

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2173 OF 2025

Shri Mouni Vidyapeeth, Gargoti,
Through the Director
Shri Parshuram Bhimrao Patil And Ors. ...Petitioners

Vs.

The State of Maharashtra And Ors. ...Respondents

Mr. N.V. Bandiwadekar, Sr. Advocate i/by Mr. Sagar A. Mane, for the
Petitioners.

Ms. Shubha Chipade, AGP for Respondent No.1.

Mr. Ashutosh M. Kulkarni a/w Ms. Vrushali Maindad, Mr. Hrushikesh
Giri, Adv. Shaheen Kapadia and Adv. Simran Raut, for the Respondent
Nos.2 and 3.

CORAM : SHYAM C. CHANDAK, J.

DATED : 17th FEBRUARY, 2025

P.C. :-

. Present Petition is seeking for quashing and setting aside of the
impugned Order dated 7th February 2025, below Application Exhibit-169,
in Application No.16 of 2017, passed by the learned Joint Charity
Commissioner, Pune Region, Pune thereby, the said Application at Exhibit-
169 was rejected.

2) Mr.Bandiwadekar, the learned Senior Counsel, at the outset, seeks
leave to delete the name of Respondent No.1-State from the array of title.

3) Leave granted.

4) The name of Respondent No.1 be deleted forthwith.

5) Mr.Kulkarni, the learned counsel for the Respondent Nos.2 and 3
waives the notice on behalf of the said Respondents.

6) **Rule.** Rule is made returnable forthwith. Heard finally with the consent the learned counsel for the parties.

7) The background facts are that, the Respondent Nos.2 and 3 have filed the said Application No.16 of 2017 against the Petitioners and others, under Section 41D of the Maharashtra Public Trust Act of 1950 (*'The Act'*, for short) read with Rule 25AA of the Maharashtra Public Trust Rules. The Petitioners received the notice of the said Application, but they did not file their reply to the Application. Consequently, "No Say" Order was passed by the learned Joint Charity Commissioner on 19th December 2018. Therefore, the Petitioners filed the said Application at Exhibit-169 on 7th February 2025, and prayed to set aside the "No Say" Order. In the Application at Exhibit-169 it was stated that, during pendency of the main Application, the parties had filed some Writ Petitions and Misc. Applications which consumed time for its disposal. Meanwhile there was COVID-19 pandemic situation. Therefore, the Petitioners could not file their reply. The Petitioners never intended to avoid the filing of the reply. Therefore, the Application at Exhibit-169 may be allowed. The Respondent Nos.2 and 3 opposed the said Application by their say.

7.1) After hearing the parties, the learned Joint Charity Commissioner rejected the Application at Exhibit-169 for the reasons that, the challenges filed before the High Court and pending Applications did not preclude the Petitioners from filing their reply. The matter has been substantially heard. The Application at Exhibit-169 was filed after rejection of an Application

for adjournment. In view of the Order passed by this Court in W.P. No.6694/2024, the matter cannot be reverted back for filing the reply.

8) Mr. Bandiwadekar, the learned Senior Counsel tried to convince that the Petitioners could not file their reply due to the compelling circumstance stated in the Application at Exhibit-169. However, the facts and circumstances of the case indicate the otherwise. Mr. Bandiwadekar submitted that, the Petitioners have two opportunities to challenge the main Application by filing the reply. Firstly, after receipt of the notice of the Application and secondly, after framing of the charges. Mr. Bandiwadekar submitted that, the charges are yet not framed against the Petitioners and others. The Petitioners are ready to file the reply, within one week. Therefore, the Petitioners may be permitted to file the reply.

8.1) In view of the aforesaid submissions, Mr. Kulkarni, the learned Counsel for the Respondents submitted that the learned Joint Charity Commissioner may be requested to frame the charges on the due date i.e. 24th February, 2025 and the Petitioners be directed to file their reply within one week therefrom. Mr. Bandiwadekar agreed for the same. But the main Application is at the stage of final arguments as stated by Mr. Kulkarni. On this, Mr. Bandiwadekar fairly submitted that one last opportunity may be granted to the Petitioners to contest the Application subject to payment of a reasonable costs.

9) As revealed from the record and submitted by Mr. Bandiwadekar, the learned Senior Counsel, originally, the Application No.16 of 2017 was filed before the Joint Charity Commissioner, Kolhapur Region, Kolhapur. Then the Charity Commissioner transferred the said Application from Kolhapur to Pune. Thereafter, the Petitioner No.1 filed the W.P. No.6694 of 2024 and prayed to re-transfer the Application to Kolhapur as the reason for the transfer was not surviving. However, *vide* Order dated 22.01.2025 therein, that prayer was not entertained by this Court for the reason that the Application No.16 of 2017 was substantially heard by the learned Joint Charity Commissioner, Pune Region, Pune and the matter has been listed on 07.02.2025 for final hearing. Further, to address the inconvenience of the Petitioner therein, this Court directed the Joint Charity Commissioner to ensure that the proceedings are decided in accordance with law expeditiously and in any case, within a period of 4 weeks from the date 07.02.2025.

10) Perusal of the photocopy of the Application No.16 of 2017 enclosed with the Petition indicates that the said Application was filed in August, 2017. Admittedly, the Application No.16 of 2017 has been filed under Section 41D of the Act. Said Section 41D deals with suspension, removal and dismissal of trustees. Sub-Sections (1) and (2) thereof are relevant in this petition and it read as :

“(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) (a) When the Charity Commissioner proposes to take action under sub-section (1), the Charity Commissioner may issue notice to the trustee or the person against whom the action is proposed is to be taken only when he finds that there is prima facie material to proceed against the said person.

(b) The trustee or person to whom a notice under clause (a) is issued, shall submit his reply thereto within fifteen days from the date of receipt of notice.

(c) If the person fails to give reply to the notice issued under clause (a) or the Charity Commissioner finds that the reply is not satisfactory, the Charity Commissioner shall frame charges against the said person within fifteen days of the filing of the reply or the default in the filing of reply, as the case may be, and give the said person an opportunity of meeting such charges and after considering the evidence adduced against him and in his favour, may pass order regarding suspension or removal or dismissal within three months from the date of

framing of charges. If it is not practicable for the Charity Commissioner to issue notice, frame charges and pass final orders within stipulated time, he shall record reasons for the same.

(d) The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation, if any, and the finding on each charge, with reasons therefor.”

11) The aforesaid sub-Section (2) has been substituted by the Maharashtra Act No.55 of 2017, dated 01.09.2017 (*w.e.f.* 10.10.2017). Prior to substitution, said sub-Section (2) read as:

“(2) When the Charity Commissioner proposes to take action under sub-section (1), he shall frame charges against the trustee or the person against whom action is proposed to be taken and give him an opportunity of meeting such charges of testing the evidence adduced against him and of adducing evidence in his favour. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge, with the reasons therefor.”

12) Considering the provision of said sub-Section (2) before and after the amendment thus, it is clear that the opportunity to file the reply is available before framing of the charges. After framing of the charges, opportunity to meet the charges shall be provided to the trustee or the person against whom the action was taken under sub-Section (1) of said Section 41D. But this position in the statute was not highlighted during the hearing, by the learned Counsel appeared for the parties. The impugned Order indicates

that the Petitioners were available for framing of the charges. However, the learned Counsel for the parties stated that no charges have been framed in the matter. Mr. Bandiwadekar, the learned Senior Counsel for the petitioners stated that the proceedings in the Application No.16 of 2017 were stayed as per Order dated 24.04.2019 in W.P No.3921 of 2019, which Petition was disposed on 06.01.2021. From the submissions made by Mr. Kulkarni, learned Counsel for the Respondents it can be gathered that the Respondents also wants to proceed with the matter in accordance with law and by framing of the charges. The principle of natural justice requires that no person shall be condemned unheard. Similarly, as directed by this Court in the said Order dated 22.01.2025 in W.P. No.6694 of 2024, the Application No.16 of 2017 is to be decided in accordance with law meaning thereby, the procedural aspect should not be ignored.

13) Thus, considering the facts of the case, the provisions of Section 41D of the Act, the Order dated 22.01.2025 passed by this Court in the W.P. No.6694 of 2024 and the principle of natural justice, following Order is passed.

- ORDER -

- i) The Petitioners are permitted to file their reply subject to payment of cost of Rs.30,000/-.

The Petitioners shall pay the said costs of Rs.30,000/- to Kirtikar Law Library, High Court, Mumbai, within one week from the date of uploading of this Order on the official website of the High Court, Mumbai.

- ii) The petitioner shall file their reply on the due date i.e. 24th February, 2025.
 - iii) Immediately after filing the reply by the Petitioners, the learned Joint Charity Commissioner, Pune Region, Pune to proceed for framing of the charges and hearing the matter in accordance with the provisions of the Maharashtra Public Trust Act of 1950.
 - iv) Both the parties shall cooperate with the learned Joint Charity Commissioner, Pune Region, Pune for expeditious hearing and disposal of the said Application No.16 of 2017, by remaining present on each date alongwith their Advocates and as directed by this Court in the Order dated 22.01.2025 in W.P. No.6694 of 2024.
 - v) The Petitioners shall not avoid to proceed with the hearing in the Application No.16 of 2017 on any count.
 - vi) The Writ Petition stands disposed of in the aforesaid terms.
- 14) It is made clear that, the aforesaid Order is passed looking at the peculiar facts and circumstances of the case.
- 15) The learned Joint Charity Commissioner, Pune Region, Pune to proceed with the Application No.16 of 2017 on its merit.

(SHYAM C. CHANDAK, J.)