IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.13458 OF 2022

Pune District Football Association ...Petitioner
vs.
Maria Das Shripat Bodhak and Others ...Respondents

Mr. Atul Damle, Senior Advocate i/b. Mr. Tukaram Shendge, for the Petitioner.
Mr. Aniket Ranade, for the Respondents.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 17, 2023

P.C.:

1. Rule. Rule made returnable forthwith and with the consent of the counsel for the parties, heard finally at the stage of admission.

2. The challenge in this petition is to an order passed by the learned Joint Charity Commissioner, Pune in Misc. Application No. 2 of 2022 to appoint a special auditor to carry out a special audit of the petitioner-trust purportedly under section 33(4) of the Maharashtra Public Trusts Act, 1950 (the Trust Act, 1950).

3. Pune District Football Association, the petitioner, is a society registered under the Societies Registration Act, 1860 and a public trust within the meaning of Section 2(13) of the Trust Act, 1950. The respondent Nos. 1 and 2 are the representatives of the clubs affiliated with the petitioner.

4. Respondent Nos. 1 and 2 filed an application before the Joint Charity Commissioner, Pune with the allegations that the accounts of the trust were not maintained and audited in accordance with the provisions of the trust Act, 1950 and the rules thereunder. Therefore, a special auditor be appointed to carry out a special audit of the accounts of the trust. It was alleged, inter alia, that the audit reports for the year 1944-45, 1998-99, 2001-02, 2008-09 and 2009-10 have not been filed. The income and expenditure statement for the year 2015-16 revealed irregularities in the matter of the incurring expenses for food items, website charges and for secular education. In fact, providing secular education was not and had never been one of the objects of the trust. Respondent Nos. 1 and 2 therefore suspected mis-application and misappropriation of the trust/fund.

5. The petitioner resisted the application by filing reply. It was contended, inter alia, that the audit report for few of the years were misplaced. It was categorically asserted that the audit reports were duly filed with the office of Charity Commissioner for the year 2012-13 to 2017-18. Explanations were sought to be offered with regard to the alleged increase in the expenditure for food items, website charges and for secular education.

6. By the impugned order, the learned Joint Charity Commissioner was persuaded to allow the application and appoint a Chartered Accountant as a special auditor to verify the financial transactions of the trust for the years 2015-16 to 2018-19. The learned Charity Commissioner was of the view that there were specific allegations about mis-application of the trust funds. Exorbitant amounts were shown towards the expenditure for food items, website charges and secular education. In the circumstances, the Charity Commissioner considered it appropriate to appoint a special auditor as it would not cause any prejudice to the petitioner and its trustees.

7. Mr. Damle, learned senior counsel for the petitioner strenuously submitted that the learned Joint Charity Commissioner did not consider the reply on behalf of the petitioner and proceeded to appoint the special auditor on an extraneous consideration that it would not cause any prejudice to the petitioner. Mr. Damle, submitted that the power of the Charity Commissioner to direct the special audit is circumscribed by the provisions contained in sub section (4) of section 33. The Charity Commissioner is enjoined to record reasons to justify the formation of opinion about necessity of the special audit. A special auditor can not be appointed sans

formation of such an opinion.

8. Chapter V of the Act, 1950 provides for budget, accounts and audit of the trust. Section 31A provides for submission of budget to the Charity Commissioner by the trustees of the public trust, annual income of which exceeds the prescribed limit. Section 32 ordains the maintenance of accounts by every trustee of a public trust containing particulars as may be prescribed and in the form as may be approved by the Charity Commissioner. Sub section (1) of section 33 mandates that the accounts of a public trust under section 32 shall be balanced each year on the 31st day of March or such other day, as may be fixed by the Charity Commissioner. Sub section (2) of section 33 provides for audit of the accounts by a Chartered Accountant or such persons as the State Government may authorize.

9. Sub section (4) of the section 33 provides for a special audit. It reads as under :-

> (4) Notwithstanding anything contained in the preceding sub-sections—
> [(a)] the Charity Commissioner may direct a special audit of the accounts of any public trust whenever in his opinion such special audit is necessary. The provisions of sub-sections (2) and (3) shall, so far as may be applicable, apply to such special audit. The Charity Commissioner may direct the payment of such fee as may be prescribed for such special audit;

> and
>
> (b) State Government may, by general or special order, exempt any public trust or class of public trusts from the provisions of sub-section (2), subject to such conditions as may be specified in the order.]

10. A plain reading of sub section (4) of section 33 would indicate that power is vested in the Charity Commissioner to direct a special audit by incorporating a non-obstante clause. The Charity Commissioner may exercise the power to direct a special audit whenever in his opinion such special audit is necessary. Formation of opinion is imperative. Whenever the Charity Commissioner finds that the accounts of the trust have not been either maintained or audited in conformity with the provisions of the Act, 1950 and the Rules framed thereunder, the Charity Commissioner can legitimately exercise the power to order a special audit. However, the circumstances which necessitate a special audit, in the opinion of the Charity Commissioner, can not be restricted to cases of gross misappropriation or fraud. It would be impermissible to read restrictions on the power to order a special audit where the legislature, in its wisdom, has vested discretion in the Charity Commissioner, on the one hand, by incorporating a non-obstante clause and, on the other hand by employing elastic words.

11. On the aforesaid touchstone, reverting to the facts of the case, I find it difficult to accede to the submission that the process of formation of the opinion by the Charity Commissioner can be faulted at. Evidently, the Charity Commissioner gave an opportunity of hearing to the petitioner trust and its trustees before ordering a special audit. The learned Charity Commissioner also considered the reply filed on behalf of the petitioner and its trustees.

12. The reasons which weighed with the Charity Commissioner cannot be said to be extraneous. The observations that the special audit would not cause prejudice to the respondents are required to be appreciated in the context in which they are made. Construed as a whole, the observations in paragraph 9 of the impugned order indicate that the Charity Commissioner was of the view that the special audit would give a correct picture of the state of affairs of the accounts of the trust. In exercise of extraordinary writ jurisdiction, this Court may not be justified in delving into the justifiability of the reasons which weighed with the learned Charity Commissioner especially when the discretion is exercised to have a special audit essentially in exercise of the parens patriae jurisdiction, which the Charity Commissioner exercises over the

public trusts.

13. For the foregoing reasons, I do not find any justifiable reason to interfere with the impugned order.

14. The petition thus stands dismissed.

15. Rule discharged.

16. No costs.

(N. J. JAMADAR, J.)