

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 WRIT PETITION NO.11478 OF 2022

SHARAD DATTATRAYA KULKARNI
VERSUS
THE JOINT CHARITY COMMISSIONER

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Mr. Swapnil A. Deshmukh, Advocate for the Petitioner/s.
Mr. S.N. Morampalle, AGP for the Respondent/State.

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CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 07, 2023.

PER COURT :

1. Heard the learned counsel for the Petitioner and the learned AGP for the Respondent-State.
2. By the impugned order dated 18th August, 2021, the Joint Charity Commissioner in Suo Moto Inquiry No.14/2014 has rejected the application of the Petitioner for setting aside “no say” order. The inquiry was initiated under Section 41(D) of the Maharashtra Public Trusts Act, 1950. The appearance was caused by the Petitioner in the year 2016, as the say was not filed, “no say order” was passed on 15th January, 2016.
3. Upon learning of the said fact, an application was filed by the Petitioner for setting aside no say order on 18th August, 2021. In the said application, the Petitioner tendered the

explanation that since their counsel was appointed as C.P.O. at Maharashtra Administrative Tribunal, Bench at Aurangabad, the proceedings could not be prosecuted and order of “no say” came to be passed. The learned counsel for the Petitioner submits that default in filing the say was not on account of the Petitioner and for the reason which is stated in the application and pressed that the impugned order may be set aside.

4. *Per contra*, the learned AGP vehemently opposed the application and submits that setting aside the “no say” order is necessary to be accompanied with say and since the memorandum did not contain say, the impugned order has been rightly passed.

5. I have considered the rival submissions of the parties. It is to be noticed that the procedural law cannot take precedence over substantial rights of the parties. In an inquiry under section 41(D) of the Maharashtra Public Trusts Act, the Petitioner is required to be given an opportunity to represent his case in the interest of justice. The reasons set out in the application has not been considered by the Joint Charity Commissioner and only on the ground that the say has not been annexed to the memorandum, has proceeded to dismiss the application and the matter is posted for cross-examination. In order to afford opportunity of hearing to the Petitioner and in the interest of justice, the impugned order dated 18th August, 2021 is hereby quashed and set aside, subject to the

costs of Rs.2,500/-, to be paid to the High Court Legal Services Authority, Aurangabad within a period of two weeks from today. The say of the Petitioner to be filed with Joint Charity Commissioner, Aurangabad Region, Aurangabad along with the receipt evidencing the payment of costs to the High Court Legal Services Authority, Aurangabad.

6. The Writ Petition is allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)