IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

11 WRIT PETITION NO. 8480 OF 2020

Laxminarayan Bankatlal Lahoti
Age : 69 years, occ : business
R/o Lahoti Compound, Dayaram Road,
Latur. Petitioner

Versus

1. M/s Paramound Machinery Stores,
Through its representative -
Santosh Jugolkisharji Gilda
Age : major, occ : business
R/o Near Balaji Temple, Latur.

2. Joint Charity Commissioner,
Latur Region, Latur. Respondents

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Ms. Anjali Bajpai Dube, Advocate for the petitioner.
Mr. B.M. Dhanure, Advocate for respondent No. 1.
Mr. A.B. Chate, A.G.P. for respondent No. 2.

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CORAM : **N.J. JAMADAR, J.**

DATE : 5th April 2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and having regard to the limited nature of the controversy, heard finally at the stage of admission, with the consent of the learned Counsels for the parties.

2. The challenge in this petition is to an order passed by the learned Joint Charity Commissioner, Latur in Enquiry Application No. 003/41-D/2020 dated 21st October 2020,

whereby the learned Joint Charity Commissioner issued notice to the petitioner and others under Section 41D of the Maharashtra Public Trust Act, 1950 (the Act 1950).

3. The petitioner claims to be the President of Dayanand Education Society, Latur, a trust registered under the Maharashtra Public Trust Act 1950. In accordance with the Bye-laws of the Society, election to the governing council of the Society was held on 15th October 2017. The petitioner claimed to have been elected as a President in the said meeting. A Change Report to that effect has been filed. Respondent No. 1 is the only person who objects to the said change. Respondent No.1 has filed an application before the Joint Charity Commissioner, Latur purportedly under Section 41D of the Act 1950. The learned Joint Charity Commissioner passed the impugned order of issue notice to the petitioner and other members of the governing council of the trust oblivious of the legislative change brought about by way of amendment to Section 41D of the Act 1950 by Act No. 55 of 2017, w.e.f. 10th October 2017 primarily to arrest the abuse of the said provision of framing charges against the trustees or managers of the trust indiscriminately. Hence, this petition.

4. I have heard Ms. Bajpai, the learned Counsel for the petitioner and Mr. B.M. Dhanure, the learned Counsel for respondent No. 1.

5. Ms. Bajpai invited the attention of the Court to the legislative change brought about by the Amendment Act 55 of 2017. Laying emphasis on Clause (a) of sub-section (2) of Section 41D, which provides for issue of notice to the trustee or the person against whom the action is proposed to be taken, only when the Charity Commissioner finds that there is a *prima facie* material to proceed against the said person, Ms. Bajpai would urge that the impugned order which indicates total non-application of mind and issue of notice in a casual manner, by a stroke of pen, deserves to be quashed and set aside. The purpose for which the amendment has been brought about would be frustrated if the Charity Commissioner issues notice under Section 41D without recording *prima facie* finding, urged Ms. Bajpai.

6. In order to appreciate the aforesaid submissions, it may be apposite to extract the provisions of sub-section (2), as it stood before it suffered the amendment by Maharashtra Amendment Act 55 of 2017 and the amended sub-section (2) of Section 41D.

7. Sub-section (2) of Section 41D, as it stood before the amendment, read as under :

> *"(2) When the Charity Commissioner proposes to take action under sub-section (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".

8. Sub-section (2), post amendment, reads under :

"(2) (a) When the Charity Commissioner proposes to take action under sub-section (1), the Charity Commissioner may issue notice to the trustee or the person against whom the action is proposed to be taken only when he finds that there is prima facie material to proceed against the said person*.*

(b) The trustee or person to whom a notice under clause (a) is issued, shall submit his reply thereto within fifteen days from the date of receipt of notice.

(c) If the person fails to give reply to the notice issued under clause (a) or the Charity Commissioner finds that the reply is not satisfactory, the Charity Commissioner shall frame charges against the said person within fifteen days of the filing of the reply or the default in the filing of reply, as the case may be, and give the said person an opportunity of meeting such charges and after considering the evidence adduced against him and in his favour, may pass order regarding suspension or removal or dismissal within three months from the date of framing of charges. If it is not practicable for the Charity Commissioner toi ssue notice, frame charges and

pass final orders within stipulated time, he shall record reasons for the same.

(d) The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation, if any, and the finding on each charge with reasons therefor".

9. It is evident that under sub-section (2) of Section 41D, before it suffered the amendment, the Charity Commissioner was not enjoined to issue a notice before initiating action under sub-section (1) of the Act, of suspension, removal or dismissal of any trustee of a public trust, if such person appeared to have committed misdemeanors enlisted in clauses (a) to (f) thereof. If a decision to take action under sub-section (1) was taken by the Charity Commissioner, he was, however, enjoined to frame charges against the trustee or the person against whom the action was 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. To put it in other words, no notice prior to framing of charges was peremptorily required under the old provision.

10. The amended provision, however, envisages a pre-charge hearing. Clause (a) of sub-section (2) thus provides that when the Charity Commissioner proposes to take action under sub-section (1), he may issue notice to the trustee only when he finds that there is *paima facie* material to proceed against the

said person. Undoubtedly, the issue of notice is not expressly stated to be mandatory. The legislature has used the word "may". However, the legislature has taken care to further provide that notice ought to be issued only when the Charity Commissioner finds that there is *prima facie* material to proceed. Thus, at the stage of issue of notice itself, some application of mind on the part of the Charity Commissioner is expected. Clause (b), further provides that the trustee to whom notice under Clause (a) is issued, shall submit reply thereto within 15 days of the service of notice. Clause (c) envisages the consideration of the reply, if filed, and thereafter the framing of charges.

11. In the backdrop of the aforesaid provisions, the notice in question can be said to have been issued only under Clause (a) of sub-section (2). It does not imply that the Charity Commissioner has proceeded to take action as envisaged by Clause (c) of sub-section (2).

12. The grievance of the petitioner that the learned Charity Commissioner has not recorded a *prima facie* finding that issue of notice is warranted, carries some substance. When the legislature has specifically provided that notice be issued only when the Charity Commissioner finds *prima facie* material, it would be legitimate to expect that the Charity Commissioner ought to record brief reasons to indicate *prima facie* satisfaction for issue of notice. Issue of notice by affixing the stamp, as has

been done in the case at hand, would not be in consonance with the legislative mandate.

13. For the purpose of this petition, it would be suffice to clarify that the notice issued by the Joint Charity Commissioner by the impugned order dated 21st October 2020 shall be construed as the notice issued under Clause (a) of sub-section (2) of Section 41D, and the petitioner and the persons against whom the said notice has been issued, shall be at liberty to file reply thereto within a period of 15 days from today and the learned Joint Charity Commissioner shall thereafter proceed to take appropriate action under Clause (c) of sub-section (2), of either dropping the enquiry or proceeding further, in accordance with law, after providing opportunity of hearing to both the parties.

14. The petition stands allowed to the aforesaid extent. Rule is made absolute in aforesaid terms. No costs.

(N.J. JAMADAR, J.)

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