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

## WRIT PETITION NO. 13533 OF 2022

Narayan Mangilal Agrawal & Ors. ...Petitioners
Versus
The Charity Commissioner
Nashik Region & Ors. ...Respondents

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**Mr. P. B. Shah,** Sr. Advocate i/b. Mr. K. P. Shah for Petitioners.
**Mr. A. P. Vanarse,** AGP for Respondent.

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**CORAM: SANDEEP V. MARNE, J.**
**DATE : 31 AUGUST 2023.**

**ORAL ORDER:**

Petitioners are aggrieved by the order dated 28 September 2022 passed by the Jt. Charity Commissioner, Nashik Region, Nashik framing charges for passing order under Section 41-D of the Maharashtra Public Trusts Act, 1950 **(the Act**).

2. It appears that Deputy Charity Commissioner, Nashik Region, Nashik submitted a report dated 21 November 2017 on the basis of which the Jt. Charity Commissioner proceeded to initiate *suo motu* proceedings under Section 41-D of the Act. He accordingly issued notice to the Petitioners seeking their response on the findings recorded by the enquiry officer. It appears that some of the Petitioners filed reply before

the Jt. Charity Commissioner. The Jt. Charity Commissioner, after hearing learned advocate appearing for Petitioner was not satisfied with the reply and proceeded to frame charges for the purpose of taking action under Section 41D of the Act.

3. Though it is not necessary to discuss all the findings of the enquiry officer and response of Petitioners thereto, there appears to be non-application of mind on the part of Jt. Charity Commissioner to the defence taken in the response filed by the Petitioners. To illustrate, one of the allegations against Petitioner in the report of the enquiry officer is about borrowing money. This allegation is denied by the Petitioners. The defence is taken that some amounts were borrowed without interest and have already been repaid. That the said transaction does not fall under the expression 'loan' within the meaning of Section 36A of the Act.

4. Another allegation against the Petitioners is failure to file budgets. However in the reply, Petitioners raised a defence giving dates of filing of budgets of various years.

5. Perusal of the impugned order of the Jt. Charity Commissioner would indicate non-application of mind to said defences. The Jt. Charity Commissioner has not recorded any *prima facie* finding that amounts procured by Petitioners would amount to 'loan' within the meaning of Section 36A of the Act. Similarly the defence of filing budgets on various dates taken by Petitioners has not been dealt with by Jt. Charity Commissioner.

6. Jt. Charity Commissioner himself has observed that the proceedings under Section 41D cannot be initiated casually. However while observing so, the Jt. Charity Commissioner has not recorded even *prima facie* findings for rejecting defences raised by the Petitioners. In this regard provisions of Section 41D (2)(c) of the Act are reproduced.

> **"41D Suspension, removal and dismissal of trustees**
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> 2. (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 or the default in the finding of reply, as the case may be, and give 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, frame charges and pass final orders within stipulated time, he shall record reasons for the same."

7. Thus, under clause (c) of Sub-Section (2) of Section 41D, the Charity Commissioner can proceed to examine charges only if he finds the reply to be non-satisfactory. The satisfaction reached by Charity Commissioner on reply is required to be supported at least by *prima facie* findings. The Jt. Charity Commissioner cannot mechanically proceed to reject the reply and proceed to frame charges. True it is that the trustees do get an opportunity of defending action under Section 41D upon framing charges. However considering language implied in clause (c) of

Sub-Section (2) of Section 41D, the Charity Commissioner is required to record a finding that the reply is not satisfactory. While doing so, Charity Commissioner is required to take into consideration contentions raised in the reply. Perusal of the order would indicate that there is no application of mind on various defences taken in the reply. In my view therefore the impugned order of Jt. Charity Commissioner is not sustainable. I therefore proceed to pass following order-

**O R D E R**

i) The order passed by Jt. Charity Commissioner, Nashik Region, Nashik dated 28 September 2009 is set aside and the proceedings are remanded to the Jt. Charity Commissioner, who shall consider the replies filed by the Petitioners to the enquiry report and after considering defences taken in the reply, shall proceed to pass a fresh order either dropping the proceedings or framing the charges. Needless to observe that the Jt. Charity Commissioner shall not be influenced by any of the observations in this order and that he shall take a decision independently. All contention of parties are left open.

8. With the above observations, Writ Petition is disposed of.

KISHOR VISHNU KAMBLE

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Date: 2023.09.07 12:42:47 +0530

**SANDEEP V. MARNE, J.**