

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1087 OF 2014

1. Baburao S/o Sopanrao Palmate,
Age : 61 Years, Occu. : Agril.,
R/o Kopara, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
2. Khanderao S/o Narsingh Elkatwad,
Age : 60 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
3. Sau. Laxmibai W/o Khanderao Elkatwad,
Age : 55 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
4. Shivshankar S/o Gurulingappa Kharabe,
Age : 43 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
5. Sau. Lata W/o Shivshankar Kharabe,
Age : 34 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
6. Bhimashankar S/o Nagorao Rokade,
Age : 62 Years, Occu. : Agril.,
R/o Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
7. Pooja Sachinrao Bhikane,
Age : 30 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,

Tq. Ahmedpur, Dist. Latur.

8. Ravikiran S/o Uttamrao Bhikane,
Age : 38 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
9. Sau. Jyoti W/o Ravikiran Bhikane,
Age : 33 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
10. Sau. Suwarnabai W/o Shrikant Naragude,
Age : 58 Years, Occu. : Household,
R/o Sonkhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
11. Sau. Satyabhamabai W/o Madhavrao Pangare,
Age : 46 Years, Occu. : Household,
R/o Sonkhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
12. Laxmibai W/o Kondiram Kasabe,
Age : 63 Years, Occu. : Household,
R/o Sonkhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
13. Sau Muktabai W/o Tukaram Kasabe,
Age : 31 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
14. Nivrutti S/o Gunaji Kamble,
Age : 68 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.

15. Kacharu S/o Narayan Kendre,
Age : 71 Years, Occu. : Agril.,
R/o Patoda, Post Kajal Hipparga,
Tq. Ahmedpur, Dist. Latur.
16. Sau. Anusayabai W/o Kacharu Kendre,
Age : 67 Years, Occu. : Household.,
R/o Patoda, Post Kajal Hipparga,
Tq. Ahmedpur, Dist. Latur.
17. Anil S/o Udhavrao Bhikane,
Age : 48 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
18. Uttamrao S/o Vitthalrao Bhikane,
Age : 63 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
19. Sau. Madyanti W/o Uttamrao Bhikane,
Age : 57 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
20. Pandhari S/o Limbaji Gaikwad,
Age : 77 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
21. Siddheshwar S/o Gurunathappa Swami,
Age : 60 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
22. Gangadhar S/o Shivdasappa Rodge,
Age : 64 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,

Tq. Ahmedpur, Dist. Latur.

23. Jagannath S/o Shrirang Dahiphale,
Age : 48 Years, Occu. : Agril.,
R/o Pathera, Post Kajal Hipparga,
Tq. Ahmedpur, Dist. Latur.
24. Subhash S/o Dattabuva Giri,
Age : 44 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
25. Suresh S/o Govindrao Alapure,
Age : 56 Years, Occu. : Agril.,
R/o Dhalegaon, Tq. Ahmedpur,
Dist. Latur.
26. Shivaji S/o Balnath Bane,
Age : 63 Years, Occu. : Agril.,
R/o Dhalegaon, Tq. Ahmedpur,
Dist. Latur.
27. Dhananjay S/o Ramkishan Rachmale,
Age : 39 Years, Occu. : Agril.,
R/o Dhalegaon, Tq. Ahmedpur,
Dist. Latur.
28. Ramnath S/o Narayan Palmate,
Age : 42 Years, Occu. : Agril.,
R/o Dhalegaon, Tq. Ahmedpur,
Dist. Latur.
29. Onkar S/o Bapurao Parge,
Age : 59 Years, Occu. : Agril.,
R/o Dhalegaon, Tq. Ahmedpur,
Dist. Latur.

30. Vishnu S/o Nivruttirao Alapure,
Age : 46 Years, Occu. : Agril.,
R/o Dhalegaon, Tq. Ahmedpur,
Dist. Latur.
31. Subhash S/o Dhondiram Bhikane,
Age : 53 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
32. Harishchandra S/o Ramrao Jadhav,
Age : 61 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
33. Balasaheb S/o Kishanrao Teerthakar,
Age : 53 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
34. Vijaykumar S/o Devidasrao Bhikane,
Age : 49 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
35. Sau. Daivashala W/o Kalidas Jadhav,
Age : 54 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
36. Sau. Shobha W/o Nanasaheb Mankhedkar,
Age : 46 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
37. Sau. Surekha W/o Shivhar Kharabe,
Age : 38 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,

Tq. Ahmedpur, Dist. Latur.

38. Sau. Laxmibai W/o Digambar Sangle,
Age : 56 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
39. Sau. Vanita W/o Vijaykumar Bhikane,
Age : 46 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
40. Achyut S/o Kalidas Jadhav,
Age : 29 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
41. Sau. Renuka W/o Vijaykumar Kharabe,
Age : 28 Years, Occu. : Household,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
42. Bharat S/o Vithalrao Bhikane,
Age : 53 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
43. Nagesh S/o Vishwanath Bhikane,
Age : 30 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.
44. Pradeep S/o Gundappa Kharabe,
Age : 29 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur.

45. Sau. Aruna W/o Babasaheb Kamble,
Age : 51 Years, Occu. : Agril.,
R/o Mankhed, Post Kingaon,
Tq. Ahmedpur, Dist. Latur. .. Appellants

Versus

1. The Joint Charity Commissioner,
Latur Region, Latur.
2. Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.
3. Gurulingappa S/o Ramlingappa Kharabe,
Age : Major, Occu. : Agril. & President of
Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.

(Deleted as per Order dated 25.09.2014)

4. Kalidasrao S/o Ramrao Jadhav,
Age : Major, Occu. : Agril. & Vice President
of Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.
5. Shivajirao S/o Vithalrao Bhikane,
Age : Major, Occu. : Agril. & Treasurer
of Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.
6. Pangre Madhavrao Vithalrao,
Age : Major, Occu. : Agril. & Treasurer
of Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,

Dist. Latur.

7. Kamble Nanasaheb Ramji,
Age : Major, Occu. : Agril. & Member
of Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.
8. Kharabe Shivhar Gundappa,
Age : Major, Occu. : Agril. & Member
of Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.
9. Sudhakar S/o Bhagwanrao Nagargoje,
Age : 57 Years, Occu. : Agril.,
R/o Ahmedpur, Tq. Ahmedpur,
Dist. Latur.
10. Pravin S/o Manoharrao Reddy,
Age : 42 Years, Occu. : Agril.,
R/o Kajal Hippargaon, Tq. Ahmedpur,
Dist. Latur.
11. Anand S/o Raghuvirrao Reddy,
Age : 32 Years, Occu. : Agril. & Medical
Practitioner,
R/o Kajal Hippargaon, Tq. Ahmedpur,
Dist. Latur.
12. Kendre Shivaji Ganpatrao,
Age : Major, Occu. : Service,
R/o Kendrewadi, Tq. Ahmedpur,
Dist. Latur.
Now at Kesharbai Sonajirao Kshirsagar,
Kesharkaku Mahavidyalaba Beed.

13. Smt. Naragude Trivenibai Bhagwatrao,
Age : Major, Occu. : Household,
R/o Sonkhed, Tq. Ahmedpur,
Dist. Latur.
14. Swami Shivanand Shankar,
Age : Major, Occu. : Agril.,
R/o Mankhed, Tq. Ahmedpur,
Dist. Latur.
15. The Assistant Charity Commissioner,
Latur. .. Respondents

Shri N. P. Patil (Jamalpurkar), Advocate for Appellants.
 Shri P. N. Kutti, A.G.P. for Respondent Nos. 1 and 15.
 Shri R. R. Mantri, Advocate Respondent Nos. 2, 4 to 8.
 Shri S. S. Thombre, Advocate for Respondent Nos. 9 and 10.
 The Respondent Nos. 4, 5, 7, 13 and 14 served.

**WITH
FIRST APPEAL NO. 1088 OF 2014**

1. Gurulingappa S/o Ramlingappa Kharabe,
Age : 70 Years, Occu. : Agril. & President of
Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.
- (Deleted as per Order dated 27.01.2015)
2. Kalidasrao S/o Ramrao Jadhav,
Age : 49 Years, Occu. : Agril. & Vice President
of Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.
3. Shivajirao S/o Vithalrao Bhikane,
Age : 47 Years, Occu. : Agril. & Secretary,

of Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.

4. Pangre Madhavrao Vithalrao,
Age : 64 Years, Occu. : Agril. & Treasurer
of Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.
5. Kamble Nanasaheb Ramji,
Age : 47 Years, Occu. : Agril. & Member
of Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur.
6. Kharabe Shivhar Gundappa,
Age : 42 Years, Occu. : Agril. & Member
of Nutan Janta Shikshan Prasarak Sanstha,
Sonkhed-Mankhed, Tq. Ahmedpur,
Dist. Latur. .. Appellants

Versus

1. Sudhakar S/o Bhagwanrao Nagargoje,
Age : 57 Years, Occu. : Agril.,
R/o Ahmedpur, Tq. Ahmedpur,
Dist. Latur.
2. Pravin S/o Manoharrao Reddy,
Age : 42 Years, Occu. : Agril.,
R/o Kajal Hippargaon, Tq. Ahmedpur,
Dist. Latur.
3. Anand S/o Raghuvirrao Reddy,
Age : 32 Years, Occu. : Agril. & Medical
Practitioner,
R/o Kajal Hippargaon, Tq. Ahmedpur,

Dist. Latur.

4. Kendre Shivaji Ganpatrao,
Age : Major, Occu. : Service,
R/o Kendrewadi, Tq. Ahmedpur,
Dist. Latur.
Now at Kesharbai Sonajirao Kshirsagar,
Kesharkaku Mahavidyalaba Beed.
5. Smt. Naragude Trivenibai Bhagwatrao,
Age : Major, Occu. : Household,
R/o Sonkhed, Tq. Ahmedpur,
Dist. Latur.
6. Swami Shivanand Shankar,
Age : Major, Occu. : Agril.,
R/o Mankhed, Tq. Ahmedpur,
Dist. Latur.
7. The Assistant Charity Commissioner,
Latur.
8. The Joint Charity Commissioner,
Latur Region, Latur. .. Respondents

Shri R. R. Mantri, Advocate h/f Shri B. B. Dahiphale, Advocate for Appellants.

Shri S. S. Thombre, Advocate for Respondent Nos. 1 and 2.

Shri M. S. Karad, Advocate for Respondent Nos. 3 to 6.

Shri P. N. Kutti, A.G.P. for Respondent Nos. 7 and 8.

CORAM : S. V. GANGAPURWALA, J.

CLOSED FOR JUDGMENT : 20/10/2015

JUDGMENT PRONOUNCED ON : 21/11/2015

JUDGMENT :-

. The Change Report Enquiry No. 495 of 2003 was filed before the Assistant Charity Commissioner on 28.07.2003 by Shivajirao Vitthalrao Bhikane pursuant to the election of the Executive Body of Nutan Janta Shikshan Prasarak Sanstha, Sonkhed-Mankhed, Tq. Ahmedpur, Dist. Latur held on 24.06.2003. The said elections were conducted pursuant to the orders of the Joint Charity Commissioner in M. C. A. No. 05 of 2002. The elections were conducted by the Election Officer appointed by the Joint Charity Commissioner. The Assistant Charity Commissioner vide its order dated 25.10.2011 rejected the change report. Aggrieved thereby the elected office bearers filed appeal bearing Appeal No. 30 of 2011 before the Joint Charity Commissioner, Latur. The Joint Charity Commissioner vide its order dated 25.10.2012 dismissed the said appeal and confirmed the judgment of Assistant Charity Commissioner rejecting Change Report No. 495 of 2003. The Joint Charity Commissioner while dismissing the appeal gave further directions to conduct the election of the Executive Body of the trust on the basis of 39 members mentioned in the pursis at Exhibit 38. In the body of the judgment, the Joint Charity Commissioner observed that, the Executive Body elected on 24.06.2003 which enrolled 31 new members on 12.01.2007 and 15 new members on 20.05.2011 are not valid members. So also held that the body of fit persons appointed by the Joint Charity

Commissioner pursuant to the proceedings U/Sec. 41-D of the Bombay Public Trust Act (hereinafter for the sake of brevity referred as to the "Said Act") are also not the legal and valid members. The trustees being aggrieved by the order of Joint Charity Commissioner preferred Civil Misc. Application No. 12 of 2012 before the District Judge, Ahmedpur. At the same time, the 45 members who were enrolled as members in the year 2007 and 2011 also filed Civil Trust Application No. 01 of 2013 before the District Judge, Ahmedpur. The District Judge, Ahmedpur vide its common judgment and order dated 03rd May, 2014 dismissed Civil Misc. Application No. 12 of 2012 filed by the trustees and Civil Trust Application No. 01 of 2013 filed by persons who were enrolled as members in the year 2007 and 2011. The First Appeal No. 1087 of 2014 is filed by those 45 persons whose membership has been held to be illegal and First Appeal No. 1088 of 2014 is filed by the trustees whose change report application bearing Change Report Enquiry No. 493 of 2003 has been rejected.

02. Both these appeals are based on similar set of facts, as such are decided together.

03. Mr. N. P. Patil Jamalpurkar, the learned counsel appearing for appellants in First Appeal No. 1087 of 2014 and Mr. Mantri, the learned counsel appearing for appellants in First Appeal No. 1088 of 2014 strenuously put forth their submissions. The same

can be culled out as under :

i) The Joint Charity Commissioner vide order dated 25.02.2002 by exercising powers U/Sec. 41-D of the said Act removed 10 trustees of the said Trust and vide order dated 21.06.2002 appointed 11 trustees from amongst the members of the trust to look after the administration and management of the trust. As per bye-law No. 8 of the trust, eleven trustees appointed have formed board of trustees. These body of eleven persons appointed was not ad-hoc committee, but appointed trustees consisting of eleven members. The said board of trustees appointed by the Joint Charity Commissioner cannot be termed as an ad-hoc committee as laid down U/Sec. 41-D of the said Act. The Joint Charity Commissioner also did not impose any restriction on the powers of these eleven trustees. These board of trustees had given approval to 25 persons as members by taking a decision in the meeting dated 18.08.2002. These 25 persons had submitted application before the Executive Committee in the year 2000 and they have also paid their membership fees. The said amount is also credited in the account of the trust. These 25 persons had applied for membership on 18.01.2000, when the earlier board which is removed, subsequently, U/Sec. 41-D of the said Act was in office. According to learned counsel, even the Joint Charity Commissioner in his order dated 22.05.2002 passed U/Sec. 41-D of the said Act had held that, these 25 persons who have applied

for membership are qualified to be enrolled as members, but the Executive Committee with malafide intention did not take any decision about their membership inspite of application and payment of membership fees. According to the learned counsel, it was erroneous to hold that, these 25 members are not legal and valid members. It was not the case that, they were enrolled subsequently. Only members were not shown in the membership register. The board of trustees appointed by the Charity Commissioner have only taken their names in the membership register. Only because these 25 persons have participated in the elections, the elections cannot be termed to be invalid.

ii) It is further submitted that, one of the reason given for rejection of change report is that, the 10 trustees who were removed U/Sec. 41-D of the said Act were not allowed to participate in the election. The Joint Charity Commissioner vide order dated 11.10.2002 had clarified that, these persons cannot participate in the election. The same authority is now giving a finding that these 10 persons were eligible to participate in the election of 2003 and because of their non participation the election is illegal. The same is erroneous. It was only upon the orders of the Joint Charity Commissioner dated 11.12.2002, the said 10 trustees who were removed U/Sec. 41-D of the said Act were not allowed to participate, now the authority cannot hold otherwise.

iii) According to learned counsel it was also erroneous on the part of the Joint Charity Commissioner to direct holding of election of board of trustees from amongst 39 members as per the list submitted by respondents. Even objections were not invited from appellants with regard to eligibility of these 39 persons. These 39 persons include 16 persons whose membership was already cancelled by the Assistant Charity Commissioner vide order dated 30th July, 2001 in Enquiry No. 420 of 2001, as such the said direction of holding election from amongst 39 members as per the list itself is illegal. Even those persons who have been removed U/Sec. 41-D of the said Act are included in the list of 39 members. Apart from the rejection of the membership of these 16 persons by the Assistant Charity Commissioner vide order dated 30th July, 2001 in Enquiry No. 420 of 2001, even the Joint Charity Commissioner in his order dated 22.05.2002 passed in proceedings U/Sec. 41-D of the said Act held that the board of trustees were interested in enrolling those 16 persons as members because they were their nearest relatives. The Joint Charity Commissioner further held in the said order that, these 16 persons are not eligible to become members and that their membership is rightly cancelled by the Assistant Charity Commissioner. Even the members who were removed trustees U/Sec. 41-D cannot be valid members.

iv) The learned counsel further submit that, the 45 members who have filed Appeal No. 1087 of 2014 are validly enrolled as

board of trustees. The validity of their membership could not have been decided in their absence. The same is violative of principles of natural justice. The learned counsel rely on the judgment of the learned Single Judge of this Court in a case of **Rajaram Vithoba Kadam Vs. Joint Charity Commissioner** reported in **2011(2) Mh.L.J. 759**. According to the learned counsel, the board of trustees assume office, the moment election has taken place and they need not wait till the decision in the change report proceedings. The learned counsel rely on the judgment of the Division Bench of this Court **dated 22.09.2005** in **Writ Petition No. 6073 of 2005**. The elected representatives cannot be prohibited from functioning, merely, because change report is pending. The decision taken by the elected board of trustees cannot render invalid in the event of rejection of change report of their election. Even as per Sec. 56(o) of the said Act, the decision taken by the committee cannot be rendered invalid only because subsequently, it was found that committee was wrongly constituted. The learned counsel rely on following judgments.

- a. **2002 (3) B.C.R. 161.**
- b. **2008 (5) Mah. L. J. 85.**
- c. **AIR 1977 SC 237.**

v) The controversy about membership of 45 persons was never raised in the original proceedings and for the first time is raised in the appeal. The same is not permissible. These 45 persons have been validly enrolled as members vide meeting of the Executive Committee. The Executive Committee scrutinized their applications, accepted the membership fees and enrolled them as members. No illegality is committed in the procedure enrolling them as members. It is also nobody's case that, these 45 persons are not eligible to be members. The findings recorded by the Joint Charity Commissioner as against these 45 persons cannot be sustained and is illegal.

vi) The learned counsel further submit that, the trust is also registered under the Societies Registration Act, apart from the registration under the Bombay Public Trust Act. According to the learned counsel as per Sec. 15(2) of the Societies Registration Act and Rule 15 of the Societies Registration (Maharashtra) Rules 1971, for enrollment of members three stages are involved. The 25 members alleged to be enrolled by the ad-hoc committee have already submitted their applications when regularly elected committee was in office in the year 2001 and also paid membership fees of Rs. 500/- each. The same is credited to the account of the trust. The said membership fees is never returned to them. The first two stages mentioned have already taken place, when regular committee was in office. If the committee does not communicate any decision on applications for

membership within three months to the said persons, then the said persons after expiry of three months are deemed to be the members. The said corollary can be found in the provisions of the Maharashtra Co-operative Societies Act also. The order of rejection of change report is illegal.

Vii) It is further submitted that, the judgment in a case of **Kishanrao Kanhaiya Naidu and others Vs. Jeevraj Bhairavlal Agrawal and others** reported in **2010(2) Mh.L.J. 31** is not attracted in the present case. The same was on altogether different facts, wherein the coram of the committee in the meeting was not properly constituted. There was no proper notice of meeting and on that ground the resolution passed in the said meeting about enrollment of members was under challenge. Even as per the judgment of the learned Single Judge of this Court in the case of **Vijay K. Mehta and ors Vs. Charu K. Mehta and others** reported in **2009(2) Bom.C.R. 321**, it is laid down that order of Assistant Charity Commissioner U/Sec. 22(3) of the said Act does not make changes effective from the said order. As such, only because change report of committee is rejected the enrollment of new members by the said committee does not become *ipso facto* invalid.

04. Mr. Thombre, the learned counsel for respondents has put forth following submissions.

a. All the Courts have rightly rejected the change report. The Joint Charity Commissioner in proceedings U/Sec. 41-D of the said Act had appointed committee of fit persons i. e. ad-hoc committee and not board of trustees. The Joint Charity Commissioner after removing the trustees U/Sec. 41-D of the said Act vide order dated 22.05.2002 directed the Assistant Charity Commissioner to submit the report with the help of Inspector as to who would be fit and proper persons for being appointed to be the trustees of the above trust. The said directions were as per Clause 3 of the order dated 25.02.2002 passed in Application No. 3 of 2002. Thereafter on 21.06.2002 after receiving report, the Joint Charity Commissioner, Latur appointed body of fit persons. These body of fit persons enrolled new members. These body of fit persons do not have any right or authority to enroll new members. These body of fit persons is appointed temporarily as a stop gap arrangement. They are neither trustees, nor managers. As such, they cannot enroll the members. The learned counsel relies on the judgment of this Court in the case of **Zitru Lahanuji Lonare Vs. Rajesh Trimbakrao Deshmukh** reported in **2005(6) All M. R 229**. In the light of that, the 25 persons appointed as members by the body of fit persons are rightly held to be illegal. These persons also participated in the elections. On this count also the elections are illegal and the change report is rightly rejected. The learned counsel relies on the judgment of this Court in the case of **Smt. Shobatai Krishnarao Zoting and ors Vs. Joint**

Charity Commissioner and ors reported in **2005(2) All M.R. 237** to submit that, ad-hoc committee or body of fit persons do not have any right to enroll new members.

b. The learned counsel submits that, the 16 members enrolled by the body prior to its removal U/Sec. 41-D of the said act is perfectly legal and valid. After the order was passed by the Assistant Charity Commissioner dated 30th July, 2001 cancelling membership of 16 persons a fresh resolution was passed conferring membership upon these 16 persons. The managing committee if passes resolution by majority, then it need not be reviewed by the authority U/Sec. 41-A of the said Act.

c. It is submitted that, Mr. Gurlingappa and Mr. Kalidas filed application U/Sec. 41-A of the said Act which was numbered as Enquiry No. 353 of 2002. The same was rejected by the Assistant Charity Commissioner vide order dated 21.11.2002 and it was observed in the said order that managing committee of the trust passed resolution second time and 16 persons whose membership was cancelled are again made members that trust. The same was a subsequent event, as such, these 16 persons are validly enrolled as members.

d. The learned counsel submits that, the order U/Sec. 41-D of the said Act was clear. It only removed the trustees from the office and their membership was not cancelled. There was no

propriety on the part of the appellants, to file any application. These persons who were removed as trustees were not allowed to participate in the meeting. On this count also change report is rightly rejected. The provisions of law were ignored while conducting the meeting and elections. The learned counsel submits that, the Joint Charity Commissioner was within its authority to determine about the membership. If the order dated 25.10.2011 is perused, there is no reference about enrollment of 45 persons. Uptill 25.10.2011 when the Assistant Charity Commissioner decided the change report, the appellants herein had not placed on record the list of members allegedly enrolled by them. This would make it clear that, false record is prepared regarding membership of 45 persons allegedly enrolled in the year 2007 and 2011. Even otherwise, the change report of the Executive Committee pursuant to the election in the year 2003 is rejected. Once the change report is rejected, then the *status quo ante* is required to be restored and decision taken by the said Committee to enroll new members becomes null and void. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **Chembur Trombay Education Society and ors Vs. D. R. Marathe and others** reported in **2002(3) Bom.C.R. 161**, so also the judgment of the learned Single Judge of this Court in the case of **Kishanrao Kanhaiya Naidu and others Vs. Jeevraj Bhairavlal Agrawal and others** reported in **2010(2) Mh.L.J. 31**.

e. According to the learned counsel, the pursis giving list of members is legal and valid and the elections are required to be held by the Executive Committee from the list as submitted before the Joint Charity Commissioner and the directions are rightly given by the Joint Charity Commissioner and upheld by the District Judge. No illegality has been committed.

05. I have considered the submissions canvassed by the learned counsel for respective parties and I have also gone through the judgments. The Assistant Charity Commissioner has rejected the change report basically on the ground that the 25 persons who were enrolled as members by the body of fit persons could not have been enrolled as members, as body of fit persons do not have any right to enroll new members, as these 25 persons participated in the elections. So also has rejected the change report on the ground that the trustees who were removed U/Sec. 41-D of the said Act were not allowed to participate in the election even as members of the trust.

06. The fact that, these 10 trustees who were removed U/Sec. 41-D of the said Act were not allowed to participate in the election is admitted. It would be clear that in the proceedings U/Sec. 41-D of the said Act, these 10 persons were removed as trustees and not as members of the trust. They have every right to vote in the election of the trust as members. According to the appellants, they relied on the order passed by the Joint Charity

Commissioner on an application filed by Narayan Patil. The Joint Charity Commissioner observed that, those trustees who have been removed U/Sec. 41-D of the said Act are disqualified either to contest the election, etc. The application was filed by said Narayanrao for getting clarification in Marathi language of the order passed by the Joint Charity Commissioner which was in English language. The said order sought to be relied by the appellants, cannot legalize, the elections held without participation of these 10 persons. The said application was seeking clarification of the order passed in English language into Marathi language. The same also does not appear to have been passed after hearing the parties. Be that as it may, the said clarification would not negate the rights of these trustees to participate in the elections as members of the trust as permissible. It is not disputed that, these trustees are the members of the trust. They have every right to participate in the election of the trust to the extent permissible under the Trust Act. As these persons have not been allowed to participate in the election of the trust, the elections held in the year 2003 were certainly not legal and valid. On this count alone the rejection of change report deserves to be upheld. It would not be necessary to refer to other facts for holding the said elections to be erroneous, inter alia rejection of change report at the hands of Assistant Charity Commissioner and upheld by the Joint Charity Commissioner and the District Judge needs no interference and the same deserves to be upheld.

07. The major controversy between the parties is with regard to the membership of 45 persons enrolled by the said Executive Committee in the year 2007 and 2011 whose change report is rejected. So also the validity of the 25 members which are said to be enrolled by the body of fit persons in the year 2002. So also the validity of the 16 persons as members who were enrolled by the erstwhile Executive Committee, which was removed U/Sec. 41-D of the said Act.

08. The Assistant Charity Commissioner had never dilated upon the validity of the membership of all these persons. The Joint Charity Commissioner also in appeal did not apply his mind with regard to the validity of the members enrolled by the Committee in the year 2007 and 2011, so also did not apply mind with regard to the membership of 16 persons who were enrolled allegedly by the body which is subsequently removed U/Sec. 41-D of the said Act. The Assistant Charity Commissioner had cancelled their membership by order dated 30th July, 2001. It is the case of respondents that, vide subsequent resolution, they were again inducted. The validity of the same has not been tested. Even the District Court failed to apply its mind in that regard. While deciding the enrollment of 45 members by the Committee, whose change report is rejected in the year 2007 and 2011, the authorities have not applied their mind with regard to whether proper procedure is followed, as to whether the membership fees is credited to the account of the Society and

other steps taken. Naturally, it will also have to decide the validity of their membership qua, their enrollment by the Committee whose change report is subsequently rejected. All these aspects have not at all been dealt with in its correct perspective. The contention of present appellant that 25 members who were appointed as fit persons had already applied, when the earlier body was in force and their membership fees was accepted by the earlier body and credited in the account before the body of fit persons was appointed is also not considered. On all these aspects there is absolutely no application of mind by any of the authorities. There is no doubt that, the body which was appointed after removal of the trustees U/Sec. 41-D of the said Act is a body of fit persons. They do not have the authority to enroll new members, however, the fact was also required to be considered, as to whether these 25 members had filed application seeking membership when the regular Executive Committee was in office. The date when they deposited the amount, whether the said amount was credited in the accounts of the trust, all these facets were required to be considered. The aspect of membership in respect of all these persons i. e. 45 members enrolled in 2007 and 2011, 25 persons enrolled in the year 2002 and 16 members enrolled by Executive Committee which is removed U/Sec. 41-D of the Trust Act has been dealt with in slipshod manner by the authorities.

9. Considering aforesaid aspects of the matter, it would be for

the authorities to consider in detail the aspect about the validity of these persons as members of the trust. To the said limited extent the matter is required to be remitted back. The clause 2 and 3 of the order passed by the Joint Charity Commissioner in Appeal, as such will have to be quashed and set aside. However, till the said aspect is decided, the appellants acting as trustees will have to be refrained from taking policy decisions and authority may also consider the other avenues for proper management of the trust.

10. In the result I pass following order.

ORDER

A. The order of the authorities rejecting the change report Enquiry No. 495 of 2003 is upheld and confirmed.

B. The clause Nos. 2 and 3 of the order dated 25.10.2012 passed by the Joint Charity Commissioner in Appeal No. 30 of 2011 is quashed and set aside.

C. The parties are relegated before the Assistant Charity Commissioner, Latur to the extent of deciding the validity of the membership of 25 persons enrolled as members in the resolution passed by body of fit persons in the year 2002, so also the validity of 45 persons enrolled by the present committee in the year 2007

and 2011 and also the validity of membership of 16 persons who were enrolled by the erstwhile Executive Committee which was subsequently removed U/Sec. 41-D of the said Act.

D. The Assistant Charity Commissioner, Latur shall decide about the validity of membership of these persons detailed above in clause 'C' expeditiously.

E. The parties shall appear before the A. C. C. Latur on 15th December, 2015.

F. The A. C. C. Latur shall after hearing all the parties decide about the validity of membership of all these persons and thereafter shall direct holding of election for Executive Committee of the Trust.

G. Till the A. C. C. Latur decides the aspect about the validity of these persons as members, the appellants herein shall work as trustees and the members of the Executive Committee, but shall not take any policy decision with regard to the affairs of the trust, nor shall enroll any fresh members.

H. The A. C. C., Latur shall endeavour to dispose of the proceedings expeditiously and preferably within a period of six (6) months from the date of appearance of the parties.

I. The parties shall co-operate in expeditious disposal of the same.

J. The first appeals accordingly are partly allowed, however, with no order as to costs.

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Nov. 15