



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition No.8240/2019

Abid Khan Akbar Khan,
Aged 64 years, Oc.-Business,
R/o.- Bhurekhan Nagar, Darwaha, Tq. Darwaha,
District Yavatmal.

.... Petitioner

- Versus -

1. Nasrullakhan Sarfarazkhan,
Aged 60 years, Occ.-Service,
R/o Inamdar Pura, Tq. Darwaha, District Yavatmal.

2. Abd. Sattar Abd. Gaffar,
Aged 62 years, Occ.-Service,
R/o. Mubaraq Nagar, Darwaha, Tq. Darwaha,
Distt. Yavatmal.

.... Respondents.

Mr. J. Gilda, Senior Advocate a/b Mr. A.J. Gilda, Advocate for petitioner.
Mr. Prashant Gode, Advocate for respondent.

CORAM : R.M. Joshi, J.

DATE : 16-06-2025.

ORAL JUDGMENT

By consent of both the sides, heard finally at the stage of admission.

2. This petition takes exception to the order passed by the Joint Charity Commissioner (JCC) dated 26-05-2017 in Application No.17/2008 filed under Section 41-D of the Maharashtra Public Trusts Act (for short 'Trust Act') and confirmation of the said judgment with modification by the District Judge-1, Darwaha in Misc. Civil Appeal No.26/2017.

3. The facts which are absolutely necessary for the decision of the case are reproduced in brief, as under :-

4. The petitioner is the trustee of Shahid Abdul Hamid Education Society, Darwaha, District Yavatmal which is a public trust registered under the Trust Act bearing PTR F-1051/Yavatmal. The respondent nos. 1 and 2 and one more trustee had filed application before the JCC, Amravati under Section 41-D of the Trust Act which was numbered as Application No.17/2008. The petitioner and other trustees filed their written statement and opposed the application. Learned JCC framed the charges against the trustees on 25-11-2011. The JCC by order dated 26-05-2017 directed the petitioner and other trustees of the trust be permanently removed from the trusteeship of the trust and fresh elections were directed to be held for electing new Executive Committee of the trust. Being aggrieved by this order, the petitioner filed appeal before the District Court, Darwaha being Misc. Civil Appeal No.26/2017. The learned District Judge-1, confirmed the said order passed by the JCC with modification. It was held by the District Judge that the petitioners and other trustees cannot be removed from trusteeship

permanently and directed them to be removed from existing trusteeship of Executive Committee of the trust.

5. The allegations against the petitioner and the charges framed against him are as under :-

"1) That you the above named non-applicants being trustees of the trust committed breach of rules & regulations of constitution by not holding general body meeting and by not maintaining the resolution book as required.

2) That you being trustees of the trust failed to hold election of the executive body as required as per constitution of the trust.

3) That you the non-applicants Nos. 1 to 3 being trustees of the trust misappropriated the funds of the trust amount in lakhs of rupees by not maintaining membership register, proceeding book, stock register, cash book, ledger book, voucher file and pass book.

4) That you the non-applicants failed to file change report of immovable property bearing plot No. 219 admeasuring 1100 sq.mtr. Purchased on 28-3-1995.

5) That the non-applicants No. 1 to 3 constructed the building on above said land. That you the non-applicant No. 1 is residing in the said building constructed for the Principal without making any permission to the trust for such resident since year 2000 and that such act is being done with consent of non-applicant No. 2 & 3.

6) That you the non-applicant No. 1 to 3 in consultation and consent with each other, constructed school building upon the trust property and obtained Rs. 2,20,000/- towards grant and that you the non-applicant No.1 is recovering rent for the two schools from the Government without any authority.

7) That you the non-applicant No. 1 to 3 have misappropriated funds of the trust in lakhs of rupees by improperly handling saving account bearing No. 4026 opened in the name of trust with Vidarbha Kshetriya Gramin Bank, Branch Darwha.

8) That you the non-applicant No. 1 to 3 misappropriated amount of Rs. 80,171/- received from Governments towards scholarship to the students."

6. In support of the said charges the original applicants led evidence of Nasarulla Khan Sarfaraj Khan and Mahadev Chunge (Bank Manager of Vidarbha Konkani Garamin Bank, Darwaha Brnach). The petitioner on the other hand examined himself and also led evidence of Sherenawaj Aabid Khan.

7. After hearing the parties, the JCC by passing the impugned order has held that the non-applicant trustees of the trust committed breach of rules and regulations of the trust by not holding General Body Meeting and by not maintaining the Resolution Book as required. It is also held that trustees have failed to hold the elections of the Executive Committee as required by the constitution of the trust. It is further held that the non-applicant failed to file change report of immovable property bearing Plot No.219 admeasuring 1100 sqmtr. purchased on 28-03-1995. Charge no.7 was answered by treating that there is improper handling of the accounts. Thus, in this manner charges no.1, 2, 4 and 7 are held to be proved. Rest of the charges are held to be not proved. On holding that the above charges are proved, JCC termed the same as malfeasance and misfeasance. The JCC permanently debarred the trustees from trusteeship of the trust.

8. The District Judge in the appeal filed against the order passed by the JCC has confirmed the findings, however modified the direction of removal of trustees from the trusteeship permanently and reduced the same to the extent of removal from their existing trusteeship.

9. Learned Senior Counsel for the petitioner submits that both the authorities below have committed serious error in not appreciating the facts on record in proper perspective. It is his submission that the JCC has failed to take into consideration the fact that it was the burden on the applicant to prove the charges against the non-applicant and perusal of the record indicates that there is no evidence to prove the same. It is his submission that the respondent herein in his evidence on oath before the JCC has candidly stated about he having filed false complaint against the trustees, being aggrieved by the action of removing him from trusteeship. It is his submission that the authorities ought not to have held that the petitioner has failed to prove his defence and by wrongly placing burden on the petitioner to prove his defence, without applicant having succeeded to discharge initial burden of proving charge. It is his submission that JCC as well as appellate authority have committed error in not considering the order dated 23-08-2012 below Exhibit-14 passed by the JCC on an application filed by the applicant for production of documents, which indicates that inspection was directed to be taken by the applicant of the documents which were sought to be produced on record. It is

his submission that further order was passed on 22-11-2012 indicating that inspite of opportunity granted to the applicant to take inspection, the same was not taken and as such appropriate order in this regard came to be passed. According to him, once an application is filed by the applicant under Section 41-D, the initial burden would always be on the applicant to prove the charges against the non-applicant. It is his submission that unless the initial burden is discharged, onus cannot shift upon the non-applicant to prove otherwise. It is his submission that this rule of evidence would apply to the present proceeding being quasi judicial in nature. He further argues that both the authorities erred in law in drawing adverse inference against the petitioner for non-production of the documents as on passing of order on Exhibit-14 and subsequent order in respect of inspection, there was no legal obligation on petitioner to produce any document. It is his further submission by drawing attention of this Court to the findings recorded by JCC and District Judge- 1 that there is a positive finding recorded that the case of misappropriation has not been proved against the petitioner. It is his submission that when there is no dispute about the fact that the application Exhibit-22 i.e change reports are filed, it was not open for these authorities to hold that belated filing of the report is non-compliance of the provisions of law. To support his submissions reliance is placed on the following judgments :-

- (a) **Mallikarjuanappa s/o Sidramappa Bidve and others Vs Joint Charity Commissioner, reported in 2008(1) Mh.L.J. 148.**
- (b) **Totaram Dasuji Rathod and others vs Atmaram Kisansing Rathod and others, reported in 2020(1) Mh.L.J. 922.**
- (c) **Eknath Tukaramji Pise and another Vs Rama Kawauji Bhende and others, reported 2020 SCC OnLine Bom 934.**
- (d) **Vajubhai Patel and another vs The Charity Commissioner, Maharashtra Sate and others, reported in 1990 SCC OnLine Bom 94.**
- (e) **Dr. Avinash s/o Herabba Dekate and another vs The Joint Charity Commissioner and others (First Appeal No.100/2019 decided on 26-07-2022).**
- (f) **Bank of Maharashtra vs M/s ICO Jax India Deedwana Oli Lashkar Gwalior and another, reported in I.L.R. [2017] M.P. 645.**

10. On the point of elections of executive committee, hold during pendency of appeal, he submits that pursuant to the order passed by the JCC election was held of the Executive Committee of the trust, however as the appellate Authority has modified the order of removal of the petitioner from trusteeship permanently and limited the said removal to the extent of existing trusteeship, the petitioner could not have been denied

contesting election, since the order of JCC has merged into the order passed by appellate authority. It is his submission that since the petitioner was prohibited from participating in the election pursuant to the order of JCC, and since the order passed by the appellate Court relates back to the order passed by the JCC, subsequent elections held be declared illegal.

11. Learned Counsel for the respondent/original applicant vehemently supported the impugned order. It is his submission that there are concurrent findings recorded by both the authorities and in the exercise of writ jurisdiction the concurrent findings cannot be interfered. It is his submission that after order dated 22-11-2012 passed by JCC was not complied by the petitioner. It is his submission that the import of the said order is that the documents sought were required to be provided to the applicant. Since the same has not been done, the authorities below are fully justified in drawing adverse inference against the petitioner. It is his submission that the record indicates that no elections were conducted from 1985 to 2008 and as such there was no reason for the authorities to hold accordingly. On the point of admission of applicant in evidence, it is his submission that the stray admission given by the applicant about having filed false complaint cannot become a ground for dismissal of the application. It is his submission that there is evidence of witness no.2- Sherenawaj Khan Aabid Khan who has shown that account was opened in the bank and there were entries of

withdrawal of cash from the account. He argued that unless the said withdrawal is explained satisfactorily, there is no reason for causing interference in the impugned order. It is his submission that there is evidence on record to indicate that the wife of the petitioner was wrongly shown as a Secretary of the trust when she was not the trustee and the JCC was justified in holding to be an act of malfeasance and misfeasance. It is his submission that the appellate Court has modified the order passed by JCC in disqualifying him from the trusteeship permanently and the same is restricted to the existing trusteeship and hence order not being harsh, needs no interference. Finally he argued that the elections were held on 04-07-2017 and that new Committee has been elected and therefore this is not the case of causing inference into the directions issued by the JCC and to hold the elections being not valid. To support his submission he has placed reliance on :-

(a) Shree Tikai Devi Trust and others vs Shri Nivrutti P. Mujumle and others, reported in 2015(2) ALL MR 377.

12. At the outset, this Court would like to deal with the arguments sought to be made by the counsel for the respondent that since there are concurrent findings, the same cannot be interfered with in exercise of writ jurisdiction. No doubt if the findings so recorded are not perverse, it would not be open for this Court to cause interference therein. Similarly, merely because different view is possible, this Court cannot

substitute its view and dislodge the one taken by the Courts below. However, there is no embargo to unsettle even concurrent findings if they are contrary to evidence and law being perverse. Keeping in mind this position of law, the facts of the case and submission of rival parties are considered.

13. The proceedings in question filed under Section 41-D of the Trust Act. For the sake of convenience the said provision is reproduced, which reads thus-

"Section 41-D Suspension, removal and dismissal of trustees.

(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 41 B 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) When the Charity Commissioner proposes to take action under subsection (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.

(3) Pending disposal of the charges framed against a trustee the Charity Commissioner may place the trustee under suspension.

(4) Where the Charity Commissioner has made an order suspending, removing or dismissing any trustee and such trustee

is the sole trustee or where there are more than one trustee and the remaining trustee according to the instrument of trust, cannot function or administer the trust without the vacancy being filled, then in that case the Charity Commissioner shall appoint a fit person to discharge the duties and perform the function of the trust, and such person shall hold office only until a trustee is duly appointed according to the provisions of the instrument of trust.

(5) A trustee, aggrieved by an order made under sub-section (1) may, within ninety days from the date of communication of the order of suspension, removal or dismissal, apply to the Court against such order.

(6) An appeal shall lie to the High Court against the decision of the Court under sub-section (5) as if such decision was a decree from which an appeal ordinarily lies.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final."

14. This provision contemplates three contingencies in which the trustee can be removed from trusteeship. This can be done on an application moved by the person interested. Secondly, on report under Section 41-B, the JCC may consider exercising the powers under this provision. Similarly, the said powers can be exercised even *suo motu*. Similarly action of removal/ suspension/dismissal of a trustee can be taken only in cases covered by clauses (a) and (f). Herein this case the JCC has held that case is covered by clause (c) i.e. continuous neglect of duties, act of malfeasance and misfeasance and breach of trust.

15. There is no dispute about the fact that the present proceedings are initiated at the instance of respondent/original applicant. Thus, this is not the case wherein *suo motu* cognizance is taken by the JCC or there is any report under Section 41-B of the Trust Act. Once it is held that it is the

respondent/original applicant who is seeking invocation of powers of the JCC for ousting the trustee from trusteeship, the initial burden would be on him to prove the charges against the non-applicants and unless the initial burden is discharged, the question of onus being shifted to prove otherwise upon other side does not arise.

16. Needless to emphasis, that the proceedings under Section 41-D enters drastic consequences such as suspension/dismissal/ removal of any person from the trusteeship of the trust. Whenever any course of action carries significant and damaging drastic consequence, the standard of proof required for the same must be high. Though the allegations/imputations may be not proved beyond reasonable doubt as required in criminal trial but certainly there must be standard of proof of higher degree than preponderance of probabilities. In this regard reference can be made to the judgment of the Coordinate Bench of this Court in case of Mallikarjuanappa (supra).

17. The order impugned indicates that Clause (c) of Section 41-D(1) has been invoked by the applicant and accepted by Authorities under the Act. Thus in order to take action of suspension/dismissal/removal of stray trustee must be continuous neglect of duty or malfeasance/misfeasance or breach of trust. In so far as constituting any at as malfeasance or misfeasance is concerned, it must involve dishonesty or

involvement of action of neglect of duty. This Court in case of Eknath Pise (supra) has held that -

"It is thus clear the expression "misfeasance" as used in Clause (c) of Section 41D is more than mere negligence of the trustee to perform his duty. "Misfeasance" includes breach of duty by the trustee which would result into loss to the trust or would cause unlawful gain to such a trustee, charge with act of misfeasance. Further the said judgment makes it clear that imputation reflecting on the integrity of trustees have to be fortified by proof of high degree which will have to be higher than the standard of proof required in civil proceedings. Unless and until the lapse on the part of the trustee is proved to be actuated by dishonesty, the drastic action under section 41-D of the Act, 1950 may not be warranted."

18. Thus in order to hold malfeasance or misfeasance, it is necessary that findings are recorded that breach of duty has resulted in causing loss to the trust and wrongful gain to the trustee. Moreover, such findings of loss can be recorded only on the basis of proved facts and not on surmises and conjunctures. A reliance also can be made to the judgment of Vajubhai (supra).

19. JCC in order has held that non maintenance of record would not be sufficient to prove misconduct. It is observed in para 8 of order that detail and cogent evidence is necessary and on basis of vague statement misconduct cannot be proved. JCC further observes in para 9 that Audit Reports for period from 1985-86 to 2006-07 were filed with Charity

Commissioner and it shows that account are maintained properly. On the point of allegation of withdrawal of cash, it is observed that mere withdrawal of cash from account will not prove misappropriation but since non-applicant has not explained the withdrawal by placing documentary evidence, it is held that charge no.7 is proved. While recording this finding JCC committed error in casting burden on the non-applicant to prove that he has not misappropriated funds, in absence of any evidence led by applicant to prove the misappropriation.

20. JCC held that the non-applicant no.1/petitioner was minor when he became member of trust and therefore this act on his part amounts to malfeasance. There was no allegation against him about he being not appointed as trustee validly and that petitioner was not allowed to meet the said contention. JCC at the time of passing of order without giving opportunity of rebuttal recorded these findings. For non compliance of principle of *audi alteram partem* such findings cannot sustain.

21. In para 26 JCC recorded the findings that non-applicant no.1 is treating the trust s family trust and did not care for welfare of students taking deduction in the institution run by trust. Firstly, there is no evidence on record to conclude that the welfare of students is not considered. Secondly, applicant himself was trustee of trust and hence he could not have made any such allegation. Suffice it to say that said finding is not supported by cogent evidence.

22. Most importantly there was no other evidence before JCC except oral evidence of applicant and evidence of Bank employee, who only proved transactions of withdrawal of amounts. Once it is held by JCC that mere withdrawal of amounts is not misappropriation, the evidence of applicant only would remain for consideration. Insofar as the veracity and reliability of evidence of applicant is concerned, on oath he made candid statement that "since I was removed by non-applicants from membership of general body, therefore I filed false case". According to learned Counsel for the applicant, this is stray statement and hence cannot become basis for decision of case.

23. It however appears from cross examination of this witness that he was not even aware as to which documents are filed on his behalf in the proceeding. He states having no knowledge whether any objection is taken to the Charge Report No.105/2008 filed by non-applicant no.1 regarding charge no.4. He admits that he has no documentary proof to show that non-applicant constructed house on plot belong to trust or trust received rent from government. He also states that he has not produced document in respect of Charge No.7. These admissions of the applicant indicate that he was never serious about proving the allegations or was not in a position to prove the same. In this backdrop his admission that he filed false case since removed from trusteeship, cannot be brushed aside. In fact the JCC ought to have been on guard while

considering the allegations and asked the applicant to prove charges strictly.

24. Appellate Court, held that the change report was not submitted within 90 days from acquisition of properties and that condition of delay is not sought. Needless to say it was for Deputy Charity Commissioner or Assistant Charity Commissioner who deals with change report, would be competent to decide the correctness thereof. This task is not permissible to be taken by JCC in a proceeding under Section 41-D. It is observed that non-applicant has produced record of elections held on 11-05-2008 and 11-05-2013, but not produced record of earlier election and hence charge is held to be proved by drawing adverse inference against him.

25. Both authorities below have failed to take into consideration the order passed by JCC dated 22-11-2012 and consequent order indicating that in spite of opportunity, the applicant has failed to take inspection. Though it is sought to be argued on behalf of the respondent that there was non compliance of order dated 22-11-2012 by the non-applicant, a bare perusal of the said order indicates that clause no.3 of the operative part indicates moving of an application to the non-applicant for giving copies of the documents. Admittedly, no such application was moved. Thus it cannot be said that there is any breach of order on the part of the non-applicant.

26. The documents which are said to be not placed on record and adverse inference is drawn in respect of the same

were asked to be produced before the JCC by order dated 22-11-2012. This application was partly allowed. The applicant was directed to take inspection of the said documents and it was open for the applicant to apply to the non-applicant for receiving copy of particular documents. There is no inspection taken by the applicant of the documents nor any application was moved for seeking the documents in question. Admittedly, the said order passed by the JCC has not been challenged by the applicant and as such it has attained finality. Thus, after passing of the said order, the non-applicant was not bound to produce any documents before the JCC and as a result of which no adverse inference could have been drawn against the non-applicant.

In the aforestated facts judgment cited by counsel for respondent/original applicant in Shree Tukai Devi Trust (supra) has no application in the present case.

27. The above discussion, indicates that petitioner is able to demonstrate that the said findings recorded by the authorities below are inconsistent to the evidence on record and contrary to law. This Court has no hesitation to hold that the findings recorded by the authorities below are perverse and hence deserve interference.

28. The JCC had directed permanent removal of the petitioner from the trusteeship. In the said order itself the direction was issued for conducting the election. Accordingly, the elections were conducted before the Appellate Court could

pronounce its order. The Appellate authority has modified the order of removal of petitioner from the trusteeship permanently and limited the same to the extent of existing trusteeship. Thus order passed by JCC therefore has merged into the order of Appellate Court. The order of permanent disqualification/removal of the petitioner from the trusteeship therefore does not exist. As a result of the order passed by JCC, the petitioner was prohibited from participating in the election. Once the order passed by the JCC as well as the Appellate authority are set aside, the petitioner would be within his right to participate in the election so conducted. Consequent to the setting aside of the order impugned, the subsequent act of holding of election also cannot sustain and therefore needs to be set aside.

29. In the result, petition stands allowed. Impugned orders passed by the authorities below are set aside.

30. However, in the interest of the Trust, it is directed that fresh election of the Executive Committee of the Trust be conducted under the supervision of the Inspector under Trust Act, of concerned area, within a period of two months from today.

31. Petition stands allowed in above terms.

(R.M. Joshi, J.)