms of paragraphs 5 and 6. Only a limited compliance has been made with the said directions by the State Government as indicated by the affidavit of Shri V.G. Bisht.

25. The other direction was to frame the Rules. Accordingly, to the affidavit of Shri V.G. Bisht, Draft Rules called as Bombay Public Trust (Amendment) Rules, 2014 have been annexed. By the said amendment Rules, proposal is to incorporate Rule 25AAA. There have been deliberations before this Court on various suggestions made by the learned counsel representing the parties on the said Rule. While framing the Rules, same will have to be consistent with Section 41C. In our view, the Rules must cover some vital aspects. A proper prescribed form for furnishing information as contemplated by Sub-Section (1) of Section 41C should be provided. The form should contain all the particulars of the person collecting the amounts including his address, telephone number, e-mail address, pan card number, Aadhar Card number, etc. If more than one person is collecting the amounts or property, the form must provide for giving information of all the persons concerned. The information will include the purpose or object of collection, mode and manner of collection including the location and area where the collection has been commenced and will be continued. There should be a requirement of producing self attested copies of the relevant documents. The form of information must require the informant to disclose whether in the past any such information has been furnished by him for collection of funds and the details of the orders passed on the basis of such information. The information must

contain the details or the extent to which the collection is to be made. All particulars of the collection already made till the filing of the information in prescribed form shall be also furnished including the details of the donors who have already made contributions and copies of the receipts issued to such donors. It is necessary that a register must be maintained of such information received and orders passed thereon. While prescribing the form of receipts to be issued, a provision can be made of incorporating the particulars of the permission granted under Sub-section (2) of Section 41C. Ideally, a provision should be made for placing the details incorporated in the register and the orders passed under Sub-Section (2) of Section 41C on the website of the office of the Charity Commissioner.

26. Rule making authority will have to also consider whether by exercise of power of framing Rules, any specific time limit can be imposed for furnishing such information from the date on which actual collection is commenced.

27. Rule making authority will have to examine whether Rules can incorporate a provision regarding the conditions which shall be normally imposed by the Charity Commissioner while granting permission under Sub-Section (2) of Section 41C. Clause 4 of the Draft

Rules at Annexure -"A" to the additional written submissions of the learned Amicus Curiae Ms. Deepa Chavan incorporates suggestions on this aspect. Rules may also provide for the manner for holding an inquiry under Sub-Section (2) of Section 41C. The suggestions made by the learned Counsel for the parties which are on record are worth considering.

28. There is another aspect of the matter. On various festive occasions or on the occasion of religious festivals, it is a matter of common knowledge that persons start collection of money and property. The citizens will have to be made aware of the provisions of Section 41C. Citizens will have to be made aware of the control retained by the Charity organisation on such collections by virtue of Section 41C. The Citizens should be also made aware of the penal consequences. Therefore, the Charity Commissioner shall issue a circular informing the public at large about the provisions of Section 41C and the implications thereof. The circular will contain an appeal to the members of the public to inform the local Charity offices in the event any collection is being made in contravention of Section 41C. The circular so issued shall be given a wide publicity on the website of the charity organisation, the websites of the District Collectors as well as in print and electronic media all over the State. The State

Government shall issue directions to its publicity department to circulate the said circular to the print and electronic media with a request to them to give adequate publicity to the circular. Adequate publicity should be given after periodical intervals.

29. The State Government will have to consider the issue of making adequate statutory provisions for regulating and controlling collection of such funds by persons other than the Public Trusts. The State will have to also consider of amending Section 41C and also of exercising the Rule making power for making the existing Section 41C more effective. Moreover, amendment is needed for incorporating stringent penalty in the event of violation of the statutory provisions or the breach of the orders of the Charity Commissioner.

30. As far PIL No.148 of 2009 is concerned, the State Government will have to examine whether criminal law deserves to be set in motion against the wrong doers.

31. We must express our appreciation for the contribution made by the learned Counsel appearing in the matters and especially the learned Counsel appointed as amicus curiae.

32. Accordingly, we dispose of the Petitions by issuing following directions:

(i) We direct the learned Joint Charity Commissioner, Kolhapur to examine the Report submitted by his office to the Charity Commissioner along with letter dated 17th October 2013 and to direct initiation of appropriate action in accordance with law against the Trustees/Office bearers of the 12th Respondent in PIL No. 148 of 2009 who are responsible for the illegalities. A report of compliance shall be submitted to this Court within three months from today.

(ii) The citizens shall be made aware of the provisions of Section 41C. Citizens shall be made aware of the control retained by the Charity organization on such collections by virtue of Section 41C. The Citizens shall be made aware of the penal consequences. Therefore, the Charity Commissioner shall issue a circular informing the public at large about the provisions of Section 41C of the said Act of 1950 and the legal implications thereof. The circular will contain an appeal to the members of the public to inform the local Charity offices in the event any collection is being made by any person in contravention of Section 41C. The circular so issued shall be given wide publicity on the website of the Charity Commissioner, the websites of the District Collectors as well as in print and electronic media all over the State. The State Government shall issue directions to its publicity department to circulate the said circular to the print and electronic media with a request to them to give adequate publicity to the circular. Adequate publicity shall be given after periodical intervals every year especially before commencement of festive season. Appropriate posters shall be got printed by the State Government which shall be displayed prominently in the offices of the Revenue Department such as the offices of the Collectors, Additional Collectors, Sub-divisional Officers, Tahasildars, Circle Officers etc and in the offices of the Charity Commissioner, Joint Charity Commissioners, Deputy Charity Commissioners, Assistant Charity Commissioners in the State.

(iii) The State Government shall consider the issue of making adequate statutory provisions for regulating and controlling the collection of such funds by persons other than the Public Trusts and as well as the Public Trusts. The State will have to also consider of amending Section 41C and also of exercising the Rule making power for making the existing Section 41C more effective. Moreover, amendment to the said Act of 1950 is needed for incorporating stringent penalty in the event of violation of the statutory provisions or the breach of the orders of the Charity Commissioner. The State Government shall constitute a committee of experts to suggest the amendments to the said Act of 1950 and the Rules framed thereunder as well as for suggesting other legal measures for dealing with the issue . We may suggest that The learned Charity Commissioner, the Principal Secretary of the Law and Judiciary Department and both the learned Counsel appointed as the amicus curiae may be made members of the said Committee. The Committee shall be constituted within a period of one month from today which shall submit a report within a period of four months from the date of its Constitution. The State Government shall take appropriate action on the basis of the report of the Committee.

(iv) As far PIL No.148 of 2009 is concerned, the State Government shall also examine whether criminal law needs to be set in motion against the wrong doers;

(v) The State Government shall file first compliance report on or before 31st July 2015. The Petitions shall be listed on 3rd August 2015 for considering the compliance report;

(vi) The Petitions are disposed of on above terms;

(vii) The Registry shall forward a true copy of this Judgment to Shri Justice D.G.Deshpande, a retired Judge of this Court.

(A.S.GADKARI, J) **(A.S. OKA, J)**