

From: Ar. Dilip Sudhakar Deshmukh,
"D" Wing, Ground Floor,
Paramount Park Apartments,
Manpada, Sandap Village Road,
Behind Runwal Garden Complex,
Dombivali East.

Date: 23.12.2023

To,
The President,
The Indian Institute of Architects,
5th Floor, Prospect Chambers Annexe,
Dr. D.N. Road, Fort, Mumbai - 400001

Respected Sir,

This is to inform you that an Application No. ACC VII/68/2003 under the provisions of section 41 A of the Maharashtra Public Trusts Act, 1950 seeking directions from the Hon'ble Assistant Charity Commissioner, Greater Mumbai Region, was filed before this Hon'ble Authority which was attended by you through your Advocate before the this Hon'ble Assistant Charity Commissioner, Greater Mumbai Region wherein he has passed an order dated 22.12.2023 directing the Trust as under:


- 1) The legal and valid members of the trust as well as the present legal and valid approved executive committee of the trust, if any, is only directed to hold the election as per provisions of the Memorandum of Association and Rules & Regulations of the trust / constitution of the trust.***

2) *At present time, if there is no approved legal and valid executive committee of the trust then the parties are directed that first to adjudicate the pending change reports on merit at the earliest and so far as the issue regarding new executive committee for the next tenure is concerned, in that regard take the proper recourse from appropriate remedies, if any, available under Maharashtra Public Trusts Act, 1950.*

3) *If the approved constitution of the trust provided then the election should be conduct by online election module which is declared as legal, valid and authenticate by appropriate government authority.*

In view of the above you are hereby informed that only the approved Executive Committee of the Trust can hold the elections and that too on the basis of approved Constitution of the Trust and through appropriate Government Authority only. *The copy of the above said order is attached herewith for your reference. It is also available on the website of the*
Charity Commissioner, Maharashtra State
<https://charity.maharashtra.gov.in>

Needless to say that in spite of the above directions if you go ahead with the elections to be held on 28.12.2023, otherwise than above the direction given by the authority in the above referred order will be Contempt of Court and all the person involved shall be responsible for the same.



(Ar. Dilip Sudhakar Deshmukh)

Requesting for preserving IIA (Indian Institute of Architecture) Election Module



Deshmukh Associates <archdeshmukhoff@gmail.com>

Oct 4, 2023, 11:22 AM



to cc.mum-mh, jtcc1.mum-mh, jtcc2.mum-mh, dycc.mum-mh, acc.mum-mh, jtcc.gmr-mh, dycc.gmr-mh, acc1.gmr-mh

One attachment • Scanned by Gmail



BEFORE THE ASSISTANT CHARITY COMMISSIONER-VII,
GREATER MUMBAI REGION, MUMBAI

(Presided over by : Shri. Ram A. Lipte)

Change Report No. ACC/VII/58/2023

Under Section 41A of the Maharashtra
Public Trusts Act, 1950)

In the matter of :

"The Indian Institute of Architects"

P.T.R. No. F-184 (Mumbai)

Ar. Dilip Sudhakar Deshmukh :- Applicant

V E R S U S

The Indian Institute of Architecture :- Respondents

This is an application filed by the applicant under section 41A of the Maharashtra Public Trusts Act, 1950. As per this application applicant submitted that, "The Indian Institute of Architects" is the public trust registered under Societies Registration Act, 1860 as well as under Maharashtra Public Trusts Act, 1950 bearing P.T.R No. F-184 (Mumbai). The applicant further submitted that he is a life member of the trust and therefore, as per section 2(10) of Maharashtra Public Trusts Act, 1950 is the person having interest of the trust. Accordingly, being a person having interest in the trust he has filed this application for seeking direction against the trust that the last elected body should not distract or destroy the record of last election which has been conducted by online election module as well as also seeking directions against the trust that the last board of trustees / council have to file change report about last election within stipulated time provided by law. This is an administrative inquiry therefore, before concluding the same it is necessary to

go through the contentions of both the parties if any and other necessary relevant records of the trust.

2. Accordingly, on perusal of Exh.1 it is seen that, after filing this application by the applicant, to conclude this inquiry on merit and for the rule of fair hearing this authority passed an order to issue notice to the respondent. Accordingly, after service of notice to the respondent by the process server of this office the said respondent not appeared before this authority on 12.12.2023, 18.12.2023 and on 20.12.2023. It is seen that because of service of notice respondent have knowledge of this proceeding then also he is not remained present in person or through any authorised representative before this authority. It is seen that, after being given sufficient opportunity, the trustees do not file any say. Therefore, this authority kept this matter for giving appropriate directions.

3. Now, to conclude the present administrative inquiry it is necessary to go through the contents of the application made by the applicant. On perusal of contentions of the same it is seen that the said trust will be conducting the election by online election module. The applicant further submitted that if the trust conducts the election by online mode therefore, applicant submitted that the online election module should be protected till the disposal of change report.

4. Now, it is necessary to see whether the trust has the right to conduct the election by online election module. In that regard on perusal of constitution of the trust it is seen that, as per Rule 32 provision on election of council is given. However, in the said clause there is

no such provision is given to conduct the election by online election module but on perusal of record and proceeding of the trust it is seen that the trust filed one change report no. 3716/2018 on 21.06.2018 in respect of amendment in clause 32 of the constitution. As per the said amended clause the election should be conducted by E-ballots as well as by E-voting. In short, the said amendment was carried out in 2015 by the trust in respect of election by online election module.

5. Therefore, on perusal of entire record, provisions of Memorandum of Association and Rules & regulations and in view of the pendency of the change reports as well as considering all these aspects in the interest of the trust this authority feels that it is necessary to circulate some direction to the trust.

6. Now, prior to issuing any kind of direction to the trust it is necessary to see that up to what extent this authority has power to issue direction or under section 41A what is the scope given to this authority to issue direction to the trust. In this regard it is necessary to go through the verdict given by Hon'ble High Court of Bombay - Bench at Nagpur in the following landmark case law.

Vanmala Manoharrao Kamdi Vs Deputy Charity Commissioner, : (2012)3 Mah LJ 594:

"31. It is thus clear upon adopting the settled principles in interpreting statute that Section 41A of the B.P.T. Act, 1950 gives ancillary or additional powers to the Charity Commissioner to suppress the apprehended mischief to the property and income of the Trust and also in the administration of the Trust. Such a power also exists on judicial side in Section 41E of the B.P.T. Act,

1950. But this power under Section 41A of the B.P.T. Act, 1950 has been given to him to act in case doing of anything which is about to be done or is being done is causing or is likely to cause injury or annoyance or is against public interest or the interest of the object and purpose of the Trust or which may lead to breach of peace. He can thus act in emergency. In such a eventuality, and the satisfaction being subjective satisfaction of the authority, the hearing before making any order may not be possible in each case. **We further find that the term 'from time to time' has been deliberately utilised in Section 41A of the B.P.T. Act, 1950, which manifestly suggests that the Charity Commissioner can issue direction number of times, may even change, modify, amend or annul such direction as per the exigencies.** Such orders can in no event partake the character of quasi-judicial or judicial order. Then no appeal or revision is provided against such order/s. That is why we think that the nature of provision is 'administrative'. The submission made by Senior Advocate Shri Manohar about explanation to Rule 18 in Chapter XVII of the Bombay High Court Appellate Side Rules, 1960, does not impress us. The reason is Charity Commissioner when makes a direction under Section 41A of the B.P.T. Act, 1950, he does not act as either judicial or quasi-judicial authority. Secondly, while acting under Section 41A of the B.P.T. Act, 1950, he does not make any 'order' but issues direction/s. There is a deliberate absence of the word 'order' in Section 41A of the B.P.T. Act, 1950."

After going through the ratio of the above case law it is very clear that in the interest of trust and for the betterment of trust this authority has the power to issue just and proper direction from time to time.

7. Hence, on perusal of entire record and after going through the provisions of Memorandum of Association and Rules & Regulations of the trust, provisions of Maharashtra Public Trusts Act, 1950 and in view of the pendency of change reports this authority hereby issue following direction.

Administrative Directions

1. If the trust conducted last election by online election module then it is directed to protect and preserve the said record till the disposal of change report if any filed by the trust.
2. If the change occurred in respect of election of last managing council or board of trustees then the trust is directed to submit change report within stipulated time provided as per provisions of section 22 of the Maharashtra Public Trusts Act, 1950.

Sd/-

Place: Mumbai
Date:- 22.12.2023

(Ram A. Lipte)
Assistant Charity Commissioner-VII,
Greater Mumbai Region, Mumbai.

BEFORE THE ASSISTANT CHARITY COMMISSIONER-VII,
GREATER MUMBAI REGION, MUMBAI

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V E R S U S

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2. Accordingly, on perusal of Exh.1 it is seen that, after filing this application by the applicant, to conclude this inquiry on merit and for the rule of fair hearing this authority passed an order to issue notice to the respondent. Accordingly, after service of notice to the respondent by the process server of this office the said respondent not appeared before this authority on 12.12.2023, 18.12.2023 and on 20.12.2023. It is seen that because of service of notice respondent have knowledge of this proceeding then also he is not remained present in person or through any authorised representative before this authority. It is seen that, after being given sufficient opportunity, the trustees do not file any say. Therefore, this authority kept this matter for giving appropriate directions.

3. Now, to conclude the present administrative inquiry it is necessary to go through the contents of the application made by the applicant. On perusal of contentions of the same it is seen that the said trust will be conducting the election for the tenure of 2023-2026 by issuing notice on 29.11.2023 for electing five representatives by conducting election on 28.12.2023. The applicant further submitted that the trust conducts the election by online mode therefore, applicant submitted that the online election module should be proper, authenticate and authorised by the appropriate authority.

4. Now, it is necessary to see whether the trust has the right to conduct the election by online election module. In that regard on perusal of constitution of the trust it is seen that, as per Rule 32 provision on election of council is given. However, in the said clause there is no such provision is given to conduct the election by

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3. If the approved constitution of the trust provided then the election should be conduct by online election module which is declared as legal, valid and authenticate by appropriate government authority.

Sd/-

Place: Mumbai
Date:- 22.12.2023

(Ram A. Lipte)
Assistant Charity Commissioner-VII,
Greater Mumbai Region, Mumbai.