

**(2014) 02 BOM CK 0041**

**In the Bombay High Court**

**Case No : Second Appeal No's. 76 and 77 of 2011**

Ravindra Nanasaheb Deshmukh and Chandrakant Prataprao Deshmukh

APPELLANT

Vs

Shankarrao Dashrath Ingle, Chandansa Punjasa Rothe, Bhagwandas Nandlal Heda and Ramdhan Amarsingh Naik

RESPONDENT

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**Date of Decision : 12-02-2014**

**Acts Referred:**

Bombay Public Trusts Act, 1950 — Section 22 41(a) 72 72(4)  
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31 100

**Citation :** (2014) 5 ABR 426 : (2014) 4 ALLMR 605 : (2014) 4 BomCR 130 : (2014) 6 MhLj 208

**Hon'ble Judges :** S.B. Shukre, J

**Bench :** Single Bench

**Advocate :** R.L. Khapre, for the Appellant; N.W. Sambre, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

S.B. Shukre, J.—Both these appeals are directed against common judgment and order passed on 16/10/2010 by District Judge, Washim in Miscellaneous Judicial Case Nos. 61 and 62 of 2008. The controversy involved in these appeals has at its root a dispute that is raging between the appellants and the respondents in respect of the control over the management of the affairs of "Shree Ambika Education Society, Gawha, District Manora, District Washim" (hereinafter called the "Society" for short). The said Society is registered under the provisions of Bombay Public Trust Act, 1950 (hereinafter referred to as, "the BPT Act", for short) bearing registration No. F-153/Akola dated 07/7/1964. The affairs of the Society are carried on in accordance with its written constitution containing various rules and regulations to govern all aspects relating to management and execution of the Society.

2. It is the case of the appellants that prior to 12/7/1996, appellant No. 2 was the member of the executive committee of the Society and from 12/7/1996, he

has been elected as President of the Society. The respondents are the members of the executive committee. The appellants submitted that process for election to the post of the President was initiated because of the death of its President-Zingraji Harbaji Ingle on 21/4/1996. A notice for convening the meeting of the managing committee of the Society on 12/7/1996 for electing the President of the said Society was issued by appellant No. 1 on 04/7/1996. By this notice, it was also informed that meeting scheduled on 07/7/1996 had been cancelled due to technical reasons. The meeting was accordingly held and appellant No. 2 was elected as President of the Society and thereafter an application u/s 22 of the BPT Act was filed with the Assistant Charity Commissioner, Akola for effecting change. The application was accompanied by a change report and relevant documents. It was registered as Inquiry No. 549 of 1996.

3. In this inquiry, the respondents submitted their objections. The main thrust of the objections was that no notice as alleged by the appellants was issued or received by the respondents and other members of the managing committee.

4. Just before issuance of notice by appellant No. 1 on 04/7/1996, one notice dated 28/6/1996 convening meeting of the managing committee on 07/7/1996 at 2.00 p.m. for electing the President was also issued by R.S. Patil, Vice President of the Society. According to the respondents, this meeting was attended by nine members of the managing committee and respondent No. 1 was elected as President of the Society in place of deceased Zingraji Harbaji Ingle. The respondents also submitted an application u/s 22 of the BPT Act to the Assistant Charity Commissioner, Akola together with change report and necessary documents for effecting the change. It was registered as Inquiry No. 550 of 1996. In this inquiry, objection was filed by the appellants.

5. Common evidence was recorded in both the said inquiries by the Assistant Charity Commission, Akola and by his common order passed on 24/7/2007, the change report in Inquiry No. 549 of 1996 came to be rejected and change report in Inquiry No. 550 of 1996 came to be accepted. The appellants challenged the same in Appeal Nos. 32 of 2007 and 31 of 2007, respectively before the Joint Charity Commissioner, Amravati. The Joint Charity Commissioner, Amravati allowed these appeals by common judgment and order passed on 20/10/2008 thereby accepting the change report in Inquiry No. 549 of 1996 and rejecting the change report in Inquiry No. 550 of 1996.

6. After such reversal of decision of the Assistant Charity Commissioner by the Joint Charity Commissioner, there was another round of litigation. This time the respondents filed the appeals (applications) u/s 72 of the BPT Act against the said common judgment and order passed on 20/10/2008 by the Joint Charity Commissioner before the Court of District Judge, Washim. They were registered as Miscellaneous Judicial Case Nos. 61 and 62 of 2008. The District Judge, Washim, after hearing both the sides, set aside the common judgment and order passed by the Joint Charity Commissioner on 20/10/2008 and restored the common order passed by the Assistant Charity Commissioner on 24/7/2007 in

Inquiry Nos. 549 and 550 of 1996. The appellants felt aggrieved by the same and, therefore, they have preferred these second appeals.

7. This Court, after hearing the parties, admitted these appeals by passing a common order on 12/8/2011 on four substantial questions of law. These substantial questions of law, which are common to both the appeals and which arise for my consideration, are as follows.:

(i) Whether the District Judge-1, Washim committed error of law in reading clause (4) relating to convening of meeting of the Society and in particular as to the power of the Director of the Society to call the meeting holding that such a power was with the Vice President because such a practice of issuing notice by the Vice President was existing without even specifying as to the period for which such a practice was adopted?

(ii) Whether the District Judge-1 Washim committed an error in rejecting the evidence of P.W. 2 Arun without any reason which was accepted by the Joint Charity Commissioner, upon analysis thereof?

(iii) Whether the learned District Judge-1 committed an error in not finding that the bye-laws of the Society do not at all empower the Vice President of the Trust to call any meeting of the Society or for election of the President or any other office bearer and particularly when admittedly there was no Secretary functioning, but there was a power with the Director to call at least a special meeting?

(iv) Whether the meeting for holding election for the post of President could be validly convened by the Vice President; and if it was being invalidly convened, whether action of the Director to cancel notice of such meeting could be said to be illegal, as held by the District Judge-1?

8. In these appeals, two change reports filed in Inquiry Nos. 549 and 550 of 1996 have been disputed by the rival parties. The change report in Inquiry No. 549 of 1996 arises out of the election of the President of the Society in a meeting held on 12/7/1996 and the change report in Inquiry No. 550 of 1996 arises out of the election of the President in a meeting held on 07/7/1996. The meeting of 12/7/1996 was convened by appellant No. 1 upon notice issued by him on 04/7/1996 in his capacity as a Director whereas, the meeting of 07/7/1996 was convened upon a notice issued by the Vice President of the Society, R.S. Patil, on 28/6/1996. Both these meetings have been termed as sham, bogus and illegal by the rival parties and even the notices dated 04/7/1996 and 28/6/1996 have been stated by the rival parties to be without any authority on the part of the Director and Vice President respectively. The controversy involved in both these appeals thus revolves around the question as to who has the power to issue notices to convene a meeting of the managing committee, in the absence of President of the Society.

9. Shri Khapre, learned Counsel for the appellants has submitted that in the

absence of the President, the power to issue notice calling for a meeting of the managing committee of the Society vests in the Director of the Society and not its Vice President. In support, he has taken me through all the rules and regulations of the Society making up its constitution and forming part of the appeal paper book from page Nos. 142 to 147. According to Shri Khapre, learned Counsel, Clauses-4, 6, 13, 15 and 16 throw sufficient light upon the powers of important functionaries of the managing committee of the Society such as; President, Vice President and Director and they indicate that even though the power to call meeting of the managing committee has not been specifically conferred upon the Director, same can be inferred upon overall reading of these provisions, when the post of the President is vacant.

10. On the other hand, Shri Sambre, learned Counsel for the respondents has submitted that the power to issue notice for calling meeting of the managing committee for election of the President has to be read into the office of the Vice President as the Vice President has been empowered to preside over the meetings of the managing committee in the absence of the President and the position of the Director has been relegated below that of the Vice President. He submits that the Director is empowered to preside over the meeting of the managing committee in absence of the President and Vice President. According to him, this power as contained in Clause-15 of the rules and regulations of the Society is wide enough to take within its fold the powers of the President, when there is no President of the Society. He further submits that if the other provisions of the rules and regulations of the Society are perused, the nature of the power of the Vice President, as explained by him, would become more clear. He points out from Clause-13 that the President has been made in-charge of the office of the Society and is entitled to carry on correspondence on behalf of the Society and when the Vice President has to preside over the meetings in the absence of the President, he would have all the powers of the President including the power to make correspondence. He submitted that the power to make correspondence is inclusive of the power to issue letters, notices, replies and so on and as such, according to him, the order passed by the Assistant Charity Commissioner in this regard, which has been confirmed by the District Judge in MJC Nos. 61 and 62 of 2008, is legal and proper requiring no interference with it.

11. In order to consider as to with whom, whether the Director or Vice President, the power to issue notice to convene the meeting for election of the President, in the absence of the President, lies, it would be necessary to take into consideration in their entirety the rules and regulations of the Society. In these rules and regulations, the Trust has been referred to as the Society and it has been established with an object of providing of high school educational facilities to the boys and girls residing in the surrounding villages and to promote educational and cultural activities among them. The constitution of the Society, as seen from the introductory part of the rules and regulations, has been prepared with the help of S/Shri Nanasaheb Nilkanth Deshmukh and G.U. Mahakal. No restrictions have been placed upon the total number of members of

the Society. The Society has a managing body consisting of sixteen members and only certain categories of persons can be the members of the managing body and they are-Patron, Vice-Patron, Sympathizers and Superior donors. The managing body consists of President, Vice President, Director, Secretary, Treasurer and eleven members. The President, Vice President, Director, Treasurer and the Secretary are elected from among the members of the managing body. The Director and Secretary have been entrusted with duty of managing the affairs of the Society under the powers of the managing body. The tenure of the managing body consisting of President, Vice President, Director, Secretary, treasurer and eleven members is of only three years and after the period of three years, a new managing body is required to be elected as per the rules and regulations of the Society. There is also a general meeting of the Society, which is to be held once in a year. The Secretary has the power to call special meetings of the Society whenever it is necessary to do so. But, it has to be done with the previous permission of the Director or the President of the Society. While the matters, such as giving of sanction to the budget prepared by the managing body and formulation of policy have to be decided in the general meetings, the managing body looks after the whole management of the educational institutions of the Society and day to day affairs of the administration of the Society. The President has been made in-charge of the office and is under a duty to carry on correspondence on behalf of the Society. The Director is the custodian of all the documents of the Society and he is empowered to deal with the Court or legal matters. The President presides over the meetings of the managing body of the Society and in his absence, the Vice President presides over those meetings. In the absence of the President and Vice President, it is the Director, who presides over the meetings.

12. From these provisions, the first impression that is created is that after the President, it is the Director, who has been assigned more active role and powers to look after the management and day to day administration of the Society. Together with the Director, the Secretary has also been empowered under Clause-6(b) to look after the management of the Society. It is provided that the Director and the Secretary shall look after the management of the institutions under the powers of the managing body. In Clause-14, the Director has been made custodian of all the documents of the Society and has also been given power to deal with any Court or legal matters. Under Clause-4(b), although the Secretary has been conferred with the power to call special meeting of the Society when necessary, the power is subject to grant of prior permission by the Director or the President of the Society. In this provision, no power of grant of prior permission has been reserved with the Vice President and the power of the Secretary to call the special meeting has been subjected to the superior power of the Director or the President. When the provision lays down that the Secretary can call special meeting only with the previous permission of the Director or the President, it indicates that the power to grant permission is superior to the power of the Secretary to call special meeting and as rightly submitted by learned

Counsel for the appellants, whenever there resides a superior power in a person, it would include secondary or inferior power as well and this power would be the power to call special general meeting by the Director. As stated earlier, this superior power has not been given by the constitution of the Society to the Vice President. There is an express provision made about such power in the constitution and in the absence of any provision, expressly conferring similar power upon the Vice President, such power cannot be read into the office of the Vice President and, therefore, the argument of the learned Counsel for the respondents made in this regard cannot be accepted.

13. I have pointed out that under Clause-6(b), the Director and the Secretary have been entrusted with the job of looking after all the management of the institutions of the Society under the powers of the managing body. In addition to this function, the Director has also been made custodian of the record of the Society and in-charge of the Court and legal matters (Clause-14). On the other hand, there is only one provision in the entire rules and regulations of the Society which assigns some role in the functioning of the Society to the Vice President and this provision is contained in Clause-15. It states that in the absence of the President, the Vice President presides over all the meetings of the managing body of the Society. But, here again, the Director has been given a role to preside over the meetings of the managing body, when both President and Vice President are absent. Except for the provision of Clause-15, there is no other provision in the rules and regulations of the Society expressly conferring any other power upon the Vice President or assigning any other function to the Vice President or reserving any residuary power for the Vice President. Therefore, as I have already said, overall reading of all these provisions only indicates that the makers of the constitution of the Society had intended the Director of the Society to perform more active role in managing the affairs of the Society and exercise the powers of the President of the Society in the matters where they have been expressly or impliedly conferred upon him. These provisions further indicate that the makers of the constitution had intended the Vice President of the Society to perform only that specific task, which has been assigned to him expressly under Clause-15 of the rules and regulations of the Society. This task is of presiding over the meetings of the managing body of the Society in the absence of the President.

14. When a person is entrusted with the function of presiding over a meeting, it is implicit in the entrustment that the function or role assigned is more of a judge or umpire than an administrator. The expression "preside" has been defined in Black's Law Dictionary-Ninth Edition at page 1304 as; "1. To occupy the place of authority, esp. as a judge during a hearing or trial." The word "preside" has been defined as "1. To sit in authority, as over a meeting; be in-charge of an assembly, government, etc.; act as chairman or preside, 2. To exercise direction or control..." in The New International Webster's Comprehensive Dictionary of the English Language-Deluxe Encyclopedic Edition (2004 Edn.) page 997. These meanings would only show that power to preside over the meetings is akin to a

power exercised by an umpire or a judge or some neutral authority and is distinguishable from administrative power which includes power to issue notice to convene a meeting. Since the Vice President has not been conferred with any other administrative powers and has been endowed with only a power to preside over a meeting, which is entirely different from an administrative power of issuing notice to convene a meeting, power to issue notice to convene a meeting cannot be impliedly said to be given to the Vice President. On the other hand, since the Director has been given more administrative powers and has also been given an authority to grant or refuse permission to the Secretary to convene general meeting, the Director can be impliedly said to be enjoying the power to issue notice to convene a meeting, as the superior power would also include the lesser power.

15. Such interpretation of the presence of the power in the Director to issue notice for general meeting is also consistent with the intention of the makers of the constitution of the Society as ascertained from various roles assigned to the Director and just one function having been given to the Vice President in the whole scheme of the constitution. While under the scheme of the constitution, the Vice President has been put on the pedestal of a neutral authority, only, the Director has been made first the administrator and then a neutral authority in case of need. This was all about the power of the Director to issue notice to call general meetings and absence of the power of the Vice President to issue the same. So far as issuance of notice convening meeting of managing body is concerned, there is absolutely no provision made in that regard in the entire constitution of the Society. In the absence of any express provision in this regard, what has been interpreted for convening of the general meeting, would also have to be applied to convene the meeting of the managing body of the Society. With more administrative powers having been vested in the Director and also presence of power in the Director to issue notice for convening special general meeting, and absence of any administrative power in the Vice President together would lead to only an interference that in the absence of the President, it would be the Director, who would be the right person to have authority to issue notice calling for meeting of the managing body of the Society. Such power, upon overall reading of the rules and regulations of the constitution of the Society, cannot be inferred to be present in the Vice President of the Society. He has been assigned the role of a neutral authority i.e. to preside over the meetings of the managing body of the Society in the absence of the President and nothing more. Therefore, I find that the Assistant Charity Commissioner as well as District Judge, Washim have committed serious error of law in reading in the office of the Vice President presence of power to issue notice to convene the meeting of the managing body of the Society and absence of that power in the office of the Director.

16. Learned Counsel for the respondents has submitted that R.S. Patil was the Vice President of the Society in the year 1990 when previous President, late Zingaraji Harbaji Ingle was elected. The notice convening the meeting for

election of the President in the year 1990 was issued by the Vice President and there is no dispute about this fact and this would show that there was a practice that the Vice President used to issue notices to convene the meetings of the managing body of the Society, so submits learned Counsel for the respondents. I am not inclined to accept this argument as barring this one instance, there have been no examples brought on record showing that the Society was following the practice of issuance of notices for calling such meetings by the Vice President since certain number of years. The evidence on record shows that the instance of year 1990 was the first and the instance of 28/6/1996 was the second and last when notice convening meeting of managing body of the Society on 07/7/1996 was issued by the Vice President and the authority for issuance of the notice of the second instance has been seriously challenged in these appeals. So, there is only one undisputed instance when such notice was issued by the Vice President and it would not result into an accepted practice or convention or custom of the Society legalising the act of the Vice President in issuing notice calling for meeting of the managing body of the Society owing to objection raised later on.

17. Learned Counsel for the respondents has submitted that there have been admissions given by appellant No. 1 that he could not submit any record pointing out that he had issued notices for calling the meetings in the past, that as per the constitution the Director was empowered only to keep the record and deal with the legal matters and that there was no mention in the constitution that the Director shall issue notices for calling meetings, which admissions would show that appellant No. 1 was aware of his powers and powers of Vice President under the constitution and, therefore, it cannot be said that the notice issued by the appellant on 04/7/1996 was in accordance with the provisions of the constitution of the Society. He further submits that if the President can correspond on behalf of the Society, it cannot be understood why the Vice President can also not make any correspondence and in any case, the power to make correspondence cannot be stretched to empower the Director to make the correspondence. He further submits that since the Director had no power to issue any notice, he also does not have any power to cancel the meeting scheduled on 07/7/1996 as per the notice issued on 28/6/1996 by the Vice President because power to undo would be there only when there is power to do something.

18. Learned Counsel for the appellants does not agree. He submits that whatever admissions have been given by appellant No. 1, they would have no impact on the interpretation of the provisions of constitution that is to be made by a Court of law. He further submits that the Vice President has only been conferred with a very limited power in the entire constitution and, therefore, the Vice President cannot be understood to also have the power of making correspondence on behalf of the Society. He further submits, relying upon the observations of Hon'ble Supreme Court in the case of Jayantbhai Manubhai Patel and Others Vs. Arun Subodhbhai Mehta and Others, , that power to convene meetings implies power to cancel or postpone the meetings. He submits that the provisions of the constitution would show that the Director had the power to convene the

meetings and, therefore, had also the power to cancel the meetings.

19. It is true that the admissions as pointed out by learned Counsel for the respondents have been given by appellant No. 1. But, as rightly submitted by learned Counsel for the appellants, those admissions would not be relevant for the purpose of interpreting the provisions of the constitution of the Society as it is something which has to be done by the Courts of Law. As regards the argument that if the President could correspond, why not the Vice President as well, I would only say that since the makers of the constitution have contemplated only a limited role to be performed by the Vice President, the power to make correspondence cannot be said to be impliedly present in the office of the Vice President of the Society. Even, the limited role that has been assigned to the Vice President is in the nature of an umpire or a neutral authority and not as an administrator, and this would rule out any power to him to issue notice by implication.

20. I have already found that this power can be read into the office of the Director and if that is so, it would also include the power to cancel the meeting. In the instant case, by a notice issued on 04/7/1996, the appellant No. 1, being the Director of the Society, had not only convened the meeting of the managing body of the Society on 12/7/1996 for election of the President but also simultaneously cancelled the meeting convened on 07/7/1996 by a notice issued on 28/6/1996 by the Vice President of the Society. Such an act of cancellation of the meeting dated 07/7/1996, in view of the observations of the Hon'ble Supreme Court in the case of Jayantbhai (supra) that power to convene meetings implies power to cancel or postpone them, cannot be said to be illegal or without any authority of the constitution of the Society.

21. Learned Counsel for the respondents submitted that the Director had invalidly cancelled the meeting called on 07/7/1996 in pursuance of the notice dated 28/6/1996 issued by the Vice President of the Society as no reasons were stated. It has come on record that the cancellation of the said meeting was not for any specific reason. It was only stated that meeting was cancelled due to technical difficulty. Once it is found that the Director has power to issue notice calling for a meeting and also cancel the meeting already called and that such power is absent in the office of the Vice President, the Vice President of the Society cannot issue notice convening the meeting of the managing body and if he does, it would be an illegal notice. Therefore, it would be well within the powers of the Director to stall that meeting by issuing another notice. This is what has been done in the instant case by the Director and, therefore, even though no specific reasons have been stated for cancellation of the meeting dated 07/7/1996, the action of the Director to cancel the meeting cannot be said to be invalid or illegal.

22. In view of the above discussion, it is clear that as per the scheme of the constitution, power to convene meeting of the managing committee was with the Director and not with the Vice President and the Director also had the power to

cancel the meeting illegally convened by the Vice President. Questions No. 1, 3 and 4 are, therefore, answered accordingly.

23. Learned Assistant Charity Commissioner has found that evidence of A.W.-2 Arun Dhamnikar as well as A.W.-1 Ravindra Deshmukh as regards issuance of notice on 04/7/1996 as of doubtful nature. He has also found the evidence of A.W.-2 Arun on the point of service of notice upon seven members as stated by him in his evidence as of unreliable nature. He has also found that holding of meeting on 12/7/1996 itself was doubtful. These findings were reversed by learned Joint Charity Commissioner and setting aside the same, learned District Judge, Washim confirmed the said findings of learned Assistant Charity Commissioner. The judgment and order of learned District Judge, Washim, however, give no cogent reasons for which the findings of learned Joint Charity Commissioner were set aside and findings of learned Assistant Charity Commissioner were restored. The proceedings filed before the learned District Judge though were the applications made u/s 72(4) of the BPT Act, have been held as per the settled legal position, to be in the nature of the first appeals. Therefore, it was incumbent upon learned District Judge to re-appreciate the evidence just to satisfy himself that appraisal of the evidence by the trial Court did not suffer from material irregularity or was not based on inadmissible evidence or surmises and then record his general agreement with reasons. The law also requires, if a finding of fact is to be reversed, the appellate Court must go into close quarter with the reasonings assigned by the trial Court and then assign its own reasons for arriving at a different finding. These are the obligations cast upon the first appellate Court by the scheme of Section 100 of the CPC as it is a final Court of facts and it's pure findings of fact, remain immune from challenge before the High Court in second appeal. For these observations, I would like to draw support from the observations of the Hon'ble Supreme Court in its judgment rendered in the case of Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., referred to me by learned Counsel for the appellant. This duty, does not appear to have been performed in this case by the first appellate Court and, therefore, it would be necessary for this Court to do it as now it would be a part of substantial question of law, which has already been framed as second question in this appeal.

24. Learned Counsel for the appellants has suggested at the possibility of remanding of the matter to the District Judge, Washim so that the evidence regarding issuance of notice dated 04/7/1996 and holding of meeting on 12/7/1996 can be decided properly by the first appellate Court. Learned Counsel for the respondents has strongly opposed the suggestion submitting that the Court of the District Judge has already made substantial compliance with the requirements of Order 41 Rule 31 C.P.C. like framing of points for determination, recording of decision thereon together with the reasons and so on and these reasons cannot be said to be so cryptic as not to show any application of mind by the learned District Judge to the factual aspects of the case. He also submits that remand of the case may cause delay and prejudice to the parties and in this case

material being available before the High Court, this Court should exercise its own discretion and decide the appeals. Besides, according to him, the regime of the managing body of 1996 having been expired long back, the question of legality of election of its President has now been rendered purely academic. For all these reasons, he submits, remand is not necessary. In this regard, he has placed his reliance upon the following cases.:

I. G. Amalorpavam and Others Vs. R.C. Diocese of Madurai and Others, .

II. Jagatnarayansingh Swarupsingh Chithere and Others Vs. Swarupsingh Education Society and Another, .

III. Ashwinkumar K. Patel Vs. Upendra J. Patel and Others, .

25. In the case of G. Amalorpavam (supra), it has been held by the Hon'ble Supreme Court that while examining the question of making compliance with the provisions of Order 41 Rule 31 C.P.C., what has to be seen is; whether or not there is substantial compliance with the requirements of the provisions and if it is possible to make out from the judgment of the appellate Court that there is such substantial compliance and no prejudice has been caused to the parties, the Court must hold that the requirements of these provisions have been fulfilled. In the instant case, learned District Judge has framed the points for determination, has given his decision on each of the points framed and has also recorded his reasons for deciding those points. This shows that in the judgment there is compliance with the requirements of Order 41 Rule 31 of C.P.C. in form. But, I have already found that the reasons recorded by learned District Judge are very cryptic and do not indicate any application of mind on his part to the evidence brought on record by the rival parties. So, there is no compliance in substance with the requirements of Order 41 Rule 31 of C.P.C. At the same time, it must be held, the evidence being available before this Court, this Court can exercise its own discretion and decide the appeal instead of remanding it to the District Judge as held in the case of Ashwinkumar K. Patel (supra). There is also a question of propriety. Since the issue regarding election of the President is now rendered only academic, as rightly submitted by learned Counsel for the respondents and as held in the case of Jagatnarayansingh (supra), remand of the matter is unwarranted.

26. The evidence of A.W.-1 Ravindra (Exh. 28) shows that he had issued the notice convening meeting on 12/7/1996 at 2.00 p.m. on 04/7/1996 and by this notice, he had also cancelled the meeting scheduled to be held on 07/7/1996 in pursuance of the notice issued on 28/6/1996. He has stated in his evidence that he had asked the peon of the School, Arun Dhamnikar (A.W.-2), to circulate the notice to fourteen members of the Society all of whom were residing in nearby villages in Manora tahsil. He has stated that only seven members acknowledged the receipt of the notice and the members who refused to receive the notice, were later on sent the notice under Certificate of Posting. He has been extensively cross-examined by learned Counsel for the respondents, but no

circumstance and no material appeared in his cross-examination so as to discard his evidence as of doubtful nature on the aspect of issuance of notice. His evidence is also supported by the evidence of A.W.-2 Arun Dhamnikar (Exh. 35) and through his evidence, it can be seen that the appellants also established the fact that notice was served upon seven members of the Society. There were four members whose names were specifically stated by A.W.-2 Arun, who had refused to accept the notice. He has also stated that the meeting was held in the School of the Society after seven to eight days of service of notice and he was present at the time of meeting for the purpose of serving tea and water to the members. There is nothing in his cross-examination so as to discredit him.

27. It is true that A.W.-2 Arun admitted that he did not make any endorsement upon the copy of notice that four members had refused to accept the notice. But, his such failure is inconsequential as he is not a person who is experienced in service of notices like a Bailiff of the Court. Therefore, only because he failed to mention on the copy of the notice the refusal to accept it by those four members, his such failure would not be sufficient to disbelieve him. It is submitted by learned Counsel for the respondents that the notice was given to him for circulation among the members of the Society by the Headmaster but the Headmaster has not been examined by the appellants and, therefore, a doubt about service of notice has arisen in this case. I do not think so. The notice was issued by A.W.-1 Ravindra and what the Headmaster had done in this case was only a mechanical act of handing over the copies of notice to the School Peon and when the person who had issued the notice had been examined, there was no need for the appellants to also examine a person whose role was not more than that of a middle man between the author of the notice and server of the notice. A.W.-2 Arun was the server of notice and his evidence is also supported by the evidence of A.W.-1 Ravindra regarding issuance of the notices. Therefore, no doubt about his evidence that he had received copies of notice for service upon the members from the Headmaster could be entertained. That apart, nothing prevented the respondents from examining the Headmaster as their witness to prove their claim about non-service of notice. But, they did not and, therefore, cannot be allowed to gain advantage from their own failure.

28. Learned Counsel for the respondents has also submitted that the postal seal on the Certificate of Posting was of 10/7/1996 and this would show the act of the issuance and service of notice dated 04/7/1996 as of doubtful nature. No doubt, the postal seal is of 10/7/1996, but the evidence of A.W.-1 Ravindra as well as A.W.-2 Arun cumulatively shows that seven members had received the notice and only four members had refused to accept the notice and therefore, the notice was again sent to only these four members. The evidence of A.W.-2 Arun is of reliable nature. As already stated, there is absolutely no material which has surfaced on record in his cross-examination extensively taken on behalf of the respondents so as to entertain any manner of doubt about his evidence before the Court and as such when the evidence shows that four members have refused to accept the notice, it would have to be taken as proper service of notice upon

those four members and sending of notices by post was only an additional service, though not really necessary. So, I find no substance in the argument of learned Counsel for the respondents in this regard.

29. In view of the above, I am of the view that the finding recorded by learned Assistant Charity Commissioner that there was really doubt about issuance of notice on 04/7/1996 and holding of meeting on 12/7/1996, which has been confirmed by learned District Judge, Washim, is absolutely erroneous. The evidence of A.W.-1 Ravindra and A.W.-2 Arun do not show presence of any such material or circumstance as to create in one's mind any doubt about their creditability. Therefore, the finding recorded by learned Joint Charity Commissioner accepting the evidence of both these witnesses as reliable appears to be correct and proper. The question No. 2 is, therefore, answered as in the affirmative.

30. Learned Counsel for the respondents has submitted that there is no need to entertain these appeals and these appeals should be simply disposed of as the tenure of the managing body of the Society having long been over, no effective order now can be passed in these appeals. He relies upon the case of Hidayatkhan Bismillakhan Pathan Vs. Vajinath and Others, for this submission. No doubt, the tenure of the managing committee has expired long back and the issue of election of President in the year 1996 has also turned academic now. But, there is something more in these appeals than what meets the eye. It has to borne in mind that these appeals have been admitted on four substantial questions of law and three of which revolving around the issue as to in whom, whether the Director or Vice President, the power to issue notice convening the meeting of managing body of the Society vests, would certainly require determination by this Court as such determination would not be academic and would only go to set the direction for effectively managing the affairs of the Society in times to come. From such an angle, I do not think that this is a case wherein no effective order can be passed. Of course, while passing the final order, one has to bear in mind the nature of direction issued by learned Assistant Charity Commissioner u/s 41(a) of the BPT Act, directing the Trust/Society to elect new management committee as per the rules and regulations of the Society. Such direction, as held in the case of Damodar Jairam Sao Vs. Deputy Charity Commissioner and Others, by the learned Single Judge of this Court, being administrative, this Court would have to grant liberty to the Society for conducting fresh elections as per the rules and regulations of the Society, while quashing and setting aside the impugned judgments and orders passed by the Assistant Charity Commissioner, Akola and District Judge, Washim and restoring the judgment and order passed by the Joint Charity Commissioner, Amravati.

Having answered the substantial questions of law in the terms stated earlier, both the appeals would have to be allowed with costs.

(1) Both the appeals are allowed with costs.

(2) The common order passed in Misc. Judicial Case Nos. 61 and 62 of 2008 by the District Judge, Washim on 16th October, 2010 is hereby quashed and set aside and in its place the common judgment and order passed in Appeals No. 31 of 2007 and 32 of 2007 on 20th October, 2008 by the Joint Charity Commissioner, Amravati in Enquiry Nos. 550 and 549 of 1996 is hereby restored.

(3) Liberty is granted to the Society to elect new managing committee as per the Rules and Regulations of the Society.

(4) Learned Counsel for the respondents, at this stage, has made a request for staying the effect and operation of this judgment so as to contemplate filing of SLP before the Hon''ble Supreme Court against this judgment for a period of eight weeks. He submits that the interim stay granted by this Court on 12/8/2011 had been stayed by the Hon''ble Supreme Court on 13/01/2012 in Special Leave to Appeal (Civil) Nos. 36403 of 2011 and 17 of 2012.

(5) The prayer has been opposed by learned Counsel for the appellants. However, considering the interim relief granted by the Apex Court earlier, the effect and operation of this judgment is stayed for a period of eight weeks to enable the respondents to take necessary steps in the matter.