IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No. 3521 of 2018
Satyanarayan Namdeo Ajabale
Vs.
Wasudeo Motiram Ambade and others

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Mr.Prashant Gode, counsel for the Petitioner.
Mr. M.B.Turankar, counsel for respondent Nos.2 and 4.
Mrs.H.N.Jaipurkar, AGP for Respondent No.11.

CORAM : ANIL S. KILOR, J.
DATED : 06.01.2023.

Heard the learned counsel for the respective parties.

2. The present petition is arising out of the judgment and order dated 09/11/2017, passed by the District Judge-2, Bhandara, thereby partly allowing the M.J.C. No.96 of 2015. The learned District Judge-2 further set aside the judgment and order dated 29/03/2012, passed by the learned Joint Charity Commissioner, Nagpur, in Application No.30 of 2004 under section 41-D of the Maharashtra Public Trusts Act ('Trusts Act') and the matter was remanded back to

the learned Joint Charity Commissioner for fresh hearing and disposal in accordance with law to consider the only aspect of proportionality of punishment on the basis of charge/charges held to be proved after hearing of the parties concerned. It is further observed that the other points concluded shall not be reopened.

3. The learned counsel for the petitioner submits that though there is no evidence on record about malfeasance and misfeasance. It is submitted that there are no findings recorded by both the Courts below that the audit reports were not submitted for the period from 1998 to 2004 by the petitioner with *mala fide* intention or with some ill intention. Moreover, there is nothing to show that there was any misappropriation of amount. It is therefore, submitted that the findings about malfeasance and misfeasance are perverse and without any evidence.

4. Shri Gode, learned counsel for the petitioner, further submits that in absence of any finding that the audit was not conducted and the reports were not submitted by the petitioner with *mala fide* intention, the remand of the matter to the Joint Charity Commissioner to determine the proportionality of punishment is unwarranted and contrary to law. For

this purpose. The learned counsel for the petitioner has placed reliance on the judgments of the Coordinate Bench of this Court in the case of **Mallikaarjunappa v. Jt. Charity Commr.**, reported in **2008 (1) Mh.L.J. 148** and **Totaram Dasuji Rathod v. Atmaram Kisansing Rathod**, reported in **2020 (1) Mh.L.J. 922**. Accordingly, he prays for quashing and setting aside the impugned judgment and order dated 09/11/2017.

5. On the other hand, the learned AGP for respondent No.11 supports the impugned judgment and order.

6. The learned counsel for the respondent Nos.2 and 4, submits that in cross-examination, the petitioner has admitted that during the period from 1998 to 2004, he was holding both the posts of President and Secretary of the concerned Trust and did not submit audited statements of the trust to Assistant Charity Commissioner, Bhandara. The learned counsel for the respondent Nos.2 and 4, therefore, submits that once the admission of the petitioner has come on record as regards the defaults in respect of section 41-D(1)(a) of the Trusts Act, the concurrent findings recorded by both the Courts below as regards the defaults cannot be faulted with and, therefore, the remand of the matter to

determine the proportionality of punishment is just and proper. Accordingly, the learned counsel prays for dismissal of the present writ petition.

7. I have perused the documents filed along with the writ petition and the judgments and orders passed by the Joint Charity Commissioner and the learned District Judge-2, Bhandara.

8. In this case, the applicants in Application No.30 of 2004, filed before the Joint Charity Commissioner under section 41-D of the Trusts Act, prayed for dismissal and removal of the petitioner from the concerned Trust. The learned Joint Charity Commissioner after scrutinizing the oral as well as documentary evidence, removed the petitioner from the post of the President and as Trustee with immediate effect. The said judgment and order of removal dated 29/03/2012 was carried in M.J.C. No.95 of 2015, which came to be partly allowed by setting aside the judgment and order of the Joint Charity Commissioner dated 29/03/2012 and the matter was remanded back to the Joint Charity Commissioner to consider the aspect as regards the proportionality of punishment in view of the obsrvations made by the learned District Judge-2, Bhandara in judgment and order dated 09/11/2017.

9. In the cross-examination of the petitioner, he has admitted in clear terms that from the years 1998 to 2004, he was holding both the posts of President and the Secretary of the Trust and during the said period he did not submit audited statements of the trust to the Charity Commissioner.

10. At this stage, therefore, it is pertinent to refer to the provision under section 41-D(1)(a) of the Trusts Act, as under:

> *"41D. (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 of suo motu may suspend, remove or dismiss any trustee of a public trust, if he, –*
>
> *(a) makes persistent default in the submission of accounts report or return;"*

11. Thus, it is evident from the above referred provision that if in case persistent defaults in the submission of accounts report or return, the Charity Commissioner may suspend, remove or dismiss any trustee of a public trust.

12. In this case, as the petitioner himself admitted the defaults committed by him during the

period from 1998 to 2004 in submitting the audited reports, I do not find any error committed by both the Courts below in recording the default under section 41D(1)(a) of the Trusts Act against the petitioner.

13. The Coordinate Bench of this Court in the case of *Santoshkumar Nandkishor Pande v. Vinaykumar Satyanarayan Mishra*, reported in **2013 (1) Mh.L.J. 145** has held in paragraph 6 thus:

> "Section 41-D(1) of the Bombay Public Trusts Act confers a power upon the Charity Commissioner to suspend, remove or dismiss any Trustee/Trustees of the Public Trust if he/ they are found guilty of the act/acts, which is/are mentioned in any of the Clauses (a) to (f) therein. In order to consider the question as to whether the Trustee or the Trustees, who is or are found guilty of any of the charges mentioned in Clauses (a) to (f) to sub-section (1) of section 41-D of the said Act, should be suspended, removed or dismissed, there has to be an application of mind to the aspect of proportionality of punishment on the basis of the charges held to be proved. The punishment of either suspension, removal or dismissal, as the case may be, has to be proportionate to the gravity of the charge/charges held to be proved. It is not the every lapse or every act of misconduct, which invites the punishment of dismissal. The

> Charity Commissioner is, therefore, bound to record reasons for imposing a particular punishment. The substantial question of law is, therefore, answered accordingly."

14. As far as the malfeasance and misfeasance is concerned, without discussing any material in that regard, the Court has presumed that by not submitting the accounts of the trust, the inaction committed by the petitioner amounts to malfeasance and misfeasance. Thus, in the absence of any evidence or discussion in this regard, I find such observations in respect of malfeasance and misfeasance are perverse and without any evidence.

15. In the circumstances, I have no hesitation to hold that both the Courts below have rightly held that the petitioner has committed defaults as stipulated under section 41D(1)(a) of the Trusts Act and, therefore, I do not find any error committed by the learned District Judge-2, Bhandara as well as by the learned Joint Charity Commissioner.

16. Accordingly, the writ petition is dismissed. No order as to costs.

[ANIL S. KILOR, J.]