IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5484 OF 2016

Smt. Mandatai Vasantrao Wasankar and others
vs.
The Joint Charity Commissioner, Amravati Region, Amravati

Office Notes, Office Memorandum of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri. A. J. Gilda, counsel for the petitioners.
Shri. H. R. Dhumale, counsel for respondent.

CORAM : MANISH PITALE J

DATED : 06/12/2019

By this writ petition, petitioners who are trustees of a trust registered under the Maharashtra Public Trusts Act, 1950, have challenged order dated 16/08/2016, passed by the respondent Joint Charity Commissioner, whereby an application filed by the petitioner (Exh.1) seeking that sou-motu proceeding undertaken against them under the provisions of the said Act may be dropped, was rejected. The respondent in the impugned order has found that suo-motu action for negligence and disobedience of the order of respondent authority committed by the petitioners/trustees under Section 41D of the Act, in the facts and circumstances of the present case, cannot be said to be premature and on this basis the application has been rejected.

2. The learned counsel appearing for the petitioner submitted that even prior to initiation of sou-motu proceeding under Section 41D, safeguards provided in

Circular dated 02/08/1978, were required to be followed, because there have been number of instances where the authorities under the said Act have proceeded against the trustees without verification as to whether there was even prima facie material to take action under Section 41D of the aforesaid Act, which undoubtedly is a drastic action sought to be taken against the trustees. The learned counsel invited attention of this Court to the material on record, particularly, the notice issued by the concerned authority on the basis of complaints filed by certain third party and the report dated 28/03/2016, prepared by Inspector of Public Trust Registration.

3. It was submitted that a perusal of even the report would demonstrate that no drastic action was contemplated and yet the Joint Charity Commissioner in the present case passed an order dated 04/05/2016 holding that sou-motu proceeding under Section 41D stood initiated against the petitioner. It was emphasized that while clause (1) of the said order held that the sou-motu proceeding stood initiated, but as per clause (3), the petitioner was asked to furnish explanation as to why sou-motu proceeding ought not to be initiated. It was submitted that therefore, the order demonstrated non application of mind by the respondent to the requirements of the Section 41D of the said Act, as also the aforementioned Circular. In this backdrop, it was submitted that application for dropping the proceeding was filed at Exh.1. It was submitted that without referring to the requirements of the provisions of the said Act and the aforesaid Circular, the respondent held that the sou-motu proceeding initiated against the petitioner could not be said to be premature. On this basis, the learned counsel submitted that the instant petition deserved to be allowed.

4. On the other hand, the learned counsel appearing on behalf of the petitioners invited attention of this Court to Section 41D of the aforesaid Act, emphasizing that although the consequences of the action taken under the said provision is drastic, there is a procedure prescribed therein, particularly in sub Section (2) thereof, which provided for sufficient safeguards before taking action against any trustee. It was submitted that despite repeated notices sent to the petitioners they had avoided responding to the same and the report dated 28/03/2016 prepared by the Inspector demonstrated that when the petitioners were repeatedly asked to produce record for inspection, the petitioners avoided doing so. It was further pointed out that after the order dated 04/05/2016 was passed by the respondent, the petitioners filed at least two applications that were on record, seeking further time for supplying documents and eventually reply was filed on 29/07/2016. It was pointed out that even with this reply no documents were placed on record.

5. The learned AGP emphasized that it was in this backdrop of non cooperation on the part of the petitioners that the respondent proceeded to initiate suo-motu proceeding under Section 41D of the Act and that therefore, the writ petition deserved to be dismissed.

6. Heard learned counsel for the rival parties and perused the material placed on record. There can not be any doubt about the fact that action under section 41D of the said Act results in drastic consequences of suspension or removal of a trustee from a charitable trust. It is therefore, necessary that before such action is contemplated, material is perused and appreciated by the respondent authority. In the present case, the record shows that the Inspector had issued notices to the petitioners calling upon them to produce the record including membership register, bank passbook, vouchers, receipts books, audit reports etc.. In response to said notices, the petitioners sought time on 31/12/2015, 16/01/2016. Thereafter, report dated 28/03/2016 was prepared and submitted by the Inspector, wherein it was recorded that despite specific notices being given to the petitioners to produce the aforesaid record, they failed to do so. Thereafter, the respondent passed order dated 04/05/2016, taking note of the aforesaid report and holding that the trustees were called upon to show-cause, as to why they should not be suspended from the executive body for negligence and illegal activity and why the action should not be taken for their removal or dismissal. In the said order, while in clause (1) it was recorded that sou-motu proceeding under Section 41D of the Act stood initiated on the basis of the aforesaid report of the Inspector, Clause (3) of the said order recorded that in case the petitioners failed to submit an explanation, sou-motu proceeding under Section 41D would be initiated against them.

7. The learned counsel appearing for the petitioners is justified in contending that this order appears to be as contradictory, but clauses (2) and (3) of the order dated 04/05/2016 passed by the Joint Charity Commissioner indicate that notice was issued to the petitioners calling upon them as to why sou-motu action ought not to be undertaken. The record further shows that the petitioners sought time on 09/06/2016 and 07/07/2016, to supply documents and to file their written statement. Thereafter, finally the petitioners filed their reply on 29/07/2016. There is no dispute about the fact that no documents were placed on record on behalf of the petitioners in support of their response/reply dated 29/07/2016.

8. It is at this stage that on the same date i.e. 29/07/2016, petitioners filed an application for dismissal of the sou-motu proceeding (Exh.1), claiming that the proceeding initiated against them deserved to be dropped.

9. It is on this application that the impugned order dated 16/08/2016 has been passed by the respondent. It is held therein that the action initiated under Section 41D of the aforesaid Act cannot be said to be premature and on this basis the said application at Exh.1 stood rejected. The series of events that have occurred in the present case do indicate that the inspector had issued notices calling upon the petitioners to produce the record, which admittedly was not produced. Thereafter, the report dated 28/03/2016 recorded this fact of the petitioners not having produced the record and then proceeded to make certain observations, which the respondent took into consideration and then passed its order dated 04/05/2016. Although in clause (1) of the said order it is stated that sou-motu proceeding stood initiated, clauses (2) and (3) of the said order indicate that failure to give explanation on the part of the petitioners would lead to initiation of sou-motu proceeding under Section 41D of the said Act. Even if clause (1) of the said order records that the sou-motu proceeding stood initiated, it cannot be said that the petitioners suffered any prejudice since clauses (2) and (3) did call upon them to give explanation. In this situation, the petitioners were facing the possibility of drastic action under Section 41D of the said Act. It was expected that they would respond immediately and come clean by producing record as expected from them. Instead the petitioners sought time on two occasions and finally filed reply on 07/12/2016. The impugned order records these events and the fact that even while filing reply dated 29/07/2016, the petitioners did not submit any documents to show their bonafide. It is in the backdrop of all these events that the respondent has recorded in the impugned order that the explanation sought to be given by the petitioners is not found to be satisfactory. On this basis the application filed by the petitioners was rejected.

10. The approach of the petitioners in response to notices issued by the Inspector as well as notice issued by the respondent shows that they did not take action in a manner expected from trustees who were faced with the possibility of initiation of sou-motu action under Section 41D of the said

Act. Therefore, it cannot be said that respondent authority committed any error in passing the impugned order.

11. Apart from this, perusal of the Section 41D of the said Act would show that initiation of sou-motu proceeding may be undertaken by the respondent if prima facie material was available before it. Section 41D(2)(a), (b), (c) and (d), provide a mechanism, wherein the trustees against whom an action is proposed can place on record their version and after the same is taken into consideration the respondent authority can take any action. In the facts and circumstances of the present case, particularly the approach adopted by the petitioners, it cannot be said that the respondent authority committed any wrong in holding that sou-motu proceeding stood initiated after the reply dated 29/07/2016 was filed by the petitioners. This Court is of the opinion that the Circular emphasized upon by the learned counsel appearing for the petitioners is certainly a safeguard advised to Authorities under the provisions of the said Act before sou-motu action is proposed, but it can certainly not over ride the provisions of the said Act, particularly Section 41D(2) after coming to a conclusion that prima facie material was available to proceed against the trustees. As noted above, this Court finds that no error could be attributed to the respondent authority in having passed the impugned order and reached the stage of action contemplated under Section 41D (2)(c) of the said Act. Charges are yet to be framed in the present case and a perusal of the aforesaid provision would show that an opportunity has to be given by the respondent authority to the trustees like the petitioners herein, even after charges are framed, for meeting such charges. After considering the evidence adduced by the trustees, any order contemplated under the said provision can be passed. The respondent authority shall follow the procedure prescribed under the provisions of the said Act from the stage of Section 41D (2)(c) onwards scrupulously to ensure that sufficient opportunity is granted to petitioners to place on record their side of the story.

12. Despite the fact that the petitioners did place on record a reply before the respondent authority, since the petitioners could not place on record documents, as a matter of last chance, the petitioners are granted two weeks time to place on record documents in support of their reply dated 29/07/21016, filed before the respondent authority. It is only if the respondent authority is not satisfied with the reply and the documents, it can take further action as contemplated under Section 41D(2)(c) of the said Act.

13. The Writ Petition is dismissed with above observations. No order as to costs.

JUDGE

KOLHE/P.A.