

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

CONTEMPT PETITION NO.213 OF 2022
IN
FIRST APPEAL NO.177 OF 2019

- 1] Veerbadra s/o. Sidramappa Birajdar,
Age 62 years, Occu : Business,
- 2] Chandrashekhar s/o. Manohar Kshirsagar,
Age: 59 years, Occu : Business

Residing at Latur
- 3] Malikarjun s/o. Virupakashyya Shankad,
Age: 51 years, Occu : Medical Practitioner
- 4] Deepak s/o. Bankatlalji Chandak,
Age 51 years, Occu : Business
- 5] Raosaheb s/o. Narsingh Mule,
Age 66 years, Occu : Business

All R/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur

.. PETITIONERS

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai-32.
- 2] High Court of Judicature at Bombay,
Through its Registrar General,
High Court, Mumbai.

- 3] Charity Commissioner,
Maharashtra State Mumbai,
Sismira Building,
Dr. Annie Besant Road,
Worli, Mumbai.

**Respondent nos.1 to 3 deleted as
per Court's Order dated 7.8.2023**

- 4] Shri B.D.Kulkarni,
Age Major, Occu : District Judge,
presently posted as
Joint Charity Commissioner,
Latur Region, Latur
Padile Complex, Ambajogai Road,
Latur, Dist. Latur.
- 5] Vishwanath Shankarappa Walande,
Age 83 Years, Occu : Agri & Business,
R/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur.
- 6] Basvaraj Vajjnathappa Gastgar,
Expired on 04.08.2020
- 7] Ramniwas Balkishan Darak,
Expired on 25.10.2020
- 8] Premchand Ranglal Biyani,
Age 67 Years, occu : Business,
R/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur.
- 9] Ramesh Dadarao Bagdure,
Age 63 years, Occu : Business,
R/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur.

- 10] Kishanrao Veerappa Bhingole / Reddy,
Age 78 years, Occu : Agriculture,
R/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur.
- 11] Shivajirao Manikrao Jadhav,
Age 74 years, Occu : Pensioner,
Retired Principal, M.D.M. Arts &
Commerce College, Aurad Shahajani
R/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur.
- 12] Madolayaa Sangaya Mathpati,
Age 69 Years, Occu : Pensioner,
Retired Teacher, Maharashtra Vidyalyaya,
Aurad Shahajani,
R/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur.
- 13] Rajesh Vishwanath Walande,
Age 57 years, Occu : Business,
R/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur.
- 14] Dagdu Baliram Girbane,
Age 70 years, Occu : Pensioner,
Retired Teacher, Maharashtra Vidyalyaya,
Aurad Shahajani,
R/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur.
- 15] Matin Nabisab Alandkar,
Age 67 years, Occu : Pensioner,
Retired Professor, M.D.M. Arts &
Commerce College, Aurad Shahajani,
R/o. Aurad Shahajani,
Tq. Nilanga, Dist. Latur.

16] Shardopasak Shikshan Sanstha,
Aurad Shahajani,
Tq. Nilanga, Dist. Latur.
Through its Secretary

.. RESPONDENTS

...

Mr.S.B.Gastgar, Advocate for the petitioners.
Mr.B.V.Virdhe, AGP for the respondent-State
Mr.Ajay Deshpande, Advocate for the respondent no.4.

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 25.10.2023.

ORDER :

1] By the present Contempt Petition, the petitioners allege that Judicial Officer Mr.B.D.Kulkarni, District Judge, presently posted as Joint Charity Commissioner, Latur Region, Latur has committed contempt of the order passed by this Court dated 26.02.2019 in First Appeal Nos.177/2019 & 178/2019.

2] The primary contention of the petitioners is that the respondent no. 16 Shardopasak Shikshan Sanstha is a registered Public Trust bearing PTR No.F-144/Latur. The said trust is registered in the year 1972 under the relevant provisions of law. The said trust is running the educational

units and are receiving 100% grant in aid from the State Government as well as from the University Grants Commission. It is the contention of the petitioners that the trust is mismanaged by the respondent trustees and they have committed irregularities and misappropriated huge funds of the said trust. The petitioner nos.1 and 2 have filed application dated 06.11.2017 under Section 41D and 41E of the Maharashtra Public Trusts Act and thereby prayed that the respondent trustees be removed permanently from the trustee-ship and even from their membership and they be held as disqualified permanently from becoming the members or the office bearers of the said trust. The respondent nos. 5, 8 to 16 filed their say and resisted the application more particularly on the ground of maintainability and locus standi of the petitioners for filing the said application. After hearing the parties, the Joint Charity Commissioner rejected the application filed by the petitioners on the ground that the petitioners have no locus standi to file enquiry application under Section 41D of the Maharashtra Public Trusts Act as they are not the person

having interest in the trust.

3] The petitioners filed First Appeal before this Court and this Court after hearing the parties set aside the orders challenged therein and held that the petitioners have every locus standi to file the proceeding under Section 41D and 41E of the Maharashtra Public Trusts Act against the respondents trustees and it was directed by this Court that the Joint Charity Commissioner shall permit the appellants in both the appeals to participate in the suo motu inquiry initiated against the respondents under Section 41D and 41E of the Act.

4] After restoration of the application, the Joint Charity Commissioner framed the charges after hearing the parties under Section 41D (1) (a) (b) (c) (d) and (e) and decided the same, by the judgment and order dated 21.12.2020. The Joint Charity Commissioner, Latur i.e. respondent no. 4 Shri B.D.Kulkarni heard the parties in Application No.87/2017 and Application No.186/2018 on 18.08.2021 and reserved the matters for order. After

near about 3 months period, passed common judgment and order dated 03.11.2021 and thereby dismissed both the applications and discharged the respondent trustees from the said proceedings.

5] It is the case of the petitioners that this Court has already held in the earlier proceedings that the petitioners have locus standi to maintain both the applications. However, the learned Joint Charity Commissioner has held that the petitioner has no locus standi, and therefore, has committed contempt of the order of this Court.

6] The petitioners have challenge the said judgment in this Court by filing First Appeal so also they have filed contempt petition in which it is alleged that the Joint Charity Commissioner has held that the petitioners do not have locus standi to file the application, therefore, the Joint Charity Commissioner has acted contrary to the order passed by this Court and thus contempt its committed.

7] In the Contempt Petition, this Court on 19th April, 2022 has passed the following order :

1. Heard Mr S.B.Gastgar, learned Advocate for petitioners for some time.

2. Having regard to the grounds pleaded in the petition for motion of contempt, it is necessary to have hearing in detail to find out whether case for initiating contempt is made out.

3. Hence, keep it on 7.6.2022.

8] This Court on 11th July, 2022 has passed the following order :

“ Heard.

2. Issue notice to the respondent No.4, returnable on 10-08-2022.”

9] The respondent no.4 has filed it's affidavit and stated in para nos.1 to 5, as under :

1. At the outset, with full responsibility and sense of remorse I hereby tender my sincere and unconditional apology to this Hon'ble Court, without attempting to justify the order passed by me and observations made therein,

contrary to the findings recorded by this Hon'ble Court in First Appeal No. 177 of 2019. I express a sense of gratitude towards the petitioners, who have pointed out contradictory findings recorded by me qua the observations made by this Hon'ble Court while deciding First Appeal No. 177 of 2019.

2. I am flabbergasted to know that, I have recorded a finding while delivering a decision on 21.12.2020, contrary to the findings recorded by this Hon'ble Court in First Appeal No. 177 of 2019. It is indeed a blunder committed by me, which ought not to have been done, even inadvertently. I have to accept the blame of not adhering to the observations of this Hon'ble Court, although inadvertently. It should not have happened and I have no words to justify. Although at the relevant point of time I was unstable due to some family issues, yet in no way I would justify the acts and omissions attributable to me while rendering the decision dated 3.11.2021, wherein I have recorded a finding contrary to the findings recorded by this Hon'ble Court. I am, therefore, to tender unconditional apology for the same, with full sense of remorse, coupled with an assurance to this Hon'ble Court that, there would be absolutely no recurrence of such incidence in future.

3. I say that, I have to justify nothing but to tender as unconditional apology in the matter to this Hon'ble Court for the acts and omissions

attributable to me, for having deciding the proceedings by recording findings contrary to the observations of this Hon'ble Court while adjudicating First Appeal No. 177 of 2019 dated 26.2.2019.

4. I say that, it would indeed be inappropriate if I do not advert to the contents of para No. 7 of my order at Exh. 'J' below Exh. 4 in Appeal No. 10 of 2021 dated 17.8.2021. On account of passing of an order of 'status-quo', there were allegations and counter allegations that, the status-quo is being misinterpreted. Certain accusations were also made against me in the capacity as a Presiding Officer. The statements in para No. 7 are the outcome of Discomposure, which too were not expected to be a part of an order in judicial proceedings. My sincere apologies for the same.

5. I say that, since the decision rendered by me is under judicial scrutiny of this Hon'ble Court, it would be audacious on my part to offer comment thereon either way. Nonetheless, with the unconditional apology I have tendered, on account of a mistake occurred due to sheer inadvertence is solely attributable to me. The decision rendered by me is incapable of being sustained in the eye of law on that score. Adjudication of the proceedings apart, for the reason of inadvertent mistake committed by me, the decision rendered as it stands, does not withstand judicial propriety and inconvenience caused to this Hon'ble Court as well as to the litigating parties on that score is sincerely

regretted with a solemn assurance to this Hon'ble Court that, such mistake, even inadvertently would not recur in future. I once again tender my unconditional apology with full sense of remorse and earnestly pray this Hon'ble Court to graciously condone the lapse on my part with a parental approach, for which I shall remain ever grateful to this Hon'ble Court.

10] The order of the Joint Charity Commissioner dated 3rd November, 2021 at paragraph nos.16 and 18 has observed as under :

16. It is pertinent to note that the applicant in application No. 186/2018 claims himself to be the trustee and member of the Trust. The said fact is not denied by the applicants in both matters. Hence, it can be safely said that the said applicant Ravindra Gastagar is entitled to file an application u/sec. 41D of the Act. So far as the applicants in application No.87/2017 are concerned, they are not claiming themselves to be members of the Trust. In the cross-examination of applicant No.3 at Exh.79, he admitted the fact that he is not a member of the Trust. For that we can take help of the ratio led down in the judgment of Shri. Maganlal Himatram Vs. Mridangraj Hiralal Suchak, decided by the Hon'ble Bombay High Court in Writ Petition No 7296 of 2018 wherein it is

observed that;

"... The definition 'beneficiary' has to be given a narrow and restrictive meaning. It is thus clear that the legislative intent to insert the definition of 'beneficiary' under section 2-A of the MPT Act is to restrict the interference with the management of the public trust only by the persons having an interest in the trust including the trustee and beneficiary and more particularly the beneficiary defined under section 2(2-A) of the MPT Act inserted by 2017 Amendment and no other person."

18. As discussed in forgoing paras, only the applicant in application No. 186/2018 is the person having an interest in the Trust in question. As the applicant in application No.186/2018 is a member of the Trust and as stated earlier, both the matters are filed on the same grounds for the same period and common evidence is adduced therein, both the applications needs to be entertained through applicants in application No.87/2017 are not the interested persons as well as beneficiaries. Hence, I answer point No.1 partly in the affirmative.

11] From para 18 it is apparent that the court has held that the present applicant did not have locus standi to file application for enquiry under Section 41D of the

Maharashtra Public Trusts Act, which is contra to the findings recorded by the High Court. The Tribunal further proceeded to hold that since both the matters are filed on the same grounds for the same period and common evidence is adduced therein, both the applications needs to be entertained through applicants in application No.87/2017 are not the interested persons as well as beneficiaries. Para no.19 of the order dated 3rd November, 2021 is as under :

AS TO POINT NO.2:

19. Learned counsel for the applicants in both the matter argued that the respondents have not submitted audit reports regularly and submitted the same at once after a gap of two to ten years. They further argued that the audit report from 1996 to 2005 and 2018 to 2021 are not submitted and as such, they have committed persistent default in the submission of account reports. All the witnesses examined by the applicants have also gone on the same line and deposed that the respondents have made persistent defaults. The said fact also transpires from the certified copy of schedule-X filed at Exh.7 in application No.87/2017.

12] The Tribunal held that the first applicant did not have locus standi. On 3rd November, 2021, the Tribunal has proceeded to pass the following order and operative part of the said order is as under :

ORDER

- 1. Both applications No.87/2017 and 186/2018 are hereby dismissed.*
- 2. The respondents in both matters are discharged from the proceedings.*
- 3. No order as to cost.*
- 4. Original judgment be kept in application No.87/2017 and verified copy of which be kept in application No.186/2018.*

13] The correctness of the order dated 3rd November, 2021 is challenged before this Court by filing the First Appeal. Along with the First Appeal, Contempt Petition is also filed.

14] Heard the learned counsel for the parties. The

Tribunal although held that the petitioners did not have locus standi to maintain the application, has nevertheless proceeded to consider the evidence of the contempt petitioners and has dealt with the case of the complainant and has decided the case on its own merit. The correctness of the order dated 3rd November, 2021 is now challenged before this Court in First Appeal. On issuance of the notice in the Contempt Petition by this Court, the Judicial Officer has tendered his unconditional apology and has submitted that the order is inadvertent and regretted. Considering the apology tendered by the respondent no.4 and the also the fact that evidence tendered by the petitioners is taken into consideration while deciding the companion application for the same cause, it cannot be said that the act of the learned Joint Charity Commissioner is deliberate. The learned Joint Charity Commissioner has not non-suited the petitioners on locus but has adjudicated the connected application for the same cause on merits taking into consideration the evidence adduced in both the applications. As such, no case for contempt is made out. I accept the statement of the Joint

Charity Commissioner that the error is inadvertent and it is regretted. Contempt Petition is accordingly disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC