

(2022) 08 GUJ CK 0098
In the Gujarat High Court

Case No : R/Special Civil Application No. 9851, 10145 Of 2021

Patel Kodarbhai Kalabhai

APPELLANT

Vs

Joint Charity Commissioner

RESPONDENT

Date of Decision : 26-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Public Trusts Act, 2011 — Section 12A, 22, 41A
Bombay Public Trusts Act, 1950 — Section 22
Companies Act, 2013 — Section 17, 18, 19

Citation : (2022) 08 GUJ CK 0098

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Premal R Joshi, Adiyta Jadeja, Bhatt

Final Decision : Dismissed

Judgement

Dr. A. P. Thaker, J

FACTS-SPECIAL CIVIL APPLICATION No.10145 of 2021

1. By filing Special Civil Application No.10145 of 2021, the petitioner has prayed to quash and set aside order dated 9.6.2021 passed by Joint Charity Commissioner, Mehsana, in Judicial Misc. Application No.13 of 2018. It is further prayed to declare constitution of Core Committee as illegal and to declare all its decisions as illegal. It is also prayed to appoint Administrator.

2. As per the facts of the case, the petitioners are members of Shri C.D.Patel Mahavidya Mandal. All the petitioners are elected as members of executive Committee. One Tushar Kanubhai Patel, one of the respondent herein was elected as President of Shri C.D.Patel Mahavidya Mandal.

2.1 Shri C.D.Patel Mahavidya Mandal is a public trust registered under the Bombay Public Trusts Act, 1950. The object of the Trust is to see that children of Talod town and surrounding areas can get educational facilities in Talod town so

that they may not have to travel at distant place. The entire area is backward area and for upliftment of the public, the said Trust was established in the year 1960. Initially, the Trust has established Arts and Science College. In the year 1972, the Trust separated the said Arts and Science College into two separate colleges, one is Science College and another is Arts and Commerce College. Both the colleges are grant-in-aid colleges and salary of teaching and non-teaching staff is made by the State Government directly.

2.2 Shri Kanubhai Chunibhai Patel-Respondent No.3 approached the learned Charity Commissioner, Gujarat State, Ahmedabad by way of filing Judicial Miscellaneous Application No.26 of 2015 with a prayer to appoint administrator of Shri C.D.Patel Mahavidya Mandal. The learned Charity Commissioner, Gujarat State, Ahmedabad by order dated 13.10.2015 was pleased to appoint administrator of the Mandal.

2.3 Thereafter, Shri Kanubhai Chunibhai Patel approached the learned Charity Commissioner, Gujarat State, Ahmedabad by way of filing Judicial Miscellaneous Application No. 56 of 2015 with a prayer to declare election of Shri C.D.Patel Mahavidya Mandal. The learned Charity Commissioner, Gujarat State, Ahmedabad by order dated 27/4/2016 directed that the election of Shri C.D.Patel Mahavidya Mandal be conducted as early as possible. Further, the administrator was directed to hold the election without fail within 3 months from the receipt of the order and before holding the election, certain instructions were issued.

2.4 Pursuant to the order dated 27/4/2016 passed in Judicial Miscellaneous Application No. 56 of 2015, the Administrator published notification declaring election of Shri C.D.Patel Mahavidya Mandal for the year 2016 to 2019 (three years). The petitioner is member of Shri C.D.Patel Mahavidya Mandal. The petitioner is elected as member of executive committee. The respondent No.3 was elected as President of Shri C.D.Patel Mahavidya Mandal.

2.5 Respondent No.2 did call the first meeting of Executive Committee on 17/9/2017 but in the said meeting contrary to the Constitution of the Mandal, he constituted Core Committee. There is no provision of appointing any Core Committee in the Constitution of the Shri C.D. Patel Mahavidya Mandal. Further, the term of executive committee came to an end on 30/6/2019. In spite of that, respondent No.3 neither call any meeting of General Board nor initiated any proceeding to hold election and committed breach of the provisions of the Constitution.

2.6 Under the aforesaid circumstances, the petitioner had approached respondent no.1 by filing Judicial Miscellaneous Application No. 13/2018 with a prayer to (i) direct respondent No.2 to call the meeting of Executive Committee since he has not called any meeting till date after 4/7/2016 the day on which executive committee was constituted; (ii) to cancel Core Committee which is constituted on 17/9/2017 contrary to the Constitution of mandal; (iii) to declare all resolutions/decisions passed by Core Committee as illegal and (iv) to appoint

Administrator for administration of Shri C.D.Patel Mahavidya Mandal.

2.7 At present none of the trustee whose name appears on PTR is alive. Under the aforesaid circumstances, respondent No. 2 was joined as party since he was the President of Shri C.D.Patel Mahavidya Mandal. However, respondent No. 1 has failed to appreciate this aspect and dismissed the application by passing impugned order observing that all trustees are not joined as opponent and has joined respondent No. 2, who is not Trustee on PTR. By order dated 9.6.2021, Joint Charity Commissioner, Mehsana, dismissed Judicial Miscellaneous Application No. 13/2018. Hence, present petition,

FACTS-SPECIAL CIVIL APPLICATION No.9851 of 2021

3. In Special Civil Application No.9851 of 2021, the petitioners have prayed to quash and set aside order dated 9.6.2021 passed by Joint Charity Commissioner, Mehsana, in Judicial Misc. Application No.11 of 2019 qua not appointing Administrator of Shri C.D.Patel Mahavidya Mandal and it is also prayed to hold election of Shri C.D.Patel Mahavidya Mandal within a period of two months under the supervision of an Administrator.

3.1 The respondent No.3 did not call the meeting of General Board as per the provision of the Constitution of the Shri C.D.Patel Mahavidya Mandal. Further, the term of executive committee came to an end on 30/6/2019. In spite of that, the respondent No.3 neither call any meeting of general board nor initiated any proceeding to held election and committed breach of the provisions of the Constitution.

3.2 The respondent No.3 collected fees towards post-graduation center. As per the circular No. 82/2017 dated 12/4/2017 issued by Hemchandracharya Uttar Gujarat University, the said amount is to be deposited in the separate bank account, which is to be maintained with nationalized bank. Further, the said amount cannot be transferred to Trust in any circumstances. Under the aforesaid circumstances, the University by communication date: 28/8/2018 brought to the notice of the colleges about the same.

3.3 In spite of specific instruction by the University, the colleges run by Mandal did not comply with the same and therefore vide communication date 28/11/2018 the University instructed the Mandal to give the bank details along with necessary documents. The University again by another letter dated 21/6/2019 asked respondent no.3 to provide the details as asked for.

3.4 Under the aforesaid circumstances, the petitioners had approached the respondent No.2 by way of filing Judicial Miscellaneous Application No.11/2019 with a prayer to direct the respondent No.3 to call the meeting of general board and to appoint administrator under whose supervision the election of executive committee of Shri C.D.Patel Mahavidya Mandal is held.

3.5 Shri C.D.Patel Mahavidya Mandal approached the learned In-charge Assistant Charity Commissioner, Himmatnagar, for change of Constitution of Trust by way

of filing Change Report No.2/2020.

3.6 Learned In-charge Assistant Charity Commissioner, Himmatnagar by order dated 18/2/2021 was pleased to reject the same. The respondent No. 3 has filed an appeal against the same before in-charge Assistant Charity Commissioner, Himmatnagar.

3.7 During the pendency of Judicial Miscellaneous Application No. 11/2019, the respondent no. 3 published notification dated 08.03.2021 declaring election of Shri C.D.Patel Mahavidya Mandal contrary to the Constitution of Trust by abusing the process of law and with a view to defeat the proceedings of Judicial Miscellaneous Application No. 11/2019. It is also stated that election programme declared on 08.03.2021, it would apparently make it clear that the same was contrary to the Constitution of Trust and issued hurriedly without giving sufficient time and just to make Judicial Miscellaneous Application No. 11/2019 infructuous. In fact the term of the elected body ended on 30.06.2019. In spite of that, respondent no.3 neither call any meeting nor held election of the trust and, therefore, it would be obligatory on the part of respondent authority to appoint administrator of the trust to hold election of the trust under the supervision of officer of the respondent authority as per the constitution of Trust.

3.8 The petitioners moved an application below Exhibit 45 challenging the same. Having come to know about the application below Exh. 45 in Judicial Miscellaneous Application No. 11/2019 filed by the petitioners, the respondent No.3 released public notice in the newspaper dated 9/3/2021 that considering the increase in the cases of Covid-19 the election declared on 8/3/2021 has been postponed at this stage.

3.9 The respondent No. 3 published notification of election contrary to the Constitution of the trust on 8/3/2021. Since the petitioners filed an application below Exhibit 45 with a prayer to direct not to proceed further with election programme immediately on 9/3/2021, respondent No. 3 released public notice postponing the election on the ground of Covid-19. This act of respondent No. 3 itself makes it clear that the intention of respondent No. 3 is to hold election contrary to the Constitution of the trust.

3.10 Under the aforesaid circumstances, the petitioners have approached this Honourable Court by way of filing Special Civil Application No. 5409/302 with a prayer to appoint Administrator in Shri C.D.Patel Mahavidya Mandal and under whose supervision the election of executive committee may be conducted in accordance with Constitution of the Trust and also challenging the illegal and unlawful attempt on the part of respondent no. 3 to hold election contrary to the approved constitution of the Mandal.

3.11 However, during the pendency of the aforesaid petition, the respondent no.2 passed impugned order dated 09.06.2021 by directing respondent No.3 to call General Board Meeting as per the Constitution at appropriate time and at appropriate place. At this stage, it is required to be noted that the respondent

authority ought to have appointed an administrator since the term of the Executive Committee has come to an end long back and the respondent number 3 is misusing his power and management of the Mandal is hampered.

3.12 The petitioners have filed one F/Special Civil Application No.5992/2021 before the Hon'ble Court with a prayer to appoint administrator for Shri C.D.Patel Mahavidya Mandal and to hold election of executive committee of Shri C.D.Patel Mahavidya Mandal and in alternative prayed to direct respondent No.2 to pass appropriate order in Judicial Miscellaneous Application No.11/2019 within a week. However, due to office objection the same is not listed for hearing. Meanwhile the impugned order has been passed and therefore the petitioner is filing substantive fresh present petition.

3.13 The respondent authority ought to have appointed Administrator and ought to have directed the respondent No.3 not to take any policy decision. Hence, present petition.

4. Heard Mr.Premal Joshi, learned advocate for the petitioners, learned AGP, Mr.Jadeja for respondent no.1-State and learned advocate Mr.Bhatt for respondent no.2 at length.

4.1 Mr.Joshi, learned advocate for the petitioner humbly submits that respondent no.4-Shri Kanubhal Chunibhai Patel approached learned Charity Commissioner, Gujarat State, Ahmedabad by way of filing Judicial Miscellaneous Application No. 56 of 2015 with a prayer to declare election of Shri C.D.Patel Mahavidya Mandal. It was contended that, as per the constitution, the election of the Trust is required to be conducted every 3 years and the election was not conducted for many years and therefore he prayed to declare election of the Mandal. The learned Charity Commissioner, Gujarat State, Ahmedabad, by order dated 27/4/2016 directed that the election of Shri C.D.Patel Mahavidya Mandal be conducted as early as possible. Further, the administrator was directed to hold the election without fail within 3 months from the receipt of the order and before holding the election, certain instructions were issued. Now, respondent no. 3 after having been elected as President of Shri C.D.Patel Mahavidya Mandal for the year 2016 to 2019 [three years], did not hold election in gross violation of the Constitution of the Trust. On the contrary he has declared election Notification dated 08.03.2021 contrary to the Constitution of Trust. The respondent authorities cannot take a different view in the matter once the term of the executive committee is over and to declare election of the Mandal. He also submitted that there is no provision in the Constitution of the Mandal for constituting Core Committee to take decision. He further submitted that since the term of the Committee has come to an end, the Administrator should have been appointed till the next committee is elected in the election. Further, if election is held now by respondent No.3, there are all possibilities that he would adopt mal-practices and therefore for smooth, impartial and fair election, the same shall be held under the supervision of Administrator. The apprehension of the petitioner is valid in view of the conduct of respondent No.3. He also submitted that the term

of executive committee came to an end on 30/6/2019. In spite of that, respondent No.3 has neither call any meeting of general board nor initiated any proceeding to held election and committed breach of the provisions of the Constitution.

4.2 He further submitted that at present none of the Trustee whose name appears on PTR is alive. Under the aforesaid circumstances, the respondent No. 2 was joined as party since he was the President of Shri C.D.Patel Mahavidya Mandal. However, respondent No. 1 has failed to appreciate this aspect and dismissed the application by passing impugned order observing that all trustees are not joined as opponent and has joined respondent No. 2, who is not trustee on PTR. Therefore, question of joining all office bearers also does not arise since their names are also not on PTR.

4.3 He also submitted that Shri C.D.Patel Mahavidya Mandal approached the learned in-charge Assistant Charity Commissioner, Himmatnagar for change of Constitution of Trust by way of filing Change Report No. 2/2020. The Learned In-charge Assistant Charity Commissioner, Himmatnagar by order dated 18/2/2021 was pleased to reject the same. During the pendency of Judicial Miscellaneous Application No. 11/2019, respondent no.3 has published notification dated 08.03.2021 declaring election of Shri C.D.Patel Mahavidya Mandal contrary to the Constitution of Trust by abusing the process of law and with a view to defeat the proceedings of Judicial Miscellaneous Application No. 11/2019. Under the aforesaid circumstances, the petitioners moved one application below Exh. 45 in Judicial Miscellaneous Application No. 11/2019 with a prayer to direct respondent no.3 not to proceed further with the election programme. If we peruse the election programme declared on 08.03.2021, it would apparently makes it clear that the same was contrary to the Constitution of Trust and issued hurriedly without giving sufficient time and just to make Judicial Miscellaneous Application No. 11/2019 infructuous. In fact the term of the elected body ended on 30.06.2019. In spite of that, respondent no.3 neither call any meeting nor held election of the Trust and therefore, it would be obligatory on the part of respondent authority to appoint administrator of the Trust to hold election of the Trust under the supervision of officer of the respondent authority as per the constitution of Trust. Immediately on the next day on 9/3/2021, the respondent no.3 postpone the election.

4.4 Mr.Joshi has also submitted that the colleges of the Trust have been affiliated with Hemchandra University. He submitted that the Trust has collected fees and has not deposited the same as per the directions of the University. He has submitted that administration of the Trust is not being properly run. He submitted that even during the pendency of Misc. Application before Charity Commissioner and present petitions, the respondent moved proposed change report in the year 2019, which came to be rejected by the Assistant Charity Commissioner. According to him, order of the Assistant Charity Commissioner rejecting change report was proper. He also submitted that in appeal filed against

the order of Assistant Charity Commissioner rejecting change report, Charity Commissioner has passed an order in favour of the respondent, which order has been stayed by Charity Commissioner himself for one month.

4.5 Mr.Joshi has also submitted that the Charity Commissioner ought not to have passed an order in regard to change report when present matters are pending before this Court. He also submitted that, during this period, various other institutions have held meetings and the respondent herein has with mala fide intention postponed the same, which was earlier declared.

4.6 While referring to the impugned orders, Mr.Joshi has vehemently submitted that the Joint Charity Commissioner has committed serious error of facts and law in not appointing administrator of the Trust as the functioning of the Trust is not in consonance with original constitution of the Trust and in accordance with the provisions of the Gujarat Public Trusts Act. He has submitted that prayer of the petitioner is to appoint Administrator of the Trust and to set aside impugned orders of the Joint Charity Commissioner and to hold election within two months from the date of appointment of Administrator as per original constitution, ignoring latest order of the Charity Commissioner accepting change report. He also submitted that the material placed along with change report is only muster roll, showing names of the persons present but in reality no such meeting was held. While referring to various affidavits filed on behalf of the respondent, election programme and public notices, he has submitted that since tenure of the executive committee having come to an end in the year 2019 itself, there was no need of any permission being sought for from Government office for holding the meeting.

4.7 It is further submitted by Mr.Joshi that Charity Commissioner has lost sight of the fact that change report has to be submitted within 90 days of any change made in the constitution of the Trust. He has submitted that, in present case, change report has been submitted before the authority on 30.12.2019, whereas proposed change in the Constitution has been made on 20.10.2018 and thus, there is clear breach of the provisions of Section 22 of the Gujarat Public Trusts Act and change report ought not to have been accepted by learned Charity Commissioner after expiry of 90 days, without condoning delay. Mr.Joshi has also read order of learned Charity Commissioner allowing the appeal of the Trust for change report and has assailed it on the ground that when the matter is sub-judice before this Court with regard to appointment of Administrator and holding of election as per earlier constitution, learned Charity Commissioner ought not to have passed such order. According to him, since Charity Commissioner himself has stayed his order for one month, at present old constitution is in existence and, therefore, considering conduct of the respondent, in not holding meeting and disobeying direction of the University and for smooth functioning of administration of the Trust, Administrator needs to be appointed and election needs to be held under the control and supervision of such Administrator. He has also submitted that there is no Rule in Constitution as to appointment of Core

Committee and, therefore, appointment of Core Committee by the Executive Committee itself is de-hors original constitution of the Trust and, therefore, whatever action initiated and taken by the Core Committee needs to be set aside. While referring to original Constitution, he has submitted that provision made therein is regarding Executive Committee and regarding how many members may be there but there is no provision of appointment of the Core Committee. On all these grounds, he has prayed to set aside impugned orders of Joint Charity Commissioner and to allow both the petitions in toto.

5. Per contra, learned advocate Mr.Bhatt for respondent no.2 has submitted that new constitution was accepted in general meeting held on 28.10.2018, wherein the petitioners were also present. He submitted that new constitution was made as there was lacunae in old constitution of the Trust and there was no specific rule regarding election and qualification of the members. He has submitted that new constitution is not contrary to any provisions of any law. He has submitted that for the first time, rules relating to elections have been framed and accepted by the Trust by its Executive Committee and ultimately by general board meeting. He has submitted that, by new constitution, tenure of the Committee has been extended to five years with an intention to reduce expenses. He has submitted that earlier tenure of the Committee was three years and it is now increased to five years and, this increase would not affect any rights of the petitioners as the tenure will automatically stand extended.

5.1 Mr.Bhatt has also submitted that, even as per paragraph 5 of the new constitution, provision has been made to increase capital of the Trust. He has submitted that since there were no election rules codified in earlier constitution, no elections were held for number of years and, ultimately, after getting order from the Charity Commissioner, election was conducted as per the direction of this Court under the supervision of the District Judge, Sabarkantha at Himmatnagar. He has submitted that even as per contentions made in the petitions, meeting of the Executive Committee was held, wherein Core Committee was appointed. According to him, the petitioners are blowing hot and cold at the same time, as at one hand they are challenging appointments of the Core Committee and actions taken by it and on the other hand, they are submitting that no meeting of the Executive Committee was ever held, after elections being conducted under supervision of the District Judge. He has also submitted that the petitioners were present when amended constitution was approved.

5.2 Mr.Bhatt has further submitted that impugned order of learned Joint Charity Commissioner rejecting prayer for appointment of Administrator is in consonance with provisions of the Gujarat Public Trusts Act and observations of the Joint Charity Commissioner are based upon material placed on record and they cannot be termed as either arbitrary or capricious. He has also submitted that learned Joint Charity Commissioner has properly considered the fact that proper parties have not been joined before it and in absence of necessary parties, which include

the Trust and members of the Executive Committee, observation that no judicial order could be passed is proper and it does not require any interference by this Court. According to him, in the present case, the Trust is not joined as party and the Trust is necessary party to the proceedings. He has submitted that even no designations of other respondents have been mentioned and the members of the Executive Committee have also not been joined as party.

5.3 Mr.Bhatt has also submitted that due to Corona Pandemic, meeting could not be held without sanction of the concerned authority. So far as reliance placed on programmes of other institutions by learned advocate Mr.Joshi is concerned, Mr.Bhatt has submitted that it is a question of fact as to whether said elections have been held or not. While referring to the documentary evidence, whereby the Government has issued various instructions in respect of holding of meetings due to Corona pandemic is concerned, Mr.Bhatt has submitted that due to this situation the meetings could not be held.

5.4 He has submitted that present petitions are not under Article 226 of the Constitution and the Charity Commissioner has already sanctioned change report, whereby the tenure of the Committees has been extended from three years to five years and necessary Rules have been framed for carrying out the election process. According to Mr.Bhatt, now election needs to be held as per new constitution.

5.5 He has submitted that learned Joint Charity Commissioner has properly appreciated the facts and circumstances of the case and has rightly not appointed any Administrator and has passed the impugned order in consonance with the provisions of Section 41-A of the Gujarat Public Trusts Act. Mr.Bhatt has also submitted that since it is in the jurisdiction of the competent authority under the Gujarat Public Trusts Act, as to what type of direction to be issued against concerned Trust and when impugned orders of the Joint Charity Commissioner are in consonance with such legal provision, this Court may not interfere with the discretion exercised by the Joint Charity Commissioner. While relying upon the decision of Bombay High Court in Appeal from Order No.1260 of 1995 dated 1.10.2001 in the case of Chembur Trombay Education Society and Others v. D.K. Marathe and Others, [MANU/MH/0863/2001] he has submitted that present petitions may be dismissed.

6. Learned AGP, Mr.Jadeja for the respondent-State has submitted that during the pendency of these petitions, change report has now been accepted by the Charity Commissioner and, therefore, whatever action needs to be taken by the Trust is to be carried out in consonance with new constitution. He has submitted that simply because the Charity Commissioner has stayed its own order for one month cannot be a ground to accept the submission of the petitioners for appointment of Administrator. He has submitted that learned Joint Charity Commissioner while passing the impugned orders has properly considered the facts of the case and has properly passed the impugned orders, which does not require interference by this Court. In view of these submissions, he has prayed

to dismiss both these petitions.

7. In rejoinder, Mr.Premal Joshi, learned advocate for the petitioners has submitted that before the Charity Commissioner, the respondent has been referred to as the President, however, in the order there is no mention of such designation of President. He has submitted that considering the facts of the case and overall conduct of the private respondent, there is need of appointment of Administrator of the Trust, under whose supervision and control the meeting and election needs to be carried out and that too not in consonance with the new constitution but as per old constitution. He has submitted that decision cited by learned advocate Mr.Bhatt is factually different and it is not applicable to the facts of present case. He, therefore, prayed to allow both these petitions by setting aside the impugned orders.

8. Having considered the submissions made by both the sides coupled with the material placed on record, it appears that there is no dispute regarding fact that the Trust is a public Trust duly registered under the provisions of the Gujarat Public Trusts Act. It is an admitted fact that earlier as no election was held one Mr.Kanubhai Patel approached the Charity Commissioner in 2015 for appointment of Administrator and, for holding election, whereupon the Administrator was appointed and election was ordered to be held under its supervision. It also appears that against the order of such election, matter was filed before this Court and this Court has passed an order to hold the election under the supervision of District Judge, Sabarkantha at Himmatnagar, in Special Civil Application No.11302 of 2017 dated 23.6.2017, copy of which has been placed in Special Civil Application No.9851 of 2021.

9. It is also admitted fact that the election was accordingly held and Executive Committee came to be appointed. Now, one of the contentions raised by the petitioners is regarding original constitution of the Trust, without any amendment, upon which the petitioners are relying. At this juncture, it is pertinent to note that this Court, in the aforesaid Special Civil Application has specifically observed in paragraphs 3 and 4 to the following effect:-

"[3] Learned advocate Mr. Premal R. Joshi submitted that the change report of the trust was submitted, way back in the year 1975 in which the name of the trust was also proposed to be changed. He submitted that only the name being C.D. Patel Mahavidya Mandal was changed from Sabarkantha Mahavidya Mandal and was accepted by the Charity Commissioner and rest part i.e. constitution was not approved. This fact would have bearing on the controversy involved in the petition, wherein the dispute as regards the constitution of the trust has also been raised. Thus, without addressing the said fact, it would not be possible for this Court to pass for order proposed on 15.06.2017. Thus, respondent No.1 may file affidavit in support of necessary facts. At this stage, learned advocate Mr. Joshi upon instructions withdrew the submission that only name of the trust was approved and constitution was not approved in absence of documentary evidence with him. Under further instructions, learned advocate Mr. Joshi also submitted

that the private respondent will have no objection if the election of the office bearers of the trust is held in accordance with the new constitution; copy which is produced at page 84 of this petition. He also submitted under the instructions that all the members, who have enrolled in accordance with the said last constitution may participate in such election. The grievance, however, is that the persons, who had applied for membership and paid donations before the date specified by the Administrator have been excluded from the members list. He also submitted under the instructions that the election of the working committee has already been held and there is no necessity of holding fresh election of the said committee.

[4] In view of the above submissions, there dIn view of the above submissions, there does not remain any substantial dispute between the parties insofar as the election of office bearers of trust is concerned and the grievance, if any, can be resolved by the following directions:-

The learned District Judge, Sabarkantha is appointed as the authority to supervise the election of the office bearers of the trust. He would be at the liberty to take assistance from the office of the Charity Commissioner.

The learned District Judge, will verify the list of members of the trust, as also necessary record to find out as to whether any person, who might have donated specified amount under the constitution for enrollment as a member on or before the date earlier specified by the Administrator, is left out or not from being enrolled as such in the relevant category specified in the Constitution. If the learned District Judge finds that such donees have been left out, he will include the same in the list of the members. It is clarified that under no circumstances, the learned District Judge will exclude any name from the members already enrolled.

The learned District Judge will thereafter declare the election programme for the office bearers of the trust which should be held through secret ballot.

The above exercise shall be initiated within a period of four weeks from the date of receipt of the writ of this Court."

10. Thus, the factum of amendment of original constitution was accepted in the year 2017 and, on that basis, the election of the Trust was carried out under the supervision of the District Judge, Sabarkantha.

11. It is also pertinent to note that the petitioner is blowing hot and cold, because as per the averments in the petition before the Joint Charity Commissioner in Judicial Misc. Application, after the election of 2017 meeting of the Executive Committee was held and in the said committee meeting, Core Committee was appointed. The petitioner has also challenged action of the Core Committee. At the same time, it is contended by the petitioner that the private respondent did not hold meeting of Executive Committee. Thus, if really there was no meeting of Executive Committee, then how Core Committee came to be

appointed. When the appointment of the Core Committee and action of the Core Committee have been challenged by the petitioner, it indirectly suggests that there was meeting of the Executive Committee after election of 2017. Further, as observed by learned Joint Charity Commissioner in his order that as per the constitution of the Trust, there was a specific provision of appointment of special/sub-committee for helping the Trust in carrying out the functions of supervision of colleges. Therefore, when there is a provision made in the constitution regarding appointment of special committee, if the Executive Committee of the Trust has appointed any committee, can it be called Core Committee or special committee, it will be within the power of the Trust as per the constitution. Thus, observation of the Joint Charity Commissioner is in consonance with the terms of constitution of the Trust. The observation of learned Joint Charity Commissioner in this regard cannot be said to be arbitrary or capricious.

12. It is pertinent to note that the petitioners have approached the competent authority under Section 41-A of the Gujarat Public Trusts Act for appointment of Administrator on the basis that no meeting of Executive Committee was held during the tenure of three years as per the original constitution. As per the contention of the petitioners since no election has been carried out, there is a need for appointment of Administrator. At this juncture, it is pertinent to refer to provisions of Section 41-A of the Gujarat Public Trusts Act, which reads as under:-

"41A. Power to Charity Commissioner to issue directions to trustees and other persons. - (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 such 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.

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

(1) ."

13. This Section empowers the Charity Commissioner to issue certain directions to the trustees and other persons to ensure that such Trust is properly administered and income thereof is properly accounted for and duly appropriated and applied to the objects and for the purpose of the Trust. Thus, to exercise power under this section, it must be shown that the Trust is not properly administered and income and property thereof is not properly accounted for and not duly appropriated and applied to the objects and purpose of the Trust. No iota of evidence has been produced by the petitioners to show that the Trust is not properly administered and income of the Trust and property of the Trust is not properly accounted for. It is not the case of the petitioners that income of the Trust is not applied to the objects and purposes of the Trust. It is pertinent to note that learned Joint Charity Commissioner has considered this very aspect of provisions of Section 41-A in declining the relief of appointment of Administrator

to the Trust. Merely, because election is not held within prescribed period or there is some irregularity in carrying out the process of election of a committee or holding of any meeting of committee or general board meeting, it does not ipso facto reflect that the Trust is not properly administered. There must be some iota of evidence to substantiate the stand that there is need of appointment of Administrator.

14. So far as Special Civil Application No.10142 of 2021 is concerned, Joint Charity Commissioner has rejected the application, not only on the technical ground of non-joining of other members of the Executive Committee but also on facts declined the prayer of appointment of Administrator. It is pertinent to note that action of appointment of Administrator to run and carry out purposes of the Trust would definitely affect reputation and rights of the person, who is a member of the executive committee or any other committee as per the constitution of the Trust. Therefore, before passing order of appointment of Administrator, it is necessary to hear all those persons so that they can put their submissions before the concerned authority. Now, admittedly in the present case, persons who have been selected as Members of the Executive Committee or Core Committee have not been joined as party in judicial application. Under these circumstances, the observation of learned Joint Charity Commissioner that in absence of such persons, no order of appointment of Administrator be passed is in consonance with well settled principles of natural justice. Under these circumstances, the impugned order passed by learned Joint Charity Commissioner in Judicial Misc. Application No.13 of 2018 cannot be faulted with.

15. Now, so far as impugned order passed by learned Joint Charity Commissioner in Judicial Misc. Application No.11 of 2019 is concerned, learned Joint Charity Commissioner has partly allowed the same and directed holding of general board meeting in consonance with entry made in PTR register. Learned Joint Charity Commissioner has issued the order considering the fact that at the relevant point of time, there were various guidelines issued by the State Government for holding of meetings in view of Corona pandemic. Learned Joint Charity Commissioner has, of course, declined to grant prayer of appointment of Administrator as observed in earlier part of this order, the observation regarding non-appointment of Administrator by learned Joint Charity Commissioner is in consonance with well settled principles of law. Further, as there was Covid pandemic, issuance of direction and fulfillment of such direction of the Government by holding general board meeting is also in consonance with prevailing circumstances. Thus, the prayer as granted by learned Joint Charity Commissioner directing respondent for holding meeting of general board as per the constitution of the Trust and the entry in PTR register is proper one and it does not require interference. However, it is pertinent to note that during the pendency of these petitions, events have changed to the effect that on behalf of the Trust change report has been submitted to the concerned authority under the Gujarat Public Trusts Act in the year 2019 regarding change report of 2018. Initially, the same came to be rejected by concerned Assistant Charity

Commissioner. Against the order of the Assistant Charity Commissioner, appeal came to be preferred before learned Charity Commissioner, who has ultimately passed the order setting aside order of Assistant Charity Commissioner and has uphold the change report and directed to accept the same. Of course, learned Joint Charity Commissioner stayed his own order for one month. Order of the Charity Commissioner has been placed on record and both the sides have relied upon it. It is pertinent to note that the said order is not the subject matter of these petitions and, therefore, it is not proper to make any observations regarding legality or otherwise of said order. It is for the person concerned, who has grievance against said order passed in Appeal No.38 of 2021 to challenge the same before appropriate forum by taking recourse in accordance with law. If any observation in respect to the order of learned Joint Charity Commissioner passed in aforesaid appeal is made in this judgment, it may adversely affect the parties in such proceedings. However, suffice it to mention that learned Charity Commissioner has not touched the fact of both these petitions in said order. He has restrained himself from making any observations with regard to both these petitions. However, it needs to be observed that merely because petition is pending before this Court, does not mean that other provisions of the substantive law i.e. Gujarat Public Trusts Act have been indirectly stayed. Therefore, as there was no stay operating against learned Joint Charity Commissioner in respect to the change report, if the Charity Commissioner exercises its statutory power under substantive law that fact itself cannot be a ground for appointment of Administrator.

16. At this juncture, it is pertinent to note that observations of Bombay High Court in the case of Chembur Trombay Education Society and Others (supra), it is observed as under:-

"11. The law with regard to the efficacy of any change brought about and its application is no more res integra. The Apex Court in decision reported in A.I.R. 1993 S.C.W. 3006; Managing Committee, Khalsa Middle School and another v. Smt. Mohinder Kaur and another, has considered this aspect of the matter. The Apex Court was called upon to examine similar provisions of the Societies Registration Act, 1860. The scheme of section 12-A of that Act is more or less same as section 22 of the Bombay Public Trusts Act. The Apex Court compared the said provision with the provisions of sections 18 and 19 of the Companies Act which mandate that the alteration or amendment to the Memorandum of Association of the Company takes effect from the date of its registration only. In that context the Apex Court in para 11 of the said judgment has observed that in absence of any requirement in the Act that the alteration in the Rules and Regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for such an alteration to come into effect. A priori, any amendment or change brought about in accordance with law would come into effect from the date of resolution of the Society to bring about such a change. This proposition is fortified from the plain language of section 22 of the Bombay Public Trusts Act. The said section requires

that where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, report such change to the Deputy or Assistant Charity Commissioner, as the case may be. The dictionary meaning of expression "occur" as observed in the Black's Law Dictionary is:

"To happen; to meet one's eyes; to be found or met with; to present itself; to appear; hence, to befall in due course; to take place; to arise."

Giving the natural meaning to this word in section 22 of the Act, coupled with the principle enunciated by the Apex Court that when the Act does not require that registration of any change is a condition precedent to come into effect, I have no hesitation in taking the view that the amendment to the constitution as well as subsequent elections of the President and members of the Governing Council, therefore, came into effect from the date of the respective resolutions of the general body. The enquiry postulated under section 22 is only to ascertain the factum as to whether the change has occurred or not. In the event, the competent authority is satisfied that the change has not occurred in accordance with law, only then that change will have to be undone and status quo ante will have to be restored. A fortiori, resolution of the general body of the Society is sufficient to ignore the change of amendment in the constitution as well as of electing new general body for administering the affairs of the Society.

....."

17. Now, considering facts and circumstances of both these petitions, it clearly appears that impugned orders of learned Joint Charity Commissioner are sustainable in the eyes of law. Therefore, there is no need to interfere with impugned orders. Accordingly, both these petitions are liable to be dismissed.

18. In view of above discussion, both these petitions are dismissed. No order as to costs.