



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

8 WRIT PETITION NO. 2933 of 2014

Satpuda Shikshan Prasarak Mandal, Dhule
& others

....Petitioners

VERSUS

Vasantrao Jesa Chavan & another

.....Respondents

.....

Mr. B. R. Waramaa, Advocate for the Petitioners.
Mr. Milind Patil, Advocate for Respondent No. 1.
Mr. B. A. Shinde, AGP for the State.

CORAM : R. M. JOSHI, J.

DATE : 15th JULY, 2024.

PER COURT :

1. Heard both sides extensively.
2. Facts which lead to filing of this Petition can be recorded in brief as under :-

Petitioner is educational trust duly registered under Bombay Public Trust Act, 1950 ('Act' for short). The functioning of trust is said to have started with meager amount and gradually number of educational institutions are established. Respondents filed enquiry application bearing No. 12/2005, under Section 41D of

the act against trustees. This application came to be filed by making several allegations against trustees. Petitioners filed application vide Exhibit 28 raising preliminary issue of locus standi of Respondents to file application.

3. It is the case of Petitioners that Respondent No. 1 was appointed as clerk in school run by trust on 15.06.1970. He was removed from service on 12.01.1988. He was unsuccessful in challenging of his termination from service till Supreme Court. Petitioners have also given reference of other proceedings in which Respondent No. 1 caused interference. It is alleged that Respondent No. 1 is a person against whom several offences are registered such as :

01	Section 107 of Code of Criminal Procedure.
02	Section 107 of Code of Criminal Procedure.
03	Sections 147, 148, 149, 323, 324, 504, 506 of IPC
04	Sections 147, 148, 323, 504, 149 of IPC
05	Sections 451, 354 of IPC
06	Section 56A of Bombay Police Act.
07	Sections 499 and 500 of IPC
08	Sections 504 and 506B of IPC
09	Sections 182 and 177 of IPC

10	Sections 499 and 500 of IPC
11	Sections 381 and 408 of IPC
12	Sections 499 and 500 of IPC
13	Sections 499 and 500 of IPC
14	Section 500 r/w 34 of IPC
15	Sections 499 and 500 of IPC

4. According to Petitioners, objection raised to the locus standi of Respondent Nos. 1 and 2 vide application under Section 41D of Act was rejected by passing impugned order. Hence, this Petition.

5. Learned counsel for Petitioners submits that considering the status of Applicant Nos. 1 and 2 as ex-employee and ex-student of one of the schools managed by the Trust, they can never be considered as the persons interested as defined under Section 2(10) (e) of Maharashtra Public Trust Act. He also drew attention of the court to the fact that Applicant No. 1 is not only a dismissed employee whose dismissal has been upheld till the Supreme Court of India, but he is habitual criminal since there are as many as 15 offences registered against him. As far as Applicant No. 2 is concerned, he is aged 35 years and claims himself to be a person interested in the affairs of the trust and beneficiary thereof which is

not conceivable. According to him, the only idea behind filing of application under Section 41D of Act is to cause harassment and to blackmail Trustees to extract money. It is his grievance that in ignorance of the provisions of Act, casually, impugned order is passed holding that Respondents have locus standi to prefer such application.

6. Learned counsel for Respondents has tried his best to convince the Court that this is not a frivolous litigation. According to him, being a student and as observed by the Joint Charity Commissioner in the impugned order, relying upon the judgment of this Court, definition under Section 2(10)(e) is wide enough even to cover a student as person interested.

7. At the outset it needs to be recorded that the order passed by Joint Charity Commissioner (JCC) is in complete ignorance of fact and law. Though he records that Respondent No. 1 is terminated employee, no further finding is recorded as to how in that capacity he becomes person interested under Section 2(10)(e) of the Act. Further it is observed that son of Respondent No. 1 is studying in one of the schools and Respondent No. 2 was student of one school

managed by Trust. There is however, no reason recorded as to how would these persons become interested in the affairs of the trust or beneficiary thereof. JCC has sought to take support of judgments in case of Digambar Pralhad Jot vs. Satyanarayan Biharilal Zunzunwala, **AIR 1978 Bombay 196** and Gallaleshwar Dev and others vs. Gangawwa Kom Shantayya Math and others, **AIR 1986 231 SC**. Perusal of these judgments show that in first case proceeding was initiated by a Donor of trust and in case of Galleshwar issue was about temple trust and those persons were members of founder's family and hence held beneficiaries. The said Authority therefore has misdirected itself in holding that Respondent Nos. 1 and 2 have locus standi to maintain application under Section 41D of the Act, by relying upon these judgments.

8. It would be relevant to take note of provisions of Section 41(D) and (2)(10) of the Act, which read thus :-

Section 41(D) Suspension, removal and dismissal of trustees :

(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,--

- (a) makes persistent default in the submission of accounts report or return;
- (b) wilfully disobeys any lawful orders issued by the Charity Commissioner under the provisions of this Act or rules made thereunder by the State Government;
- (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;
- (f) if convicted of an offence involving moral turpitude.

- (2) * * *
- (3) * * *
- (4) * * *
- (5) * * *
- (6) * * *
- (7) * * *

Section 2(10) of the Act reads thus :-

(10) "person having interest" [includes]--

- (a) in the case of a temple, person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in that habit of partaking in the distribution of gifts thereof,

- (b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs,
- (c) in the case of a wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf,
- (d) in the case of a society registered under the Societies Registration Art, 1860, any member of such society, and
- (e) in the case of any other public trust 2[any trustee or beneficiary];

Except in case of religious places, legislative intention is clear from above provisions that in case of a Trust only trustee or beneficiary of trust would get locus standi to initiate any proceeding under Section 41D of the Act. Such restriction is necessary in order to ensure that trust/trustees would be able to perform its activities without external interference/disturbance and any person unconnected with trust and its affairs and who is not a beneficiary would not abuse the provisions of Section 41D. If no such embargo is created then the same would lead to make trust and trustees vulnerable to obstruction/prosecution by any person, which could be never intended by legislature. Having regard to the scheme of the

Act, unless any person is trustee or beneficiary, he cannot be allowed to invoke this provision.

9. Admittedly, Respondent Nos. 1 and 2 are not trustees of Petitioner/Trust. As far as beneficiary is concerned, word 'beneficiary' has not been defined under Maharashtra Public Trust Act. It is therefore necessary to consider dictionary meaning of 'beneficiary'. Oxford dictionary defines it as :

Beneficiary : (of something) a person who gains as a result of something.

Cambridge dictionary meaning reads thus :-

Beneficiary : a person or group who receives money or other benefits as a result of something else.

It is thus clear that a person is beneficiary who receives money or other benefits of something. In respect of a trust, in order to become competent to invoke Section 41D of Act, such person must be entitled to receive any benefit either monetary or in other form from the trust. Both Respondent Nos. 1 and 2 do not claim themselves to be entitled to receive any benefit of trust. Even if the contention of Respondent No. 1 is accepted that his son is student,

which is otherwise not possible, considering is age 64 years at the time of making application and that Defendant No. 1 is ex-student of one of schools, they are entitled to receive education imparted in the school against payment of fees and not to receive any benefits of trust. Moreover, to become beneficiary, he/she must be entitled to receive anything from trust, which is absent in this case.

10. This Court finds substance in the contention of learned counsel for Petitioners that this sort of litigation is nothing but abuse of process of law and adoption of pressurising tactics, either for vindicating personal vendetta or even for extortion of money. Needless to say that such frivolous litigation cannot be tolerated and in no circumstances can be encouraged but needs to be nip in bud. There is apparent ulterior motive of Respondent Nos. 1 and 2 to entangle trust in forced litigation. This Court, therefore, is compelled to observe that there cannot be any other malicious and bogus litigation than the one in hand. Impugned order therefore is quashed and set aside. Application filed by Petitioners challenging locus standi of the applicants stands allowed. Application No. 12/2005 filed before the Joint Charity Commissioner, Nashik, stands dismissed with cost of Rs. 1,00,000/- each payable by Respondent Nos. 1 and 2. On deposit

of amount of cost, the same be transferred to the Government Cancer Hospital, Aurangabad.

11. Petition stands allowed in above terms.

(R. M. JOSHI)
Judge

dyb