IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 606 OF 2024

Shrikant Gajanan Beni and Anr. ...Petitioners

Versus

Sarvajanik Wachnalay and Ors. ...Respondents

Mr. Vivek V. Salunke, *for the Petitioners.*

Mr. Satyajeet P. Dighe, *for the Respondents.*

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : FEBRUARY 9, 2026

Oral Judgement:

1. Rule. Made returnable forthwith, by consent of the parties, and the Petition is taken up for final hearing.

Context and Factual Background:

2. The challenge in this Writ Petition is to an order dated August 1, 2022 ("***Impugned Order***"), by which the learned Joint Charity Commissioner declined to take action under Section 41D of the Maharashtra Public Trusts Act, 1950 (***"the Act"***), pursuant to proceedings initiated by the Petitioners who sought the removal of

various Trustees who held office in the subject Trust between 2012 and 2017 ("***Relevant Period***").

3. The core grievance raised by the Petitioners with the Impugned Order is that the order does not deal with material information, that had been pressed into service by the Petitioners in the form of specific affidavits, that were filed in the course of the proceedings, as also the evidence led by a Superintendent of Tax Department in connection with one of the charges.

4. The two facets that are being pressed into service in pursuit of this Petition are the first two charges – the allegation relating to defaults relating to payment of service tax during the Relevant Period; and the manner of procuring and installing firefighting equipment in the premises of the Trust.

Service Tax Issue:

5. As regards the service tax charge, it is common ground that the manner of treatment by the Trust, of the amount payable towards service tax has been consistent right since 2007 and this practice went on until 2017, when the Trust eventually paid over a sum of over Rs. 30,00,000/- towards penalty and interest. Since the Respondents in the

Petition are said to have held office as Trustees between 2012 and 2014, the key contention of the Petitioner is that an Amnesty Scheme that had been available in 2013, not having been availed of by them, the Trust was exposed to avoidable liability. Not availing of the Amnesty Scheme, Learned Advocate for the Petitioner would submit, constitutes an act of neglect and misfeasance, for which the provisions of Section 41D (1)(c) of the Act would need to be pressed into service.

Firefighting Equipment Issue:

6. As regards the charge relating to procurement of firefighting equipment, the Petitioners would submit that the findings in the Impugned Order inherently indicate that something was amiss in the manner in which the firefighting equipment had been procured. To begin with, the quotation from one M/s Bharati Enterprises which supplied the firefighting equipment, had been received on April 16, 2013, whereas the tender floated by the Trustees was published on May 1, 2013. That apart, the grant of the contract and stipulation of terms and conditions had been effected on June 7, 2013, signed by three Trustees, even while one of them was not in the country at the relevant time. This, it is alleged by the Petitioner, is indicative of forgery.

<u>Analysis and Findings:</u>

7. Having heard learned Advocates for the parties at length and having examined the material on record with their assistance, in my opinion, no case has been made out to exercise the extraordinary jurisdiction of this Court to interfere with the Impugned Order. My reasons set explained below.

8. It is not reasonable to hold that Impugned Order is a product of arbitrariness or irrational analysis, to warrant an intervention in exercise of the extraordinary writ jurisdiction. To begin with, the issue relating to service tax is evidently a historical issue, which was dependent on the judgment call of the Trustees right since 2007. If the Trustees continued to have a *bona fide* view on the tax position to be adopted by the Trust, it cannot be said that their judgement not to avail of an Amnesty Scheme of 2013, by itself, attracts the jurisdiction of Section 41D of the Act. It would entail elevating the decision not to avail of the Amnesty Scheme as a neglect of duty or misfeasance warranting the drastic step of suspension, removal and dismissal of the Trustees.

9. Trustees holding office after the Relevant Period too continued to pursue the same position until 2018 and the stance adopted during the Relevant Period was consistent with past practice.

Merely because an Amnesty Scheme had been available, it cannot be contended that not availing of it was a matter of misfeasance or even of neglect., and that too when subsequent trustees too continued with the same stance. These are judgement calls on how to handle a taxation issue, and one cannot find fault with the Impugned Order for taking a view that is not unreasonable.

10. That apart, the allegation by the Petitioner that the evidence led by the Superintendent of Tax Department on the tax position has been ignored, does not inspire confidence. Evidence of the tax official against whom Trust has tax litigation would not be instructive on the tax position. The question that had to be answered by the Learned Joint Charity Commissioner was whether the conduct of the Trustees was irrational, arbitrary, or of such a nature that it demonstrated neglect of their duty. The evidence led by the tax official would not turn the needle on this count.

11. As regards the issue of ordering firefighting equipment, the Learned Charity Commissioner noted that the document dated June 7, 2013, purports to have been signed by three Trustees namely Respondent Nos. 12, 5 and 8. Respondent Nos. 5 and 8 were evidently in the country at the relevant time. The signature of Respondent No. 12,

who was not in the country, is seen on the document. Whether the affixation of signature by the trustee who was travelling constituted a pretension of having been around to approve, or whether the signatory did not write a date if he eventually signed on his return, is a question of evidence. Two of the three had signed when they were indeed in India. I am not satisfied that in exercise of the writ jurisdiction, this Court could get into a matter of evidence and elevate these facts to a finding that forgery had taken place, warranting removal of a trustee from office.

12. The Learned Joint Charity Commissioner has also taken note of the fact that all three of them had been deleted from the array of parties because, by the time the proceedings were conducted, they had already vacated office and there was no scope for any interference under Section 41D of the Act. Therefore, without prejudice to any other implications for any alleged conduct on behalf of the Respondents, since they had already vacated office, the case for their removal from office was rightly dealt with as infructuous by the Learned Joint Charity Commissioner.

13. Various minute operational issues are sought to be pressed into service by the Petitioner. It must be remembered the writ jurisdiction is not a full-blown appellate jurisdiction for this Court to

substitute the Learned Joint Charity Commissioner’s wisdom in assessment of facts and evidence, with its own on the assessment of facts. The judicial review by the Writ Court would be on the premise of whether the actions of the authority whose decision has been impugned are vitiated by any reason of due process, such as lack of reasons, arbitrariness, refusal to consider relevant facts and consideration of irrelevant facts, and the like.

14. Another facet that cannot be lost sight of is that the proceedings were initially initiated against 18 Respondents, all of whom are said to have been Trustees at some point of time or the other, during the Relevant Period. Fourteen of the parties have been deleted in the course of the proceedings and only four continued.

15. Even in terms of proportionality, the assignment of individual roles to individual Respondents for their office to be vacated under Section 41D is not available from the record. It is not clear what devolution of responsibilities had been agreed upon between the Trustees. At this distance in time, when one simply reviews the assessment by the Learned Joint Charity Commissioner from the perspective of a constitutional challenge to the validity of the Impugned Order, in my opinion, no case has been made out for exercising the

Court's equitable jurisdiction to hold that something inequitable has transpired from the Impugned Order.

16. Learned Advocate for the Petitioners presses into service a decision of a Learned Single Judge of this Court in ***Mallikarjunappa*[1]*,*** to indicate that the term "*misfeasance*" used in Section 41D(1)(c) of the Act would bring within its ambit any action that results in a loss to the Trust, it need not necessarily cause unlawful gain to such Trustee.

17. While such a reading may be unexceptionable, it cannot be forgotten that the decision in ***Mallikarjunappa*** was rendered in the context of receipt of donations for admission in an engineering course run by the relevant charitable trust. The facts in hand in this Petition are about a judgement call on service tax and operational details in placing an order for firefighting equipment. In my opinion, Paragraph 23 of ***Mallikarjunappa*** indeed points out that the proceedings before the Learned Joint Charity Commissioner are not a bilateral adversarial trial, but more in the nature of a regulatory proceeding which partakes the character of an inquiry. It is with this perspective in mind, that the judgement in the Impugned Order in not holding the skipping of the

1 Mallikarjunappa s/o Sidramappa Bidve And Ors. Vs. Joint Charity Commissioner, Maharashtra State, Mumbai And Ors., 2008(1) Mh.L.J. 148

Amnesty Scheme or the rejection of the firefighting charge as infructuous, cannot be faulted.

18. The Impugned Order, on its own showing, does not lend itself to interference. In these circumstances, having examined the record, I am not satisfied that a case of neglect of a magnitude that would warrant interference under Section 41D(1)(c) of the Act has been made out. The findings by the Learned Joint Charity Commissioner are reasonable and plausible, and they do not lend themselves to being disturbed in the exercise of the extraordinary writ jurisdiction.

19. The Writ Petition is therefore ***dismissed***. Rule is discharged. No costs.

20. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]