IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4880 OF 2020

Shri Sthanakwasi Jain Sangh,
Shrirampur, Through President,
Ramesh S/o Indrabhan Lodha,
Age : 71 years, Occu: Business,
R/o: Main Road, Shrirampur,
Tq. Shrirampur,
District Ahmednagar …Petitioner

Versus

1 Deepak S/o Hukumchand Duggad
Age : 49 years, Occu: Business,
R/o. Sangamner Road, Shrirampur,
Dist. Ahmednagar.

2. Ramesh S/o. Ratnachand Gundecha
Age : 68 years, Occu. Business,
R/o. C/o. Sarin Book Agency,
Shriram Mandir Road, Shrirampur,
District Ahmednagar.

3. The Charity Commissioner,
Maharashtra State,
Office of Charity Commissioner,
3rd Floor, Dharmaday Ayukta Building,
Dr. Annie Besant Rad, Opposite Garment
House, Worli, Mumbai.

4. The Deputy Charity Commissioner,
Charity Commissioner Office,
Ahmednagar Region,
Central Administrative Building,
Second Floor, Near Akashwani,
Savedi, Ahnmednagar,
Dist. Ahmednagar ...Respondents

Mr Sushant V. Dixit, Advocate for Petitioner
Mr V.M. Maney, Advocate for Respondent No. 1
Respondent No. 2 served by R.P.A.D.
Mr A.A. Jagatkar, A.G.P. for Respondents No. 3 and 4

CORAM : S. V. GANGAPURWALA
AND
SHRIKANT D. KULKARNI, JJ.

JUDGMENT RESERVED ON : 29.09.2020
JUDGMENT DELIVERED ON : 21.10.2020

JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.

2. Feeling aggrieved by the common Judgment and order rendered by the Deputy Charity Commissioner, Ahmednagar in enquiry application No. 1653 of 2018 and enquiry application No. 1188 of 2015 dated 28.02.2020, the petitioner has approached this Court by invoking writ jurisdiction.

3. The relevant facts which give rise to this petition, are as under :-

The petitioner is a religious Trust and duly registered under the Maharashtra Public Trusts Act, 1950 (hereinafter referred as “the Act” for brevity). The scheme of the petitioner/Trust was duly approved in the year 1984 which provides for Constitution of Board of Trustees, manner of enrolling members and mode of conducting elections to the Board of Trustees. According to the petitioner, change reports till the year 2017, were accepted by office of the Charity Commissioner on 28.02.2020 on the basis of revised list of members. The Board of Trustees decided to conduct election for the period of 2018 to 2023, and accordingly, appointed Mr Sushilkumar Pande, Advocate as an Election Officer by passing resolution in the Annual General Meeting dated 28.09.2017. Advocate Mr Pande also gave consent to work as Election Officer and accordingly, prepared election programme. The advertisement was published for enrollment of new members in the year 2018. As earlier change report and enquiry application No. 1188 of 2015 under section 41A of the Act were pending, it was orally informed to the office bearers of the petitioner not to proceed with the election till decision of change report and application under section 41A of the Act. As such, no election was conducted as per the election programme published by Advocate Mr Pande.

4. According to the petitioner, enquiry application No. 1188 of 2015 filed by Mr Abhay Bansilal Mutha along with respondent No. 1 though pending, respondents No. 1 and 2 together filed another enquiry application No. 1653 of 2018 seeking directions to hold elections on the basis of members list of the year 1997. It is contended by the petitioner that respondents No. 1 and 2 had suppressed material facts while filing enquiry application No. 1653 of

2018. It is contended that respondents suppressed that mother of respondent No. 1 is using premises of petitioner-Trust and wanted that premises for free of cost, which was not acceded by the Board of Trustees which resulted into filing various applications before the Deputy Charity Commissioner. It is contended by the petitioner that respondents have no *locus-standi* to file application under section 41A of the Act. They have no concern with the Trust. The respondents were not the members of the Trust.

5. It is contended by the petitioner that the learned Deputy Charity Commissioner, Ahmednagar by way of impugned judgment and order dated 28.02.2020 was pleased to allow enquiry application No. 1653 of 2018 and disposed of enquiry application No. 1188 of 2015, thereby, giving directions to present Board of Trustees to conduct elections by appointing Election Officer and on the basis of list of members of the year 1997 as valid.

6. According to the petitioner, the impugned judgment and order passed by the Deputy Charity Commissioner is perverse and bad in law. The learned Deputy Charity Commissioner has exceeded its jurisdiction available under section 41A of the Act. Section 41A does not give any authority to the Deputy Charity Commissioner to interfere in the process of election to conduct the

election by directing to conduct election on the basis of members list of the year 1997. Further, it is contended that the proceeding before the Deputy Charity Commissioner was defective due to non-joinder of necessary party. According to the petitioner, the learned Deputy Charity Commissioner has not considered the record produced by the petitioner in enquiry application No. 1653 of 2018 and 1188 of 2015. The impugned judgment and order is not sustainable on legal platform.

7. The respondent No. 1 has filed his reply and supported to the impugned judgment and order. According to respondent No. 1, the learned Deputy Charity Commissioner has considered the record produced by both the sides and also considered rival contentions raised by both the sides and decided 60th enquiry applications by common decision. The findings recorded by the learned Deputy Charity Commissioner are well reasoned and in view of provisions of the Act. There is no legal defect in the impugned judgment and order.

8. Heard Mr Dixit, the learned Counsel for the petitioner, Mr V.M. Maney, learned Counsel for respondent No. 1 and Mr A.A. Jagatkar, learned Assistant Government Pleader for respondents No. 3 and 4. None present for respondent No. 2 though duly served.

9. We have studied the impugned judgment and order passed by the Deputy Charity Commissioner, Ahmednagar and scheme of the petitioner/Trust.

10. Mr Dixit, learned Counsel strenuously argued that the impugned judgment and order passed by the learned Deputy Charity Commissioner, Ahmednagar is perverse and bad in law. It is settled position of law that jurisdiction available under section 41A of the Act can be invoked under the circumstances mentioned therein. The learned Deputy Charity Commissioner has interfered in the process of election by directing to conduct election on the basis of list of members of the year 1997. As such, the directions issued by the Deputy Charity Commissioner are without jurisdiction and violative of scheme of the petitioner/Trust. According to learned Counsel Mr Dixit, no reasons are ascribed for issuing directions to conduct elections on the basis of list of members of the year 1997. Mr Dixit, further contended that list of members has been updated and many new members are enrolled after the year 1997. The revised and updated members list has been communicated to the Charity Commissioner. The learned Deputy Charity Commissioner has not considered latest position of membership and issued directions to consider list of members of the year 1997 which violates scheme of

the Trust and outside the scope of learned Deputy Charity Commissioner.

11. Mr Dixit, the learned Counsel has placed reliance on following citation in support of his argument.

Dinkar Shankarrao Patil & Ors. Vs. Sheshrao Shankarrao Patil & Ors. reported in AIR 2009 (NOC) 594 (BOM.) (Aurangabad Bench).

12. Per contra, Mr V.M. Maney, learned Counsel for respondent No. 1 and Mr A.A. Jagatkar, learned Assistant Government Pleader for Respondents No. 3 and 4 have supported to the impugned judgment and order rendered by the Deputy Charity Commissioner.

13. The learned Assistant Government Pleader submitted that the Deputy Charity Commissioner can issue directions to the Trust to hold the elections in view of the provisions of section 41A of the Act. The learned Assistant Government Pleader has placed reliance on following two citations in support of his submissions :-

(i) Nathmal Kisanlalji Goenka and Another Vs. Asstt. Charity Commissioner, Akola and Another reported in 1994 (1) Mh.L.J. 303.

(ii) Shobhatai Krishnarao Zoting & others Vs. Joint Charity Commissioner & others reported in 2005 (2) All.M.R.237.

14. We have considered the arguments advanced by the learned Advocates for respective sides.

15. Section 41A of the Act is introduced by way of an amendment with effect from 01.08.1985, which provide elaborate provisions regarding the stages which may take care of affairs of the Trust. It would be useful to reproduce Section 41A of the Act, which reads as under :-

> **S.41A. Power of Charity Commissioner to issue directions (for proper administration of the trust) :**
> (1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person if he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of.
>
> (Provided that, if any application is made by the trustee of any trust for seeking directions under sub-section (1), the Charity Commissioner shall decide such application within three months from the date of its receipt

and if it is not practicable so to do, the Charity Commissioner shall record the reasons for the same.)

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1).

16. Section 41A of the Act takes care of following three important factors -

(i) Proper Administration of public trust,
(ii) for proper accounting of its income
(iii) for appropriate application of the income to the objects of the said trust.

17. Needless to say that public trust must function according to its scheme and the Constitution of the trust.

18. Main grievance of Mr Dixit, learned Counsel for the petitioner is about conducting election on the basis of list of members of the year 1997. According to Mr Dixit, the learned Deputy Charity Commissioner should not have issued directions to conduct election of the Board of Trustees on the basis of list of members of the year 1997 particularly, when change reports filed by Board of Trustees have been accepted till the year 2017 on the basis of approved list of members. Such kind of direction is a hurdle in the way of new members of the Trust to participate in the election of the Board of Trustees. It amounts to interference in the election of the

Trust and same is not permissible in view of the clear provisions of section 41A of the Act.

19. On perusing the impugned judgment and order passed by the Deputy Charity Commissioner, it is noticed by us that learned Deputy Charity Commissioner has observed in para No. 10 of the impugned judgment that there was consenses between both sides to conduct election of the Trust. Further it was observed by the learned Deputy Charity Commissioner that for proper administration of the Trust and for better management, it is necessary to conduct election for the Board of the Trustees of the petitioner-Trust. The term of the Board of the Trustees was upto the year 2017 and after the tenure of the Board of the Trustees which ended in the year 2017, no election was conducted.

20. By taking into consideration all these aspects and for proper administration and better management of the Trust, learned Deputy Charity Commissioner seems to have issued directions to conduct election for Board of new Trustees. For conducting election of Board of trustees, approved list of members of the Trust of the year 1997 should be acted upon. In order to put an end to the dispute between two groups of the trustees, the directions seem to have been issued by the Deputy Charity Commissioner to conduct election of Board of trustees on the basis of approved list of

members of the year 1997 and that too by appointing independent person as an Election Officer. It is difficult to accept that such kind of directions amount to interference in the election. The learned Charity Commissioner seems to have considered underlined idea of section 41A of the Act which relates to proper administration of public trust and secondly, for its proper accounting of income and proper use of the income of the Trust for the objects defined in the Constitution of the Trust.

21. In case of ***Dinkar Shankarrao Patil & Ors. Vs. Sheshrao Shankarrao Patil & Ors. (supra),*** it is held by the Division Bench of this Court that section 41A of the Act empowers the Charity Commissioner to issue directions for proper administration of the Trust. It does not include power to remove trustees or appoint trustees or committees or to look after affairs of the Trust.

22. In case of ***Nathmal Kisanlalji Goenka and Another Vs. Asstt. Charity Commissioner, Akola and Another (Supra),*** it is *held by the* learned Single Judge of this Court, Bench at Nagpur that section 41A empowers the Charity Commissioner/Joint Charity Commissioner to issue directions to any trustee or any person connected with the Trust. The directions are intended for proper administration and better management of the public trust. No question of adjudication of any controversy or dispute arises

thereunder. The object of section 41A of the Act is to streamline the administration of public trust and to ensure more effective implementation and enforcement of the provisions of the said Act. Section 41A of the Act empowers the Charity Commissioner to issue directions to the trustee to hold election in the interest of administration and proper management of the Trust.

23. In case of **Shobhatai Krishnarao Zoting & others Vs. Joint Charity Commissioner & others (supra),** the learned Single Judge of this Court, Bench at Nagpur held that order of Charity Commissioner that date of 1996 be maintained for voters list does not call for interference. The selection of the year 1996 for the purpose of said election of the Trust by Joint Charity Commissioner is just, proper and cause for no interference.

24. Looking to the scheme of the Act, it is clear that the function of the Charity Commissioner while acting under the provisions of the Act is administrative, judicial, quashi-judicial and even that he acts as a watchdog and delegate of the Government for superintendence and control over the public trust. Section 41A of the Act gives ancillary or additional powers to the Charity Commissioner suppress the apprehended mischief of the property and income of the Trust and also in the administration of the Trust. The Power under section 41A of the Act, 1950 has been given to the Charity

Commissioner to act in case of malfeasance, misfeasance and non-feasance.

25. The learned Deputy Charity Commissioner has observed in his decision that term of Board of trustees came to an end in the year 2017. No election for Board of trustees was held after the year 2017. As such, election for the Board of trustees is necessary for proper administration and accounting of the Trust. The income of the Trust needs to be utilised for the object written in the Constitution. The directions have been issued by the learned Deputy Charity Commissioner in order to take care of the Trust. It was direction in a way in anticipation of certain things.

26. As all parties had conceded for holding the election before the Deputy Charity Commissioner, we are not inclined to invoke our writ jurisdiction. The learned Deputy Charity Commissioner has issued those directions for proper administration and better management of the petitioner-Trust and to put an end the dispute between two groups of Trust. The petitioner can challenge or raise objection to the change report. So also raise issue of membership in appropriate proceedings. The petitioner is not without remedy.

27. The writ petition stands dismissed. Rule discharged. No order as to costs.

[SHRIKANT D. KULKARNI, J.] [S.V. GANGAPURWALA, J.]

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At this stage, the learned Counsel for the petitioner seeks stay of the order for a period of six (06) weeks from today.

Considering the nature of the matter, we are not inclined to accept the request of the petitioner.

[SHRIKANT D. KULKARNI, J.] [S.V. GANGAPURWALA, J.]

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