



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5898 OF 2024

Nanarao Vitthalrao Deshmukh

-Vs.-

Joint Charity Commissioner, Amravati and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's Orders.
or directions and Registrar's orders.

Mr.A.R.Deshpande, Mr.S.O.Pundkar, Advs.for the petitioner.
Mr.S.B.Bissa, AGP for the respondents-State.
Mr.K.P.Mahalle, Adv.for the respondent Nos.3 and 4.
Mr.N.D.Khamborkar, Adv.for the respondent Nos.5 and 6.

**CORAM : SMT. M. S. JAWALKAR &
PRAVIN S. PATIL, JJ.**

DATE : 16TH JULY, 2025

Heard the learned counsel for the parties.

2. The present petition is filed by the recorded Trustee of Lokmanya Shikshan Prasarak Mandal, Charangaon, Tahsil Patur, District Akola challenging the order dated 28/02/2024, passed by the respondent No.2-Assistant Charity Commissioner, Akola in Enquiry Case No.43 of 2023, thereby directing the applicants therein (i.e. petitioner and respondent Nos.3 and 4 as recorded trustees) to enroll new members and hold elections of executive committee of the trust.

3. The learned counsel for the petitioner submitted that the application filed before the Assistant Charity Commissioner, Akola bearing No.2897 of 2013 under section 41-A of the Maharashtra Public Trusts Act, as there

were no required strength of trustees and since 1991 there were no elections. By this petition, the petitioner also seeks direction against the respondent No.1-Joint Charity Commissioner, Amravati to exercise power under section 47 of the Maharashtra Public Trusts Act.

4. The learned counsel for the petitioner relied on **Gram Vikas Samittee, Shahakpur v. Darshanlal s/o Nandlal Malhotra and others, 2009 (5) Mh.L.J. 457**, wherein the order in respect of change report passed by Assistant Charity Commissioner, Bhandara was under challenge before the Joint Charity Commissioner, Nagpur under section 70 of the Maharashtra Public Trusts Act. In the same order Assistant Charity Commissioner also issued directions under section 41A to enroll members, conduct elections and submit the change report. The petitioner challenged clause-3 of the impugned order by which respondent No.1 was directed to make/enroll members of the trust and hold election within two months and to file report. These directions are issued under section 41A of the Maharashtra Public Trusts Act. This Court set aside the order passed by the Assistant Charity Commissioner and directed the respondent No.1 to manage the affairs of the petitioner-Trust. After setting aside this order, the LPA was filed and it was pending. Writ Petition No.35 of 2009 challenging the order under section 70 of the Maharashtra Public Trusts Act by the Joint Charity Commissioner in respect of change report. This Court specifically held in paras-32 and 33 as under:

“32. As regards the scope of direction under section 41-A of the Bombay Public Trust Act, the decision of this court in *2007 AIR Bombay R 547 = 2007 AIR Bombay R 547, Dattatraya Mahadeo Hiware & Others ..vs.. Arjun Sambhaji Shinde and others* may also be referred, wherein in paragraph 15 it has been held thus:

"15. Learned counsel Shri R.N. Dhorde, seeks to rely upon *Ramdas Shivaji Sakharam and others vs. Karuji Dago Ambade and others, 2002 (2) Mh.L.J. 304 : 2002 AIHC 2328 and Asaram Bhimrao Shinde and others vs. State of Maharashtra and otehrs, 2001 (4) Mh.L.J. 548*. In both these matters, it is held that Section 41-A does not empower the Charity Commissioner to remove or to appoint any new committee for the administration of the trust. The purpose of Section 41-A is to ensure that the administration of the trust is properly carried out and there is no mismanagement. The expression "issue direction to any trustee of a public trust or any person connected therewith" as used in Section 41-A, would show that the directions can be issued only against trustees or the persons connected with the trusts. In the present case, the status of the respondent Nos.1 to 3 as members of the educational trust was seriously disputed. The learned Asst. Charity Commissioner did not enquire about the status of the respondent Nos. 1 to 3 and straight way proceeded to allow their application. This approach of the Asstt. Charity Commissioner is improper and erroneous. Consequently, I have no hesitation in holding that the Asstt. Charity Commissioner cannot appoint a committee and the application could not have been allowed to the extent of such appointment.

When assistant Charity Commissioner cannot direct the appointment of trustees, he would also not be able to direct to enrol members, hold elections and submit change report under section 41-A of the Act.

Any such direction would vitiate, if challenged, for it would be illegal exercise of jurisdiction. The decision of this court in *2001 (4) Mh.L.J. 548 = 2002(3) Bom.C.R. 16 Asaram Bhimrao Shinde and others vs. State of Maharashtra* can also be referred in this regard.

33. Yet another judgment which needs to be referred is judgment of this court in *2007 (1) ALL MR 71, Nawalchand Champalal Chaudhari and another vs. Joint Charity Commissioner, Nagpur and another*, wherein it has been held:

"In the instant case, it is clear that minimum number of trustees to administer the trust itself were not available. Both the groups made rival claims and enrolled members. In such circumstances, permitting any one of them to hold elections will never result in resolving the issue once for all and dispute will continue. In fact both of them have held elections and filed change reports. If change reports furnished by them could not have been entertained, there is no point in asking any one of them to hold elections again. The Assistant Charity Commissioner ought to have seen that provisions of section 47 of the Act, have been placed in statute book to take care of such contingencies. Initially the matter should have been considered to fill in requisite number of vacancies so as to see that minimum members required to administer the trust become available and then only a direction under section 41-A of the Act could have been issued to such trustees. It is only thereafter that the act of such trustees could have been treated as act of trust. The Assistant Charity Commissioner has overlooked this aspect and also provisions of section 47 of the Bombay Public Trust Act. This was not a case in which powers under section 41A of the Act could have been exercised.

In such circumstances, the Assistant Charity Commissioner ought to have referred the matter to Charity Commissioner under section 47 of the Act to appoint adequate number of trustees so that there is valid Executive Committee initially to take care of affairs of Trust. As the quorum for meeting of Executive Committee as per constitution is 7 and three Executive members/trustees were already available, the Assistant Charity Commissioner ought to have seen that remaining four are first appointed under section 47 of the Act. The task of holding elections could have been left to such Executive Committee thereafter. By leaving the task of holding elections only to one of the rival groups in the matter, the Assistant Charity Commissioner has added to the problems instead of resolving it."

In these circumstances, if Assistant Charity Commissioner was of the opinion that fresh members need to be enrolled and elections have to be held, it was for him to refer this matter to the Joint Charity Commissioner for action under section 47 of the Bombay Public Trust Act."

4. Thus, it would be clear that the powers of issuance of directions under section 41A of the Maharashtra Public Trusts Act are quite different and the said powers can be exercised only in the circumstances referred in the said section and not otherwise.

5. In the present matter, though application was moved under section 41A of the Maharashtra Public Trusts Act, in view of the judgment cited supra, the Assistant Charity Commissioner should refer this matter to the Joint Charity Commissioner for deciding the same under section 47 of the Maharashtra Public Trusts Act as there were no strength of trustees to complete quorum.

6. It is the contention of the respondents that there is delay and laches on the part of the petitioner in approaching this Court and there is already change report filed with the Assistant Charity Commissioner. However, in view of the fact that we have satisfied that the order passed by the Assistant Charity Commissioner, Akola is without jurisdiction, all other grounds raised by the respondents have become redundant.

7. In view of our finding that Assistant Charity Commissioner has no authority to issue such directions as issued vide order dated 28/02/2024 to enroll members and to conduct election, specifically when there were three trustees. The order is not only contrary to the provisions of law, but also contrary to the bye-laws of the institution. As such, the impugned order dated 28/02/2024 in Enquiry Case No.33 of 2023 is hereby quashed and set aside. The consequential proceedings filed by the respondent Nos.3 and 4 are also dismissed.

8. The petitioner and respondent Nos.3 and 4 may apply to the Joint Charity Commissioner, Amravati jointly or individually under section 47 of the Maharashtra Public Trusts Act for further directions. After receipt of such application, the Joint Charity Commissioner, Amravati shall decide the same within a period of two months. As such, the petition stands disposed of. No costs.

(PRAVIN S. PATIL, J)

(SMT.M.S.JAWALKAR, J)