IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 272 OF 2025

Gajendra Ramchandra Biyani,
Age: 46 years, Occu. Business,
R/o. Biyani Nagar, Hingoli,
Tq. & Dist. Hingoli. ..Petitioner

VERSUS

1. Assistant Charity Commissioner,
Hingoli, Tq. & Dist. Hingoli.

2. Mukesh Dharmaji Ingole,
Age: 40 years, Occu: Agriculture,
R/o. Indra Nagar, Tq. Kalamnuri,
Dist. Hingoli.

3. Jitendra Omprakash Biyani,
Age: 50 years, Occu. Business,
R/o. Biyani Nagar, Hingoli,
Tq. & Dist. Hingoli.

4. Bansi Ashruba Ubale,
Age: 75 Years, Occu. Business,
R/o. Risala Bazar, Hingoli,
Tq. Dist. Hingoli. ..Respondents

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Advocate for Petitioner : Mr. S.S. Dargad
Advocate for Respondent No.2 : Mr. A.D. Khot & Mr. V.B. Kharat
AGP for Respondent/State : Mr. K.B. Jadhavar

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : JUNE 20, 2025

PRONOUNCED ON : JULY 15, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The present writ petition takes exception to order dated 23.09.2024 passed by Joint Charity Commissioner, Nanded Region in Miscellaneous Application No.25 of 2024, thereby condoning delay in preferring appeal against the judgment and order dated 09.12.2019 passed by Assistant Charity Commissioner, Hingoli in Inquiry No.311 of 2015.

3. The petitioner herein filed proceeding vide Inquiry No.311 of 2015 before Assistant Charity Commissioner, Hingoli, under Section 50-A of the Maharashtra Public Trusts Act, 1950 to frame a new scheme in respect of trust, namely Panchshil Shikshan Prasarak Mandal, Hingoli, bearing PTR No. F-28(P). It is submitted that the trust was registered in the year 1962 under the provisions of Maharashtra Public Trusts Act, 1950 and Societies Registration Act, 1860. The founder trustees, including the President and Vice President, are died. Therefore, three trustees, who were alive, in a meeting dated 24.05.2015, decided to frame a new scheme of trust for smooth and better administration in the interest of students taking education in school run by the trust.

4. The learned Assistant Charity Commissioner, vide order dated 09.12.2019, partly allowed the application and framed a scheme. While doing so, he directed removal of names of two persons from trusteeship as they were removed under section 41-D of Maharashtra Public Trusts Act. So also, directed that a heir of

founder trustee removed under Section 41-D to be a member of society under Societies Registration Act, 1860 and two of them will be office bearers/members of executive body of the trust. The trust shall be governed under scheme at Annexure-A.

5. Respondent No.2 filed appeal under Section 70 of Maharashtra Public Trusts Act, 1950, assailing order dated 09.12.2019 passed by the Assistant Charity Commissioner under Section 50-A(1) of the Maharashtra Public Trusts Act. Act. Since the appeal was delayed, an application was moved to condone the delay of almost five years. The learned Joint Charity Commissioner Nanded, after hearing parties, allowed Miscellaneous Application No.25 of 2024 and condoned the delay subject to cost of Rs. 5,000/- (Rupees Five thousand).

6. Mr. S.S. Dargad, learned Advocate appearing for petitioner vehemently submits that Section 70 (2) of the Maharashtra Public Trusts Act specifically states that no appeal against order passed under Section 50-A shall be maintainable after expiration of sixty days from passing of the order. Therefore, Joint Charity Commissioner has no jurisdiction to entertain time barred appeal or application to condone delay. As such, Joint Charity Commissioner exceeded its jurisdiction. He further submits that inordinate delay of five years in filing appeal is condoned in absence of sufficient cause. According to him, merits of the matter are not germane while

considering delay application. It was for the Court to find out if sufficient cause is made out and could not have condoned delay on equitable grounds. In support of his contention, he relies upon judgment of Supreme Court in case of ***H. Guruswamy & Others Vs. A. Krishnaiah Since (D) by Lrs*** reported in ***2025 SCC OnLine 54***.

7. Per contra, Mr. A.D. Khot, learned Advocate appearing for respondent No.2, supports impugned order by inviting attention of this Court to Section 75 of the Maharashtra Public Trusts Act. He submits that provisions of Sections 4, 5, 12 and 14 of the Indian Limitation Act are made applicable to appeals under Chapter XI of Maharashtra Public Trusts Act. Sub-section (2) of Section 70 will have to be read harmoniously with Section 75. Therefore, Joint Charity Commissioner is empowered to entertain appeal after expiry of sixty days, subject Section 5 of Limitation Act.

8. Having considered the submissions advanced by learned advocates appearing for respective parties, two questions emerged for determination before this Court. The first question is, as to whether in light of provisions of Section 70 (2) of Maharashtra Public Trusts Act, an appeal against order passed by the Assistant Charity Commissioner could have been entertained after expiry of sixty days. Section 70 of Maharashtra Public Trusts Act reads thus :

> ***"70. Appeals from findings of Deputy or Assistant Charity Commissioner***

(1) An appeal [against the finding or order] of the Deputy or Assistant Charity Commissioner may be filed to the Charity Commissioner in the following cases :--

(a) the finding [and order, if any,] under section 20;

(b) the finding under Section 22;

[(b-1) the findings under Section 22A;]

(c) the findings under Section 28;

[(c-1) the order under section 41C;]

[(c-2) the order under section 50A;]

(d) the order under sub-section (3) of Section 54;

((d-1) an order under sub-section (1) of section 79;]

(e) an order confirming or amending the record under Section 79AA.]

(2) No appeal shall be maintainable after the expiration of sixty days from the recording of the finding or the passing of the order, as the case may be.

(3) The Charity Commissioner may, after hearing the appellant or any person appearing on his behalf for reasons to be recorded in writing either annul, reverse, modify or confirm the finding or the order appealed against or he may direct the Deputy or Assistant Charity Commissioner to make further inquiry or to take such additional evidence as he may think necessary or he may himself take such additional evidence."

9. It is apparent that Clause (2) puts embargo to entertain appeal after expiry of period of sixty days from the date of recording of finding or passing of order, as the case may be. However, Section 75 of the Act reads thus :

"75. Limitation

In computing the period of appeal under this Chapter, the provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908, shall apply to the filing of such appeals."

10. The harmonious reading of Section 70 with Section 75 depicts that for appeals filed under Chapter XI of the MPT Act, provisions of Limitation Act are made applicable. Therefore, for computing or complying the period of limitation, Section 5 can also be resorted to. In that view of matter, although appeal filed under Section 70, beyond 60 days would not be tenable, it would be subject to provisions of Section 4, 5, 12 and 14 of the Indian Limitation Act. Once Section 5 of limitation is made applicable, the appellate authority is empowered to condone the delay once sufficient cause is made out. The Single Judge of this Court in the case of **Mansoor Khan Multani Vs. Nawab Kha Multani Others (Writ Petition No.11794 of 2023 decided on 21.09.2023)**, dealt with aforesaid provisions and observed as under :

> *"11. On plain reading of Sections 70 and 75, it is clear that provisions of Section 5 of the Limitation Act, are applicable to the appeals filed under Section 70.*
>
> *12. Merely because sub-section (2) of Section 70 starts with words "No appeal shall be maintainable after the expiration of sixty days....", it cannot be said that appeal filed beyond limitation of 60 days would not be maintainable at all.*
>
> *13. On conjoint reading of Sections 70 and 75 of the Maharashtra Public Trust Act, and Section 5 of Limitation Act, it is clear that, where appeal is preferred beyond prescribed period of limitation, if appellant satisfies Court that he had sufficient cause for not preferring appeal or making application within such period, appeal can be admitted."*

11. In light of aforesaid exposition of law, this Court finds no merit in contention of petitioner that the appeal is absolutely barred or not maintainable after expiry of sixty days or that appellate Court has no power to condone the delay.

12. The second contention raised on behalf of petitioner is that there is inordinate delay of five years in filing the appeal and same has been condoned without there being sufficient cause. On perusal of reasons mentioned in Miscellaneous Application No.25 of 2024, it is discernible that impugned order has been passed on 09.12.2019. The limitation of 60 days expired on or about 07.02.2020 as per sub-clause (2) of Section 70. Thereafter, since March 2020 till 28.02.2022, the limitation was freezed by Supreme Court due to pandemic situation. Thereafter, according to applicant, he was not keeping good health for about six to eight months. Then he managed requisite funds, applied for certified copy on 01.02.2024 and received the same on 29.02.2024 and then filed appeal along with application for delay condonation. It is submitted that impugned order passed under Section 50-A is grossly illegal and requires interference by condoning the delay. The said application was opposed by the petitioner. The learned Joint Charity Commissioner observed that reasons as stated in the application constitutes sufficient cause. It is further observed that the Charity Commissioner is the guardian of trusts and has sufficient administrative powers.

13. According to Mr. Dargad, once a party has lost its right to have matter considered on merit because of his own inaction, the delay has to be construed as deliberate. According to him, the Courts cannot delve into merits of the matter or equitable considerations. There cannot be quarrel over aforesaid prepositions, however in present case, fact remains that initial two years after passing of impugned order are covered by pandemic situation and further period consumed in illness and making financial arrangements. These statements are not specifically controverted by the petitioner.

14. This Court cannot be oblivious of the fact that present matter is arising out 50-A proceeding under the Maharashtra Public Trusts Act. Framing of a scheme in relation to a public trust involves the interest of beneficiaries of trust and in such a situation, if the Joint Charity Commissioner has felt it appropriate to exercise discretion and condone the delay, this Court would not entertain challenge in writ jurisdiction under Article 227 of Constitution of India.

15. In result, there is no merit in the writ petition. Writ Petition stands rejected.

16. Rule discharged.

(S.G. CHAPALGAONKAR, J.)

Mujaheed//