IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.2737 OF 2022

Paras A. Shah and Another ...Petitioners
vs.
Praful Keshavji Chedda and Others ...Respondents

Mr. D.H. Sharma, for the Petitioners
Mr. A.P. Vanarase, AGP for Respondent Nos. 1 and 2.
Ms. Gunjan Shah, for the Respondent No. 3.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 27, 2023

P.C.:

1. Heard the learned counsel for the parties.

2. The challenge in this petition is to an order dated 16th March, 2020 passed by the learned Joint Charity Commissioner, Mumbai on an application containing the draft charges (Exhibit 21), whereby the learned Joint Charity Commissioner arrived at a conclusion that the allegations made against the petitioners warrant an inquiry as contemplated by section 41D of the Maharashtra Public Trust Act, 1950 (the Act, 1950) as evidence was required to be adduced in proof or disproof of the said allegations.

3. The learned counsel for the petitioners submitted that the learned Joint Charity Commissioner has not at all considered the

aspect as to whether the material on record warrants framing of the charges as contemplated by section 41D(1)(c)(d) and (e) of the Act, 1950, and by single line order allowed the application (Exh 21).

4. The learned counsel for respondent Nos. 1 and 2 countered the submissions on behalf of the petitioners. It was urged that the petitioners will have an opportunity to meet the charges at the stage of inquiry.

5. Sub section (1) of section 41D enumerates the grounds on which the Charity Commissioner may suspend, remove or dismiss any trustee of the public trust. The procedure of the inquiry warranted to exercise the power to suspend, remove or dismiss any trustee is prescribed in Sub-Sec.(2) of Sec.41D. It reads as under:-

> 41D **Suspension, removal and dismissal of trustees:-**
>
> (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 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 of the default in the filing of reply, as the case may be, and given 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 to issue notice, fame 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.

6. In the case at hand, it seems, after notice under clause (a), the petitioners appeared and filed reply. Thereupon the impugned order came to be passed on an application containing the draft charges (Exhibit 21). The inquiry contemplated under clause (c) of sub section (2) of section 41D may not be very elaborate. However, the Charity Commissioner must arrive at a satisfaction that the charges are required to be framed against the trustees against whom action is proposed to be taken under sub section (1) of section 41D, and frame definite charges. Further inquiry pivots around the charges which the Charity Commissioner frames.

7. In the case at hand, the Charity Commissioner has held that the charges be framed against the petitioners under section 41D(1) (c), (d) and (e), which read as under:-

> (1) The Charity Commissioner may, either on application of a trustee or any person interested in the trust, or on receipt of a report under section 41B or suo motu may suspend, remove or dismiss any trustee of a public trust, if he,—
> (c) continuously neglects his duty or commits any malfeasance or misfeasance, or breach of trust in respect of the trust;
> (d) misappropriates or deals improperly with the properties of the trust of which he is a trustee; or
> (e) accepts any position in relation to the trust which is inconsistent with his position as a trustee.

8. I have perused the draft charges. Some of the draft charges do not fall within any of the aforesaid clauses. Charges must have elements of certainty and precision as to acts or omissions, which fall within the dragnet of aforesaid provisions. Framing of specific and precise charges is imperative for an effective inquiry, which advances the object of above provision.

9. It would, therefore, be, in the fitness of things that the Charity Commissioner frames definite charges against the petitioners under section 41D(1) (c), (d) and (e). That would also give the petitioners an opportunity to know the case which they are required to meet at the inquiry.

10. Hence, the petition stands disposed with a direction to the Charity Commissioner to frame definite charges with reference to the allegations against the petitioners under section 41D(1) (c), (d)

and (e) and thereafter proceed with the inquiry in accordance with the provisions contained in the Act, 1950.

11. It is clarified that this Court has not entered into the merits of the allegations against the petitioners.

(N. J. JAMADAR, J.)