(1992) 08 BOM CK 0066

In the Bombay High Court

Case No : Writ Petns. No''s. 1136 and 1304 of 1992

Lahudas Sambhaji Karad APPELLANT

Vs

State of Maharashtra and others RESPONDENT

Date of Decision : 24-08-1992

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 32, 32, 33, 34

Citation : (1993) MhLj 1056

Hon'ble Judges : A.A. Halbe, J

Bench : Single Bench

Advocate : M.A. Kulkarni, A.B. Naik in W.P. No. 1136 of 1992, S.S. Chaudhari and S.C. Bora in W.P. No. 1304 of 1992, for the Appellant; S.C. Bora for Respondent No. 2, Vivek Bhavthankar for Respondent No. 3, V.M. Kendre and U.R. Chavan in W.P. No. 1136 of 1992, V.M. Kendre, V.G. Sakolkar, U.R. Chavan for Respondents Nos. 3, 4 and Vivek Bhavthankar in W.P. No. 1304 of 1992, for the Respondent

Judgement

A.A. Halbe, J.—In both these writ petitions, the judgment of the Joint Charity Commissioner, passed in Application No. 3 /1992, has been impugned on the ground that u/s 41 -A of the Bombay Public Trusts Act, 1950. the Joint Charity Commissioner has no powers to interfere with the process of election to the Governing Council of the public trust, set in motion on the grounds stated in his order dated 14-5-1992 in Application No. 3/1992 and hence both these writ petitions are disposed of by the common judgment. The question posed is what are the parameters of section 41-A of the said Act. Section 41 -A reads as under :-

Section 41-A:-(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 if he finds that any property of the trust is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of.

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

2. In the above judgment, intervening in the elections, the learned Joint Charity Commissioner under sections 41-A and 41-E of the Bombay Public Trusts Act. 1950 directed the Governing Council of Jawahar Education Society. Parli Vaijinath to appoint freshly Election Officers under bye-law No. 10 of the society and further directed the said Governing Council to depend on the list consisting of 483 members for the purpose of the election to the Governing Council. This has been challenged in both the writ petitions on the ground that under the above provisions of the Bombay Public Trusts Act. the Joint Charity Commissioner has no power whatsoever to interfere in the affairs relating to the membership and election of the Governing Council to the society and further that the President and the Election Officers of the said society are competent to hold election on the basis of the list containing 834 members mentioned in the list published on 16 4-1992.

3. As against this, the respondents in both the writ petitions have commonly urged that when the list of 483 members was published for the purpose of elections to the Governing Council, the final list containing enlarged members of 834 has been set up by the President and the office bearers of the society only with a view to ensure their success in election to the Governing Council. That list contained bogus members and that the story of enrolment of fresh members raising the membership from 483 to 834 is a fabricated measure not supported by any substantial evidence and hence the directions given by the Joint Charity Commissioner in the above proceedings should be confirmed. By way of analogy, it is also contended that by decision in Writ Petition No. 3878/1991 decided on 17 -2-1992. the power of the Joint Charity Commissioner to direct the management to hold elections of the said society has virtually closed this issue and this question cannot be gone into afresh under the doctrine of res judicata.

4. In order to appreciate rival contentions, it is imperative to mention all the relevant facts which have given rise to this litigation. Jawahar Education Society. Parali Vaijinath is a registered society duly registered under the Societies Registration Act. 1860 and a public trust duly registered under the Bombay Public Trusts Act, 1950 at serial No. F-W115(Beed). The bye-laws of this society provide for election to the governing council comprised of 31 elected members and 4 nominated members. The election to the Governing Council lastly took place on 22-7-1986 and the bye-laws of this society provide for the tenure of three years to the Governing Council, according to which, the said tenure expired on 21-7-1989. Respondent No. 2 in Writ Petition No. 1136/1992 and petitioner in Writ Petition No. 1304/1992, Shridharrao Gungaram Gite was elected as President of this society from amongst the members of the Governing Council.

5. The main dispute started after expiry of the term of the President as well as members of Governing Council. It seems that the President issued advertisement for appointment of Principal of the college run by the society. Incidentally, it may be stated that this society is involved in the propagation of education and for this purpose, is running educational institution by name Vaijinath College at Parli Vaijinath. This advertisement was issued by the President without approval of the Governing Council and this, therefore, encouraged one member of the Governing Council Atmaram Baburao Mundhe and the Principal of the said college Harishchandra Panditrao Gite to approach the Joint Charity Commisioner by Application No. 7/ 1991 under sections 41-A and 41-E of the Bombay Public Trusts Act, 1950. In that application, the grievance was made that the President was carrying out the affairs of the society in most arbitrary manner. He has been taking unilateral decisions and has not been taking the consent of other members of the Governing Council. There was. therefore, mismanagement in the affairs and that in spite of the expiry of the term of President, he had issued the advertisement in Lokmat paper of 17-8-1991 calling for the applications from the candidates to fill up the post of Principal of the above college. This advertisement gave rise to unhealthy atmosphere in the college and the students went on strike. In spite of this, the President wrote letter to the Marathwada University and also the Director of Education to nominate their names to the Selection Committee for the said post. The President was thus interfering in the affairs of the management of the college and was even putting spokes in the day to day management of the college. It was. therefore, prayed in that application that the society should ho directed to hold elections of the Governing Council and further the management should withdraw the advertisement given in paper for appointment of the Principal.

6. This was opposed by respondent-President on the ground that the claim of the applicants was totally false and that those prayers in the application cannot be granted under either section 41-A or 41 -E of the Bombay Public-Trusts Act. 1950; It was also contended that the change report filed in respect of the President and other members in 1986 was ultimately approved in favour of the President as late as in 1989 and hence the period should be deemed to commence from 1989 and thus the President was competent enough to issue public notice in the above newspaper for appointment of the Principal. He was empowered to constitute Selection Committee under the Marathwada University Act and also call for the applications for the said post.

7. The learned Joint Charity Commissioner, after detailed consideration of the affidavits and other documents, came to the conclusion that the Governing Council should hold fresh elections and that the respondent President should withdraw the said advertisement dated 17-8-1991 and also the letters written to the Director of Education and Marathwada University. The President petitioner in Writ Petition No 1304/1992 challenged the decision in Writ Petition No 3878/1991 and this Court, in its judgment dated 17th February. 1992. upheld the power of the Joint Charity Commissioner to issue the directions as indicated

in his above order dated 25-9-1991 and dismissed the Writ Petition with direction that the election programme should be fixed within two weeks.

8. In pursuance of the order in the above Writ Petition, the election programme was fixed vide Exh. P. 7 in Writ Petition No. 1304/1992 whereby the voters'' list was to be declared on 10-3-1992, the objections to that provisional list were to be filed by 10-4-1992 and the final list was to be published on 16-4-1992. So far as the elections are concerned, it was further provided that the nominations were to be received on 17th April, 1992. The last date for filing nomination was 24th April, 1992; the date of scrutiny of nominations was fixed on 25th April. 1992 and the date for withdrawal of the nominations was fixed on 1-5-1992. The elections were to be held on 21-5-1992. It should be stated that as per P-7 public notice in ''"Marathwada Sat hi", the names of the Election Officer and Assistant Election Officer were also indicated. The results of elections were to be declared after the voting. The Election Officers. President and Secretary of the society had signed that public notice. It is claimed by the President that he had published the list of 835 members under his signature as well as the signature of the Election Officer and as no objections were received, the final list of 834 members was published on 16-4-1992 as one member by name Sarda had expired during the time.

9. Two members of the Board namely Prabhu Appa Halge and Bhanuda-srao Deshmukh questioned the final list on the ground that the list that was published as the provisional list contained only the names of 483 members vide R-3 in the above Writ Petition. The members enquired with the Election. Officers as to how this list was enlarged to 834 members. Thereupon the Election Officer informed Deshmukh and Halge that the list was published at the instance of the President. It should be stated that this was during the election process. Prabhu Appa Halge and Bhanudasrao Deshmukh, therefore, filed Application No. 3/1992 before the Joint Charity Commissioner, under sections 41 A and 41 -E of the Bombay Public Trusts Act against the President-respondent No. 1 and the Election Officers inter alia challenging that this list of 834 members was not the authentic list and it contained names of about 351 bogus members and solicited directions from the Joint Charity Commissioner that the elections should proceed on the basis of the lists of 483 members and not 834 members and that the same list should be quashed- This was disputed by the respondent President who contended that the members have been properly inducted in terms of the order of the Assistant Charity Commissioner dated 25-10-1991 (Exh. P-1) which was passed on the application by the newly inducted members Vishnudas Dwarkadas Lahoti and Deelip Guruling Swami.

10. The Assistant Charity Commissioner, Beed directed the President and other trustees of Governing Council of the above education society to enrol new members as per the provisions of the constitution of the trust within two months. It is in pursuance of this direction that 362 members were enrolled between 6-5-1991 and 10-2-1992 vide list Exh. A in the above Writ Petition and that all

the members were entitled to vote. He also challenged the jurisdiction of the Joint Charity Commissioner to issue directions under sections 41 A and 41-E of the Bombay Public Trusts Act in this regard. The learned Joint Charity Commissioner, in his interim order dated 21-4-1992 directed that respondents Nos. 2 and 3 namely the Election Officers should treat the list of 483 members as the authentic list for the purpose of election. In the final judgment dated 14-5-1992. in the above application No. 3/1992, the learned Joint Charity Commissioner found that the so called meeting of the governing council on 19-2-1992 was not proved; that no notice was issued to the members of the Governing Council; that there was also no proper agenda providing for the adjourned meeting in absence of quorum. He also observed that the President failed to produce the necessary books and proceedings to establish that new members were properly inducted. He, therefore, found that the story of 351 newly inducted members was not properly proved and hence he directed that the Governing Council of the said education society should appoint new Election Officers and set aside the appointment of the Election Officers namely Lahoti and Swami.

11. The said order also contained directions that the list of 483 members should be taken as basis for voting and fresh election programme should be issued, by the Governing Council. The Tahsildar, Ambejogai was directed to act as Election Officer by its order dated 14th May, 1992. The Upper Tahsildar. Ambejogai vide Exh. P-14, issued the election programme whereby the date of election was postponed to 21-6-1992. The other dates regarding filing of nomination, withdrawal of nomination, voters list have been indicated in that Exh. P-14. What is relevant is the date of election which was fixed on 21-6-1992. It is this judgment of the Joint Charity Commissioner, which has been impugned in both these Writ Petitions.

12. In Writ Petition No. 1304/1992. petitioner President has contended that in view of the above facts the order of the Joint Charity Commissioner was not warranted firstly on the ground that the petitioner was not given sufficient time to produce the evidence; that the period of few hours was granted to produce evidence; that the Joint Charity Commissioner has no power to issue directions u/s 41-A or 41-E of the Bombay Public Trusts Act and further that the Upper Tahsildar Shri Dhele was related to Halge. for which marriage invitation has been produced on record. All these facts vitiated the order of the Joint Charity Commissioner and hence the Writ Petition should be allowed and that the order of the Joint Charity Commissioner dated 14-5-1992 should be quashed.

13. Respondents Halge and Deshmukh (Respondent Nos. 3 and 4 in W.P. No. 1304/1992 and Nos. 6 and 7 in W.P. No. 1136/1992 respectively) filed their affidavits in reply. According to them, the tenure of the governing council had expired on 22nd July. 1989: that Mundhe and Gite had filed application No. 7/1991 for quashing the advertisement of appointment of Principal by the President. This was challenged by the President in the above Writ Petition No.

3878/1991 which was also dismissed. Even the Misc. Civil Appeal No. 45/1991 before the Additional District Judge against the order of the Joint Charity Commissioner was dismissed on 22-11-1991 and thus the power of the Joint Charity Commissioner to issue directions u/s 41 A of the Bombay Public Trusts Act. 1950 was confirmed and it is in pursuance of these facts that the society was directed to hold fresh elections and was further directed to withdraw the proposal of appointment of the Principal.

14. Regarding application No. 3/1992. it was contended that as per the order of this Court in the above Writ Petition, the election programme was fixed wherein 21-5-1992 was the date for election. Provisional list of 483 members was published under the signature of President Gite but to the surprise of these respondents, the final list of 834 members was published on 16th April, 1992. This means, 351 members were enrolled as bogus members. The President has thus played fraud on the Governing Council. It was also contended that if the enrolment of 351 members was (rue, the amount of Rs. 70.200/- received from these members at the rate of Rs. 200/ per head as "Sahayyak Member" was not properly accounted for in the books of the society and thus this was a false list and that the Joint Chanty Commissioner issued the instructions properly for reliance on the list produced by the respondents Nos. 6 and 7 of 483 members as the proper list. It was further contended that the story regarding enrolment of new members under the orders of the Assistant Charity Commissioner dated 25-10-1991 was also not properly complied with because under that order, society was required to furnish the list of members within two months, which expired on 25-12-1991. Even the first order dated 25-5-1991 in Application No. 7/1991 required that the election should be held before 25-11-1991.

15. All these facts would indicate that the entire list was a fabricated piece of evidence. It was also contended that the so called story of the meeting of the Governing Council dated 19-2-1991 was also wholly false and that no notice was circulated to the members and further that the resolution approving the list of 834 members and the resolution providing for appointment of two Election Officers were false and contrary to the bye-laws of the society. The Election Officer Dhele has also filed affidavit inter alia contending that he had carried out the election as per the programme on 21-6-1992 only on the basis of the list of 483 members.

16. In Writ Petition No. 1136/1992. one Lahudas Sambhaji Karad contended that he had paid the enrolment fees of Rs. 200/- on 4-2-1991 and that this was done in pursuance of the order of the Assistant Charity Commissioner. He further contended that he had become member on the basis of the resolution approved at the meeting of the Governing Council on 19-2-1992 and hence the Joint Charity Commissioner had no authority to issue directions to the society to rely on the list of 483 members. He was not given notice of that proceeding and hence the order of the Joint Charily Commissioner in Application No. 3/1992 was not tenable and deserved to be set aside. In this Writ Petition also, practically the

same nature of reply has been filed on behalf of the respondents Nos. 6 and 7 - Halge and Deshmukh. They have challenged the list of 834 members and the so called story of the meeting of the Governing Council on 19-2 1992.

17. As soon as these Writ Petitions have been filed, this Court by its order dated 1 7-6-1992, did not grant injunctions but directed that the elections as scheduled in respect of 483 members should be completed and that the question of additional members should be deferred. Accordingly, the position today is that the elections of the Governing Council from amongst 48 3 members took place on 21-6-1992. However, the results have not been declared in terms of the directions issued by this Court.

18. The important question which has been raised in these Writ Petitions is whether the Joint Charity Commissioner has powers under sections 41-A and 41-E of the Bombay Public Trusts Act to issue directions of the nature stated in the order in Application No. 3/92.

19. It is necessary to observe that in the judgment of the Joint Charity Commissioner in application No. 3/1992, at more than one place, he has observed that once the election process has started, there should not be any interference and that the remedy available for the petitioner is to raise objection in the change report which would be filed after the elections of the governing council. The Joint Charity Commissioner was thus fully aware that this was not the proper stage to interfere. In the same judgment, at another place, he has stated that it is true that remedy is available to petitioners to raise objections at the proper stage but it could not be lost sight of that the said objection was raised before the Election Officer, which was turned down without assigning any reason.

20. Now before probing into the details, it would be proper to ascertain as to whether the Joint Charity Commissioner was entitled to issue directions u/s 41-A of the Bombay Public Trusts Act. In this behalf, it would be necessary to state that section 41 A of the Bombay Public Trust Act has been recently added under the Maharashtra Act No. 5/1985 w.e.f. 1-8-1985. It seems that the experience had shown that when it was brought to the notice of the Charity Commissioner or if he learnt otherwise that the public trust is either mismanaged or is not managed properly or that the income of the said trust was not properly accounted for, there were no powers conferred upon the Charity Commissioner to prevent any loss being caused to a public trust or to prevent any public trust being mismanaged or to give directions to the trustees or any other person connected with the said public trust to administer the said public trust in accordance with the objects of the said trust or to see that the income of the said public trust was duly accounted for. The above amendments to the Act, therefore, provided for elaborate provisions regarding the steps that may be taken to prevent the loss in case of mismanagement in the affairs of the public trust.

21. However, it should be observed that similar provisions are also to be found in the original sections 40, 41 or even section 50 of the said Act but the steps could be taken only after the loss or mismanagement has been caused. There was, therefore, no preventive measures. It would be, therefore, proper to state that these directions relate to the matters falling under sections 32 to 41 of the Bombay Public Trusts Act, 1950. These sections provide for proper administration of the public trusts or proper accounting or appropriate application of the income of the trust to the objects of the said trust. Section 41-A, therefore, does not contemplate any adjudication and is, therefore, not subject to the rules of natural justice and obviously those directions are not appealable nor could be questioned u/s 72 of the Bombay Public Trusts Act. They are not in the nature of quasi-judicial directions. Such directions could be issued to the trustees or any person connected with the trust and every trustee or a person to whom such directions are issued is bound to comply with them u/s 41 -A(2) of the said Act. Now application u/s 41-E is obviously not warranted because the grievance is in relation to the list of voters and not in relation to the trust property being wasted, damaged or improperly alienated. The application u/s 41 -E was not, therefore, maintainable. All the same, it will have also to be examined as to whether Joint Charity Commissioner was justified in interfering with election process already set in motion by issuing directions as are to be found in his order dated 14-5-1992 u/s 41-A of the Act.

22. Now coming to the hard facts which have emerged from the above discussion in the foregoing paragraphs are that the Joint Charity Commissioner in the first Application No. 7/1992 filed by Mundhe and Gite, directed the society to hold the meeting of Governing Council. The matter was brought to this Court and in the above Writ Petition, it was observed that such directions were competent. The election programme was extended by two weeks. Thereafter the Governing Council held the meeting on 19-2-1992 and approved the list of 834 members and thus prepared a programme under the newly elected Election Officers for holding election on 21 -5-1992. That list contained 834 members. About the number of members, the question would be dealt with later on but suffice it to say at this stage that the Governing Council had approved the list of 834 members and it was, therefore, the bounden duty of the Election Officers to hold the elections as stipulated. Surprisingly, two Directors - Halge and Deshmukh of the Governing Council preferred the above application u/s 41-A of the Bombay Public Trusts Act, 1950 before the Joint Charity Commissioner contending that the enlarged number of members provided a basis for suspicion, that the final list of voters was not an authentic list and that 483 members were the original members who were only competent to vote at the above election.

23. As indicated, the learned Joint Charity Commissioner was fully aware of his lack of powers to issue directions during the election process. He. however, found that the Election Officers had turned down the request and that nobody was interested to stop the election, although the list was patently false. It would be thus seen that the main question was regarding enrolment of members and

interference with the election process. It would be rather proper to observe that in the book of the Bombay Public Trusts Act, 1950 by K. N. Shah, 1992 Edition he has observed at page 528 in Para No. 9 sub-para No. 7 that -

Application by members to trustees refusing admission as members does not come within the scope of section 41 -A of the Bombay Public Trusts Act.

This view appears to be wholly correct in view of the fact that election is not the matter of administration of the public trust. Ultimately proper administration of the trust would not connote the question of membership or the election of the members of the Governing Council.

24. The underlying idea of section 41 -A is that those directions should relate only to administration of the public trust or for proper accounting or for appropriate application of the income to the objects of the said trust. Such directions could be issued only in respect of the matters falling under sections 32 to 41 of the Act and not beyond that, because whatever toss or damage to the trust is likely to happen, that would be sequel to the breaches u/s 32 to 41 of the Act. Bombay Public Trusts Act does not envisage any loss or damage beyond these provisions in respect of mismanagement or wrongful accounting. Elections are wholly beyond the purview of those provisions. Section 32 is in Chapter V of the Bombay Public Trusts Act. It provides for maintenance of accounts, auditing of accounts, preparation of balance sheet etc. Sections 32 and 33, therefore, require that the accounts of the society should be properly maintained in order to ensure that the property or the funds of the society are not wrongly expended away without proper accounting. u/s 34, auditors are under duty to prepare balance sheet and income and expenditure account. The auditor has to point out irregularities. u/s 35, the trustees are bound to invest the funds of the trust in the manner indicated in that section. Section 36 relates to alienation of the immovable property of the public trust. Section 36-A is in respect of powers and duties and restrictions on the trustees. It enjoins upon the trustees to exercise powers in respect of properties incidental to prudent and beneficial management of the trust. There is a restriction on borrowings of money by way of mortgage or otherwise except without permission of the Charity Commissioner. Section.. 36-B requires the public trust to maintain register of all movable and immovable properties and this is subject to audit. Section 37 in chapter VI of the said Act provides for the powers of the Charity Commissioner, Deputy Charity Commissioner or Assistant Charity Commissioner to carry out inspection and supervision over the trusts. Section 38 calls upon the auditors to prepare reports about the accounts. Section 39 relates to the report to the Charity Commissioner about the complaints relating to gross negligence, breach of trust, misappropriation or misconduct on the part of the trustees resulting in loss to the trust. Section 40 requires the Charity Commissioner to Scrutinies those reports and compliance and determine the amount of loss to the public trust because of the negligence, breach of trust etc. on the part, of the trustees. Section 41, provides that the amount of loss caused by trustee or any person could be

surcharged on that person. u/s 50 of the said Act, it is provided that the loss caused to the trust could he recovered from the trustee responsible for it by a suit.

25. This would show that the main safeguards that have to be kept in mind by the Charity Commissioner or the Joint Charity Commissioner are in respect of the property and other affairs of society. If there is negligence in the management of affairs of the society, directions could be issued but -the scope of section 41-A would certainly not cover the interference with the process of election and also interference in respect of the members entitled to vote. They are the disputes which can be corrected by filing change reports after the elections u/s 22 of the Act. I, therefore, feel that the Joint Charity Commissioner should not have entertained the application No. 3/92 filed by Hedge and Deshmukh. They had the remedy to approach the Assistant Charity Commissioner questioning the change report. Merely because no further action was likely to be taken on the part of the society or others to challenge the voters'' list, the Charity Commissioner did not acquire any powers to look into these affairs and rectify them by virtually stalling the election.

26. It has been urged on behalf of respondents Nos. 6 and 7 in Writ Petition No. 1136/1992 or respondents Nos. 3 and 4 in Writ Petition No. 1304/1992 that in Writ Petition No. 3878/1991, decided on 17-2-1992, this question was virtually closed and that at this stage, it cannot be questioned that no powers existed with the Joint Charity Commissioner to issue the directions which are contained in his order dated 14-5-1992. I am afraid that this argument cannot be entertained in view of the fact that in the Application No. 7/91, the question was that the President was acting arbitrarily; that he was going to appoint new Principal although there was nothing wrong with the working Principal Shri Gite; that there was strike and that the entire functioning of college was likely to be disturbed and that the President was taking arbitrary decisions even by ignoring the other members of the Council and that is why this was likely to cause loss to the society. There was clearly mismanagement of the affairs of the trust and in that background, the direction was issued that fresh elections should be held as the period of the existing body had expired about two years back.

27. However in the present case what is to be seen is that the election process is on, that the list of 834 members was approved at the so called Governing Council meeting of 19-2-1992 and there was, therefore, absolutely no necessity for the Joint Charity Commissioner to issue the directions interfering with both election process and the list of voters. This was totally beyond the jurisdiction provided u/s 41-A of the Bombay Public Trusts Act, 1950. It could not be lost sight of that some more members were registered and unless they were heard, the Joint Charity Commissioner could not have taken decision directing that the list of 483 members should be treated as authentic list for the purpose of election. I, therefore, feel that the question raised by the petitioners is proper and that the Joint Charity Commissioner has no jurisdiction to entertain the

dispute made in Application No. 3/1992. The matter should end here. However by way of abundant precaution, it also becomes necessary to examine other grievances of the Directors Halge and Deshmukh.

28. Halge and Deshmukh have raised the question of the authenticity of the list of 8 34 members. In this behalf, as indicated, the learned Joint Charity Commissioner in Application No. 3/1992 held that the said list produced by the President is not an authentic list. Reliance is placed for that purpose on the list of 483 members produced at Exh. R-3 in Writ Petition No. 1304/1992. The same list is also relied upon in sister petition No. 1136/1992. The learned advocate for the respondents Nos. 6 and 7 Halge and Deshmukh has drawn my attention to the letter to the Election Officer dated 17-4-1992 at Exh. R-4; letter Exh. R-4 of the same date signed by Section Officer; letter Exh. R-5 respectively by respondent Deshmukh and reply by the Election Officer. In those letters, it was enquired by the respondents as to whether the list R. 3 was not objected to. The reply by the Election Officer was that it was not objected to and that it was final for the purpose of voting. However, Deshmukh complained as to how that list swelled from 483 to 834 members to which the Election Officer replied that the said list was sent for publication by the President Shridharrao Gite. The learned advocate for the respondents Nos. 6 and 7 (respondents Nos.3 and 4 in sister petition) have contended that this is a fabricated list of 834 members. It is however not in dispute that 483 members are the old members. But according to the President Gite, in terms of the order of the Assistant Charity Commissioner, the new members were enrolled right from May, 1991 to February, 1992 and that as the affairs of the trust were in dispute, they could not be acknowledged as admitted members. The list of 483 members is signed only by the President.

29. In this behalf, the learned advocate for the President has contended that the list is relied upon even by the respondents. There are names of Election Officers Lahoti and Swami. The respondents have not been able to point out as to how their names have come although their appointments as Election Officers have been disputed by the respondents. The list of 834 members, on the other hand, is signed by the President, Election Officer Lahoti and Assistant Election Officer Swami. They all have signed on 10-3-1992. This lends credibility to the list of 835 members, out of whom one Sarda is dead.

30. Incidentally in this behalf, the question arises as to whether the meeting of the Governing Council was held on 19-2-1992 in the terms of order in Writ Petition No. 3878/1991. The petitioner Gite in Writ Petition No. 1304/1992 has filed counter affidavit in reply to the submissions made on behalf of Halge and Deshmukh and in that affidavit, he has clearly submitted that the meeting of the Governing Council was called on 19-2-1992. It was by circular resolution and that 8 members signed that circular. Remaining members refused to sign. This circular was circulated by one Ramakant Manikrao Phad - an employee of the trust institution. As there was no quorum on 19-2 -1992, the meeting was adjourned and then it was again re-summoned in terms of notice to be found at

Exh. B. The said circular has been signed as indicated by about 8 members of the Council. It is clearly mentioned in the notice dated 18-2-1992 that in case there was no quorum, the meeting will be adjourned for one hour and the meeting of present members will be held. This is in terms of bye-laws of the society. On 19-2-1992 about 8 members attended the same meeting and passed two resolutions one approving the Fist of 834 members and appointment of Lahoti as Election Officer and Swami as Assistant Election Officer.

31. If the respondents Halge and Deshmukh rely on the list which has been purported to have been signed or approved by Swami and Lahoti, there is an implied admission that the said meeting was held on 19-2-1992 and Swami and Lahoti could sign as the Election Officers in terms of the resolution. In the list at Exh. A, there are names of about 362 persons who have paid Rs. 200/- per head as "Sahayyak Members". Their dates and receipt numbers are given. It has been urged on behalf of the President Gite that the other members of the Governing Council were not associating with him and were, therefore, determined to thwart any legal action of holding the meeting by petitioner Gite.

32. For that purpose, my attention is drawn to the proceedings held by other members of the Governing Council as per the proceeding book. It seems that petitioner Gite had opposed such meeting. Despite that, the meeting by other members of the Governing Council was held and this would indicate that many of the members of the Governing Council were opposing the petitioner and if in that background, only 8 members attended the meeting of the Governing Council, it cannot be said that this meeting was not held. At this juncture, it is necessary to observe that petitioner Gite had asked for time at the time of hearing of Application No. 3/1992 but the record clearly shows that the time granted to the President Gite was so short that he could not tender the entire record. It was rather expected of the Joint Charity Commissioner to have granted adequate time when as a matter of fact, the application was heard at Aurangabad whereas this society has its headquarters at Parli Vaijinath in Beed district. Failure to give time has to be viewed very seriously because when the petitioner President was required to produce the record, he should have been given sufficient time for production. This undue haste on the part of the Joint Charity Commissioner introduces serious infirmity in his judgment. The record shows that only one day was granted for production of records of the society.

33. The learned advocate for the respondents has contended that the record regarding new members has been created. Had Joint Charity Commissioner granted sufficient time to the petitioner to produce record and had the President failed to produce the same, this argument would have firmly endured. It cannot be lost sight of that all along petitioner was not required to produce such record when the holding of election was itself under challenge. The learned advocate for the respondents has urged that this record should have come at least at the time of filing of these Writ Petitions. In that regard, petitioner was called upon to produce the record and he did tender the record for inspection and it was found

that various amounts paid by the members from time to time have been entered in the cash book and the ledger. They have been credited in the names of the members and the amounts have been paid to the President who has been usually lending monies to the society from time to time.

34. In the audit report dated 6-7-1992 filed by the auditor M. B. Bagve and Company, it is clearly mentioned that Rs. 89,400/- were collected as membership fees but the application forms were not traceable. The audit was carried out for the period ending on 31st March, 1992. It will have to be emphasised that such a large amount was credited before 31st March, 1992 and this fact would go a long way to show that the members did pay membership fees before the litigation which has culminated in these Writ Petitions. This audit report has been relied upon by the respondents to show that the applications were not produced by the trust but the parallel important fact is that fees contributions were received from the members during the period canvassed on behalf of the petitioners. It is unlikely that President Gite would pay such large amount to create evidence of newly enrolled members. Again in the audit report, it is clearly shown that Rs. 26,001.25 Ps. were due to the petitioner President. If in that background, the contributions of the members were paid over to the petitioner President towards his dues, it cannot be said that the entire story is fabricated. I, therefore, find substance in the submission on behalf of the petitioner President that the members were enrolled; that their contributions were received and that those amounts were disbursed towards the liabilities of the trust.

35. In the affidavit in reply by the President, all these facts are clearly mentioned. There is reference to the meeting of the Governing Council on 19-2-1992. There is also reference to the approval to the list of 835 members of which provisional list was published on 10-3-1992. The list of 834 members is signed by the President, the Election Officer and Assistant Election Officer whereas the list of 483 members is purported to be signed Only by the President.

On oath, petitioner has stated that he has never signed any such list of 483 members and this sworn testimony has not been challenged or controverted by the respondents. These are, therefore, the circumstances which indicate that the list of 834 members is the authentic list.

36. To repeat again, the Joint Charity Commissioner was not competent to investigate this list during the election process as that investigation was clearly beyond the scope of section 41 -A of the Bombay Public Trusts Act, 1950. The above circumstances, therefore, clearly point to an important fact that the meeting of the Governing Council was held on 19-2-1992 in pursuance of the circular dated 18-2-1992 and that two resolutions were passed - one approving the list of additional members and the other relating to the appointment of Election Officers. As stated above, the list R-3 approved by the Election Officers and the President has been relied upon even by the respondents and this would, therefore, establish the submission of the petitioner that the Election Officers were appointed in terms of the resolution dated 19-2-1992.

37. It may be pointed out that none of the members listed in the list of 834 members has filed affidavit to show that he has not paid the contribution or that he has not enrolled himself as a member. On the other hand, in Writ Petition No. 1136/1992, Lahudas Sambhaji Karad, who is shown at serial No. 412, in the original list at Exh. D in the said petition, has come forth with an allegation that he has been deprived of casting vote; that Joint Charity Commissioner did not make him party and that he was required to file a petition for exercise of his right to vote. If it was contended on behalf of petitioner that the membership was of 834 members, it was bounden duty of the Joint Charity Commissioner to have issued notices to the duty enrolled members or at least to some of them to find out as to whether the newly added members were really enrolled. In the absence of such notice, the finding of the Joint Charity Commissioner stands vitiated.

38. My attention was drawn to 1980 Mh.L.J, 372, in the case of Jagat Narayan Singh Chithre vs. Swarup Singh Education Society. In that case, it was observed by the court that enquiries u/s 22 of the Bombay Public Trusts Act, 1950 are in the nature of judicial enquiries and the person affected must be noticed and heard. This has been clearly breached in this case and that the enquiry by the Joint Charity Commissioner has been totally vitiated on that count also. I am, therefore, of the view that the grievance made by the petitioner-President that the list submitted by the respondents of 483 members has not been signed by the petitioner; that in fact the list of 834 members has been signed by the President and Election Officers and it was this list which was available for the forthcoming elections of the Governing Council, appears to be truthful.

39. It has been contended that the order of the Assistant Charity Commissioner dated 25-10-1991 has been managed by the petitioner President and that the petitioner-President did not comply with the original order dated 25-9-1991 whereby he was required to file the list of members and to carry out the elections within two months i.e. by 25-11-1991. In that behalf, it cannot be lost sight of that the Assistant Charity Commissioner passed the orders on the application of Lahoti and Swami for their enrolment as members and the Assistant Charity Commissioner directed the public trust to enrol the members. It cannot be, therefore, said that this was engineered by the petitioner-President. The question of carrying out elections before 25-11 1991 was also not possible because the matter was sub judice. The argument on behalf of the respondents in that behalf cannot be countenanced.

40. In the conclusion, therefore, I find that the order of the Joint Charity Commissioner has to be set aside in view of the fact that he could not hold enquiry u/s 41 -A of the Bombay Public Trusts Act, 1950 in relation to the election process and the membership; that he failed to give adequate opportunity to the petitioner to produce the record and that the list has been approved at the Governing Council meeting on 19-2-1992 which was attended by few members and not by majority of members because of the impending dispute

and the impending conduct of non-cooperation was the approved list. The parallel meetings were held by other members of Governing Council and this is clearly borne out by the register produced on record. Hence the order of the Joint Charity Commissioner has to be set aside and the process of election should start from the stage at which it has been stopped. The 483 members have already cast their votes. They were eligible to vote in the election of 21-6-1992 as per the programme tendered by Election Officer Dhele. The supplementary elections will have to be held in respect of the newly added members namely 362 members as per Exh. A in Writ Petition No. 1304/1992.

41. The learned advocate for petitioner has contended that the newly added members are not eligible to contest the election because as per the bye-laws of the trust, only the members having two years'' standing are entitled to contest the election. It seems that 483 members were the members of two years'' standing. 362 members, therefore, are not eligible to contest the election but are certainly entitled to cast their votes. These members were eligible to vote at the supplementary elections whereas the candidates contesting the election would be the same as at the elections already held. The petitioner has no objection if supplementary election is held by permitting the remaining members to cast their votes. He has submitted that the entire election may not be quashed. Only remaining process of election should be completed and thereafter the results of both elections be declared.

42. The learned advocate for the respondents has not been able to challenge this position that the elections held need not be quashed. The Asstt. Charity Commissioner should be directed to carry out the supplementary elections by permitting the newly added members to vote at that election. The newly added members are incorporated in the final list published by the trust at Exh. P. 9 in Writ Petition No. 1304/1992. Accordingly, the following order:

43. Rule made absolute in both these Writ Petitions. The order of the Joint Charity Commissioner in Application No. 3/1992 dated 14th May, 1992 is set aside and the following directions are issued.

44. The Assistant Charity Commissioner, Beed or his delegate shall, forthwith Scrutinies the list of 362 members with reference to the published list dated 16-4-1992 and shall proceed with the supplementary election in respect of the same contesting candidates. He shall fix the date of the election and shall hold the list of 834 members as valid list for election. He shall allow only 362 newly added members to cast their votes in favour of the candidates who have contested the election on 21 -6-1992. The Assistant Charity Commissioner, Beed thereafter shall count the votes of both the elections and declare the results. He shall not however allow any member, who was eligible to vote at the election of 22-6-1992 but who could not cast the vote for any reason to cast votes. The expenses of election shall be borne by the public trust Jawahar Education Society. The Assistant Charity Commissioner, Beed shall complete the process of election within next six weeks of the receipt of the writ. He shall take possession

of the ballot boxes containing ballot papers of the election held on 22-6-1992.

45. In terms of these directions, the above Writ Petitions are disposed of. The parties are directed to bear their own costs.

