



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14596 OF 2024

1. Mrs. Charu Mehta, Age 82,
Permanent Founder Trustee for Life of
Lilavati Kirtilal Mehta Medical Trust of
Mumbai, Indian Inhabitant
having her address at Diamond House, 9
Vatcha Gandhi road, Mumbai – 400007.]
 2. Mr. Rajesh Mehta, Age 56,
Permanent Trustee
Lilavati Kirtilal Mehta Medical Trust of
Mumbai, Indian Inhabitant
having his address at Diamond House, 9
Vatcha Gandhi road, Mumbai – 400007.]
 3. Mr. Prashant Mehta, Age 52,
Permanent Trustee
Lilavati Kirtilal Mehta Medical Trust of
Mumbai, Indian Inhabitant
having his address at Diamond House, 9
Vatcha Gandhi road, Mumbai – 400007.]
- ...Petitioners.**

Versus

1. Ld. Charity Commissioner
Sasmira Institute, 2nd floor, Sasmira Road,
Opp. Nirlon House, Worli, Mumbai - 400 032]
2. Mr. Chetan Mehta
of Mumbai, Indian Inhabitant having
his address at The Imperial- North Tower,
Apartment-3205, Tardeo, Mumbai-400 034]
3. Mr. Niket Mehta
Of Mumbai Indian Inhabitant having
his address at Maker Tower 'L', 9th floor,
Flat No. 91, Cuffe Parade, Colaba,
Mumbai 400 005]
4. Mrs. Sushila Mehta
Of Mumbai Indian Inhabitant having her
address at Maker Tower 'L', 9th floor,
Flat No. 91, Cuffe Parade, Colaba,]

Mumbai 400 005]

5. Mr. Rashmi Mehta Of Mumbai Indian
Inhabitant having her address at Usha Kiran,
Flat No. 24, 12th floor, 15, Carmichael Road,
Mumbai 400 026]

6. Mr. Bhavin Mehta
Of Mumbai Indian Inhabitant having his
address at Usha Kiran, Flat No. 24, 12th floor,
15, Carmichael Road, Mumbai 400 026]

7. Mr. Ayushman Mehta
Of Mumbai Indian Inhabitant having his
address at The Imperial North Tower,
Apartment, 3205, Tardeo, Mumbai 400 034]

8. Mr. Nimesh Sheth
Of Mumbai Indian Inhabitant having his
address at Garden View, 13th floor,
Flat No. 1301, Nepeansea Road,
Mumbai 400 006]

9. Mr. Dilip Sanghavi
Of Mumbai Indian Inhabitant having his
address at Sun Pharmaceutical Industries Ltd.
No.201 B, Sun House, CTS, Western Express
Highway, Goregaon, Mumbai 400 063]

10. Mr. Rajiv Mehta
Of Mumbai Indian Inhabitant having his
address at Diamond House,
9 Vatcha Gandhi Road, Mumbai - 400 007]

11. Mr. Mohit Mathur
Of Mumbai Indian Inhabitant having his
address at Hansraj Damodar Building,
2nd floor, Mumbai 400 004]

12. Mr. Saurav Sharma
Of Mumbai Indian Inhabitant having his
address at Flat No. 4, 1st floor, Yusuf Manzil
Awabai Kashinath Street, Tardeo,
Mumbai 400 034]

13. Mr. Kiran Shah]

Of Mumbai Indian Inhabitant having his
address at S/o. Nagindas Shah,
above Bank of India, 377, Smitkiran,
1st floor, S. V. Road, Vile Parle (West),
Mumbai 400 056.

14. Mr. Sanjay Shroff
Of Mumbai Indian Inhabitant having his
address at S/o. Puran Shroff, 302, Swarup, 14,
Cumoalahul Rod, Kemps Corner, Cumballa
Hill, Mumbai Maharashtra 400 026

15. Mr. Tatyaba Palve
Of Mumbai Indian Inhabitant having
his address at F2, Marian House, 29 road,
Bandra West.

16. Mr. Kunal Shah
of Mumbai, Indian Inhabitant having his
address at Mumbai

17. Chetan Joshi
Of Mumbai, Indian Inhabitant, residing at
2/16, Seeta Mahal, Warden Road, BP Road,
Near Parsee General Hospital,
Cumballa Hill, Mumbai-400 026

...Respondents.

Dr. Abhishek Manu Singhvi, Senior Advocate (through VC), Mr. Anil Singh, Senior Advocate, Mr. Aabad Ponda, Senior Advocate along with Mr. Dakshesh Vyas, Mr. Yogesh Naidu, Mr. Aadarsh Vyas, Mr. Utwav Trivedi, Mr. Abhishek Prabhu, Mr. Tarun Mehra, Mr. H.N. Thakore, Ms. Jyoti Ghag and Mr. Shailesh Prajapati I/By Dua Associates AOR Mumbai for the Petitioners.

Mr. Cyrus Ardeshir, Senior Advocate along with Mr. Amir Arsiwala I/By Mr. Yash Jariwala for Respondent No. 2.

Mr. Dinyar Madon, Senior Advocate along with Mr. Jamshed Master and Mr. Aniket Worlikar for Respondent No.3.

Mr. S. U. Kamdar, Senior Advocate along with Mr. Jamshed Master I/By Ms. Natasha Bhot for Respondent No.4.

Mr. Aditya Udeshi and Mr. Netaji Gawde i/b M/s. Sanjay Udeshi & Co., for Respondent No.9.

Ms. Priyanka Chavan, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Reserved on : October 22, 2024.

Pronounced on : October 25, 2024.

Judgment :

1. **Rule.** Rule made returnable forthwith and taken up for final hearing with the consent of respective counsel. Learned advocates appearing on behalf of the Respondents waive notice.
2. By this petition filed under Article 227 of the Constitution of India the Petitioners seek transfer of all proceedings pertaining to Lilavati Kirtilal Mehta Medical Trust [for short, "***the said trust***"] from the file of Respondent No.1, i.e., the Charity Commissioner to any other judicial officer exercising co-ordinate jurisdiction.
3. There has been considerable dispute between the parties over the management of the trust. Relevant for our purpose and the starting point leading to filing of present petition is the order dated 14th December 2023 by which the Assistant Charity Commissioner rejected various change reports filed by the Respondent Nos.2 to 9. Against the orders of rejection of change reports, Appeals were filed by the Respondent Nos.2 to 9 before the Joint Charity Commissioner on 15th December 2023. By orders dated 15th December 2023, 21st December 2023 and 22nd December 2023 the Joint Charity Commissioner granted stay of the proceedings which were challenged

by the Petitioners before this Court by way of 7 writ petitions and by common order dated 30th January 2024 this Court set aside the orders of the Joint Charity Commissioner. As against the order dated 30th January 2024 passed by this Court, the Respondent No.2 filed SLP(C) No.3303 of 2024, the Respondent Nos.3 and 4 filed SLP (C) (Diary) No. 8888 of 2024 and the Respondent Nos. 5 and 6 filed SLP (C) No. 8331-8332 of 2024. By order dated 19th February 2024 passed by Apex Court in SLP filed by the Respondent No.2, the parties were relegated to the stage of rejection of change reports on 14th December 2023 by the Assistant Charity Commissioner by setting aside the order of Joint Charity Commissioner as well as the order of High Court. The Apex Court in paragraph 9 and 10 observed thus :

“9. Bearing in mind the recent proceedings, the parties are relegated to the stage of the rejection of the change reports on 14.12.2023 by the Assistant Charity Commissioner. The later order of the Joint Charity Commissioner and of the High Court are set aside. The appeal filed by the petitioner to challenge the order of the Assistant Commissioner on 14.12.2023, should now be considered by the Charity Commissioner, as was directed in the impugned order. During such consideration, the appellate authority, needless to say, is empowered to also pass appropriate interim order. However, interim order should be passed only after the response of the contesting parties is placed on record and all are afforded hearing. In order to avoid any delay, the respondent Nos.1 and 2, if they have not already done so, must place on record their response before the appellate authority, within two weeks from today.

10. When the response of the respondents is filed, the Charity Commissioner should consider the interim prayer on the merit of the plea, uninfluenced by either this order or the

30.01.2024 order that was passed by the High Court. The Charity Commissioner should not unduly delay consideration of the interim prayer. It is ordered accordingly.”

4. On 7th June 2024, an application was filed by the Petitioner seeking time to file reply to the Appeals filed by the Respondents, which came to be rejected by order dated 10th June, 2024 and Appeals were posted for final hearing on 19th June 2024. The rejection was carried first to the High Court which upheld the order dated 10th June 2024 and then to the Apex Court and vide order dated 8th July 2024 the Apex Court allowed the Petitioners to file their reply in the Appeals pending before the Charity Commissioner. On 23rd September 2024, the Petitioners filed an application at “Exhibit-88” before the Charity Commissioner seeking time for additional arguments which was rejected. By order of even date, the Charity Commissioner granted interim relief staying the effect of order dated 14th December 2023, provisionally accepting the change report of Respondent No.2, initiating *suo moto* inquiry under Section 41D of the Maharashtra Public Trust Act [for short **“the Trusts Act”**] against the trustees including the Petitioners and pending inquiry under Section 41D, suspended the trustees except the Petitioner No.1 and appointed a fit person to perform the functions of the trust along with the Petitioner No.1 and the Respondent No.2. On 25th September 2024, the Petitioners

challenged the interim order dated 23rd September 2024 before the High Court and this Court by order dated 25th September 2024 came to a *prima facie* finding that the Charity Commissioner acted contrary to Section 22 and Section 41D of the Trusts Act and stayed the order dated 23rd September 2024. On the same day, Respondent No.2 filed an application under Section 41D of the Trusts Act before the Charity Commissioner along with an application for taking the said application on board on 25th of September 2024. The application for taking on board the application filed under Section 41D of the Trusts Act by the Advocate of Respondent No.2 came to be rejected by the Charity Commissioner. On 27th September 2024, Appeals filed by the Respondent Nos. 3 and 4 were heard by the Charity Commissioner and after conclusion of arguments, new documents were sought to be relied upon which were objected to by the Petitioners and came to be accepted by the Charity Commissioner. On 1st October 2024, the Petitioners filed an application below "Exhibit-55" before the Charity Commissioner for deferment of the proceedings on the ground that the Petitioners intend to file petition in this Court seeking transfer of the proceedings. On 11th October 2024, the Charity Commissioner in the adjournment application on the ground of bias passed an order directing the Advocate for the Respondent Nos. 2 to 5 to file his reply on the averments of bias. On 11th October 2024, the Charity

Commissioner directed the Petitioners to disclose the source of information regarding the incident which was quoted at paragraph "F" of the Application. On 16th October 2024, the Charity Commissioner rejected the adjournment application.

5. Heard Dr. Abhishek Manu Singhvi, Learned Senior Advocate (through VC) and Mr. Anil Singh, Learned Senior Advocate and Mr. Aabad Ponda, Learned Senior Advocate for the Petitioners, Mr. Cyrus Ardeshir, Learned Senior Advocate for Respondent No.2, Mr. Dinyar Madon, Learned Senior Advocate for Respondent No.3, Mr. S. U. Kamdar, Learned Senior Advocate for Respondent No.4 and Mr. Aditya Udeshi for Respondent No.9.

6. Dr. Singhvi would submit that upon a cumulative appreciation of sequence of events from the stage of grant of interim relief on 23rd September 2024 by the Charity Commissioner, to the rejection of adjournment application by inquiring into the averments of bias itself would make it clear that justice will not be done. He would submit that by the interim order passed on 23rd September 2024 the Charity Commissioner has not only stayed the order against which the appeal was filed but has gone one step further and accepted the change report of the Respondent No.2 and initiated *suo moto* inquiry and suspended the trustees in purported exercise of powers under Section 41D of the Trusts Act without any prayer by the Respondents seeking

any such relief. He would submit that pending inquiry under Section 41D of the Trusts Act, without giving an opportunity of hearing, the Petitioners as well as other trustees except the Petitioner No.1 came to be suspended with immediate effect. He submits that by the same order, the Charity Commissioner appointed a fit person along with the Respondent No.2 and the Petitioner No.1 thereby completely changing the panel of trustees. Taking this Court through the order passed by the High Court in the challenge to the order dated 23rd September 2024, he submits that this Court had held that *ex facie* the order passed by the Charity Commissioner is not in consonance with the provisions of Trusts Act and no notice was issued before suspending the Petitioner and that there is serious doubt about the jurisdiction of Charity Commissioner to exercise the power as an authority of first instance and had stayed the impugned order. He submits that on the very same day, the application under Section 41D of the Trusts Act filed by Respondent No.2 along with an application for taking the said application on board was placed before the Charity Commissioner at about 1:30 p.m. in the presence of Petitioners' Advocate. He submits that the Petitioners' Advocate were informed that the application will be considered at 2:30 p.m. on the same day and at about 3:10 p.m. the Advocate for Respondent No.2 was alone called into the Chamber by the Charity Commissioner and a private meeting went on for 30

minutes when the Advocate for the Petitioners was not allowed to go inside. He would further submit that at around 3:40 p.m. the Advocate for the Petitioners was informed that the application for taking the matter on board has been rejected. He submits that the conduct of the Charity Commissioner in holding a private meeting with Advocate for Respondents has raised a serious doubt about impartiality of the Charity Commissioner. He submits that in the deferment application filed by the Petitioner No.1 an inquiry was conducted by the Charity Commissioner itself into the averments of bias and not only a reply was called from the Advocate of Respondent No.2 but also the Petitioner No.1 were directed to disclose the source of information as regards the incident of the Advocate for Petitioners not being permitted to enter the Court room. He would further submit that on 27th September 2024, order passed in the absence of Advocate for the Petitioner, records that the arguments on behalf of the Respondent Nos.3 and 4 are concluded and the matter is placed on 14th October 2024 for hearing of application on behalf of the Respondent No.3 for production of documents. He would submit that the sequence is contrary to the course in which the proceedings should have been conducted. He submits that if all the events stated above are considered cumulatively, the bias against the Petitioners is writ large. He submits that the Apex Court by order dated 22nd April 2024 in SLP filed by the Respondent

Nos.5 and 6 had directed the Charity Commissioner while deciding the matter to take note of the earlier orders passed by the Court including the orders dated 18th September 2023 and 19th February 2024 as regards the investigation into financial impropriety which the Charity Commissioner did not decide and decided the application for interim relief after 10 months.

7. *Per contra* Mr. Madon, learned Senior Advocate appearing for the Respondent No. 3 would submit that the only allegation of bias which is evident from the pleadings in the petition is as regards the incident alleged to have occurred on 25th September 2024. He submits that although Dr. Singhvi submitted that the Advocate for the Respondent was called into the Chamber of Charity Commissioner alone for about 30 minutes, in the petition the pleading is that the Advocate for the Respondent No.2 was called into Court room. He would further submit that against the order dated 14th December 2023, the matter was carried up to the Apex Court which directed the Charity Commissioner to consider the appeals and also directed the Charity Commissioner to pass appropriate interim order. He submits that accordingly the interim order was passed by the Charity Commissioner after hearing the parties.

8. Mr. Madon would further submit that from 1st October 2024 till date the Charity Commissioner has not been able to hear the matter.

He submits that in the earlier Petition filed by the Petitioners challenging the order of 23rd September 2024, there is not a single averment of bias. He submits that on 25th September 2024 the Respondents have argued the appeal and it is for the Petitioners to canvass their submissions. He submits that the application filed by the Respondent's Advocate for taking on board the application filed under Section 41D of the Trusts Act was in fact rejected by the Charity Commissioner. He would submit that the Petitioner habitually files transfer applications when faced with adverse orders and those applications have been rejected in the past. He submits that the Petitioners have also made allegations against the Advocate of Respondent No.2.

9. Mr. Cyrus Ardeshir, learned Senior Advocate appearing for the Respondent No.2 would submit that the Petitioner No.1 had given a written complaint to the Hon'ble Chief Justice of Bombay High Court on 27th September 2024 in which she has mentioned that the Advocate for the Respondent No.2 was called into the Court Room and others were not allowed to go inside and that the Charity Commissioner was talking to some person from the phone of Advocate for the Respondent No.2 and it appears that he was speaking with Respondent No.2. He submits that in the adjournment application filed on 1st October 2024 there is no mention that the Charity Commissioner spoke

to some person from phone of Respondent No.2's Advocate. He submits that a communication was addressed by the Advocate for the Petitioners to the Advocates for the Respondents to provide copy of letters referred to by the Petitioner No. 1 in the complaint to the Chief Justice, which was not provided. He would further submit that Ground (F) of the present petition does not plead the allegation which forms part of the complaint filed with the Hon'ble Chief Justice that the Advocate for the Petitioners had witnessed the incident. He submits that the allegations were made against the Advocate for the Respondents. He would further submit that a detailed order has been passed on the adjournment application on 16th October 2024, rejecting the application and appeal was adjourned for hearing on 18th October 2024.

10. Mr. Kamdar, learned Senior Advocate appearing for the Respondent No.4 would submit that transfer is sought by raising false and baseless allegation and there is no reasonable apprehension of bias. He submits that the allegations are that two hearings were conducted in one day and the adjournment was not given and the only incident based on which the petition has been filed is alleged incident of 25th September 2024, which does not *ex facie* demonstrate bias.

11. In rejoinder, Mr. Singh would submit that the Petitioners have made an application for extension of time granted by the Supreme

Court by order dated 8th July, 2024 for conclusion of the proceedings which is listed on Friday, i.e., 25th October, 2024.

12. Upon a query by this Court, as to who prohibited the Advocate for the Petitioner from entering the Court Room on 25th September 2024, Mr. Singh submits that the Court Peon had restricted the Advocate for the Petitioner from entering into the Court Room and that CCTV footage of the area outside of Court Room has been sought. He submits that the allegations made are serious and there is no denial of the said allegations and there is no response to the demand for CCTV footage. He would further submit that it is a specific case in the petition that Charity Commissioner does not dictate the roznama in open Court and the roznama is written subsequently and application for certified copy has been made in August 2024, however, the same has not been provided to the Petitioners.

13. In the morning session, the arguments were concluded and the order reserving the judgment was passed. Later on, in the afternoon session Mr. Singh mentioned the matter and sought to rely on certain judgments tendered across the bar during the morning session which were not referred during arguments in morning session. This was objected to by Mr. Madon submitting that he has not been served with copy of the compilation of judgments and after the matter has been closed for orders, no opportunity should be given to the Advocate for

the Petitioner to reopen the arguments. In view of the fact, that the matter was heard at length in the morning session and though the compilation of judgments was tendered, none was referred to during the arguments and after the matter has been closed and without copy of the compilation of judgments being given to the Advocate for the Respondents, this Court is not inclined to permit re-arguments based on judgments.

14. I have given my thoughtful consideration to the submissions and perused the record minutely.

15. This petition seeks transfer of the proceedings from the office of Charity Commissioner, alleging bias on the part of Respondent No.1 on the ground that a clear case of prejudice by passing of adverse orders and conducting itself in a manner contrary to the judicial norms is made out.

16. As the Apex Court by order dated 19th February 2024 had directed the appeals filed by the Respondents to be considered by the Charity Commissioner a query was posed by this Court as to whether this Court can transfer the proceedings to the Joint Charity Commissioner without leave or clarification from the Apex Court. Dr. Singhvi would submit that the direction by the Apex Court was not to *persona designata* but to the institution of Charity Commissioner and for the said purpose there is no requirement of approaching the Apex

Court either seeking leave or clarification for the purpose of deciding the present petition. He further submits that In event any clarification is required by this Court, the proceedings before the Charity Commissioner may be deferred. Mr. Madon would agree and submit no clarification is required and there is no necessity of deferring the proceedings before the Charity Commissioner as direction was to institution of Charity Commissioner.

17. In the light of submissions made, I have perused the order of the Apex Court. The Apex Court order dated 19th February 2024 has directed the appeals to be considered by the Charity Commissioner and Mr. Singhvi is right in submitting that the direction is not to *persona designata* but to the institution of Charity Commissioner and as the Joint Charity Commissioner exercises the same powers as of the Charity Commissioner, in view of Section 3A of the Trusts Act, there is no requirement of seeking clarification from the Apex Court and in event it is found that there is reasonable apprehension of bias, this Court can very well direct the transfer of proceedings.

18. Reverting to the core issue required to be decided, in order to consider the expediency of transferring the proceedings, it is necessary to consider whether the submissions canvassed can form the basis of reasonable apprehension on the part of the Petitioners that justice will not be done. It is necessary to show the circumstances from which it

can be inferred that the party to the proceedings is under an apprehension of absence of impartiality, which apprehension is reasonable, and not mere allegation. In the present case, in order to demonstrate bias on the part of Charity Commissioner what is sought to be canvassed is the passing of detailed interim order on 23rd September 2024, which goes beyond the relief sought and initiates *suo moto* inquiry under Section 41D of the Trusts Act suspending the trustees in the interregnum. To show perversity in the orders, reliance is placed on the order dated 25th September 2024 passed by this Court where this Court has *prima facie* taken a view that the order was contrary to Sections 22 and 41D of the Trusts Act and the order came to be stayed.

19. The passing of adverse order, in my view, by itself will not constitute bias on part of the Charity Commissioner or for that matter on part of any Court or Tribunal or quasi judicial authority which is empowered by law to decide the *lis* between the parties. While adjudicating any application it is open for the Judicial Officers to pass such orders, which in view of the Judicial Officer, are necessitated in facts of the case. The order, if not in consonance with the law, is liable to be corrected by the higher forum and only because such order stands corrected by the higher forum cannot lead to an inevitable conclusion that the order of the Authority/ Court / Tribunal is result of

bias.

20. To demonstrate partisan, the incident alleged is of 25th September 2024 when the Advocate for the Respondent No.2 filed an application under Section 41D of the Trusts Act and moved an application for taking the application on board on 25th September 2024. Allegation is that the Advocate for the Respondent No.2 was called alone by the Charity Commissioner. During arguments Dr. Singhvi would submit that the Advocate for the Respondent No.2 was called to the Chamber of the Charity Commissioner whereas, as pointed out by Mr. Madon in the petition the pleading is that Advocate for the Respondent No.2 was called to the Court Room and that the Advocate for the Petitioner was not allowed to go inside.

21. The debate in respect of the said incident is intensified by Mr. Ardeshir by pointing out the complaint filed by the Petitioner No.1 with the Hon'ble Chief Justice of Bombay High Court on 27th September 2024 alleging that on 25th September 2024 the Advocate for the Respondent No.2 was called into the Court Room by the Charity Commissioner for about 30 minutes at 3:10 p.m. and others were not allowed to go inside. In the complaint, Petitioner No.1 further alleges that the Charity Commissioner was talking to some person from the phone of Advocate for the Respondent No.2 and it is stated that the incident had been witnessed by the Advocate for the Petitioner and

further allegation is that it appears that the Charity Commissioner was talking with the Respondent No.2. Firstly, the whole incident of 25th September 2024 which is one of the ground for alleging bias an part of the Charity Commissioner is based on the alleged communication by the Advocate for the Petitioner to the Petitioner No.1. This Court called upon Mr. Singh to furnish copy of the letter dated 27th September 2024 addressed by the Advocate for the Petitioner to the Petitioner No.1. Upon perusal of the same, it appears that the Advocate for the Petitioner has stated that the Charity Commissioner at about 3.10 p.m. called the Advocate for the Respondent No.2 into his chamber and though they sought permission to join the meeting, the same was denied and thereafter the Advocate for the Respondent No.2 came out of the chamber of the Charity Commissioner at about 3:30 p.m. and left the Charity Commissioner's office. The communication is totally silent as to witnessing of the incident by the Advocate for Petitioners of Charity Commissioner speaking from the phone of Advocate for the Respondent No.2 with any person as is alleged in paragraph No.11 of the complaint dated 27th September 2024 filed with Hon'ble Chief Justice of Bombay High Court. While the communication of 27th September 2024 by the Advocate for the Petitioner to the Petitioner No.1 refers to the Advocate for the Respondent No.2 being called into the chamber, in the complaint to

the Hon'ble Chief Justice the Petitioner No.1 has stated that the Advocate for the Respondent No.2 was called into the Court Room. Similarly, in the petition it is pleaded in the Ground D(iv) that Advocate for the Respondent No.2 was called into the Court Room by the Respondent No.1.

22. The apprehension is based on the alleged incident which itself shows considerable discrepancy in the communication by the Advocate of the Petitioners to the Petitioner No.1, the complaint by the Petitioner No.1 to the Hon'ble Chief Justice and the pleadings in the petition and raises considerable doubt as regards the factual occurrence of said incident. The foundation of the application claiming lack of transparency in the conduct of the proceedings by reason of the alleged meeting held between the Respondent No.1 and the Advocate for the Respondent No.2 on 25th September 2024 is itself doubtful. That apart, a question also arises that if such a communication was required to be established by the Charity Commissioner as alleged by the Petitioner No.1, the same could have been done surreptitiously and not in full view of the Advocate for the Petitioner when the matter is listed for hearing and the Advocates for the Petitioner are present, although may be present outside the Court Room. In fact on that day the application for taking on board the application under Section 41D of the Trusts Act was rejected by the Charity Commissioner.

23. The prejudice towards the Petitioners is also alleged for the reason that the Charity Commissioner on 27th September 2024 accepted the compilation of documents after arguments were concluded by the Respondent No. 3 and 4. In the petition it is pleaded that the Respondent No.4 recorded that on 27th September 2024 the arguments of Respondent No.3 are concluded and the matter was placed on 14th October 2024 for hearing on the application preferred by the Respondent No.3 for production of documents, demonstrating that the objections raised by the Advocate for the Petitioners to the filing of documents were not brushed aside and in fact an opportunity was given by the Charity Commissioner by placing the matter for hearing on the application filed by the Respondent No.3 for production of documents. The procedure adopted for listing the application for hearing on 14th October 2024 after conclusion of arguments can be said to be irregularity or illegality liable to be corrected by higher forum.

24. It needs to be borne in mind that the Apex Court by order dated 8th July 2024 arising out of the order dated 10th June 2024 of the Charity Commissioner rejecting the application for adjournment, while permitting the Petitioners to file reply to the Appeals, set out a time bound programme by which the Charity Commissioner was directed to dispose of the appeals within a period of 8 weeks after completion of

pleading, which would expire on 28th October 2024. It was thus incumbent not only upon the parties but also on the Charity Commissioner to adhere to the time schedule and ensure compliance. The reliance placed on the rejection of deferment application filed on 1st October 2024 to allege bias loses sight of the fact that in the usual course the Authorities/ Courts and Tribunals when directed by order of higher forum to adjudicate the proceedings in a time-bound manner is reluctant to defer the proceedings unless found absolutely necessary. It is no answer to say that the application was made on 1st October 2024 and the appeals were required to be disposed of on 28th October 2024 or 8th November 2024 as has been stated by the Charity Commissioner in the order dated 16th October 2024. Either way it cannot be denied that firstly every proceeding should be decided expeditiously and more so where the proceedings are directed to be adjudicated in the time-bound manner, any application for deferment is viewed as delay tactics. Even if the orders passed are not in accordance with law, at the most the same can be said to be a perverse order capable of being corrected by the higher forum, however, the passing of such order itself cannot be said to be the result of predetermined and prejudiced mind.

25. As far as the allegation that the enquiry was sought to be conducted by the Charity Commissioner into the averments of bias,

although the said application Exhibit-55 is not placed on record, from the order dated 11th October 2024 it appears that the incident alleged of 25th September 2024 was one of the grounds of the adjournment application and in view of the specific allegation made against the Advocate for the Respondent No.2, the response came to be called by the Charity Commissioner. The application below Exhibit-55 does not appear to be an application simpliciter seeking adjournment for the reason that the Petitioners are in the process of filing writ petition before this Court for transfer of the proceedings but appears to be a detailed application setting out the grounds of bias which also forms part of the pleadings of the present petition. The calling of response for testing the merits of the deferment proceeding, in any view, is not an inquiry into bias itself.

26. The conspectus of foundation of bias, which can be culled out as under :

- (a) Passing of detailed order on an Interim Application going beyond the reliefs sought and exercising *suo moto* powers.
- (b) Recognition of the exercise of powers by Charity Commissioner not being in consonance with law by the High Court.
- (c) Rejection of Petitioner's application for deferment to pursue the proceedings for transfer.

(d) Incident of alleged private meeting of the Advocate for Respondent No. 2 with Charity Commissioner.

(e) Accepting additional documents of Respondents after conclusion of hearing.

(f) Inquiry into the allegation of bias by Charity Commissioner itself.

. The allegations, if viewed, in isolation would not indicate any basis for apprehension of bias. The submission of Dr. Singhvi is that a cumulative consideration would warrant a finding that the apprehension expressed by the Petitioners is a reasonable apprehension justifying transfer. Even if the incidents are cumulatively considered, apart from the alleged incident of 25th September 2024, the allegations would at the most, amount to passing of adverse orders and may not be in consonance with law. The judicial orders passed by the authorities legitimately, though may or may not be corrected by the higher forums, cannot lead to an inference of pre-judged and/or pre-determined and/or biased mind against the litigant against whom the order has been passed. Although it is well settled that the principles of administration of justice demands that the justice should not only be done but seen to be done, it is also necessary to ensure for securing the ends of justice that a mere allegation is differentiated from an apprehension and what is required is a reasonable

apprehension. An absence of congenial atmosphere cannot be a ground for transfer. Similarly, passing of the adverse order cannot be the foundation for seeking transfer of the proceedings. As already noted above, the allegations of lack of transparency is attributed to the incident of alleged private meeting on 25th September 2024, which in my opinion, considering the discrepancy in the versions cannot be said to be a reasonable apprehension.

27. Although it was sought to be contended by Mr. Madon that the Petitioners are in the habit of filing transfer applications on regular basis whenever the orders are passed against the Petitioners, I am not inclined to go into the said aspect. Before this Court what was required to be considered is whether the apprehension expressed by the Petitioner that the justice will not be done is a reasonable apprehension for transfer of the proceedings from the file of Charity Commissioner. In my view, although the Petitioners were faced with adverse orders, even if the same are corrected by higher forum, cannot be said to be the result of pre-judged mind and cannot form the basis for reasonable apprehension that justice will not be done by the Charity Commissioner while adjudicating the proceedings.

28. In my view, the apprehension of the Petitioner lacks foundation. As such I am not inclined to entertain the petition and transfer the proceedings from the file of Charity Commissioner to any other Judicial

Officer. It also needs to be noted that the transfer of proceedings from a Court/Tribunal/ or Quasi Judicial Officer Authority is usually viewed as a suspicion being cast on the conduct of proceedings by the Judicial Officer and the transfer cannot be based on mere allegation without arriving at a satisfaction that the events are such that it cannot be expected that justice will be done to the litigant. In my view, the foundation which is expected for passing an order of transfer is lacking in the present case.

29. In light of above discussion, I am not inclined to entertain the petition. Petition stands dismissed. Rule is discharged.

[Sharmila U. Deshmukh, J.]

30. At this stage, request is made by Mr. Singh for extension of the order dated 22nd October, 2024 by which this Court had requested the Charity Commissioner to defer the proceedings till 28th October, 2024. He would further submit that though the matter was to be listed today, before the Apex court, the same was not listed as the concerned Court is not available. He would further point out the communication by Charity Commissioner to the Apex Court seeking extension of time to dispose of the proceedings. He would therefore request that the proceedings before Charity Commisisoner be deferred till 4th November, 2024, as the matter is listed before the Apex Court on that

day.

31. Mr. Madon would oppose the said request and would submit that the order of the Apex Court has to be complied and the adjudication has to be completed of 28th October, 2024. He would further submit that if the proceedings are deferred beyond 28th October, 2024, the same would constitute contempt of the Apex Court as no extension is granted.

32. He would also submit that notice was given that the matter will be mentioned in the Apex Court before the alternate Bench, however, the matter was not mentioned.

33. Considering that as of today, the order of the Apex Court directing disposal of the Appeals by Charity Commissioner on or before 28th October, 2024 has not been extended, I am not inclined to grant any further deferment of the proceedings before the Charity Commissioner. Request is rejected.

[Sharmila U. Deshmukh, J.]