

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.2081/2021

1. Smt. Ushakiran Atun Thute,
aged about 66 years,
2. Shri Pandurang Dadaji Dakhore (dead)
3. Shri Janrao Chandrabhanji Raut,
aged about 85 years,
R/o. Kangaon, Hinganghat,
Distt. Wardha.
4. Baba Chandrabhan Shegaonkar,
aged about 70 years,
5. Vitthal Govindrao Awachat,
aged about 68 years,
6. Rajaram Ganpati Kumbhalkar,
aged about 66 years,
R/o. Madgaon, Sumudrapur,
Tah. Samudrapur, Distt. Wardha.
7. Smt. Suman Manohar Patil,
aged about 80 years,
R/o. Ramnagar, Hinganghat,
Tah. Hinganghat, Distt. Wardha.
8. Ajay Babarao Rithe,
aged about 52 years,
R/o. Matamandir Ward, Hinghaghat,
Distt. Wardha.
9. Aashirwad Arun Thute,
aged about 45 years,
Nos.1, 4, 5, 10 R/o. Shri Sant Tukdoji
Ward, Hinghaghat, Distt. Wardha.

10. Smt. Vanita Vasantryao Tadas (dead)

.... PETITIONERS.

// **VERSUS** //

1. Joint Charity Commissioner,
Near G.P.O. Civil Line, Nagpur-01.
2. Shobhatai Krishnarao Zoting,
aged about 88 years,
3. Sau. Asha Prakash Raut,
aged about 64 years,
4. Vinayakrao Suryabhanji Bonde,
aged about 83 years,
R/o Hinganghat, Distt. Wardha.
5. Dr. Nisha Krishnarao Zoting,
aged about 61 years,
Nos.2, 3, 5 R/o. New Malika Apartment,
Flat No.201, IInd Floor, Cement Road,
Shivaji Nagar, Nagpur-440010
6. Dr. Sudha Sanjay Sakhare,
aged about years,
R/o. Ramnagar, Hinganghat,
Tah. Hinganghat, Distt. Wardha.

.... RESPONDENTS.

Shri R.L. Khapre, Senior Advocate with Shri Vijaykumar Paliwal, Advocate for petitioners.

Shri D.P. Thakrer, A.P.P. for Respondent No.1/State.

Shri S.D. Abhyankar, Advocate for Respondent Nos.3, 4 & 5.

CORAM : MANISH PITALE, J.

DATED : 13/04/2022.

ORAL JUDGMENT :

1. Heard.

2. Rule. Rule made returnable forthwith.

3. By this writ petition, the petitioners have challenged orders dated 21/11/2019 and 21/02/2022 passed by the Joint Charity Commissioner, Nagpur.

4. In the present case an enquiry under Section 41-D of the Maharashtra Public Trusts Act, 1950, has been initiated against the petitioners at the behest of respondent nos.2 to 5. The allegation against the petitioners is that as Trustees of Gramin Vikas Sanstha, Hinganghat, District Wardha, they have acted in a manner that has made them liable for being dismissed or removed as Trustees of the said Trust.

5. During the pendency of the enquiry under Section 41-D of the aforesaid Act, the respondent no.5 filed an application for directions before the Joint Charity Commissioner seeking directions against the petitioners not to make appointments, promotions or transfers of employees of the Institutions run by the said Trust and a direction not to deal with the property of the Trust and a further

direction not to withdraw non-salary grants without previous sanction of the Joint Charity Commissioner. This application at Exhibit 26 was opposed by the petitioners. By the impugned order dated 21/011/2019, the Joint Charity Commissioner allowed the application and the operative portion of the order reads thus:

“ORDER

1. *The Application is allowed.*

2. *Non-applicants are hereby directed not to sell or lease out any immovable properties of the said trust without sanction of this authority.*

3. *Non-applicants are further directed not to appoint any employees in the institution run by the said trust without sanction of this authority.*

4. *Non-applicant are further directed to file quarterly statements before this authority regarding withdrawal of non-salary grant and payment made out of it for the information of this authority during pendency of application Exh.1.”*

6. The said order was made subject matter challenge in the present writ petition wherein notice was issued. During the pendency of the writ petition, the petitioners claimed that there was urgency in the matter for the reason that appointments were to be made in Schools and Colleges run by the Trust and therefore

appropriate orders were necessary. In this situation, the petitioners were directed that they could approach the Joint Charity Commissioner to seek sanction for making appointments in the Institutions. Pursuant thereto, the petitioners moved applications at Exhibits 44 and 48, for making appointments of teaching staff to the Educational Institutions run by the Trust.

7. By two separate impugned orders dated 21/02/2022, the Joint Charity Commissioner rejected the applications at Exhibit 44 and 48. These orders have also been made subject matter of challenge in the present writ petition by way of an amendment.

8. Shri Khapre, learned Senior Counsel appearing for the petitioners submitted that the impugned orders are wholly unsustainable for the reason that even in the application filed under Section 41-D of the said Act at the behest of respondent nos.2 to 5, only vague allegations have been made against the petitioners and the said enquiry is still languishing and not much progress has been made therein. He further submitted that during the pendency of the

said enquiry under Section 41-D of the Act, the Joint Charity Commissioner ought not to have entertained the application at Exhibit 26 seeking directions against the petitioners, because the functioning of the Trust was being undertaken smoothly and unnecessary obstructions would be created by respondent nos.2 to 5. It was further submitted that even in the application at Exhibit 26, there were no details as to why the directions sought in the said application could be granted. It was submitted that a perusal of the impugned order dated 21/11/2019, would show that directions have been given only on apprehensions and unilateral statements made on behalf of respondent no.5 as regards the functioning of the Trust. A serious objection was raised regarding the locus of the respondent no.5 to make such an application, since she was not even a Trustee.

It was further submitted that when the petitioners filed applications at Exhibits 44 and 48, before the Joint Charity Commissioner seeking sanction for making appointments of teaching staff in the Educational Institutions, the said applications were rejected by the impugned orders dated 21/02/2022, on absolutely unsustainable grounds, particularly when the petitioners had placed

on record sufficient material before the Joint Charity Commissioner to show that all necessary requirements of procedure of the Education Department were clearly satisfied before issuing advertisements for making appointments. It was submitted that the functioning of the Trust and its Institutions was paralyzed because of such orders passed by the Joint Charity Commissioner and therefore, the present writ petition deserved to be allowed.

9. Shri Abhayankar, learned Counsel appearing for respondent nos. 2 to 5 submitted that the impugned orders were justified in the facts and circumstances of the present case. In fact, a preliminary objection as regards maintainability of the writ petition was raised, stating that the nature of directions given in the impugned order dated 21/11/2019 were traceable to Section 41-A of the aforesaid Act and if that be so, as per the law laid down in the case of *Damodhar Jairam Sao Vs. Deputy Charity Commissioner, Nagpur* 2011 (6) Mh.L.J. 431, the writ petition ought to be placed before the Division Bench of this Court.

10. On the merits of the matter, it was submitted that during the pendency of the enquiry under Section 41-D of the said Act, the Joint Charity Commissioner was clearly empowered to issue directions given in the impugned order dated 21/11/2019, particularly when sufficient material was placed on record to demonstrate that there was every possibility of the petitioners making appointments to posts in the Educational Institutions without following norms and there was possibility of the property of the Trust being wasted in the hands of the petitioners. It was submitted that the impugned orders dated 21/02/2021 were also justified, for the reason that the Joint Charity Commissioner on analysis of the material placed on record found that necessary procedure was not followed. On this basis, it was submitted that the writ petition deserved to be dismissed and the enquiry under Section 41-D of the aforesaid Act ought to be expedited. Shri D.P. Thakare, learned Additional Government Pleader appeared on behalf of respondent no.1.

11. So far as the preliminary objection raised on behalf of respondent nos.2 to 5 is concerned, this Court has considered the same. It is found that under Chapter XVII, Rule 18 of the Bombay High Court Appellate Side Rules, 1960, it is specified that where orders passed under the provisions of the Maharashtra Public Trusts Act, 1950, by quasi-judicial authorities are challenged by filing petition, the same is to be placed before a Single Judge of this Court. In the present case, the enquiry under Section 41-D of the aforesaid Act is clearly an enquiry by a quasi-judicial authority i.e. the Joint Charity Commissioner. In this context, explanation to Chapter XVII Rule 18 of the aforesaid Rule assumes significance. It specifically states that the expression “order” appearing in Clauses 1 to 46 of the said Rule, which specifies the statutes covered under the said Rule, means any order passed by any judicial or quasi-judicial authority empowered to adjudicate under the specific statutes. In the present case, the Joint Charity Commissioner as a quasi-judicial authority under the provisions of said Act has issued the impugned order and therefore, the situation is completely covered under the said explanation to Chapter XVII Rule 18 of the said Rules. Therefore,

the preliminary objection raised on behalf of respondent nos.2 to 5 is rejected.

12. On the merits of the matter, it needs to be analyzed as to whether, during pendency of the aforesaid enquiry under Section 41-D of the said Act, the Joint Charity Commissioner was justified in passing the impugned orders.

13. A perusal of the impugned order dated 21/11/2019, shows that the Joint Charity Commissioner has specifically stated that such directions can be given by the authority under Section 41-D of the said Act to protect the interest of the Trust. A perusal of the above quoted operative portion of the order dated 21/11/2019, shows that the application at Exhibit 26 filed by respondent no.5 has been allowed and the petitioners have been restrained from taking any steps as regards the properties of the Trust as also on the question of making appointments in the Institutions run by the Trust, without sanction by the Joint Charity Commissioner. The aforesaid directions do show that according to the Joint Charity Commissioner, sufficient

grounds have been made out to indicate that in the absence of such directions there is every possibility that the interest of the Trust and its Institutions would suffer at the hands of the petitioners. There can be no dispute about the fact that such directions are drastic in nature and amount to a serious comment upon the conduct of the petitioners in so far as the affairs of the Trust are concerned. The question is, as to whether there was sufficient material before the Joint Charity Commissioner to issue such directions in the facts and circumstances of the present case.

14. A perusal of the impugned order dated 21/11/2019, shows that much emphasis is placed on the manner in which the Trust through the petitioners had given certain shops in a commercial complex of the Trust for lease of 11 months. A finding is rendered that the leave and license agreements for 11 months are actually agreements for periods beyond 3 years since there is a stipulation therein that 10% increase in rent would occur upon the shops being given on lease beyond the period of 3 years. This, according to the Joint Charity Commissioner, indicates the fact that

the property of the Trust was being wasted or that it was being given out on leave and license beyond the period of 3 years, which could not be done without prior sanction of the Joint Charity Commissioner as specified in the statute.

15. Thereafter, the Joint Charity Commissioner has come to a positive finding in favour of the petitioners by holding that there is insufficient material to conclude that there is mismanagement regarding expenses from the non-salary grants. But, the Joint Charity Commissioner has then jumped to a conclusion that attempts on the part of the petitioners to make appointments in the Institutions run by the Trust demonstrates that there is likelihood that appointments may be made in contravention of Government orders. These are the only reasons stated in the impugned order dated 21/11/2019 for issuing the above quoted directions against the petitioners.

16. A perusal of the impugned orders dated 21/02/2022 passed at Exhibits 44 and 48, shows that the applications moved by the petitioners for making appointments to the school and college

run by the Trust have been rejected. A perusal of the reasoning given in the said orders would show that although it is found that advertisements were issued by the petitioners for the vacancies that were allowed to be filled by the Education Department, it was found that in one case, the advertisement was not published in the newspapers on the very next date and instead the advertisements came to be issued a couple of days later. It is also found in the said orders and according to the Joint Charity Commissioner, in the case of filling vacancies of the college, while the Joint Director of Higher Education had granted sanction to fill 35 posts, the advertisement was issued for filling up 40 vacancies. It was also found that the Principal of the college had submitted the application to the Joint Director of Higher Education for filling up the posts while there was nothing on record to show that the Principal was authorized by the Trustees or office bearers of the Trust to undertake such an exercise.

17. In so far as the impugned orders dated 21/02/2022 are concerned, this Court of the opinion that the reasons given for rejecting the said applications are wholly unsustainable. The material

on record shows and it is found by the Joint Charity Commissioner that the petitioners had indeed followed the procedural requirements of filling in vacancies. The advertisement in so far as filling in vacancies for the school was concerned, was published only for 19 posts i.e. the number of posts for which the Education Officer had granted sanction. In so far as the vacancies of the college were concerned, the advertisement was published for 40 vacancies, although the Joint Director of Higher Education had granted permission for 35 posts. At worst, the Joint Charity Commissioner could have opined that the petitioners could be given sanction for filling only 35 vacancies as sanctioned by the Joint Director of Higher Education. But, it is difficult to understand as to why the application for filling in vacancies in the college was rejected in totality. In so far as the school is concerned, advertisement was issued only for 19 posts i.e. the number of posts which were sanctioned by the Education Department.

18. The reasons stated in the two impugned orders dated 21/02/2022, while rejecting the applications at Exhibits 44 and 48

are found to be totally unsustainable. The Joint Charity Commissioner has gone beyond its jurisdiction by going into the question of the student teacher ratio etc., which is in fact the domain of the Education Department. As long as the Education Department granted permission for filling in specific number of posts and the procedure as contemplated was being followed including issuing advertisements, there was no reason for the Joint Charity Commissioner to reject the applications at Exhibit 44 and 48.

19. But, the more significant aspect of the matter is, as to whether the impugned order dated 21/11/2019 and the directions contained therein can be sustained during the pendency of the enquiry under Section 41-D of the aforesaid Act. This Court finds that the reasons stated in the order dated 21/11/2019, do not entirely justify the drastic directions given in the above quoted operative portion of the order dated 21/11/2019. The approach adopted by the Joint Charity Commissioner while passing the impugned orders dated 21/11/2019 and 21/02/2022 demonstrates that if the orders are allowed to stand, the entire functioning of the Trust and its

Institutions will be paralyzed during the pendency of the enquiry under Section 41-D of the said Act.

20. A perusal of the impugned order dated 21/11/2019, shows that at one place the Joint Charity Commissioner has referred to an online advertisement dated 01/03/2019 and in that context it is stated that there is likelihood that the Executive Committee of the Trust may appoint employees in contravention of Government orders. This Court has perused the advertisement dated 01/03/2019. It pertains to 19 vacancies, which the Education Department specifically permitted the Trust to fill in the school run by the said Trust. It is difficult to understand how reference to that advertisement can lead to an apprehension on the part of the Joint Charity Commissioner that there is likelihood that the appointments of employees would be made in contravention of Government Orders. The Joint Charity Commissioner was not justified in issuing the aforesaid drastic directions merely on apprehensions that are not supported by any cogent material on record. The material placed on record on behalf of the petitioners thus indicates that attempts were

made to fill in vacancies as sanctioned by the Education Department and upon following procedure as required by law. The Joint Charity Commissioner could not have reached findings merely on apprehensions and contentions raised on behalf of the respondent nos.2 to 5.

21. As regards the Trust giving out shops on leave and license, the statutory requirement of taking permission of the authorities under the said Act for giving out such shops for periods beyond 3 years cannot be violated by the petitioners and merely because some of the shops were given out on leave and license agreements for 11 months with a clause that there would be 10% increase in rent beyond the period of 3 years, would not necessarily mean that this statutory requirement stood violated. A suitable direction could have been given to ensure that the statutory requirements are followed during the pendency of the enquiry under Section 41 -D of the said Act or even otherwise.

22. Therefore, this Court finds that the petitioners have made out a case for interference in the impugned order. In order to ensure that the interests of the Trust are not adversely affected and at the same time, the functioning of the Trust is also not unnecessarily hampered or paralyzed, the present writ petition is partly allowed in the following manner:

a) The impugned order dated 21/11/2019 is modified and it shall now read as follows:

i) The application at Exhibit 26 filed by the respondent no.5 is partly allowed.

ii) The petitioners herein i.e. the non-applicants before the Joint Charity Commissioner are directed not to sell the immovable properties of the Trust, without sanction of the Joint Charity Commissioner, Nagpur.

iii) The petitioners i.e. non-applicants before the Joint Charity Commissioner shall not lease out any of

the immovable property beyond the period of three years without sanction of the Joint Charity Commissioner, Nagpur.

iv) The petitioners i.e. non-applicants before the Joint Charity Commissioner shall file quarterly statements before the said authority, regarding withdrawal of non-salary grants and payments made out, for the information of the said authority during the pendency of the application under Section 41-D of the said Act.

b) The direction no.3 in the impugned order dated 21/11/2019 is specifically set aside, with a direction to the Trust through the petitioners herein to make appointments to the Institutions run by it, strictly in accordance with law and by following proper procedure as laid down in various directions given by

the concerned authorities of the Education Department.

c) The impugned orders dated 21/02/2022 passed in Exhibits 44 and 48 are quashed and set aside. In any case, with the modification of the impugned order dated 21/11/2019, now the Trust through the petitioners would not require sanction of the Joint Charity Commissioner before making appointments. But, it is reiterated that such appointments shall necessarily be made strictly in accordance with law.

d) The Joint Charity Commissioner is directed to immediately take up the enquiry under Section 41-D of the aforesaid Act and frame charge within a period of 6 weeks from today. Thereafter, the enquiry proceedings shall be completed as expeditiously as possible and in any case within a period of one year from today.

23. Rule is made absolute in the above terms with no order as to costs.

JUDGE

R.S.Sahare