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

WRIT PETITION NO.9102 OF 2021

SARLA PANDURANG AWCHAR
VERSUS
BABAN BAJIRAO KHILLARI AND OTHERS

...
Mr V. J. Dhage, Advocate for petitioner;
Mr V. R. Dhorde, Advocate for respondent Nos.1 & 2

CORAM : SMT. BHARATI DANGRE, J.

DATE : 1st February, 2022

PER COURT:

1. Heard the learned Counsel Shri. Dhage for the petitioner and the learned Counsel Shri. Dhorde appearing for respondent Nos.1 and 2 i.e. the contesting respondents in the petition.

2. The background on which the writ petition is filed would disclose that respondent Nos.1 and 2 (who are the original applicants) filed an application under Section 41-D(1) of the Maharashtra Public Trust Act, 1950, before the learned Joint Charity Commissioner, Aurangabad, seeking a relief that the present petitioner as well as respondent Nos.3 and 4 may be removed, dismissed or suspended from the trusteeship of Shri. Vidya Prasarak Mandal, Goregaon, Tq. Senggaon, Dist Hingoli.

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This proceedings came to be renumbered as Application No.68/2019 and on the petitioner, placing his appearance before the Joint Charity Commissioner, Aurangabad Region, the application came to be partly allowed on 30/11/2019 and the present petitioner Sau. Sarala Pandurang Awchar was temporarily suspended from the trusteeship of the Trust until further orders. Entry of the said order was directed to be effected in Schedule-I of the Trust. It is this order passed on 30/11/2019 by the Joint Charity Commissioner, which is impugned in the present writ petition.

3. The learned Counsel Shri. Dhage, by inviting my attention to the provisions in the Statute being Section 41-D, which deal with suspension, removal and dismissal of the trustees, submits that the said provisions, which stand amended w.e.f. 10/10/2017, contemplate a procedure to be followed by the Charity Commissioner, where he proposes to take action under sub-section (1) of Section 41-D, against the trustee, either on an application by other trustee or any person interested in the trust or on the report received by him under Section 41-B or suo-motu, resulting into suspension, removal or dismissal of a trustee of any public trust and this contemplate following of the principles of

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natural justice as stipulated in sub-section 2(a) of Section 41-D, which is an amended Section, which contemplate as 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.”

In the wake of the aforesaid Section, the submission advanced is, after the notice is been issued and replied to by the person, against whom the action is contemplated, the Charity Commissioner shall frame charges against the said person within a period of 15 days of the filing of the reply or the default in the filing of reply and afford the said person an opportunity of meeting such charges and on consideration of the evidence adduced against him and in his favour, an order of suspension, removal or dismissal shall be passed within three months from the date of framing of the charges.

4. On the perusal of the impugned order, it is apparent that, though the Joint Charity Commissioner made an attempt to adhere to the principles of natural justice and a show cause notice came

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to be issued as an opportunity being afforded to deal with the same, but the procedure stipulated under the amended provisions i.e. Section 2(a) of Section 41-D, of the framing of charge and giving an opportunity to the petitioner to meet the charges, has not been followed before passing the impugned order.

5. It is settled position of law that when the Statute prescribes a particular procedure to be followed, then it is imperative to follow such a procedure and the final action shall only be said to be proper only if the prescribed procedure is adhered to. In absence of the compliance of Section 41-D (2)(a), the impugned order cannot be sustained and deserves to be set aside on the very said ground.

6. The learned Counsel for the respondents, however, has invited my attention to the charge that has been framed by the Joint Charity Commissioner against the present petitioner on 22/04/2021, which is placed on record and this will now contemplate an opportunity being afforded to the petitioner to meet the said charge and only after considering the evidence adduced against him and in his favour, the final order can be passed. Since now the charge is already framed, and the

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petitioner is under suspension by invoking the sub-section (3) of Section 41-D, the Joint Charity Commissioner shall strictly adhered to the procedure contemplated under Section 2(a) of Section 41-D before he pass final order, either of suspension, removal or his dismissal.

7. The learned Counsel for the petitioner also raise another objection to the effect that before institution of the application vide No.68/2019 under Section 41-D of the Maharashtra Public Trust Act, 1950, the respondent Nos.1 and 2 had already filed another application vide No.304/2016 and in the application No.68/2019, a reference is made to filing of the earlier application, but it is attempted to be canvassed that earlier application was pending, since new material has been collected by the respondents, a fresh application vide No.68/2019 has been filed. The learned Counsel for the petitioner submits that during the pendency of the first application, it was not open for the charity Commissioner to deal with second application, and therefore, the petitioner shall be permitted to raise such an objection before the learned Charity Commissioner, who shall either direct clubbing of both this applications or may decide upon

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the maintainability of the subsequent application, by giving opportunity of hearing to both parties.

8. In the wake of the above, the impugned order passed by the Joint Charity Commissioner by invoking sub-section (3) of Section 41-D, do not warrant any interference, but it is also made clear that, since now the charge has been framed by the authority on 22/04/2021, by following the procedure strictly in terms of Section 41-D 2(a), the Charity Commissioner shall afford every opportunity to the petitioner to meet the said charge and the proceedings initiated against him, shall be culminated within a period of six months.

While the proceedings are being adjudicated, the contention of the petitioner about the earlier proceedings vide No.304/2016, shall also be determined by the Charity Commissioner by hearing both the sides.

In the wake of the above, with the aforesaid directions, the writ petition is disposed of.

(SMT. BHARATI DANGRE, J.)

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