



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10657 OF 2024

Ramkrushna @ Ramkisan s/o Damodhar Shinde .. Petitioner

versus

The Joint Charity Commissioner-II & others .. Respondents

Mrs. R. S. Kulkarni, Advocate holding for Mr. D. A. Bide, Advocate for the Petitioner.

Mr. B. A. Shinde, AGP for the State.

Mr. P. D. Bachate, Advocate holding for Mr. A. D.Khot, Advocate for Respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 16th JANUARY, 2025.

PER COURT :

1. This Petition takes exception to the order dated 18.07.2024 passed below Exhibit 10 in Application No. 11/2020 passed by the Joint Charity Commissioner-II, Pune whereby the application filed by the contesting Respondents for intervention came to be allowed.

2. It is the case of the Petitioner that Petitioner is founder trustee of Punyashlok Ahilyadevi Seva Sangh, Ahmednagar a trust registered under the Maharashtra Public Trust Act. Petitioner claims that the constitution of the trust reflects that the procedure for

membership of the trust is that the person has paid Rs. 2,000/- as membership and it is approved by 2/3 majority. It is contended by the Petitioner that only on compliance of these two conditions, a person can be treated as valid member of the trust. It is further case of the petitioner that Respondent Nos. 2 to 13 claim that they are members of the trust and handling affairs of the trust for last 30 years. They filed change reports claiming themselves as trustees. However, said change report came to be rejected by the Deputy Charity Commissioner, Ahmednagar. Petitioner moved an application under Section 47 of the Maharashtra Public Trust Act before the Joint Charity Commissioner, Pune seeking appropriate order of appointment of trustees so also to seek permission to conduct affairs of the trust. Intervention application filed by Respondent Nos. 2 to 13 earlier came to be rejected and the said order was challenged successfully in Writ Petition No. 4618/2024. On remand, learned Joint Charity Commissioner, by impugned order allowed the application and permitted Respondent Nos. 2 to 13 to intervene.

3. Learned counsel for Petitioner submits that in view of provisions of the constitution of the trust, a person who pays membership of Rs. 2,000/- and his application is accepted by 2/3

majority only can become a valid member of the trust and not otherwise. It is submitted that as held by the Deputy Charity Commissioner in the orders passed under Section 22 of the Act, Respondents have not paid Rs. 2,000/- as membership fees and as such they are not entitled to become members. Consequently, their application for causing interference ought to have been rejected.

4. Learned counsel for the contesting Respondents submit that though it is sought to be argued on behalf of the Petitioner that these Respondents are not valid members of the trust, as per the constitution of the trust, ordinary membership of the trust does not require payment of Rs. 2,000/- as claimed by the Petitioner. It is submitted that in order to become a life member, such condition may apply as sought to be contended by Petitioner.

5. The Respondents sought impleadment in the proceedings under Section 47 of the Act, pending before Deputy Charity Commissioner, which reads thus :-

47. Power of Charity Commissioner to appoint, suspend, remove or discharge trustees and to vest property to new trustees

(1) Any person interested in a public trust may apply to the Charity Commissioner for the appointment of a new trustee, where there is not trustee for such trust or the trust cannot be administered until the vacancy is filled, or for the suspension, removal or discharge of a trustee, when a trustee of such trust,-

- (a) disclaims or dies;
- (b) is for a continuous period of six months absent from India without the leave of the Charity Commissioner or the Deputy or Assistant Charity Commissioner or the officer authorised by the State Government in this behalf;
- (c) leaves India for the purpose of residing abroad;
- (d) is declared as insolvent;
- (e) desires to be discharged from the trust;
- (f) refuses to act as a trustee;
- (g) becomes in the opinion of the Charity Commissioner unfit or physically incapable to act in the trust or accepts a position which is inconsistent with the position as trustee;
- (h) in any of the cases mentioned in Chapter III, is not available to administer the trust; or
- (i) is convicted of an offence punishable under this Act or an offence involving moral turpitude.

(2) The Charity Commissioner may, after hearing the parties and making such enquiry as he may deem fit, by order appoint any person as a trustee

or may also remove or discharge any trustee for any of the reasons specified in sub-section (1).

(3) In appointing a trustee under sub-section (2), the Charity Commissioner shall have regard -

- (a) to the wishes of the author of that trust;
- (b) to the wishes of the persons, if any, empowered to appoint a new trustee;
- (c) to the question whether the appointment will promote or impede the execution of the trust;
- (d) to the interest of the public or the section of the public who have interest in the trust; and
- (e) to the custom and usage of the trust.

(4) It shall be lawful for the Charity Commissioner upon making any order appointing a new trustee under sub-section (2) either by the same or by any subsequent order to direct that any property subject to the trust shall vest in the person so appointed and thereupon it shall so vest.

(5) An appeal shall lie to the Court against the order of Charity Commissioner under sub-section (2), as if such order was a decree of a district court as a court of original jurisdiction from which an appeal lies, within sixty days from the date of the order, which shall otherwise be final.

This provision enables the Charity Commissioner not only to appoint new trustee but also to vest property in new trustee under sub-section (4) of Section 47. The contesting Respondents claim themselves to be conducting affairs of the trust. Therefore, their presence in the proceeding would enable the Deputy Charity Commissioner to pass orders effectively. Since these individuals are administering affairs of trust, they become persons interested in the outcome of the proceeding.

6. As such there would be no impediment to permit them to cause appearance in the proceeding. In fact, their presence would assist the authority to issue appropriate directions in the benefit of trust.

7. The order impugned of permitting Respondents impleadment in the proceeding under Section 47 of the Act is upheld only to this extent and not other observations and directions issued by Joint Charity Commissioner, in Clause No. (iv) of operative part of order. The said Clause (iv) is set aside.

8. In the result, the Petition stands disposed of in above terms.

(R. M. JOSHI)
Judge

dyb