
(1973) 11 BOM CK 0018

In the Bombay High Court

Case No : First Appeal No's. 689, 690 and 691 of 1973 and Civil Application No. 2818 of 1973

The Charity Commissioner

APPELLANT

Vs

Shri Vishram Bharati Goswami

RESPONDENT

Date of Decision : 30-11-1973

Acts Referred:

Electricity Act, 1910 — Section 4

Citation : (1974) 76 BOMLR 475

Hon'ble Judges : Naik, J

Bench : Single Bench

Judgement

Naik, J.—This appeal and companion appeals raise an important question about the scope and interpretation of Section 8(2) of the Bombay Public Trusts Act, 1950--which shall be hereinafter referred to as "the Act". It arises in this way:-- In the vicinity of the famous Mumbadevi temple at Bombay there are temples of Shree Ganapati, Murlidhar and Indrayani. It appears that on some representations being made to the Charity Commissioner, in the matter of these three temples, the managers or trustees of these temples were called upon to apply &r registration u/s 18 of the Act. They having declined to do so and contended that the temples in question are their private properties, the Assistant Charity Commissioner instituted suo motu enquiry in respect of these three temples. In the course of the enquiry, he sent notices to the managers of the three temples and also to the trustees of the Mumbadevi temple. But the trustees of tie Mumbadevi temple, however, informed the Assistant Charity Commissioner that they were not interested in being parties to the proceedings in view of certain technical difficulties and that they would however give the necessary assistance to the Assistant Charity Commissioner for proceeding with the enquiry. After concluding the enquiry the learned Assistant Charity Commissioner upheld the contentions of the managers of these temples, and, therefore, dropped the proceedings. After these orders were passed on May 31, 1967, on May 29, 1968 the trustees of the Mumbadevi temple through its

Chairman Mr. Barot moved the Charity Commissioner for exercising his powers of revision suo motu u/s 70A of the Act.

2. The Charity Commissioner made over the matters to one Mr. Huprikar, the Deputy Charity Commissioner, who was empowered by the Government of Maharashtra by a Notification issued u/s 8(2) of the Act to exercise the powers and functions of the Charity Commissioner u/s 70A of the Act. It was contended before the Deputy Charity Commissioner, that since the trustees of the Mumbadevi temple had applied for revising the orders of the Assistant Charity Commissioner, having- regard to the fact, that they had specifically stated when served with a notice by the Assistant Charity Commissioner, that they were not interested in being¹ parties to the proceedings, the revision proceedings could not be proceeded with on the basis of that application. It was also contended that since neither the Mumbadevi trust nor Mr. Barot were persons interested in the trust within the meaning of Section 2(10) of the Act, they had no right to approach the Charity Commissioner by way of a revision application. It was also contended that since the Mumbadevi trust and Mr. Barot were aware of the decision of the Assistant Charity Commissioner and they had not availed of the right of appeal u/s 70 of the Act, the revision application could not be entertained. It was also contended that at any rate having regard to the gross delay in filing that application, the Charity Commissioner should not exercise his discretionary powers u/s 70A of the Act. On merits it was contended that since the Assistant Charity Commissioner had arrived at his decision after proper enquiry, no case was made out for revising his order. The learned Deputy Charity Commissioner, exercising the powers of the Charity Commissioner, repelled all these submissions on behalf of the managers of the three temples in question. He pointed out that he was proceeding to exercise the revisional jurisdiction suo motu and, therefore, the fact that Mr. Barot of the Mumbadevi trust may not be a person having interest within the meaning¹ of Section 2(10) of the Act, was of no consequence. He also repelled the contention about the failure of Mr. Barot to avail of an appeal u/s 70, by pointing out, that the Mumbadevi trust or Mr. Barot not being parties before the Assistant Charity Commissioner, they could not have availed of the right of appeal u/s 70 of the Act. He also pointed out that there was no substance in the defence of laches or delay inasmuch as, there was no limitation in the Charity Commissioner exercising his revisional jurisdiction u/s 70A of the Act. Having thus repelled all the technical objections on behalf of the managers of the temples, the learned Deputy Charity Commissioner on a scrutiny of the judgment of the Assistant Charity Commissioner and the material placed before him was of opinion that the enquiry which was made by the Assistant Charity Commissioner was not at all thorough and exhaustive as it was expected in a case of suo motu enquiry. Consistently with that view, he set aside the order of the learned Assistant Charity Commissioner in all the three enquiries and remanded the enquiry proceedings for further enquiry and disposal in the light of the directions given by him in his judgment.

3. Aggrieved by this order, which was a common order in all the three revision

applications, three applications u/s 72 of the Act were filed in the City Civil Court at Bombay. Charity Application No. 12 of 1972 was filed by the managers of the Ganapati temple; Charity Application No. 15 of 1972 was filed by the managers of the Indrayani temple and Charity Application No. 17 of 1972 was filed by the managers of the Murlidhar temple. In all these three applications, the relief sought was a declaration that the orders passed by Mr. Huprikar were null, void and inoperative and for the consequential relief of restoring the orders passed by the Assistant Charity Commissioner.

4. The allegations on which the relief was¹ sought in all the three applications are briefly to this effect: It was contended that Mr. Huprikar, the Deputy Charity Commissioner, had no authority to entertain or to decide the applications and much less to exercise the powers u/s 70A of the Act. It was contended that the Notification, if any, empowering Mr. Huprikar to exercise the powers u/s 70A was in excess of and was in violation of the scheme and the provisions of the Act. Once again, it was contended that since the Mumbadevi trust had informed the Assistant Charity Commissioner, that they were not interested in being parties to the enquiry proceedings, the Charity Commissioner could not have exercised his revisional jurisdiction u/s 70A of the Act, on the basis of an application which was made by Mr. Barot the Chairman of the Mumbadevi trust. It was also contended that since no appeal was filed by the Mumbadevi trust u/s 70, the revision application u/s 70A could not lie. It was further contended, as was done before the Deputy Charity Commissioner, that there was delay in moving the Charity Commissioner to exercise his revisional jurisdiction and that at any rate the Deputy Charity Commissioner had no reason to interfere with the order passed by the Assistant Charity Commissioner and to remand the proceedings for further enquiry.

5. The learned Judge of the City Civil Court was impressed by the argument that the Notification which empowered Mr. Huprikar, the Deputy Charity Commissioner, to exercise the appellate and revisional powers exercisable by the Charity Commissioner violated the scheme of the Act. He also shuddered to think that judicial powers were being delegated by the executive. In particular he was of the view that since under no circumstances a Deputy Charity Commissioner could be appointed as a Charity Commissioner, the State Government by issuing the impugned Notification empowering Mr. Huprikar to exercise the powers u/s 70A, was trying to do indirectly what it could not do directly. Therefore, he felt that there was no alternative but to strike down the said Notification. He, however, proceeded to consider the other contentions on merits and repelled them substantially on the same grounds on which they were repelled earlier by the Deputy Charity Commissioner. He also agreed with the Deputy Charity Commissioner that the suo motu enquiry which was conducted by the learned Assistant Charity Commissioner was of a cavalier type and it was not full and thorough as it was expected to be. He, therefore, thought it necessary to set aside the orders of the Deputy Charity Commissioner and the Assistant Charity Commissioner and to remand all the three enquiry proceedings to the Assistant

Charity Commissioner for further enquiry and disposal in the light of his judgment.

6. Aggrieved by these orders in all the three charity applications, the Charity Commissioner has preferred these appeals. First appeal No. 689 of 1973 is filed against the order in Charity application No. 12 of 1972; First appeal No. 691 of 1973 is filed against the order in Charity application No. 15 of 1972 and First appeal No. 690 of 1973 is filed against the order in Charity application No. 17 of 1972. The managers of the Murlidhar temple alone have filed cross-objections challenging the order of the City Civil Court setting aside the order of the Assistant Charity Commissioner and directing him to proceed further in the light of the directions given in the judgment.

7. The learned Advocate General who has appeared in support of the appeals has assailed the judgment of the City Civil Court on the ground (1) that the judgment is based on an erroneous assumption that the powers conferred by the Act on the State Government u/s 8(2) of the Act is delegated legislation; and (2) on the erroneous assumption that the Act provides for specific powers being exercised only by the specific class of officers. According to him Section 8(2) of the Act is not a delegated legislation and in fact it is conditional legislation and since the words of that section are clear and explicit it is not at all necessary to examine the scheme of the Act. He also contends that when Section 5(3) of the Act is read with Section 8(2) of the Act, it would be clear that the impugned notification is perfectly valid and legal.

8. Mr. Parulekar, the learned Counsel for the respondents, while substantially adopting the reasoning of the learned Judge of the City Civil Court, contended that the notification is in flagrant disregard and in breach of or in violation of the provisions of Section 8(2), and the scheme and basic framework of the Act. According to him, the Act provides for an hierarchy of officers like a Charity Commissioner, Joint Charity Commissioner, Deputy Charity Commissioner and Assistant Charity Commissioner. Having done that, the Act specifically prescribes the qualification and experience for appointment to these posts. He also argues that the Act also provides specifically for the powers, functions and duties of these specific class of officers. By way of illustration he points out, that the Assistant and the Deputy Charity Commissioners exercise the powers of original jurisdiction under Sections 18, 19, 20, 22, 28, 37, 39 and 79 of the Act. The Charity and the Joint Charity Commissioners, he points out, exercise the appellate jurisdiction under Sections 70, 70A, 50A and 41. Again, the Charity and Joint Charity Commissioners, he says, exercise the original jurisdiction under Sections 41A, 41B, 41C, 41D, 41E, 47 and 51 of the Act. He has also drawn my attention to the fact that in Section 4 which, inter alia, lays down the qualifications for appointment of a Charity Commissioner, there is no provision for the appointment of a Deputy Charity Commissioner, whatever his length of standing for being appointed as a Charity Commissioner, although while laying down the provisions for the qualification of a Deputy and Assistant Charity

Commissioner in Section 5, a provision is made for making an Assistant Charity Commissioner of not less than five years standing eligible for being appointed to the post of a Deputy Charity Commissioner and a Superintendent or legal Assistant of five years standing being eligible for being appointed as an Assistant Charity Commissioner. He, therefore, says that under no circumstances the Deputy Charity Commissioner could be appointed as a Charity Commissioner. He has also drawn my attention to Section 84(5) and (t) which provide for the Government making rules for the powers, duties and functions to be exercised and performed by a Deputy or Assistant Charity Commissioner u/s 68 and the powers, duties and functions to be exercised and performed by the Charity Commissioner u/s 69, respectively. He, therefore, argues that just as in the Act there are specific provisions about the powers of the specific hierarchy of officers, even under rules, the State Government could only make rules concerning the category of officers like- Deputy and Assistant Charity Commissioners on the one hand and the Charity Commissioner on the other. Arguing in that strain and while making it clear that Section 8(2) of the Act is perfectly valid and legal, Mr. Parulekar asserts that the purpose of Section 8(2) of the Act is to enable the Government to empower an officer of one region to exercise the powers and functions of an officer of an equal grade in another region in the event of that another officer being absent from duty. That section, he says, is not at all intended and could not have been intended to enable the State Government to empower a Deputy Charity Commissioner with the powers exercisable by a Charity Commissioner. Even if for a moment it were to be held that such powers could be inferred, argues Mr. Parulekar, having regard to the scheme of the Act and the creation of a specified class of officers with specified qualifications: and with specific powers and functions, it would be necessary to infer implied limitations in Section 8(2), in the light of the scheme of the Act. He also argues that the expression used in Section 8(2) is not "delegate" but "direct". According to him, since it has been held in a number of cases that the scope of delegation is; limited in the sense, that the authority delegating could not abdicate its own functions, the expression "direct" he argues being of a much lesser or narrower import, it could never have been intended that the State Government could empower a Deputy Charity Commissioner with the powers exercisable by a Charity Commissioner. Mr. Parulekar also tried to rely heavily upon Section 3A as supporting his inference that his interpretation is correct. He argued, if as is contended for by the learned Advocate General, the State Government could have empowered a Deputy Charity Commissioner with the powers exercisable by the Charity Commissioner, where was the need to enact Section 3A by an amendment of the Act in 1960 to empower the State Government to appoint a Joint Charity Commissioner. He also argued that whereas under Rule 36, the Charity Commissioner has power at any stage to transfer any proceedings pending before a Deputy or Assistant Charity Commissioner to another Deputy or Assistant Charity Commissioner for disposal, since the scope of that rule is narrow in the sense, that it is limited only to specified proceedings, it was necessary for the State Government to provide for a

substitute officer of equal grade, when a particular officer absents himself from duty and it is precisely for that purpose that Section 8(2) was enacted. He also tried to explain that whereas Section 16 of the Act which provides, inter alia, that the State Government may appoint a Deputy Charity Commissioner or Assistant Charity Commissioner to be in charge of one or more Public Trusts Registration Offices or Joint Public Trusts Registration Offices, it in effect provides for consolidation of two regions and unlike that section, Section 8(2) is of wider import in the sense, that an officer can exercise jurisdiction over another region of equal grade, while continuing to be in charge of his own region. Mr. Parulekar, however, is not in agreement with the learned Judge of the City Civil Court when amongst other reasons, he struck down the notification on the ground that, Mr. Huprikar did not appear to be qualified for being appointed as Charity Commissioner inasmuch as he was told at the bar that Mr. Huprikar had only eight years' standing at the bar before he was appointed as an Assistant Charity Commissioner. Mr. Parulekar maintained that since there is no provision for appointment of a Deputy Charity Commissioner as Charity Commissioner, under no circumstances could the State Government empower the Deputy Charity Commissioner with powers of a Charity Commissioner by purporting to act u/s 8(2) of the Act. He, therefore, contends that the notification of the State Government empowering Mr. Huprikar to exercise the powers u/s 70A would be null and void.

9. Mr. Rizvi, while supporting some of the arguments of Mr. Parulekar contended that Section 8(2) has no application whatsoever to the officers, namely the Charity Commissioner, the Assistant Charity Commissioner, Deputy Charity Commissioner and the Joint Charity Commissioner who are expected to perform important functions. According to him, the Act creates a group of some important officers, namely the Commissioners and other officers who are of lesser importance namely the Director of Accounts and Assistant Director of Accounts. With regard to the Charity Commissioner which term includes the Deputy and the Assistant Charity Commissioners also he says, the Act has taken special care to provide for the qualifications and powers. According to Mr. Rizvi, Section 8(2) has reference only to the Director of Accounts and Assistant Director of Accounts and other subordinate officers who are mentioned in Section 6 of the Act.

10. Before proceeding to consider the rival contentions, it would be perhaps convenient to go through the relevant provisions of the Act. As the preamble of the Act shows, it is an Act to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay. Section 1(3) lays down that the Act shall come into force at once, but the provisions thereof shall apply to a public trust or any class of public trusts on the date specified in the notification under Sub-section (4).

11. Sub-section (4) of Section 1 provides:

The State Government may, by notification in the Official Gazette, specify the date on which the provisions of this Act shall apply to any public trust or any

class of public trusts; and different dates may be specified for such trusts in different areas:

There are also two provisos to this sub-section. The first proviso provides:

...that the State Government may also by a like notification direct that from the date specified therein any public trust or class of public trusts shall be exempt from all or any of the provisions of this Act, subject to such conditions as may be specified in the notification:

12. It is, therefore, clear that the purpose of this Act is to regulate and to make better provisions for the administration of public religious and charitable trusts in the State of Bombay. Again, although the Act is to come into force at once, it is left to the State Government to decide as to which of the public trusts or class of public trusts the provisions of the Act are to apply. Even the fixation of the date on which the provisions are to apply is left to the State Government. There is also a provision leaving it to the "State Government to fix different dates for different trusts in different areas. What is more, the Act also vests the State Government with powers to direct that from a date to be specified by it, the public trust or class of public trusts shall be exempt. I am referring to these provisions to show how the Legislature having enacted the Act left it to the State Government to decide the date on which it has to come into force and the trust to which it has to apply and it also invested the State Government with powers to exempt the trust from the operation of the Act. That would show that this is essentially a conditional legislation.

13. Section 2 is the usual definition clause. Section 3 in Chapter II which deals with establishment provides that

The State Government may, by notification in the Official Gazette, appoint an Officer to be called the Charity Commissioner, who shall exercise such powers and shall perform such duties and functions as are conferred by or under the provisions of this Act and shall, subject to such general or special orders as the State Government may pass, superintend the administration and carry out the provisions of this Act throughout the State.

(Italics are ours).

Section 3A provides:

The State Government may, by notification in the Official Gazette, appoint one or more Officers to be called Joint Charity Commissioners who shall, subject to the Control of the Charity Commissioner, and to such general or special orders as the State Government may pass, exercise all or any of the powers and perform all or any of the duties and functions, of the Charity Commissioner.

14. Section 4 provides for the qualifications for appointment of Charity Commissioner and Joint Charity Commissioner.

15. Section 5(1) provides:

The State Government may also appoint such number of Deputy and Assistant Charity Commissioners in the office of the Charity Commissioner or for such regions or sub-regions or for such public trust or such class of public trusts as may be deemed necessary.

16. Sub-section (2) of Section 5 lays down the qualifications for being appointed as a Deputy Charity Commissioner. Sub-section (2 A) lays down the qualifications for being appointed as a Charity Commissioner. Sub-section (3) of Section 5 provides:

The Deputy and Assistant Charity Commissioners shall exercise such powers and perform such duties and functions as may be provided by or under the provisions of this Act.

(Italics supplied).

17. Section 8 with the marginal note "delegations" is divided into two sub-sections as under:

8. (1) The State Government may delegate any of its own powers or functions under this Act to the Charity Commissioner or any other officer subject to such conditions as it thinks fit.

(2) The State Government may also direct that any powers exercisable and duties or functions to be performed by any particular officer appointed under this Act may be performed by any other officer subject to such conditions as it thinks fit.

18. Pausing here for a moment, it would appear that as provided in Section 3, the Charity Commissioner has to exercise such powers and to perform such duties and functions as are conferred by or under the provisions of the Act. u/s 3A, the Joint Charity Commissioner also has to exercise similar powers and perform similar functions but subject to the control of the Charity Commissioner. When we turn to Sub-section (3) of Section 5, which deals with the powers and the functions of the Deputy and Assistant Charity Commissioners, it lays down that the powers to be exercised and the duties and functions to be performed are those which may be provided by or under the provisions of the Act. The question as to what are the powers provided "by the Act" need not detain us, inasmuch as, they are specifically and directly provided by the Act. The question which we have to address ourselves to is, as to what are the powers and functions which are to be exercised and performed by the Deputy and Assistant Charity Commissioners "under" the provisions of the Act. Now, the expression "under" as distinguished from the expression "by" means indirectly as provided in. the Act and not directly as provided in the Act. It is said to be indirectly in the sense, that the powers are not direct-but are to flow from some act to be done by specified authority. It has been held that the expression "under the Act" would mean by virtue of the powers vested in an authority to make the bye laws or the rules. But then in the case of rules the more appropriate expression would be

"prescribed" as that term is often defined in most of the statutes. When, therefore, in Section 5(5), instead of using the expression "prescribed" the expression "under the provisions of this Act" is used, it would follow that the power contemplated therein is not one prescribed under the rules as that expression is used in Section 2(11) of the Act, and for that purpose we will have to look to the other provisions of the Act to see where the power lies, Judged in that light it would appear that the expression "under the Act" would have reference to Section 8 of the Act.

19. It is under Sub-section (2) of Section 8 that the impugned notification which is to this effect was issued by the State Government:

In exercise of the powers conferred by Sub-section (2) of Section 8 of the Bombay Public Trusts Act, 1950 (Bom. XXIX of 1950), the Government of Maharashtra hereby directs that the powers exercisable and duties or functions to be performed by the Charity Commissioner under Sections 50A, 70 and 70A of the said Act, may be exercised or performed by Shri S.M. Ismail, Deputy Charity Commissioner, Greater Bombay Region, Bombay, and Shri G.V. Huprikar, Deputy Charity Commissioner in the Office of the Charity Commissioner, subject to the condition that they shall not exercise the powers under Sections 70 and 70A in respect of findings or orders recorded or passed by them as Deputy Charity Commissioner.

20. My attention is drawn to the decision of the Supreme Court reported in *Indramani v. W.B. Nattu* AIR [1968] S.C. 274, 65 BomLR 378. In that case the validity of a notification issued by the Forward Markets Commission--a statutory body created by the Forward Markets Regulation Act, 1952--to the authorities of the best India Cotton Association, Bombay intimating to them that the continuation of trading in certain types of forward contracts in cotton including that known as "hedge contracts" was "detrimental to the interest of the trade and the public interest and to the larger interests of the economy of India" and directing these contracts to be closed out, to be settled at prices fixed in the notification, was challenged. That power was exercised under a bye-law. The bye-laws were made u/s 4 of the Act. Section 4(f) of the Act was to this effect:

The functions of the Commission shall be to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.

It was contended that the powers conferred by the bye-law framed u/s 11 or 12 was not one that is created by or under the Act or as may be prescribed. Their Lordships dealt with that contention as under in para. 15 of the report (pp. 281 and 282) :

A more serious argument was advanced by learned Counsel based upon the submission that a power conferred by a bye-law framed u/s 11 or 12 was not one that was conferred "by or under the Act or as may be prescribed". Learned Counsel is undoubtedly right in his submission that a power conferred by a bye-

law is not one conferred "by the Act", for in the context the expression "conferred by the Act" would mean "conferred expressly or by necessary implication by the Act itself". It is also common ground that a bye-law framed u/s 11 or 12 could not fall within the phraseology "as may be prescribed", for the expression "prescribed" has been denned to mean "by rules under the Act", i.e., those framed u/s 28 and a bye-law is certainly not within that description. The question therefore is whether a power conferred by a bye-law could be held to be a power "conferred under the Act". The meaning of the words "under the Act" is well-known. "By" an Act would mean by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication therefrom. The words "under the Act" would, in that context signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, bye-laws made by a subordinate law-making authority which is empowered to do so by the parent Act. The distinction is thus between what is directly done by the enactment and what is done indirectly by rule-making authorities which are vested with powers in that behalf by the Act. (Vide AIR 1949 136 (Privy Council) and Narayanaswamy v. Krishnamurthy [1958] Mad. 313, AIR [1958] Mad. 343 That in such a sense bye-laws would be subordinate-legislation "under the Act" is clear from the terms of Sections 11 and 12 themselves.

21. It would appear that reliance was placed on the decision of the Privy Council in *Hubli Electricity Co., Ltd. v. Province of Bombay*. In that case by Sub-section (1) of Section 4 of the Indian Electricity Act, 1910, it was provided that the Provincial Government may, if in its opinion the public interest so requires, revoke a licence in any of the following cases, namely, (a) where the licensee in the opinion of the Provincial Government makes wilful and unreasonably prolonged default in doing anything required of him by or under this Act, The licence was revoked on the ground that there was a default to provide continuous supply of electric energy to the consumer. When it was contended that the licence could not be revoked on that ground their Lordships repelled that contention. The relevant observations are to the following effect (p. 66):

The question that then emerges is whether the performance by the licensee of cond. VI. of the schedule incorporated in the licence by Section 3, Sub-section 2(f), & required "by or under" the Act. In their Lordships' view it is. The schedule conditions, unless excluded or modified, necessarily form part of the licence to be granted under the Act: the licence is required to be operated in accordance with these conditions and not otherwise, and the authority to operate the licence is derived from the Act. To this it may be added that the latter part of Section 3, Sub-section 2(f), expressly provides that the scheduled conditions are to apply to the undertaking and that Section 47 provides for penalties judicially exigible on breach of the conditions. Performance of the scheduled conditions may not on a strict reading be required of the licensee "by" the Act; it is clearly required "under" the Act.

22. It would be therefore clear that the expression "under" the Act appearing in Sub-section (3) of Section 5, would be the powers which could be invested on the Deputy and the Assistant Charity Commissioners either by any bye-laws or any notification. Section 8(2) precisely provides for the powers which are contemplated by the expression "the provisions of this Act" in Section 5(3) of the Act. Although the marginal note of Section 8 reads as "delegations", it would appear while it is true of the provisions of Section 8(1), it could have no application to the provisions of Section 8(2) of the Act, Therefore, the marginal note "delegations" is incomplete. The correct reading of Section 8(2) which is very clear, would show that it is a piece of conditional legislation. The section also is very clear and explicit and there is no ambiguity about it. The expression "direct" as denned in the shorter Oxford English Dictionary, 3rd edn. p. 515, means "to give authoritative instructions to; to ordain, order, or appoint (a person) to do a thing, (a thing) to be done." The word "particular" has been denned in the same dictionary as "relating to a single definite thing or person, a set of things or persons, as distinguished from others." It may be mentioned that u/s 42 of the Act, the Charity Commissioner is a corporation sole with a perpetual succession and a common seal and he may sue or be sued in his corporate name. Therefore, it would appear that the State Government can order or appoint or give authoritative instructions that any powers exercisable or duties or functions to be performed by any particular officer appointed under this Act i.e. the Charity Commissioner, to be Performed by any other officer, which would mean other than the Charity Commissioner. It would therefore appear that it being a conditional legislation and since Section 5(5) which deals with the powers and functions of the Deputy and the Assistant Charity Commissioners has specifically provided that these officers shall exercise such powers and perform such duties and functions as may be provided by or under the provisions of the Act, a notification like the one in question issued u/s 8(2) would be a perfectly valid notification.

23. When it is argued that the Act creates a specified class of officers, and it specifies the powers to be exercised by them the argument clearly ignores the provision of Section 5(5) of the Act. That argument also ignores certain other provisions namely Sections 37 and 41B which are referred to as illustrative.

24. Section 37 which occurs in Chapter VI under the heading "Control" provides that the Charity Commissioner, the Deputy or Assistant Charity Commissioner or any officer authorised by the State Government by a general or special order shall have powers mentioned in the Sub-sections therein. Then we have Section 41B in the very Chapter under the very heading "Control" which provides that on receipt of a complaint in writing from any person having interest in respect of any public trust or suo motu the Charity Commissioner or Deputy or Assistant Charity Commissioner may institute an inquiry with regard to charities, or a particular charity, or class of charities either generally, or for particular purposes.

25. It would, therefore, appear that it would not be correct to say that the Act

provides in specific terms a hierarchy of officers with specified powers. The most important powers of control, inspection and the power to institute enquiries in the matter of the administration of the trust, which is the main purpose of the trust, appear to be co-extensive and concurrent, notwithstanding the fact that there are other specified sections laying down the specific powers and functions of the Charity Commissioner as distinguished from the powers and functions of a Deputy and Assistant Charity Commissioner. But then once it is noticed that the powers and functions of the Deputy and Assistant Charity Commissioners are those which are provided by or under the provisions of the Act, it would appear that it is perfectly within the powers of the State Government to empower the Deputy Charity Commissioner to exercise the powers of a Charity Commissioner by a notification issued u/s 8(2) of the Act. We should not also lose sight of the fact that appointment is one thing and empowering an officer is another thing. It is common knowledge that when an office is created, qualifications for being appointed to that office have got to be specified. It is also common knowledge that by experience officers get certain expertise. It is also not possible for the Legislature to know or anticipate the workload or the nature of the urgency while administering the provisions of the Act. It is precisely for that reason and to meet such situation that the Legislature appears to have left to the State Government to empower the Deputy Charity Commissioner to exercise the powers of a Charity Commissioner. After all the State Government is in best position to know whether the person to be invested with these powers is suitable for being invested with the said powers. The Legislature has no means to anticipate with any certainty about the nature of the workload or urgency. It is precisely to meet such situation that the Legislature appears to have taken care to provide in Section 5(5), that the powers and functions of the Deputy and Assistant Charity Commissioners shall be those as may be provided by or under the provisions of the Act and to provide in Section 8(2) the power in the State Government to invest an officer to perform the duties of a particular other officer of the higher grade.

26. It was, however, argued by Mr. Parulekar that if that could have been accomplished by Section 8(2), where was the need to provide for the appointment of a Joint Charity Commissioner by Section 3A by the amendment of the Act in 1960. The answer seems to be simple. It may be that ever since the Act came into force and by the time the amendment was thought necessary, it was found that there was more than enough work for two Charity Commissioners and since there could not be two Charity Commissioners inasmuch as the Charity Commissioner is a corporate sole, the Legislature felt it necessary to provide for a permanent incumbent having the designation of Joint Charity Commissioner. But that by itself would not mean that no power existed in the State Government u/s 8(2) to invest a Deputy Charity Commissioner with the powers exercisable by a Charity Commissioner. After all in this State several charities are to be administered and several original and appellate and other work is to be attended to. Therefore, the Legislature must have thought that it was necessary to

empower the State Government to cope up with the day-to-day administration of the Act.

27. Turning to the submission of Mr. Parulekar that the word "direction" is narrower in scope than the word "delegation", my attention is invited by the learned Advocate General to the decision of the Supreme Court reported in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, . In that case their Lordships were concerned with the interpretation of Sections 3 and 4 of the Essential Supplies (Temporary Powers) Act, 1946. Section 4 of the Act provided that the Central Government may by notified order direct that the power to make orders u/s 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable by such officer or authority subordinate to the Central Government or such State Government or such officer or authority subordinate to a State Government as may be specified in the direction. Section 4 of the Act was attacked on the ground that it empowered the Central Government to delegate its own power to make orders u/s 3 to any officer or authority subordinate to it or the Provincial Government as specified by the Central Government. It was also contended that the delegate has been authorised to further delegate its Power in exercise of Section 3. This contention was repelled by their Lordships. The relevant observations are to this effect (pp. 389, 390) :

Section 4 of the Act was attacked on the ground that it empowers the Central Government to delegate its own power to make orders u/s 3 to any officer or authority subordinate to it or the Provincial Government or to any officer or authority subordinate to the Provincial Government as specified in the direction given by the Central Government. In other words, the delegate has been authorized to further delegate its powers in respect of the exercise of the powers of Section 3. Mr. Umrigar contended that it was for the Legislature itself to specify the particular authorities or officers who could exercise power u/s 3 and it was not open to the Legislature to empower the Central Government to say that officer or authority could exercise the power. Reference in this connection was made to two decisions of the Supreme Court of the United States of America-- *Panama Refining Co. v. Ryan* (1935) 293 U.S. 388 and *Schechter v. United States* (1935) 295 U.S. 495. In both these cases it was held that so long as the policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. These decisions in our judgment do not help the contention of Mr. Umrigar as we think that Section 4 enumerates the classes of persons to whom the power could be delegated or sub-delegated by the Central Government and it is not correct to say that the instrumentalities have not been selected by the Legislature itself. The decision of their Lordships of the Privy Council in *Shannon case Shannon v. Lower Mainland Dairy Products Board* [1938] A.C. 708 completely negatives the contention raised regarding the invalidity of Section 4. In that case the Lt.-Governor in Council was

given, power to vest in a marketing board the powers conferred by Section 4A(d) of the Natural Products Marketing (British Columbia) Act, 1936. The attack on the Act was that without constitutional authority it delegated legislative power to the Lt.-Governor in Council. This contention was answered by their Lordships in these terms: "The third objection is that it is not within the powers of the Provincial Legislature to delegate so-called legislative powers to the Lt.-Governor in Council, or to give him powers of further delegation. This objection appears to their Lordships subversive of the rights which the Provincial Legislature enjoys while dealing with matters falling within the classes of subjects in relation to which the Constitution has granted legislative powers. Within, its appointed sphere the Provincial Legislature is as supreme as any other Parliament; and it is unnecessary to try to enumerate the innumerable occasions on which Legislatures, Provincial, Dominion and Imperial, have entrusted various persons and bodies with similar powers to those contained in this Act.

28. It would, therefore, appear that there is no force in the submission of Mr. Parulekar that the expression to "direct" is of a lesser import and narrow in its scope than the expression to "delegate".

29. Once it is held that Section 8(2) is conditional legislation, it would appear that the principles laid down by the Privy Council in (1878) L.R. 5 I.A. 178 (Privy Council) would at once be attracted, I may mention that the learned Advocate General has laid special stress on this decision. Reliance is placed on the following observations (p. 193):

But their Lordships are of opinion that the doctrine of the majority of the Court is erroneous, and that it rests upon a mistaken view of the powers of the Indian Legislature, and indeed of the nature and principles of legislation. The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions.

30. The next passage is to this effect (p. 194) :

Their Lordships agree that the Governor-General in Council could not, by any form of enactment, create in India, and arm with general legislative authority, a new legislative power, not created or authorized by the Councils' Act. Nothing of that kind has, in their Lordships' opinion, been done or attempted in the present case. What has been done is this. The Governor-General in Council has determined, in the due and ordinary course of legislation, to remove a particular district from the jurisdiction of the ordinary Courts and offices, and to place it under new Courts and offices, to be appointed by and responsible to the Lieutenant-Governor of Bengal; leaving it to the Lieutenant-Governor to say at what time that change shall take place; and also enabling him, not to make what laws he pleases for that or any other district, but to apply by public notification to that district any law, or part of a law, which either already was, or from time to time might be, in force, by proper legislative authority, "in the other territories subject to his government". The Legislature determined that, so far, a certain change should take place; but that it was expedient to leave the time, and the manner," of carrying it into effect to the discretion of the Lieutenant-Governor; and also, that the laws which were or might be in force in the other territories subject to the same Government were such as it might be fit and proper to apply to this district also; but that, as it was not certain that all those laws, and every part of them, could with equal convenience be so applied, it was expedient, on that point also, to entrust a discretion to the Lieutenant-Governor. This having been done as to the Garo Hills, what was done as to the Khasi and Jaintia Hills". The Legislature decided that it was fit and proper that the adjoining district of the Khasi and Jaintia Hills should also be removed from the jurisdiction of the existing Courts, and brought under the same provisions with the Garo Hills, not necessarily and at all events, but if and when the Lieutenant-Governor should think it desirable to do so; and that it was also possible that it might be expedient that not all, but some only, of those provisions" should be applied to that adjoining district. And accordingly the Legislature entrusted, for these purposes also, a discretionary power to the Lieutenant-Governor.

Then comes the classic passage on which considerable reliance is placed by the learned Advocate General. It is to this effect (pp. 195-196) :

Their Lordships think that it is a fallacy to speak of the powers thus conferred upon the Lieutenant-Governor (large as they undoubtedly are) as if, when they were exercised, the efficacy of the acts done under them would be due to any other legislative authority than that of the Governor-General in Council. Their whole operation is, directly and immediately, under and by virtue of this Act (XXIJ. of 1869) itself. The proper Legislature has exercised its judgment as to place, person, laws, powers; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute. Where plenary powers of legislation exist as to particular subjects, whether in an imperial or in a provincial Legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the

exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient. The British Statute Book abounds with examples of it and it cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the legislative powers which it from time to time conferred. It certainly used no words to exclude it. Many important instances of such legislation in India are mentioned in the opinions of the Chief Justice of Bengal, and of the other two learned Judges who agreed with him in this case. Among them are the great Codes of Civil and of Criminal Procedure (Acts VIII. of 1859, XXIII. of 1861, and XXV. of 1861).

By Section 385 of the Code of Civil Procedure, it is provided that "this Act shall not take effect in any part of the territories not subject to the general regulations of Bengal, Madras, and Bombay, until the same shall be extended thereto by the Governor-General in Council" (not in his legislative capacity), "or by the Local Government to which such territory is subordinate, and notified in the Gazette." Section 445 in the Code of Criminal Procedure is precisely similar. And by sect. 39 of Act XXU1. of 1861, when any such extension as that authorized by Section 385 of the Act of 1859 is made, it may, with the previous sanction of the Governor-General in Council (not in his legislative capacity), be declared to be "subject to any restriction, limitation, or proviso which the Local Government may think proper." If their Lordships were to adopt the view of the majority of the High Court, they would (unless distinctions were made on grounds beyond the competency of the judicial office) be casting doubt upon the validity of a long course of legislation, appropriate, as far as they can judge, to the peculiar circumstances of India; great part of which belongs to the period antecedent to the year 1861, and must therefore (as Sir Richard Garth well observed) be presumed to have been known to, and in the view of, the Imperial Parliament, when the Councils' Act of that year was passed. For such doubt their Lordships are unable to discover any foundation, either in the affirmative or in the negative words of that Act.

31. In the instant case, therefore, it would appear that since the State Government is the best authority to find out the suitability of the officer concerned, and the occasion for investing the powers, having regard to the workload and the urgency, it was competent to issue the said notification and since the text of Section 8(2) is explicit it is not permissible for us to read any restrictions in it.

32. The argument of implied limitations no doubt appears to have been inspired by the arguments advanced on behalf of the petitioners before the Supreme Court in the recent historic case of *Kesavananda v. State of Kerala* AIR [1978] S.C. 1461. It was also argued by Mr. Parulekar that after the decision of *Kesavanm&a's* case by the Supreme Court, the principles of the Privy Council laid down in *The Queen V. Surah*, do not appear to have the same force which

they had till that decision was rendered. In support of that submission Mr. Parulekar tried to draw my attention to certain observations of his Lordship Khanna J., in para. 1370 at p. 1838 of the report. The relevant observations are to this effect:

In the case of *The Queen v. Burah* (1878) 3 AC 889 Lord Selborne observed:

The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited,...it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions.

Although the above observations were made in the context of the legislative power, they have equal, if not greater, relevance in the context of the power of amendment of the Constitution.

33. With respect, I really fail to see how Mr. Parulekar could submit that these observations would go to show that the principles laid down by the Privy Council in *The Queen v. Burah* have ceased to have the force which they had till the decision in *Kesavananda's* case was rendered.

34. Mr. Parulekar has then drawn my attention to the observations of his Lordship Hegde J., in para. 676 at p. 1627. The observations are to this effect:

The rule laid down by the Judicial Committee in *R. v. Burah*, that "if what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited it is not for any Court of justice to inquire further, or to enlarge constructively those conditions and restrictions" was heavily relied on by Mr. Seervai. That decision, however, has been confined to the interpretation of conditional legislations and the rule that it laid down has not been applied while considering the question whether there are any implied limitations on any of the powers conferred under a statute or Constitution.

35. For my part I could only say that so far as the instant case is concerned, since the statute under construction is a piece of conditional legislation, the above observations would not make any difference. On the other hand, it would appear that the principles enunciated by the Privy Council in *The Queen v. Burah's* case would be certainly applicable for considering the scope and ambit of conditional legislation.

36. In this connection I may mention that out of thirteen learned Judges of the Supreme Court as many as six of the learned Judges have expressly referred to and followed the principles laid down by Lord Selborne in *The Queen v. Burah*

way back in 1878. In this connection it is enough to refer to the relevant observations of his Lordship Bay J. (as his Lordship the Chief Justice then was) in para. 913 at p. 1681, of Palekar J., in para. 1308 at p. 1811, of Mathew J. in para. 1574 at p. 1908, of Beg J. in paras. 1851, 1853 at pp. 1979 and 1980 respectively and of Chandrachud J. in para. 2100 at p. 2041 and of Khanna J., in para. 1370 at p. 1838. It is also significant to note that in para. 1945 at p. 2005, although his Lordship Dwivedi J. has not specifically referred to the decision in *The Queen v. Burah*, his Lordship has in terms used the selfsame expression which was used by Lord Selborne in *Burah*'s case when his Lordship remarked, "It is not permissible to enlarge constructively the limitations on the amending power,..." It would thus appear that the principles enunciated by Lord Selborne in *Burah*'s case wayback in 1878 are still good law which could be resorted to when the Court is called upon to consider the question of the type which is posed before me viz., of interpreting the scope of a section of a statute, particularly of a conditional legislation.

37. I might also mention here that when the text of the statute is clear and explicit it is conclusive in both what it directs and what it prohibits. Again, the first and most important method of construction of a statute is to try to understand the intention of the Legislature from the language used. When there is no ambiguity or uncertainty in the language which is used by the Legislature it is not at all permissible to look for its construction either to the preamble or to the scheme of the Act or as is often said by reference to that illusory factor what is called the spirit of the Act. The language of Section 8(2) in this case, being clear and unequivocal it would appear that it is not at all necessary to consider either the preamble or the scheme of the Act. Even otherwise it would appear that even if that test were applied the section would certainly stand the test. The preamble as we see, shows that the Act is enacted for the administration of public religious and charitable trusts in the State of Bombay. As I have stated at the outset of this judgment, for obvious reasons, the Legislature having passed a legislation they also provided by way of conditional legislation for the State Government to decide as to when precisely the provisions of the Act should apply and public trusts: or charities to which precisely it should apply and it also left to the State Government to decide for itself the different dates from which the provisions are to apply. What is more, the Legislature in its wisdom also left to the State Government to direct certain class of trusts being exempted from, the provisions of the Act. The Legislature while no doubt provided for a hierarchy of officers and prescribed minimum qualifications for appointment of these officers, and while it also laid down specific provisions with regard to some of the powers which these officers by virtue of their office as such could perform, it also felt that it must be left to the State Government to see how best to administer the trusts. Since the Charity Commissioner is a corporate sole, it is unthinkable that there could be more than one Charity Commissioner to be appointed under the Act. Having regard to the vast area of the State concerned and the numerous trusts that have got to be administered and the several enquiries which have got

to be made and appeals and revisions which have got to be heard, the Legislature could not but leave it to the State Government to meet such situation as and when they arose. It is precisely for this purpose that the Legislature took particular care to see that while powers and functions of the Charity Commissioner and Joint Charity Commissioner are specified, there is a further provision even with regard to them, that they shall exercise the powers and shall perform such duties and functions- as are conferred by and under the provisions of this Act. That would show that the Legislature could not contemplate all manner of duties and functions which even a Charity Commissioner who is at the top of the administration may be called upon to do or perform in a given situation. It is precisely to meet such contingency that even with regard to that high dignitary who is at the helm of the administration filling an office of a corporate sole, that the Legislature by way of abundant caution had to provide that in addition to the powers and functions conferred by the Act, he should also be able to perform the duties and exercise the functions which may be required to be done under the provisions of the Act, which I have endeavoured to show, would be by a notification issued by the State Government by virtue of the enabling provisions of Section 8(2) of the Act. Again, the Legislature particularly while dealing with the functions, powers and duties of the Deputy and Assistant Charity Commissioner, has taken particular care to see, as they have done in the case of Charity Commissioner, that such powers and functions would be not only those which are provided by the Act, but also those which may be provided under the provisions of this Act. It is these provisions which would make it clear that there is no scope of reading in the Act a clear cut dichotomy of powers, which was sought to be urged by Mr. Parulekar.

38. The Court can certainly take judicial notice of the fact, that having regard to the large number of appeals and revisions and enquiries and day-to-day duties of administering the various trusts, even with the assistance of the Joint Charity Commissioner, the Charity Commissioner may not be able to cope up with the workload. That explains why the Legislature had to provide for such a contingency and since that contingency could only arise in the course of day-to-day administration of the Act in the very nature of things, the Legislature could not contemplate it, and had perforce left it in its wisdom to the State Government. It is not a case as was argued by Mr. Parulekar that the interpretation which I am trying- to put on Section 8(2) would lead to the State Government exercising uncanalized and unlimited powers. If the Legislature in its wisdom thought it necessary, to invest the State Government with powers to invest Deputy Charity Commissioners with the powers of the Charity Commissioner, it is not for us to say, that the powers which have been invested by the Legislature on the State Government are unlimited or uncanalized. That the guidance to the exercise of these powers could be had from the preamble and the scheme of the Act and that the Court would also take judicial notice of the same, are to be found in the observations of the Supreme Court in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, . It is observed as

under (p. 138) :

It is not, however, essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself.

Further on at p. 139, the relevant observations are to this effect:

Such guidance may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the Court might take judicial notice or of which it is apprised by evidence before it in the form of affidavits, *Kathi Raning Rawat Vs. The State of Saurashtra*, being an instance where the guidance was gathered in the manner above indicated, (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment.

So also in *Niemla Textile Finishing Mills Ltd. v. The 2nd Punjab Industrial Tribunal* [1957] S.C.R. 335 while dealing with Section 10 of the Industrial Disputes Act, 1947, their Lordships of the Supreme Court have made the following observations (pp. 349-350) :

We are unable to accept these contentions. Having regard to the provisions of the Act hereinbefore set out it is clear that Section 10 is not discriminatory in its ambit and the appropriate Government is at liberty as and when the occasion arises to refer the industrial disputes arising or threatening to arise between the employers and the workmen to one or the other of the authorities according to the exigencies of the situation. No two cases are alike in nature and the industrial disputes which arise or are apprehended to arise in particular establishments or undertakings require to be treated having regard to the situation prevailing in the same. There cannot be any classification and the reference to one or the other of the authorities has necessarily got to be determined in the exercise of its best discretion by the appropriate Government. Such discretion is not an unfettered or an uncontrolled discretion nor an unguided one because the criteria for the exercise of such discretion are to be found within the terms of the Act itself. The various authorities are to be set up with particular ends in view and it is the achievement of the) particular ends that guides the discretion of the appropriate Government in the matter of setting up one or the other of them. The purpose sought to be achieved by the Act has been well defined in the preamble to the Act. The scope of industrial disputes is defined in Section 2(k) of the Act and there are also provisions contained in the other sections of the Act which relate to strikes and lock-outs, lay-off and retrenchment as also the conditions of service, etc., remaining unchanged during the pendency of proceedings. These and analogous provisions sufficiently indicate the purpose and scope of the Act as also the various industrial disputes

which may arise between the employers and their workmen which may have to be referred for settlement to the various authorities under the Act. The achievement of one or the other of the objects in view by such references to the Boards of Conciliation or Courts of Enquiry or Industrial Tribunals must guide and control the exercise of the discretion in that behalf by the appropriate Government and there is no Scope, therefore, for the argument that the appropriate Government would be in a position to discriminate between one party and the other.

39. It would thus appear that it could not be said that there are no guidelines in the Act for the State Government to exercise its powers u/s 8(2) of the Act. As I have endeavoured to show, the very preamble to the Act, and the nature and the functions of the duties to be performed by the Charity Commissioner, having regard to the large number of trusts in the State and because of the heavy workload depending on emergencies, the Legislature appears to have deliberately left it to the State Government, to decide upon the nature of the urgency and the suitability of the Officer concerned to exercise the higher powers than the powers which are normally attached to the cadre post he is holding.

40. Mr. Parulekar has also drawn my attention to Section 88 of the Act, which provides, inter alia, that--

If any difficulty arises in giving effect to the provisions of this Act, the State Government may by an order published in the Official Gazette, do anything not inconsistent with the provisions of this Act which appears to it to be necessary or expedient for the purpose of removing the difficulty.

I really fail to see how this provisions could help Mr. Parulekar as this is an usual provision to be found in almost every statute. I have endeavoured to show that there is nothing inconsistent with the provisions of the Act in the State Government directing a Deputy Charity Commissioner to exercise the powers of a Charity Commissioner by virtue of the powers vested in it u/s 8(2) of the Act.

41. It would, therefore, appear that so far as the contentions of Mr. Parulekar are concerned, they cannot stand the test of scrutiny in the light of the provisions of the Act.

42. That leads me to the contention of Mr. Rizvi, As stated earlier, Mr. Rizvi submits that Section 8(2) has absolutely no application to the Charity Commissioner, or Deputy Charity Commissioner and Assistant Charity Commissioner and it has reference only to the Director of Accounts, the Assistant Director of Accounts and other officers mentioned in Section 6. For the sake of ready reference I might set out the provisions of Section 6:

For the purpose of carrying out the provisions of this Act, the State Government may appoint the Director of Accounts and Assistant Directors of Accounts possessing the prescribed qualifications, Inspectors and other subordinate officers and assign to them such powers, duties and functions under this Act, as

may be deemed necessary:

Provided that the State Government may, by general or special order and subject to such conditions as it deems fit to impose, delegate to the Charity Commissioner, the Joint Charity Commissioner and the Deputy and Assistant Charity Commissioners powers to appoint subordinate officers and servants as may be specified in the order.

43. Mr. Rizvi argues that the Act consists of two parts. According¹ to him, the parts are divided into important part and less important part. Arguing in that strain, he submits that the officers of the cadre of Charity Commissioner, Joint Charity Commissioner, Deputy Charity Commissioner and Assistant Charity Commissioner and their powers and functions form an important part of the Act and that the officers mentioned in Section 6 and their functions and duties- are of lesser importance. According" to Mr. Rizvi, so far as the important officers are concerned the Legislature took on itself to prescribe the qualifications and experience for appointment to these offices and also to lay down the provisions about their powers and functions. With regard to the subordinate officers mentioned in Section 6 argues Mr. Rizvi, the Legislature thought that it need not bother itself with such subordinate officers and it could be easily left to be determined by the State Government, He also argues that the expression "may also direct" in Section 8(2) of the Act, has reference to the provisions already made in Section 6 of the Act. He has also drawn my particular attention to the fact that both in Section 6 and Section 8(2) of the Act, we find the expression "under this Act". That common phraseology, argues Mr. Rizvi, is a pointer to his contention and a clinching one at that, about Section 8(2) having a link only with Section 6 and with no other parts of the establishment. I have mentioned this argument by way of deference to Mr. Rizvi. But I find no substance in this submission. I have already endeavoured to show while considering the elaborate arguments of Mr, Parulekar, how no exception could be taken to the notification of the State Government empowering Mr. Huprikar to exercise the powers of the Charity Commissioner.

44. In the result, it would appear that the order of the learned Judge of the City Civil Court striking down the notification cannot be sustained and must be set aside, and, that of the learned Deputy Charity Commissioner should be restored.

45. At this stage Mr. Rizvi requests me to deal with his cross-objections. His first objection is that since the Murabadevi trust or its Chairman could not be said to be interested persons within the meaning of Section 2(1) of the Act, the revision application ought not to have been entertained by the Deputy Charity Commissioner at their instance. This submission has been rightly repelled by the learned Deputy Charity Commissioner and also by the learned Judge of the City Civil Court. Section 70A is to this effect:

70A.(1) The Charity Commissioner may, in any of the cases mentioned in Section 70, (either suo motu or on application) call for and examine the record and

proceedings of such case before any Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to the correctness of any finding or order recorded or passed by the Deputy or Assistant Charity Commissioner and may either annul, reverse, modify or confirm the said finding or order or may direct the Deputy or Assistant Charity Commissioner to make further inquiry or take such additional evidence as he may think necessary or he may himself take such additional evidence:

Provided that the Charity Commissioner shall not record or pass any order without giving the party affected thereby an opportunity of being heard.

As rightly pointed out by the learned Deputy Charity Commissioner, Section 70A of the Act enables the Charity Commissioner to exercise his revisional powers suo motu or on an application. Since an application was in fact made and the matter was brought to his notice and Mr. Barot had made it clear that the Charity Commissioner may be pleased to take action suo motu it was perfectly open for the Charity Commissioner to entertain the revision application suo motu as he has in fact done.

46. Mr. Rizvi then argued that having regard to the fact that there was considerable delay in initiating¹ the revision proceedings after the order of the Assistant Charity Commissioner was passed, the learned Deputy Charity Commissioner need not have exercised his discretion to revise the order. Comment I think is not called for, because there is no limitation provided for exercising suo motu revisional jurisdiction u/s 70A of the Act.

47. Mr. Iizvi then submits that since there was sufficient evidence on record and and since the Assistant Charity Commissioner had followed the procedure mentioned in Section 19 of the Act, the learned Deputy Charity Commissioner was not justified in remanding the matter for a further enquiry. I am not at all impressed with this submission either. As rightly pointed out by the learned Deputy Charity Commissioner it being¹ an enquiry which was instituted suo motu, by the Charity Commissioner, it was evidently desirable and necessary that there should have been a thorough investigation, which investigation in the case of temples situate in a premier city like Bombay, could have been certainly facilitated by reference to the Bombay Guide and the Gazetteer and by publication of a notice in newspapers. Again, since there were no parties opposing each other, so that the veracity of the witnesses from one party may be tested by cross-examination by the opposite party, it was incumbent on the Assistant Charity Commissioner to cross-examine the interested parties concerned with these temples. After all in a case like this which is of public importance, it was essential that the Assistant Charity Commissioner should have acted with a sense of responsibility realising the nature of the duty which he was to perform. Therefore, no exception can be taken to the order passed by the Deputy Charity Commissioner. It would thus appear that there is no substance in the cross-objections.

48. In the result, all the three appeals are allowed, and the orders of the City Civil Court in all the three Charity applications Nos. 12, 15 and 17 of 1972 are set aside and the orders passed by the learned Deputy Charity Commissioner are restored.

49. At this stage, the learned Advocate General applies for quantifying the costs in exercise of the discretionary powers of the Court. He has also drawn my attention to the order as to costs passed by this Court in *Bhikusa v. Sangwmner Bidi Kamgar Union* (1958) 61 Bom. L.R. 764. I have heard the other side also in this connection. It would appear that the question about the validity of the notification was not at all raised by the managers of the temples concerned when the revision application was being- heard by the Deputy Charity Commissioner. It was only after his decision went against them, and they moved the City Civil Court by applications u/s 72 of the Act, that they challenged the very notification of the Government under which the Deputy Charity Commissioner was empowered to hear revision applications. That contention being upheld by the City Civil Court the Charity Commissioner was obliged to approach this Court by way of appeal. Having regard to the fact that a notification issued by the State Government was impeached and what is more, successfully in the City Civil Court, it would appear that it was thought that the learned Advocate General should conduct the appeals on behalf of the Charity Commissioner. The matter is heard for six days barring the time which was taken for admissions and for order matters. It would appear that complicated questions of far reaching importance were involved. The advocates concerned including the Advocate General had to put in considerable industry in putting forward their points of view. It would, therefore, appear that this is one of those rare cases where as was done by this High Court in *Bhikusa's* case, I should consider the request made by the Advocate General.

50. It was, however, submitted by the other side that having regard to the fact that in the City Civil Court no order as to costs was provided, there is no need to depart from that provision as to costs. That is what is submitted by Mr. Rizvi Mr. Pamlekar, however, says that after all they are also representing charity and the Court may award whatever it thinks fit to the Advocate General after taking that fact into consideration. It would appear that there are three original contesting-parties concerning the concerned temples. All the three matters are heard together. In the circumstances, therefore, I think that a payment of Bs. 850 per appeal for the Advocate General would meet the requirements of the case. With regard to the other parties and the cross-objections since I see no reason to depart from the usual rule as to costs, the respondents-applicants in the City Civil Court, shall pay the costs of the appellants and respondent No. 3, the trustees of the Mumbadevi temple in both the Courts and bear their own.

51. Civil applications? Nos. 2818, 2819 and 2820 of 1973 do not survive. No order as to costs.

52. Cross-objections are dismissed with costs in favour of respondent No. 3,

Chairman of the Mumbadevi temple.