

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

928 WRIT PETITION NO.4073 OF 2017

MACHINDRA NARAYAN GHARAT
VERSUS
BANKATSWAMI SHIKSHAN SANSTHA THROUGH LAXMAN
KONDIBA BHOSALE AND OTHERS

...

Advocate for Petitioner : Mr. Kulkarni Mukul S.
Adv Talekar And Associates for R-2, 4, 5 And 7;
Mr. SR Yadav, AGP for Respondent No.8;

CORAM : P.R.BORA, J.

DATE : 30th March, 2017.

PER COURT :

1) Heard finally with consent of the learned Counsel appearing for the parties.

2) The order dated 3rd March, 2017 passed by the Joint Charity Commissioner, Latur Region, Latur below Exh.82 in Enquiry No.7/2009, is challenged in the present petition.

3) The present petitioner had filed the aforesaid application invoking the provisions under Order VI Rule 17 of the Code of Civil

Procedure, seeking amendment in the petition so filed. By way of amendment, the petitioner was intending to add the subsequent events happened during pendency of the said Enquiry. According to the petitioner, in the interregnum, the respondents, against whom the Enquiry under Section 41D of the Maharashtra Public Trusts Act, 1950 (for short, the Act) was initiated and the charges were framed, have indulged in committing further misconduct during the pendency of the said Enquiry by willfully disobeying the lawful order issued by the Joint Charity Commissioner under the provisions of the Act, and the Rules framed thereunder.

4) The application so preferred was resisted by the said trustees. The Joint Charity Commissioner, after hearing the parties, rejected the said application. The said order is impugned in the present petition.

5) Shri Kulkarni, learned counsel appearing

for the petitioner, submitted that the application has been rejected by the Joint Charity Commissioner for wrong and erroneous reasons. The learned Counsel submitted that, on the contrary, for avoiding the multiplicity of the litigations, it was imperative on the part of the Joint Charity Commissioner to allow the application so preferred by the petitioner and allow the petitioner to amend the petition so filed to enable him to bring on record the subsequent events and through the said events, the misconduct, as has been committed by the said erring trustees.

6) Shri Talekar, learned counsel appearing for Respondent Nos.2, 4, 5 and 7 supported the impugned order. The learned Counsel, taking me through the provisions of the Maharashtra Public Trusts Act, submitted that for initiating any Enquiry under Section 41D of the Act and more particularly, if charges are to be framed, an Enquiry has to be conducted and only after

conducting the said Enquiry, a decision has to be arrived at as to whether some action is required to be initiated and whether any charge has to be framed against the said trustees.

. The learned Counsel further submitted that accordingly in pursuance of the application previously filed by the petitioner, Enquiry was conducted and in the said Enquiry, the learned Joint Charity Commissioner reached to the conclusion that the charges need to be looked into and Enquiry needs to be initiated and accordingly decision of initiation of Enquiry was taken by the Joint Charity Commissioner and specific charges were framed. The learned Counsel further submitted that if now the petitioner intends to bring on record certain more instances of misconduct, alleged to have been committed by the trustees, it would be a separate cause of action. According to the learned Counsel, in the pending enquiry, such amendment cannot be allowed and such charges cannot be included at this stage.

7) I have carefully considered the submissions advanced by the learned Counsel for the respective parties. I have also perused the impugned order.

8) Section 41D of the Act, which is relevant in the instant matter, reads as under, -

"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* 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 there under by the State Government;

(c) continuously neglects his duty or commits any malfeasance 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 subsection (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."

From the aforesaid provisions, it is quite evident that after receiving such an application under Section 41D of the Act, a preliminary Enquiry, in normal course, is to be conducted by the Joint Charity Commissioner and only after he reaches to the conclusion that there is some substance in the allegations so made, further order is to be passed for initiation of the Enquiry.

8) In the present matter, as is evident from the material on record, such application was preferred by the present petitioner and Enquiry was conducted in that behalf, which culminated in initiation of the Enquiry against the erring trustees and accordingly further orders are passed. If it is the contention of the petitioner that during pendency of the Enquiry, certain other misconduct is committed by the trustees, which may warrant some action against them under Section 41D and more particularly clause (1)(b) thereof, according to me, it will form a separate cause of action and same cannot be permitted to be included in the pending Enquiry. It appears that the learned Joint Charity Commissioner has rightly considered the said aspect and has rejected the said application at Exhibit-82. I do not see any error in the impugned order. The writ petition being devoid of any substance stands rejected.

(P . R . BORA , J .)

bdv/