

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 7207 OF 2014

Vinayak S/o Domaji Khode and another

-vs-

Wamanrao Arjunji Kubde and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.R.L.Khapre, counsel for the petitioners.
Mr.A.M.Ghare, counsel for the respondent No.1.
Mr.N.R.Rode, AGP for the respondent Nos.2 and 3.

CORAM : SMT.VASANTI A. NAIK &
PRASANNA B. VARALE, JJ.

DATE : 09.07.2015.

By this petition, the petitioners impugn the order of the Deputy Charity Commissioner, Amravati Region, Amravati, dated 29/11/2014, so far as it directs the Reporting Trustee, Shri Wamanrao Kubde to enroll new members in different categories within a period of one month and to hold the election of the Board of Trustees and office bearers as per the bye-laws of the Trust within a period of two months after enrolling members.

While deciding the Change Report, filed by the respondent No.1 Shri Wamanrao Kubde, under Section 22 of the Maharashtra Public Trusts Act, the Deputy Charity Commissioner, Amravati *suo motu* directed the Reporting Trustee, Shri Wamanrao Kubde to enroll new members in different categories and also hold election of the Board of Trustees and office bearers within a period of two months.

It is stated on behalf of the petitioners that the *suo motu* powers under Section 41A of the Maharashtra

Public Trusts Act could not have been exercised by the Deputy Charity Commissioner while rejecting the Change Report filed by the Reporting Trustee so as to direct the Reporting Trustee to enroll the new members and hold the election of the Board of Trustees and office bearers within a period of two months. It is stated that such directions cannot be issued under Section 41A of the Act. It is stated that this is not a case where only one founder member is alive, as the person from the family, who has donated for the Trust, is entitled to be recognized as a founder member as per the Constitution of the Trust. It is stated that the provisions of Section 47 of the Act have been overlooked by the Deputy Charity Commissioner while issuing the direction under Section 41A of the Act. The learned counsel has relied on the decision, reported in 2006 B.C.I. 46 (Nawalchand Champal Chaudhari and ors. Joint Charity Commissioner and others) to substantiate his submission.

Shri Ghare, the learned counsel for the respondent, supported the order of the Deputy Charity Commissioner and submitted that since only one founder member was found to be alive, the Deputy Charity Commissioner has rightly directed the respondent No.1 to enroll new members in different categories and hold elections of the Board of Trustees and office bearers within a period of two months.

On hearing the learned counsel for the parties and on a perusal of the provisions of Section 41A of the Act, it appears that the aforesaid direction could not have been issued by the Deputy Charity Commissioner, by exercising *suo motu* powers under Section 41A of the Maharashtra Public Trusts Act. It is well settled that a direction of the aforesaid nature cannot be issued under Section 41A of the Act, more so, while deciding the Change Report Enquiry

Proceedings. Also, we find that no opportunity was granted to the parties before the impugned order under Section 41A of the Act was passed, as the parties were not made aware of the intention of the Deputy Charity Commissioner to issue the *suo motu* direction under Section 41A of the Act.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order, dated 29/11/2014 is quashed and set aside, so far as it directs the respondent No.1 to enroll new members and hold the election of the Board of Trustees and office bearers within a period of two months.

Order accordingly. No costs.

JUDGE

JUDGE