



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1634 OF 2025

BAPURAO SHANKAR RATHOD AND OTHERS

VERSUS

**THE STATE OF MAHARASHTRA
THROUGH THE SECRETARY AND OTHERS**

...

Advocate for the Petitioners : Mr. Mukul S. Kulkarni

AGP for Respondent/State : Mr. V. M. Kagne

Advocate for Respondent No. 2 : Mr. Vivek J. Dhage

...

WITH

WRIT PETITION NO. 1285 OF 2025

BALASAHEB NARAYAN RATHOD

VERSUS

THE JOINT CHARITY COMMISSIONER LATUR AND OTHERS

...

Advocate for the Petitioners : Mr. V. D. Gunale

AGP for Respondent Nos. 1 and 2 : Mr. V. M. Kagne

Advocate for Respondent No. 3 : Mr. M. S. Kulkarni

...

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR , JJ.**

DATE : 18.02.2025

PER COURT :

. In both the matters, different parties to a statutory appeal pending before the Joint Charity Commissioner under Section 70, question the selfsame order purportedly passed in light of Section 41-A of the Maharashtra Public Trust Act.

2. One of the petitions, *viz.*, writ petition No. 1634 of 2025, has been circulated before us, purportedly in light of the decision of

the division bench in the matter of ***Vanmala Manoharrao Kamdi and Ors. V/s. The Deputy Charity Commissioner, Nagpur Division, Nagpur and Ors. 2012 (3) MhLJ 594.***

3. The other writ petition No. 1285 of 2025 was circulated before the learned Single Judge according to the roster. However, by the order dated 06.02.2025, again by referring to ***Vanmala Manoharrao Kamdi (supra)***, since the order under challenge has been passed in purported exercise of power under Section 41-A and in light of ***Vanmala Manoharrao Kamdi (supra)***, by observing that the matter would lie before the division bench, even that writ petition is circulated before us.

4. Admittedly, ***Vanmala Manoharrao Kamdi (supra)*** was decided in the year 2012. Conspicuously, it was a substantive order passed by the Assistant Charity Commissioner or Deputy Charity Commissioner under Section 41-A, which was a subject matter of challenge before the High Court, and the issue had arisen in that conspectus.

5. Another division bench in ***Subodhchandra Motiramji Lahane V/s. Assistant Charity Commissioner, Akola 2019 (1) MhLJ 210***, has distinguished ***Vanmala Manoharrao Kamdi (supra)*** with the observations that it would apply only in such challenges where the substantive order under challenge is passed under Section 41-A.

Conversely, it is held that when such order under Section 41-A is passed in an appeal under Section 70 against the order passed in the matter of Change Reports filed under Section 22, the challenge to the order passed under Section 41-A being merely an incidental order or a consequential one, depending upon the substantive challenge in which this order is passed, the matter would lie before a Single Judge.

6. Independently, Rule 18 of Chapter XXVII of the Bombay High Court Appellate Side Rules, Sub-Clause 46 expressly mentions that orders passed under Bombay Public Trusts Act, 1950, as one of the categories of the orders, challenge to which would lie before a Single Judge.

7. In light of the above, both the matters would lie before a Single Judge, since the order under challenge, though passed under Section 41-A which is an administrative order, has been passed in a substantive appeal under Section 70 of the Maharashtra Public Trust Act.

8. Remove from the board.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)

jhs/