

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

WRIT PETITION NO. 12545 OF 2024

Shree Dattabal Mission Divine Kolhapur

Through Its Treasurer

Nilesh Jaykumar Desai

... Petitioner

Versus

Jt. Charity Commissioner

... Respondent

Mr. Sukand Kulkarni *for the Petitioner.*

Mr. R. S. Pawar, *AGP for Respondent-State.*

CORAM : SANDEEP V. MARNE, J.

DATE : 18 MARCH 2025.

P.C. :

1) The Petition challenges order dated 19 June 2024 passed by the Joint Charity Commissioner, Kolhapur granting permission to the Trust to borrow amount from Non Banking Financial Company (Auxilo Finserve Private Limited, Pune) of Rs.1.70 crores under provisions of Section 36(A)(3) of the Maharashtra Public Trust Act, 1950. The order actually grants *ex-post facto* permission for borrowing sum of Rs.1.70 crores. However such permission is granted subject to the condition of each trustees of the Trust paying penalty of Rs.1,50,000/- in the PTA fund.

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2) I have heard Mr. Kulkarni, the learned counsel appearing for the Petitioner and Mr. Pawar, the learned AGP appearing for Respondent-State.

3) I have gone through the findings recorded by the Joint Charity Commissioner in the order dated 19 June 2024 and have also considered records of the case filed alongwith the Petition.

4) Under provisions of sub-section (3) of Section 36(A), the Trustees are debarred from borrowing money without prior permission of the Charity Commissioner. However sub-section (3A) makes an exception to the provision of sub-section (3) under which the Trust is permitted to first avail the credit facilities and thereafter apply to the Charity Commissioner for issuance of *ex-post facto* sanction. The present case involves application filed by the Trustees seeking *ex-post facto* sanction to the loan amount of Rs.1.70 crores already borrowed by the Petitioner-Trust. The Joint Charity Commissioner has imposed penalty of Rs.1,50,000/- on each of the trustees for not seeking prior permission before borrowing the money.

5) It appears that the Joint Charity Commissioner has determined the quantum of penalty to be imposed against each of the trustees. Considering the facts and circumstances of the present case, it appears that the trustees had become habitual in borrowing monies without seeking permission of the Joint Charity Commissioner. Two such instances during the years 2020-2021 and 2021-2022 are highlighted by the Joint Charity Commissioner. The Joint Charity Commissioner has accordingly arrived at a conclusion

that Petitioner had become habitual in securing loans without securing prior permission. In that view of the matter, the Joint Charity Commissioner has proceeded to penalize the trustees on account of repeatedly seeking *ex-post facto* permissions in respect of loans already availed.

6) According to Mr. Kulkarni, the penalty imposed by the Joint Charity Commissioner is hefty and the same would result in deposit of amount in excess of Rs.10,50,000/- in the PTA fund whereas the loan amount is only Rs.1.70 crores. He has invited my attention to a similar case where Petitioner therein was imposed penalty of only Rs.10,000/- per trustee for much higher amount of loan.

7) In an ordinary circumstance, this Court would not be justified in interfering in the quantum of the penalty imposed as selection of particular penalty forms a matter of subjective satisfaction of the Joint Charity Commissioner. However, Petitioners have taken a stand that they have repaid both the loans taken during 2020-2021 and 2022-2023 and that therefore there is no question of any misuse of the permission by the trust of the trustees.

8) Considering the unique facts and circumstances of the present case, I am of the view that reduction of amount of penalty imposed on each trustees would provide some solace to them. The loan amount borrowed is only Rs. 1.70 crores whereas the total amount of penalty would be Rs. 10,50,000/-. Considering this position, in my view, if the amount of penalty deserves to be reduced to Rs.50,000/- per trustee.

9) I accordingly proceed to pass the following order:

i) Order dated 19 June 2024 passed by the Joint Charity Commissioner, Kolhapur is modified to the extent that the penalty amount imposed on each of the trustees of the Trust shall stand reduced to Rs.50,000/- per trustee.

ii) All the trustees of the Petitioner-Trust shall deposit penalty amount of Rs.50,000/- in the PTA fund within a period of three weeks. The rest of the order shall remain undisturbed.

9) With the above directions, the Writ Petition is **partly allowed and disposed of**. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]