

*Shabnoor*

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

WRIT PETITION NO.5595 OF 2010

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R. B. Bohora Educational & Welfare
Trust ... Petitioner
V/s.
Vijay Mundaware & Ors. ... Respondents

Mr. C. G. Gavnekar a/w Mr. Rohit Parab, for the Petitioner.
Ms. V. S. Nimbalkar, AGP, for the State – Respondent No.9.
Mr. Ajinkya Jagdale i/b Shekhar Jagtap, J Shekhar & Co.,
for Respondent Nos.1, 3, and 4.
Mr. Suhas S. Deokar a/w Tanmay M. Shumbavanekar, for
Respondent Nos.5 to 8.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 29, 2026

JUDGMENT:

1. The petitioner is a public trust duly registered under the provisions of the Maharashtra Public Trusts Act, 1950. The present petition assails the judgment and order dated 28 June 2010 passed by respondent No.9 in Application No.61 of 2010. By the said order, the petitioner Trust was directed to issue a public apology to the students and their parents who were alleged to have suffered on account of refusal of admission by the CBSE Board. The direction required publication of such apology in two widely circulated newspapers in Nashik City.

2. The material facts leading to the filing of the present petition may be stated thus. The petitioner Trust was registered under the said Act on 23 April 1998. In the year 1999, the Trust was granted permission to establish a school under the name and style of New Era English School. The school obtained affiliation from the SSC Board in the year 2002. On 3 January 2004, upon requests made by parents, the petitioner secured a No Objection Certificate for the purpose of seeking affiliation of the school with the CBSE Board.

3. On 28 February 2009, an inspection of the school premises was conducted by the inspection committee of the CBSE Board. Upon such inspection, the CBSE Board communicated its decision rejecting the application for affiliation. The appeal preferred by the petitioner against the said decision before the CBSE Board also came to be rejected.

4. Subsequent thereto, the School Committee convened a meeting of the parents and apprised them of the reasons for rejection of the application for affiliation by the CBSE Board. Thereafter, on 12 January 2010, respondent Nos.1 to 4 instituted an application against the petitioner alleging that the parents and students had been cheated on account of a misrepresentation that the school was affiliated to the CBSE Board.

5. The petitioner appeared in the said proceedings, filed its written reply, and opposed the grant of any relief. Despite the objections raised, respondent No.9 passed the impugned order dated 28 June 2010 directing the petitioner Trust to publish a

public apology in two prominent newspapers circulated in Nashik City. The said order further directed the Inspector to initiate an enquiry against the school management and the petitioner. Being aggrieved by the said directions, the petitioner has approached this Court by filing the present petition.

6. By an order dated 14 October 2010, this Court issued Rule in the petition and granted interim relief in terms of prayer clause (10).

7. Mr. Gavnekar, learned Advocate appearing for the petitioner, drew attention to Section 41A and Chapter V-A of the said Act, comprising Sections 35, 36A and 36B, which deal with matters relating to the property of public trusts. He submitted that the word property used in Section 41A cannot be read in isolation and must be understood in the context of the said provisions. According to him, Section 41A confers limited powers upon the Charity Commissioner to issue directions only for ensuring proper administration of the trust and proper accounting and application of its income towards the objects of the trust. On this basis, it was contended that respondent No.9 lacked authority to entertain the application filed by respondent Nos.1 to 4, as the subject matter of the application did not concern the administration of the trust, its property, or its income as contemplated under Section 41A read with Sections 35, 36A and 36B of the said Act. It was urged that the impugned order was passed without jurisdiction and therefore deserves to be quashed and set aside.

8. The learned Advocate appearing for respondent Nos.1 to 4, on instructions, submitted that the Court may pass an appropriate order in the matter.

9. For a proper appreciation of the controversy involved and for examining the scope of the powers exercised by the authority, it becomes necessary to refer to the relevant statutory framework. Sections 35, 36, 36A, 36B and 41A of the Maharashtra Public Trusts Act govern the manner in which trust property and funds are to be managed, alienated, accounted for, and supervised. These provisions also delineate the extent of control vested in the Charity Commissioner to issue directions for proper administration of a public trust. The said provisions, insofar as they are material for the present purpose, read as under:

35. Investment of public trust money.— (1) Where the trust property consists of money and cannot be applied immediately or at any early date to the purposes of the public trust the trustee shall be bound 7 [notwithstanding any direction contained in the instrument of the trust to deposit the money in any Scheduled Bank as defined in the Reserve Bank of India Act, 1934 (II of 1934), in the Postal Savings Bank or in a Co-operative Bank approved by the State Government for the purpose or to invest it in public securities :

Provided that such money may be invested in the first mortgage of immovable property situate in any part of India] if the property is not leasehold for a term of years and the value of the property exceeds by one-half the mortgage money :

Provided further that the Charity Commissioner may by general or special order permit the trustee of any public trust

or classes of such trusts to invest the money in any other manner :

Provided also that, if any public trust has made the application to the Charity commissioner for seeking the order granting the permission for investing the money in any other manner under the second proviso, the Charity Commissioner shall decide such application within three months from the date of receipt of such application and where it is not practicable so to do, the Charity Commissioner shall record the reasons for the same.

(2) Nothing in sub-section (2) shall affect any investment or deposit already made before the coming into force of the Bombay Public Trusts (Amendment) Act, 1954 (Bom. LIX of 1954), in accordance with a direction contained in the instrument of the trust :

Provided that any interest or dividend received or accruing from such investment or deposit on or after the coming into force of the said Act or any sum 2 [so invested or deposited] on the maturity of the said investment or deposit shall be applied or invested in the manner prescribed in sub-section (1)

36. Alienation of immovable property of public trust .— (1) Notwithstanding anything contained in the instrument of trust — (a) no sale, exchange or gift of any immovable property, and
 (b) no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building,

Belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner. Sanction may be accorded subject to such condition as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust;

(c) if the Charity Commissioner is satisfied that in the interest of any public trust any immovable property thereof should be disposed of, he may, on application, authorise any trustee to dispose of such property subject to such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust.

Provided that, the Charity Commissioner may, before the transaction for which previous sanction is given under clause (a), (b), or (c) is completed, modify the conditions imposed thereunder, as he deems fit: Provided further that, if such condition is of time-limit for execution of any contract or conveyance, then application for modification of such condition shall be made before the expiry of such stipulated time.

(1A) The Charity Commissioner shall not sanction any lease for a period exceeding thirty years under this Act.

(2) The Charity Commissioner may revoke the sanction given under clause (a) or clause (b) of sub-section (1) on the ground that such sanction was obtained by fraud or misrepresentation made to him or by concealing from the charity Commissioner, facts material for the purpose of giving sanction; and direct the trustee to take such steps within a period of one hundred and eighty days from the date of revocation (or such further period not exceeding in the aggregate one year as the Charity Commissioner may from time to time determine) as may be specified in the direction for the recovery of the property.

Provided that, no sanction shall be revoked under this section after the execution of the conveyance except on the ground that such sanction was obtained by fraud practiced upon the Charity Commissioner before the grant of such sanction.

(3) No Sanction shall be revoked under this section

unless the person in whose favour such sanction has been made has been given a reasonable opportunity to show-cause why the sanction should not be revoked.

(4) If, in the opinion of the Charity Commissioner, the trustee has failed to take effective steps within the period specified in sub-section (2), or it is not possible to recover the property with reasonable efforts or expense, the Charity Commissioner may assess any advantage received by the trustee and direct him to pay compensation to the trust equivalent to the advantage so assessed.

(5) Notwithstanding anything contained in sub-section (1), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (1) results in hardship to the trust, a large body of persons or a bona fide purchaser for value, the Charity Commissioner may grant ex-post-facto sanction to the transfer of the trust property, effected by the trustees prior to the date of commencement of the Maharashtra Public Trusts (Second Amendment) Act, 2017 (Mah. IV of 2018)], if he is satisfied that, -

(a) there was an emergent situation which warranted such transfer,

(b) there was compelling necessity for the said transfer,

(c) the transfer was necessary in the interest of trust,

(d) the property was transferred for consideration which was not less than prevalent market value of the property so transferred, to be certified by the expert,

(e) there was reasonable efforts on the part of trustees to secure the best price,

(f) the trustees actions, during the course of the entire transaction, were bonafide and they have not derived any benefit, either pecuniary or otherwise, out of the said

transaction, and

(g) the transfer was effected by executing a registered instrument, if a document is required to be registered under the law for the time being force.

Explanation.— For the purpose of sub-section (5), the term “the Charity Commissioner” shall mean only the Charity Commissioner appointed under section 3.

36A. Powers and duties of, and restrictions on, trustees.—

(1) A trustee of every public trust shall administer the affairs of the trust and apply the funds and properties thereof for the purpose and objects of the trust in accordance with the terms of the trust, usage of the institution and lawful directions which the Charity Commissioner or court may issue in respect thereof, and exercise the same care as a man of ordinary prudence does when dealing with such affairs, funds or property, if they were his own.

(2) The trustee shall, subject to the provisions of this Act and the instrument of trust, be entitled to exercise all the powers incidental to the prudent and beneficial management of the trust, and to do all things necessary for the due performance of the duties imposed on him.

(3) No trustee shall borrow moneys (whether by way of mortgage or otherwise) for the purpose of or on behalf of the trust of which he is a trustee, except with the previous sanction of the Charity Commissioner, and subject to such conditions and limitations as may be imposed by him in the interest or protection of the trust.

Provided that, the Charity Commissioner or the Joint Charity Commissioner, as the case may be, shall decide the application for borrowing money from the Bank or Financial Institution forthwith and preferably within a period of fifteen days, if the Bank or the Financial Institution has provisionally sanctioned the loan.

(3A) Notwithstanding anything contained in sub-section (3), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (3) result in hardship to the trust, beneficiary or bona fide third party, the Charity Commissioner may grant ex-post-facto sanction to borrow moneys from any nationalized bank or the Scheduled Bank, by the trustees.

(4) No trustee shall borrow money for his own use from any property of the public trust of which he is a trustee :

Provided that, in the case of a trustee who makes a gift of debentures or any deposit in his business or industry the trustee shall not be deemed to have borrowed from the trust for his own use.

36B. Register of movable and immovable properties.— (1) A public trust shall prepare and maintain a register of all moveable and immovable properties (not being property of a trifling value) of such trust in such form or forms giving all such information, as may be prescribed by the Charity Commissioner.

(2) Such register shall show the jewels, gold, silver, precious stones, vessels and utensils and all other moveable property belonging to the trust with their description, weight and estimated value.

(3) Such register shall be prepared within three months from the expiry of the accounting year after the commencement of the Bombay Public Trusts (Amendment) Act, 1970 (Mah. XX of 1971).

(4) Such register shall be signed by all the trustees or by any person duly authorised by trustees in this behalf after verifying its correctness, and shall be made available to the auditor for the purpose of auditing if the accounts are required to be audited under the provisions of this Act. Where the accounts are not required to be audited, the

trustees shall file a copy of such register duly signed and verified, with the Deputy or Assistant Charity Commissioner of the region.

(5) The auditor shall mention in the audit report whether such register is properly maintained or not, and the defects or inaccuracies, if any, in the said register and the trustees shall comply with the suggestions made by the auditor and rectify the defects or inaccuracies mentioned in the audit report within a period of three months from the date on which the report is sent to the trustees.

(6) Every year within three months from the date of balancing the accounts, the trustee or any person authorised by him shall scrutinize such register, and shall bring it up-to-date by showing alterations, omissions or additions to the same, and such changes shall be reported to the Deputy or Assistant Charity Commissioner in the manner provided in section 22.

41A. Power of Commissioner to issue directions for proper administration of the trust.— (1) Subject to the provisions of this Act, the Charity Commissioner may from time to time issue directions to any trustee of a public trust or any person connected therewith, to ensure that the trust is properly administered, and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust; and the Charity Commissioner may also give directions to the trustees or such person that if he finds any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of :

Provided that, if any application is made by the trustee of any trust for seeking directions under sub-section (1), the Charity Commissioner shall decide such application within three months from the date of its receipt and if it is not practicable so to do, the Charity Commissioner shall record

the reasons for the same.

(2) It shall be the duty of every trustee or of such person to comply with the directions issued under sub-section (1).

10. Section 41A derives its colour from its placement in the Act and, more particularly, from its location immediately after Chapter V-A. Chapter V-A, comprising Sections 35, 36, 36A and 36B, forms a complete code dealing with trust property, trust funds, and fiduciary control over their management. Section 41A operates within this statutory framework.

11. Section 35 regulates investment of trust money. It imposes a statutory duty on trustees in dealing with surplus or idle funds. The provision removes absolute authority of trustees and subjects investment decisions to forum under the Act, with limited supervisory discretion vested in the Charity Commissioner. The emphasis is on preservation of capital, accountability of income, and protection of trust funds from imprudent use. The power of the Charity Commissioner under this section is supervisory and regulatory, aimed at ensuring that money belonging to the trust remains secure.

12. Section 36 deals with alienation of immovable trust property. It creates a mechanism by requiring prior sanction for sale, lease, exchange or gift. The power of sanction, modification, and revocation is carefully provided. It is exercisable only with reference to interest, benefit, and protection of the trust. Even ex post facto sanction is permitted only in exceptional situations and upon satisfaction of strict statutory conditions.

13. Section 36A defines the duties and limits of trustees. It provides the standard of measures and links trustee conduct directly to property and funds of the trust. Borrowing, use of trust assets, and incidental management powers are all regulated with reference to financial decisions and protection of trust property. The Charity Commissioner's role here is to grant or refuse sanction where financial aspect of the trust is involved.

14. Section 36B requires maintenance of a detailed property register. This provision reinforces accountability in respect of movable and immovable assets. The repeated statutory insistence on documentation, verification, audit, and reporting leaves no doubt that Chapter V-A is exclusively concerned with identification, preservation, and supervision of trust property and income.

15. It is in this statutory background that Section 41A must be interpreted. The opening words, subject to the provisions of this Act, expressly associate the power under Section 41A to the scheme and limits imposed elsewhere, including Chapter V-A. The directions contemplated under Section 41A are those necessary to ensure proper administration of the trust, proper accounting of income, and proper application of such income to trust objects. The additional power to issue directions where trust property is in danger of being wasted, damaged, alienated, or wrongfully disposed of directly reflect the issues addressed in Sections 35 and 36.

16. The phrase proper administration cannot be given an

unguided meaning. In the context of Chapter V-A, administration refers to management of trust property, funds, and statutory duties attached thereto. It does not extend to every activity carried on by a trust or every grievance raised against its management. If proper administration were construed in moral sense, unconnected from property and income, Section 41A would become an open ended source of authority, which the legislature has consciously avoided.

17. In the present facts, the complaint before the authority did not allege misuse of trust money, improper investment, illegal alienation of property, failure to maintain registers, or breach of fiduciary duty in dealing with trust assets. The grievance related to alleged misrepresentation concerning CBSE affiliation and the consequences flowing therefrom for students and parents. However serious such grievance may be, it does not touch upon trust property, trust income, or statutory financial administration as contemplated by Chapter V-A.

18. The direction to issue a public apology does not protect trust property, regulate trust income, or ensure statutory compliance under Sections 35 to 36B. It does not prevent waste, damage, or alienation of trust assets. It does not correct any defect in accounting or application of income. Such a direction, therefore, falls outside the permissible scope of Section 41A when read in its proper statutory context.

19. Section 41A is thus a power of supervision and not of moral correction. Its purpose is to preserve the financial and proprietary aspect of public trusts. Any exercise of power under this section

must demonstrate a clear and direct nexus with trust property, trust income, or statutory administration of the trust in the sense explained by Chapter V-A.

20. Viewed in this light, the impugned action cannot be sustained as an exercise of power under Section 41A. The provision does not authorise directions unconnected with property or income of the trust. The statutory limit drawn by Sections 35, 36, 36A and 36B cannot be crossed by invoking broad expressions contained in Section 41A. The interpretation must remain aligned to legislative structure, purpose, and restraint provided under the Act.

21. For these reasons, this Court is satisfied that respondent No.9 exceeded the jurisdiction vested under Section 41A of the Maharashtra Public Trusts Act. The impugned order dated 28 June 2010 suffers from a jurisdictional error.

22. The petition, therefore, deserves to be allowed. The judgment and order dated 28 June 2010 passed by respondent No.9 in Application No.61 of 2010 is quashed and set aside. Rule is made absolute in the above terms.

23. There shall be no order as to costs.

(AMIT BORKAR, J.)