

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

WRIT PETITION NO. 5287 OF 2016

**SHANKARRAO DIGAMBARRAO PUNDGE
VERSUS
THE ASSISTANT CHARITY COMMISSIONER HINGOLI AND
OTHERS**

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Advocate for the Petitioner : Shri P. D. Bachate
AGP for Respondent No. 1 : Shri K. S. Patil
Advocate for Respondent Nos. 2 to 4 : Shri P. N. Kalani

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 05th SEPTEMBER, 2018.

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PER COURT :

1. The petitioner is aggrieved by the order dated 08/01/2016, by which, he was precluded from cross-examining a witness and the order dated 11/04/2016 passed by the learned Assistant Charity Commissioner, Hingoli rejecting application Exhibit 82 in Enquiry No. 503/2015.
2. I have considered the submissions of the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.
3. The matter was earlier preferred before the learned Assistant Charity Commissioner, Parbhani. It was subsequently

transferred to the learned Assistant Charity Commissioner at Hingoli, on 05/11/2015. Notices were issued and the petitioner received a notice on 18/11/2015, Yet the witness of the respondent was not cross-examined by the petitioner. Hence, "no cross" order was passed on 08/01/2016. Exhibit 82 was filed on 06/04/2016 for re-calling that order and was rejected by the impugned order on 11/04/2016.

4. It is apparent that the petitioner has acted negligently. It is inconsequential as to whether, the negligence can be attributed to the conduct of the petitioner or his Advocate. Exhibit 82 was filed after four months of the "no cross" order.

5. Notwithstanding the fact situation as above, if the petitioner is not permitted to cross-examine the witness, he would lose a valuable right. The delay caused in filing Exhibit 82, though appears to be of about 2 months after the limitation period for seeking recalling of the no cross, such delay cannot be termed as being inordinate. The rigors of the respondent Nos. 2 to 4 can be reduced by imposing costs upon the petitioner.

6. As such, this petition is allowed. The impugned order dated 11/04/2016 is quashed and set aside.

7. Consequentially the "no cross" order dated 08/01/2016 is also set aside.

8. The petitioner shall be subjected to costs of Rs. 10,000/- (Rs. Ten Thousand only).

9. The learned Advocate for the respondent Nos. 2 to 4 submits that a small portion of the costs should be deposited for the treatment of the poor patients at Aurangabad. As such, the petitioner shall deposit an amount of Rs. 6,000/- (Rs. Six Thousand only) with the learned Assistant Charity Commissioner, at Hingoli, on or before 19/09/2018 and shall deposit an amount of Rs. 4,000/- (Rs. Four Thousand only) on or before 19/09/2018 with the Government Medical College and Hospital, Aurangabad, through **Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand draft be drawn in the name of “**Dean, Government Medical College and Hospital, Dengi Samiti, Aurangabad**”) and shall report compliance of this direction by producing a receipt of having deposited the amount, before the Registrar (Judicial) of this Court on or before 26/09/2018.

10. The petitioner shall cross-examine the concerned witness, namely Sopan Dhondiba Dhage on 24/09/2018 and

shall not seek an adjournment. Thereafter, the parties are at liberty to address the learned Assistant Charity Commissioner, Hingoli with their final arguments and also file written notes of submissions, if so desired.

11. Since the enquiry proceedings have commenced in 2003, the learned Assistant Charity Commissioner, Hingoli shall endeavour to decide the said proceedings as expeditiously as possible and in any case on or before 30/11/2018.

(RAVINDRA V. GHUGE, J.)

shp/-