
(2012) 11 MP CK 0047

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 6443 and 3926 of 2012 with 4171 of 2011

Padam Jain and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 16, 16(1), 16(2), 32

Citation : (2013) 1 MPLJ 71

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : N.K. Gupta in W.P. No. 6443 of 2012, Dr. Abhishek Manu Singhavi and K.N. Gupta, with Ankur Mody in W.P. Nos. 3926 of 2012 and 4171 of 2011, for the Appellant; R.D. Jain, Advocate General with Vivek Khedkar, D.A.G. for State in all the Writ Petitions and H.D. Gupta with Santosh Agarwal for Respondent Nos. 5 and 6 in all the Writ Petitions, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—These petitions are similar in nature and, therefore, on the joint request of the parties, matters are analogously heard and decided by this common order.

These matters have a chequered history. A long-drawn battle is fought in the corridors of the Court by the parties. The case of the petitioner is as under:--

On 12-2-1979 the respondent No. 6 was inducted as a member of the society. On 21-7-1981 State Government superseded the governing body of the society and appointed Collector, Vidisha as administrator. On 11-8-1984 State Government directed the administrator to fill up the vacant seats and hold the election of the governing body of the society. On 18-7-1984 the administrator convened a general body meeting wherein three vacant posts were filled up by inducting Sarvashri Madhavrao Scindia, Pratap Bhanu Sharma and Dr. Padam Jain and election of governing body was held. On 19-4-1990, respondent No. 5

claims that he was inducted in the society in a general body meeting. The relevant record showing the same is placed at page 68 of the paper book in WP No. 3926/2012. The State Government by order dated 22-12-1994 superseded the governing body which was called in question by respondents No. 5 and 6 in Writ Petition No. 4/1995. On 9-7-1996 the High Court disposed of the writ petition with direction to the administrator to prepare a fresh voter list of the members of the society after inviting objections. The elections were also directed to be held. Consequently, on 9-4-1997 the administrator prepared the voter list. On 11-4-1997 the then Registrar of society published the new election programme by fixing 21-4-1997 as date of election. The respondents No. 5 and 6 assailed this order by filing Writ Petition No. 628/1997, wherein they prayed for quashing of 1997 voter list and the election held on that basis. On 21-4-1997 elections took place as per 1997 voter list and result was announced by the Registrar. On 20-8-1998 Writ Petition No. 628/1997 was dismissed as having rendered infructuous. Respondent No. 6 filed another Writ Petition No. 1817/1998 assailing the voter list and election held by Registrar on 21-4-1997. During pendency of said petition, yet another petition was filed by respondents No. 5 and 6 bearing Writ Petition No. 662/2001 seeking same relief which was sought in pending Writ Petition No. 1817/1998. The petitioners of Writ Petition No. 1817/1998 did not disclose the fact of filing earlier petition for the same relief. Writ Petition No. 1817/1998 was dismissed as infructuous, whereas Writ Petition No. 662/2001 was dismissed with finding against the petitioner regarding suppression of material facts. It was dismissed also on the ground of delay and laches. The respondent No. 6 unsuccessfully challenged the order of High Court passed in Writ Petition No. 662/2001 before the Apex Court. The SLP was dismissed on 28-11-2005. The respondent No. 6 became Finance Minister in the new Government from 2004 and became very powerful. At his instance, the society was superseded on 11-10-2005. This order was assailed by the society in Writ Petition No. 4687/2005, which was dismissed on 10-4-2006 by Writ Court. A Writ Appeal was preferred bearing Writ Appeal No. 12/2006, which was allowed by the Division Bench.

Dr. Singhavi, learned senior counsel submits that while allowing the writ appeal, the Division Bench gave a finding that the supersession order smacks of political bias. The Division Bench further directed for holding of election of governing body of the society within a period of three months. On 1-3-2008 election of governing body was held. On 28-4-2008 the State Government moved an application before Division Bench in disposed of Writ Appeal No. 12/2006 without disclosing that in the meantime, election as directed by Division Bench, had already taken place and prayed for extension of time by six months for holding the election. This application was disposed of by the Division Bench without notice to the other side and time was extended. The petitioner-society when came to know about aforesaid ex parte direction in the application filed by the State Government, sought recall of the order dated 28-4-2008. After hearing the parties, the Division Bench recalled the order whereby time was extended. State

Government unsuccessfully challenged the order before the Supreme Court and the Apex Court dismissed the SLP on 26-7-2010. It is the common ground of the petitioners that the respondent No. 6 is misusing his office and harassing the petitioner-society. The documents at pages 166 and 167 are relied on in this regard.

2. Dr. Singhavi submits that the respondent No. 5, who had taken a back seat since 2005, woke up from his slumber and moved a complaint to the Registrar about alleged irregularities in the society and prayed for an enquiry by submitting application dated 19-10-2010. The Registrar forwarded this letter to the petitioner-society for its reply by communication dated 24-11-2010. On 30-11-2010 the petitioner-society filed its response assailing the tenability of the complaint on the ground that respondent No. 5 is not a member of the society and, therefore, the complaint which has been preferred does not have requisite support of one-third members as required u/s 32 of the Madhya Pradesh Society Registrikaran Adhiniyam, 1973 (hereinafter referred to as the "Adhiniyam").

3. The Registrar after considering the objection of the society aforesaid issued another letter on 1-1-2011 stating that respondent No. 5 is a member of the society on the basis of copy of membership register produced by him and directed the petitioner-society to furnish record of petitioner-society. On 24-3-2011 the petitioner-society replied the same by reiterating its earlier objection regarding the membership of respondent No. 5 and competence of the department to hold an enquiry. On 13-5-2011 respondent No. 3 passed an order rejecting the objection of the society and appointed respondent No. 4 as Enquiry Officer. This order dated 13-5-2011 was challenged by society by filing present Writ Petition No. 4171/2011. On 27-7-2011 the Writ Court dismissed the application of the society seeking stay of enquiry proceedings. Writ Appeal is preferred against this order of Writ Court which was registered as Writ Appeal No. 436/2011. The Division Bench decided the said writ appeal on 8-8-2011. The appellant was given liberty to assail the order. On 30-5-2012 the respondent No. 4 submitted the enquiry report and held that the respondent No. 5 is a member of the society. The other writ petitions are filed against the order dated 11-5-2012, Annexure P-1 and Annexure P-1(A) dated 30-5-2012.

4. In the aforesaid factual backdrop, learned senior counsel appearing for the petitioner, submitted that common grounds are involved in all the petitions. He submits that 1997 voter list had attained a finality on account of dismissal of various writ petitions filed by respondents No. 5 and 6 respectively. In that 1997 voter list, names of respondents No. 5 and 6 are not there and names of Pratap Bhanu Sharma and Dr. Padam Jain are there. Once this list has attained a finality and it got a stamp of approval in several cases by this Court and certain orders of this Court were unsuccessfully tested before the Supreme Court, it is no more open for the respondents to seek validity or assistance of the voter list of 1997. He submits that the respondent-authority by no stretch of imagination can be permitted to sit over the orders passed by this Court whereby 1997 voter list was

approved. Dr. Singhavi submits that this is settled in law that a thing which cannot be done directly cannot be permitted to be done indirectly. He elaborately submits that this is settled in law that when a thing is required to be done in a particular manner pursuant to mandate of a Statute, it has to be done in the same manner and any other methods are forbidden. He relied on AIR 1936 253 (Privy Council) and a recent judgment of Apex Court on this issue rendered in Benarsi Krishna Committee and Others Vs. Karmyogi Shelters Pvt. Ltd., By criticizing the action of respondent-authorities in raising the same issue in a collateral proceeding, Dr. Singhavi submits that it amounts to malice in law and fact. He submits that respondent No. 6 became very powerful when he occupied the post of Finance Minister in the Government of Madhya Pradesh. He left no stone unturned to disturb the normal functioning of the society and his conduct establishes malice in law. By placing reliance on the averments of the return, it is submitted by the petitioners that the impugned order/proceedings are not arising out of suo motu powers. The proceedings are initiated on the complaint of Babulal Jain/respondent No. 5 and since Babulal Jain is not a member, minus Babulal Jain, the requisite corum is not available. To bolster this submission reliance is placed on section 32 of the Adhiniyam. It is stated that unless the application is signed by one-third members, it cannot be entertained. It is a common case of the petitioners that the present matter is not arising out of any suo motu exercise of power, therefore, minus Babulal Jain, the application was not maintainable because it does not have requisite number. Thus, "number crisis" is another issue raised with the submission that it is a jurisdictional fact and issue for which this petition needs to be entertained directly and petitioners cannot be relegated to avail the alternative remedy. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, is relied on this aspect. It is further stated that the orders passed by this Court have attained a finality and for the sake of argument it needs to be considered that even a bad or void order needs to be implemented unless it is challenged or set aside. J. Kodanda Rami Reddy Vs. State of A.P. and Others, J. Kodanda Rami Reddy vs. State of A.P. and others and Barkat Ali and Another Vs. Badri Narain (D) by LRs., are relied on in this regard. Lastly, it is stated that the impugned order suffers from non-application of mind and no reasons are assigned as to why 1997 voter list should not be accepted when it is affirmed by this Court. By alleging malice in law and fact against respondents No. 5 and 6, it is stated that on following grounds malice is established:--

(i) Respondents No. 5 and 6 have unsuccessfully filed series of litigations which shows their ill-will and determination to disturb the functioning of the society;

(ii) Respondent No. 6 is Finance Minister since 2004 and at his instance earlier supersession was done, which was set aside with a finding by Division Bench of this Court about political bias.

(iii) By way of adopting collateral methods the respondents are trying to achieve something which cannot be permitted to be achieved directly.

5. Shri R.D. Jain, learned Advocate General and Shri Vivek Khedkar, learned Deputy Advocate General, supported the orders impugned. It is stated that in Writ Petition No. 4/1995 the direction was issued only to issue voter list, invite objections and finalize the same. No opinion was expressed about correctness of the voter list. Writ Petition No. 628/1997 was held to be infructuous and parties were directed to raise election dispute. No decision on merits was given. Writ Petition No. 1817/1998 was dismissed as infructuous but no findings are given on the correctness of the voter list and election based upon it. In Writ Petition No. 662/2001 also no opinion was expressed on merits. Thus, it is contended that there is no such finding. Sheodan Singh Vs. Smt. Daryao Kunwar, Jagdamba Prasad Soni Vs. State of M.P. and others, and Ishwar Dutt Vs. Land Acquisition Collector and Another, are relied in this regard. It is stated that the Apex Court dismissed the SLPs summarily and such summarily dismissal does not mean that the Apex Court has given stamp of approval to the order appealed against. Kirloskar Brothers Ltd. Vs. Employees' State Insurance Corpn., is relied on in this regard.

6. It is stated that when in a Statute powers are there to take suo motu action, merely because exercise of that power is not expressly disclosed in the impugned order will not render the order as illegal. By placing reliance on certain judgments it is stated that if authority is equipped to exercise power and source of power can be traced from the parent Statute, merely because some other provision is quoted will not denude the authority to exercise its power. It is stated that Babulal Jain is very much a member which has been held by a Single Bench of this Court and Division Bench did not disturb the said finding on merits. He submitted that doctrine of merger has no application in those cases where the order is not interfered with by the higher forum on merits. He relied on Smt. Ushadevi and Others Vs. State of Madhya Pradesh and Others, and K.K. Parmar and Others Vs. H.C. of Gujarat thr. Registrar and Others, in support of his contention that suo motu powers can be exercised when such power is available with the competent authority. Much emphasis was made by the State on the point that Babulal Jain is a member. It is stated that Shri Jain is very much a member and respondents are under a legal obligation to produce the record before the authorities. He submits that as per section 16 of the Adhiniyam, record is required to be maintained and it is open for the authorities to ensure proper compliance of the provisions of the Adhiniyam.

7. Shri H.D. Gupta, learned senior counsel with Shri Santosh Agarwal, appearing for respondents No. 5 and 6, almost borrowed the same arguments which were advanced by learned Advocate General. In addition, learned senior counsel submits that the allegations of malice against the respondents No. 5 and 6 are specifically denied in the return, which is supported by affidavit. He submits that similar allegations of mala fide were earlier turned down by Single Bench of this Court and Division Bench did not disturb it while disposing of the matter. He submits that being a Finance Minister, it was open for the respondent No. 6 to direct the concerned authority to act in accordance with law. He submits that the

documents at pages 166 and 167 (Annexures P/19 and P/20) do not establish any bias at all. He submits that if a complaint is preferred by a citizen to the Finance Minister and in turn, the said authority directs the concerned authority to look into the matter, it does not mean that the Finance Minister had exceeded its authority or such an action is actuated with bias or mala fide. He added that respondent No. 5 is a whistle-blower.

8. In rejoinder submissions, Shri K.N. Gupta, learned Senior Advocate with Shri Ankur Mody, Advocate, for the petitioners submit that when suo motu powers are exercised, it needs to be mentioned specifically. He relied on D.N. Roy and S.K. Bannerjee and Others Vs. The State of Bihar and Others, On more than one occasion, Shri K.N. Gupta, learned senior counsel for the petitioners, submits that the core issue is whether Babulal Jain or respondent No. 5 is a member or not. He submits that if it is held that he is not a member of the society, the requisite 1/3rd membership/number is admittedly not there for preferring the necessary complaint, and therefore, entire action founded upon such complaint is without any basis and authority of law. By placing heavy reliance on Annexure P/6 dated 22nd December, 1994, Shri Gupta submits that in point No. 6 the State Government gave a finding that the Execution Committee of the society was not constituted as per the bye-laws of the society, and therefore, elections were held to be illegal. It is further stated that in view of the finding in order dated 22nd December, 1994 Babulal Jain cannot be treated as member of the society. Minus Shri Jain aforesaid, necessary numbers (1/3rd in number) were not there, and therefore, complaint itself is not competent, and therefore, question of taking cognizance and consequent action on the said complaint does not arise. In nutshell, it is argued that aforesaid question of membership of Babulal Jain goes to the root of the matter and jurisdictional fact which if decided against the respondents, shows and establishes that their entire action is with ulterior motive and without authority of law.

9. It is further argued by the petitioners that if a relief is claimed and is not granted by the Courts, same is deemed to be rejected. This contention is raised with regard to the point that earlier 1997 voter list was called in question by respondents No. 5 and 6 but this Court dismissed the petitions, and therefore, the relief claimed should be treated as refused. State Bank of India Vs. Ram Chandra Dubey and Others, is relied in this regard. Shri N.K. Gupta, learned counsel for petitioner in W.P. No. 6443/12 relied on Chandra Singh Vs. State of Rajasthan and Another, and 2005 RN 142, President of Bhilseva Sangh and another vs. State of M.P. and another in support of his contention that the impugned orders herein cannot be treated as a suo motu action taken by the respondents.

10. Shri Vivek Khedkar, Deputy Advocate General for the State, in his additional submissions, stated that there is no illegality and irregularity in the orders impugned. He submits that impugned order in W.P. No. 4171/11 is only a show-cause notice and in view of Writ Court's judgment in the earlier round which was

not disturbed by the Division Bench, Babulal Jain is very much a member. The petitioners cannot be permitted to escape from the responsibility of following the provisions of the Adhiniyam and providing adequate material and documents to the relevant statutory authorities. He relied on *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*, *r, Malladi Drugs and Pharma. Ltd. Vs. Union of India (UOI)*, *U.O.I. vs. Kunisetty Satyanarayan and another* to submit that against show-cause notice the proper course is to file reply and contest it on merits. It is stated that whether show-cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice. Para 5 of the judgment in *Mohd. Ghulam Ghouse (supra)* is heavily relied in this regard.

11. I have heard the learned counsel for the parties and perused the record.

12. In the aforesaid factual backdrop, it is clear that the parties have filed various cases against each other and those matters are decided by this Court. The pivotal question raised by the petitioners is that the impugned orders cannot be treated to be in exercise of suo motu powers. Suo motu powers, when exercised should be reflected specifically. *Ms. D.N. Roy and S.K. Banerjee (supra)* is relied in this regard. In para 7 of this judgment the Apex Court held that in this case at no stage the appellant was informed that Central Government proposed to exercise its suo motu power and asked him to show cause against exercise of such power. Failure of Central Government to do so vitiates the impugned order as the appellant had not been given sufficient opportunity to put forward his case on the above issue. It is noteworthy that respondent/State in its return has nowhere disclosed that impugned action is taken by exercise of suo motu powers. Thus, I find force in the argument of petitioners that impugned action in absence of disclosing it and affording an opportunity in this regard to the petitioners, cannot be treated to be a suo motu exercise of power. The judgment cited, i.e., *Smt. Ushadevi and Others Vs. State of Madhya Pradesh and Others*, has no application in the facts and circumstances of the present case. Thus, I am unable to approve the orders impugned on the anvil of suo motu exercise of power. In the opinion of this Court, authority has not exercised suo motu powers.

13. As rightly and repeatedly argued by the petitioners, the core issue is whether Babulal Jain is a member. If he is held to be a member, the application/complaint has necessary sanction of one-third membership. If it is held otherwise, there will be a number crisis and complaint will not be treated as tenable/competent. Thus, this question regarding membership of Babulal Jain goes to the root of the matter, therefore, before dealing with other issues/points raised, I deem it proper to deal with this aspect first.

14. The common case of the petitioners is that in 1997 voter list, the name of Babulal Jain is not there. The said list was put to test by respondents No. 5 and 6 in several litigations before this Court and this Court had dismissed those

petitions and few of them got a stamp of approval from Supreme Court. Thus, it is clear that 1997 voter list is a final list which does not include the name of Babulal Jain and, therefore, the action on his complaint by impugned orders is impermissible. This Court has considered this aspect in Maharaja Jiwajirao Education Society and Shri Pratap Bhanu Sharma Vs. State of Madhya Pradesh and Others, In the said case this Court opined as under:--

38. First allegation in the show-cause notice dated 16-1-2004 is that register of members is not properly maintained. This allegation was also part of the allegations in the enquiry conducted u/s 32. Explanation of the petitioners to this allegation was that once the elections were held by the society on 21-4-1997 on the basis of order passed by the High Court in W.P. No. 628/97 and once this election is upheld contention that register of membership is not maintained as required u/s 16 of the Adhiniyam is not correct.

39. Section 16 of the Adhiniyam contemplates that register of members has to be maintained giving the particulars as indicated in subsection (2) thereof. This explanation has been considered by the Competent Authority and in the impugned order, Annexure P-1, it has been held that Writ Petition No. 628/1997 was dismissed as having been rendered infructuous after the elections were held and there is nothing in the order passed by this Court in W.P. No. 628/97 to indicate that this Court had approved the list of members. On the contrary the findings recorded in the enquiry report Annexure R-5 also pertain to this charge. Charge No. 1 in the said enquiry is also with regard to submission of register of members u/s 16(1) read with section 16(2) of the Adhiniyam. Both the authorities namely the Enquiry Officer who had conducted the enquiry in the year 2001 and had submitted his report Annexure R-5 and the Competent Authority who had passed the impugned order Annexure P-1 have taken note of these facts and the finding recorded is that right from 27-4-1997 upto 10-2-2004 when reply was filed, no list of members were submitted by the society and it was not available. Even in reply to the present proceedings no such list of members is produced. Only explanation given is that once the writ petition filed before this Court W.P. No. 628/1997 was decided and elections were held in pursuance to the said decision, petitioners wants a presumption to be drawn that the list of members were available in accordance with the requirement of section 16. This is an incorrect and unsatisfactory explanation submitted by the petitioner's society. There is nothing in the order passed by this Court in W.P. No. 648/97 to indicate that the list of membership and register of members is properly maintained. This aspect has been correctly assessed and considered by the State Government in the impugned order.

(Emphasis supplied)

A bare perusal of finding of this Court shows that after taking stock of earlier litigations, this Court opined that there is nothing in the orders passed in W.P. No. 628/1997 to indicate that High Court had approved the list of members. It is further opined that the record shows that right from 27-4-1997 till 10-2-2004 no

list of members was submitted by the society and it was not available. The similar contention of petitioners that once W.P. No. 628/1997 was decided and elections were held pursuant to the said decision, it can be inferred/presumption can be drawn that list of members was approved in accordance with requirement of section 16. This Court gave a specific finding that this contention is incorrect and is an unsatisfactory explanation by the society. Coupled with the finding that there is nothing in the order of this Court to indicate that list of membership and register of members is properly maintained.

15. It is argued by the petitioners that this order of Writ Court in W.P. No. 4687/2005, Maharaja Jiwajirao Education Society and Shri Pratap Bhanu Sharma Vs. State of Madhya Pradesh and Others, was put to test in WA No. 12/06. In the said WA, the Division Bench passed an order on 25-1-2008 and directed for holding of elections. It is argued that order of Writ Court passed in W.P. No. 4687/2005 stood merged in the order of WA No. 12/06 and, therefore, finding given by the Writ Court has lost its complete shine/effect. Thus, it is the common case of the petitioners that findings given by the Writ Court in Maharaja Jiwajirao Education Society (supra) are of no assistance to the respondents. It may be remembered at the cost of repetition that it is the stand of the respondents that doctrine of merger has no role to play in the present case where writ Appellate Court has not dealt with the merits of the matter. Thus, another important question is whether on passing the order by Division Bench in W.A. No. 12/06 the effect of finding given by the learned Single Judge has wiped off and whether doctrine of merger can be applied. The petitioners have relied on Kunhayammed and Others Vs. State of Kerala and Another, and another in this regard.

16. In the case of Kunhayammed (supra) the Apex Court in para 42 has held as under:--

42. "To merge" means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality.

However, it is held that doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of the challenge led or capable of being led shall be determinative of applicability of merger. The Apex Court has discussed the effect of dismissal of SLP, effect of granting leave and also the effect of passing orders when matter is barred by time, based on defective representation, petitioner has no locus standi and other issues. In my opinion, the Apex Court has dealt with this aspect in M.R.F. Ltd. Vs. Manohar Parrikar and Others, The relevant portion of the judgment reads as under:--

The merger is essentially of the operative part of the order and the principle of merger of the order of the subordinate Court with the order of the superior Court

cannot be applied when there is no order made by the superior Court on merits and the controversy between the parties has not been looked into by the superior Court.

(Emphasis supplied)

17. A bare perusal of judgments on the point shows that there is no thumb rule or straight-jacket formula for applying the doctrine of merger. Unless there is some adjudication on merits, doctrine of merger has no application. In the present case, the learned Writ Court has passed a detailed order on merits in the case of Maharaja Jiwajirao Education Society (supra). By the time matter was finally taken up in writ appeal, statutory period of supersession of the society was over and, therefore, the Division Bench issued direction for conducting elections. There was no occasion for the Division Bench to examine the correctness of the orders passed by the learned Writ Court. Resultantly, no opinion on merits is expressed and as a matter of course, it is directed to follow the Statute and conduct elections. In those circumstances, in the considered opinion of this Court, the doctrine of merger cannot be pressed into service and it cannot be held that the findings of Writ Court are vanished or merged by the Division Bench. In my opinion, the Division Bench has given a passing remark about political bias raised by appellants and this remark cannot be treated as finding on the issue. Apart from this, the document Annexure P/6 dated 22-12-1994 was part of W.P. in Maharaja Jiwajirao Education Society (supra) and yet Babulal Jain was treated as member by writ Court. On the basis of aforesaid analysis, it is clear that the findings of learned Writ Court in Maharaja Jiwajirao Education Society (supra) are not disturbed which contain a specific finding regarding membership of Babulal Jain. Thus, Babulal Jain is very much a member. Apart from this, in para 48 in Maharaja Jiwajirao Education Society (supra) the Writ Court gave a finding that respondent No. 5 (Babulal Jain) was a member, who had subscribed to the formation of the society in the year 1990. In fact, he is a founder secretary of the society and is one of the seven persons who had subscribed to form the society. Therefore, it was construed that he had an interest in the affairs of the society as he had played a role in establishment of the society. It is further opined by this Court that it would be natural for a person interested in the affairs of the society to make endeavour for highlighting the illegality, if any, being committed in the working of the society. Thus, the point that Babulal Jain is not a member is decided against the petitioners.

18. Another important question in this matter is whether any malice can be attributed against respondent No. 6. Interestingly, to great extent this issue was also dealt with by this Court in Maharaja Jiwajirao Education Society (supra). In paras 45, 46, 47 and 49 this Court opined as under:--

45. Now, the question of mala fides of respondent No. 5 has to be considered. Mala fides on the part of respondent No. 5 are attributed because of the following reasons:--

(i) He had been persistently making efforts to get the governing body legally elected from discharging its duties and to restrain them from taking charge.

(ii) He had filed more than three petitions in this Court in furtherance to this intention.

(iii) Entire action was taken after respondent No. 5 was elected as M.L.A. in December, 2003 and become Minister in the Cabinet.

(iv) He had written letter Annexure P-58 which considered along with the fact that arguments were heard on 7-3-2005 and thereafter no order was passed for 7 months shows his malice in the matter.

46. Supreme Court in the case of State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, has considered the legal meaning of malice and in para 12, it has been so observed by the Supreme Court:--

The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others.

(Emphasis supplied)

47. Again in the case of State of Punjab Vs. V.K. Khanna and Others, bias in administrative matter and question of mala fide action has been considered and the test for determining apprehension of bias etc. have been so considered by the Supreme Court in para 8 of the aforesaid judgment:--

8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor would not arise.

48. The question of bias attributed to respondent No. 5 is, therefore, required to be considered in the light of the aforesaid legal principle. Respondent No. 5 was a member who had subscribed to the formation of the society in the year 1990. In fact, he is founder Secretary of the society and is one of the seven persons who had subscribed to form the society. Therefore, it can be safely construed that he had an interest in the affairs of the society as he had played some role in the establishment of the society. That being so, it would be natural for a person interested in the affairs of the society to make endeavour for highlighting the illegality, if any, being committed in the working of the society.

49. Mala fides of respondent No. 5 are being highlighted mainly on the ground that entire action was taken after he came to power and became Minister in the Cabinet in December, 2003 but for this no action would have been taken. Records indicate that even before respondent No. 5 was elected as a Member of the Legislative Assembly proceedings u/s 32 were initiated on 13-11-2001 and at that point of time the present Govt. according to the petitioner's own showing was not in power. The Govt. which is said to be favourable to the petitioner's society was in power and in spite of this action was initiated and enquiry ordered u/s 32 of the Adhinyam, 1973 highlighting 30 irregularities committed by the society. After the show-cause notice was issued on 13-11-2001 enquiries were conducted on various dates and the enquiry report Annexure R-5 was submitted on 31-7-2002. Even on this date respondent No. 5 was not a Member of the Legislative Assembly or a Minister. Petitioner for reasons which remained unexplained chose not to challenge this enquiry report. It was satisfied with the report and only filed an appeal challenging appointment of Enquiry Officer vide order 13-11-2001. This appeal was dismissed on 6-5-2003 vide Annexure R-7. All these things happened even prior to the general election were held in the year 2003 in the month of December. In the enquiry report Annexure R-5, 30 irregularities establishment of which formed part of the enquiry in the show-cause notice, Annexure P-2, dated 16-1-2004 and were found to be established. No action was taken by the Govt. into the irregularities established in the enquiry report, Annexure R-5 and the matter was kept pending. If the present Govt. after it came to power thought it appropriate to proceed in the matter on the basis of the enquiry report Annexure R-5 and even if it assumed that respondent No. 5 had some role to play in the matter mala fides cannot be attributed as respondent No. 5, he being a founder member and founder Secretary of the society would naturally want to highlight the illegalities and to ensure that action is taken in accordance with law. The aforesaid factual aspect of the matter indicates that even before respondent No. 5 was elected as member of the Legislative Assembly and the present Govt. came into power enquiry into the illegalities of the petitioner's society was conducted and proved in the inquiry report Annexure R-5, dated 31-7-2002 and if this fact is taken note of then merely because further action was taken in the year 2004 that by itself cannot be a ground for attributing malice or bias in the matter. The totality of the circumstances has to be taken note of by this Court while addressing the question of bias and mala fides on the part of respondent No. 5. Except for contending that respondent No. 5 is biased and has been instrumental in initiating proceedings no cogent material is produced to substantiate this contention. The material available on record on the contrary indicates that proceedings were initiated in the year 2001 u/s 32 of the Adhinyam and when the said proceedings were initiated and enquiry was ordered respondent No. 5 and the present Govt. was nowhere in picture. That being so, this Court is unable to accept the contention that the entire action has been taken only after respondent No. 5 was elected to the Legislative Assembly and became Minister.

19. Almost on the same ground malice is again attributed/alleged against respondent No. 6. For the reasons stated in Maharaja Jiwajirao Education Society (supra) the argument deserves to be rejected. Apart from this, a bare perusal of Annexure P-19 dated 16-7-2010 and Annexure P-20 shows that a complaint was preferred to the Finance Minister and in turn, the said complaint was forwarded by the Technical Education Directorate, MP to competent officer to conduct a special audit. It is not established that such a communication is de hors the powers or with any ulterior motive. The educational institutions run by the society are getting grant in aid from the State Government. The authorities are well within their power to examine the proper use of the said grant-in-aid and merely because concerned Minister had directed for special audit, it does not establish any malice in facts or in law. Thus, this contention is also rejected.

20. The other contention of the petitioners regarding action of the respondents in acting in indirect manner when direct action was disapproved by this Court has no force. Once it is held that Shri Babulal Jain is very much a member and is competent to prefer a complaint, it goes without saying that on such complaint exercise of power by Registrar cannot be held to be incompetent or de hors the provisions of the Adhiniyam. Thus, other related arguments that collateral proceedings are impermissible etc. are of no assistance and are accordingly rejected. Since Shri Babulal Jain is held to be a member, I am unable to hold that there was any number crisis in the complaint or complaint and action is not tenable.

21. On the basis of aforesaid analysis, I am unable to hold that impugned show cause notice and the Annexure P-1(A) is bad in law. I find no reason to interfere or disturb the impugned notice/orders. For the reasons stated above, no interference is warranted by this Court. Consequently, petitions are dismissed. No costs.