IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2580 OF 2016
WITH
CIVIL APPLICATION NO. 13798 OF 2016,
CONTEMPT PETITION NO. 562 OF 2013
CIVIL APPLICATION NO. 1386 OF 2013
CIVIL APPLICATION NO. 7879 OF 2013

1. Janata Vidyaprasarak Mandal,
Shindkheda, Taluka Shindkheda,
District Dhule.

Shri. Gorakh Ragho Patil,
President,
Age. 75 years, Occu. Agriculture,
R/o. Gandhi Chowk, Shindkheda,
Taluka Shindkheda, District. Dhule.

2. Mahemud Ahamad Kureshi,
Age. 59 years, Occu. Business,
R/o. Plot No. 27, Falgun Colony,
Datta Chowk, CIDCO, Nashik,
Taluka & District. Nashik.

3. Shri. Manohar Gorakh Patil,
Age. 48 years, Occu. Service,
R/o. Saraswati Colony, Shindkheda,
District. Dhule.

4. Shri. Jitendra Gorakh Patil,
Age. 43 years, Occu. Service,
R/o. Gandhi Chowk, Shindkheda,
Taluka. Shindkheda, District. Dhule.

5. Kureshi Amjad Mahemod,
Age. 34 years, Occu. Business,
R/o. Plot No. 27, Falgun Colony,
Datta Chowk, CIDCO, Nashik,
District. Nashik.

6. Devendra Popatrao Borse,
Age. 53 years, Occu. Service,
R/o. Shivshakti Colony, Shindkheda,
Taluka. Shindkheda, District. Dhule. ...Appellants

Versus

1. Shri. Subhash shivram Patil,
Age. 62 years, Occu. Retired,
R/o. Near Hasti Bank, Saraswati Colony,
Shindkheda, Taluka Shindkheda,
District. Dhule.
(Deleted)

2. Shri. Harischandra Girdharlal Wani,
Age. 64 years, Occu. Retired,
R/o. Plot No. 12, Adarsha Colony,
Samarth Niwas, Shindkheda,
Taluka. Shindkheda, District. Dhule.

3. Rajendra Shivdas Desale (Patil),
Age. 52 years, Occu. Agriculturist,
R/o. Gandhi Chowk, Shindkheda,
Taluka. Shindkheda, Dist. Dhule.

4. Dr. Narendra Baburao Rane,
Age. 57 years, Occu. Doctor,
R/o. Shramasafhalya Colony,
Walwadi Shivar, Wadibhokar Road,
Deopur, Dhule, District. Dhule.

5. Shri. Deepak Vasantrao Desale,
Age. 37 years, Occu. Service,
R/o. Gurupushpa-B Apartment,
Flat No. 3, Vinay Nagar, Nashik.

6. Shri. Sanjay Ramanlal Shah,
Age. 40 years, Occu. Business,
R/o. Gandhi Chowk, Near Maruti Mandir,
Main Road, Shindkheda, Taluka. Shindkheda,
District. Dhule.

7. Shri. Yogendra Ramdas Desale,
Age. 56 years, Occu. Service,
R/o. 36, Gopalnagar, Jamanagiri Road,
Dhule, Taluka and District. Dhule.

8. Assistant Charity Commissioner,
Dhule Division, Dhule,
Sakri Road, Pingale Complex,
Dhule. ...Respondents.

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Adv. for Appellants : Shri P.M. Shah, senior counsel i/b Mr. A.S. Sawant
Advocate for Respondents 1 and 2: Mr. A.V. Hon
Advocate for Respondent No.3 : S.B. Talekar
Advocate for Respondent Nos. 4 and 7 : Mr. V.D. Sapkal
Advocate for Respondent No.5 : Mr. N.B. Khandare
Advocate for respondent No.6: Mr. R.R. Mantri

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WITH
CIVIL APPLICATION NO. 1411 OF 2013
IN
SECOND APPEAL (ST.) NO. 4092 OF 2013
WITH
CIVIL APPLICATION NO. 1412/2013 IN SAST/4092/2013

1. Meera Manohar Patil,
Age. 42 years, Occu. Household,
R/o. At Post Taluka Shindkheda,
District. Dhule.

2. Anil Julal Marathe,
Age. 55 years, Occu. Service,
R/o. Hasti Co-op. Bank,
Station Road, Dondaicha,
Taluka Shindkheda, District. Dhule. ...Appellant

Versus

1. Shri. Subhash Shivram Patil,
Age. 62 years, Occu. Retired,
R/o. Near Hasti Bank, Saraswati Colony,
Shindkheda, Taluka Shindkheda,
District. Dhule.

2. Shri. Harischandra Girdharlal Wani,
Age. 64 years, Occu. Retired,
R/o. Plot No. 12, Adarsha Colony,
Samarth Niwas, Shindkheda,
Taluka. Shindkheda, District. Dhule.

3. Rajendra Shivdas Desale (Patil),
Age. 52 years, Occu. Agriculturist,
R/o. Gandhi Chowk, Shindkheda,
Taluka. Shindkheda, District. Dhule.

4. Dr. Narendra Baburao Rane,

Age. 57 years, Occu. Doctor,
R/o. Shramasafhalya Colony,
Walwadi Shivar, Wadibhokar Road,
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5. Shri. Deepak Vasantrao Desale,
Age. 37 years, Occu. Service,
R/o. Gurupushpa-B Apartment,
Flat No. 3, Vinay Nagar, Nashik.

6. Shri. Sanjay Ramanlal Shah,
Age. 40 years, Occu. Business,
R/o. Gandhi Chowk, Near Maruti Mandir,
Main Road, Shindkheda, Taluka Shindkheda,
District. Dhule.

7. Shri. Yogendra Ramdas Desale,
Age. 56 years, Occu. Service,
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Dhule, Taluka & District. Dhule.

8. Janata Vidyaprasarak Mandal,
Shindkheda, Taluka. Shindkheda,
District Dhule.
Through its President
Shri. Gorakh Ragho Patil,
Age. 75 years, Occu. Agriculture,
R/o. Gandhi Chowk, Shindkheda,
Taluka. Shindkheda, District. Dhule.

9. Mahemud Ahamad Kureshi,
Age. 59 years, Occu. Business,
R/o. Plot No. 27, Falgun Colony,
Datta Chowk, CIDCO, Nashik,
Taluka & District. Nashik.

10. Shri. Manohar Gorakh Patil,
Age. 48 years, Occu. Service,
R/o. Saraswati Colony, Shindkheda,
District. Dhule.

11. Shri. Jitendra Gorakh Patil,
Age. 43 years, Occu. Service,
R/o. Gandhi Chowk, Shindkheda,
Taluka. Shindkheda, District. Dhule.

12. Kureshi Amjad Mahemood,
Age. 34 years, Occu. Business,
R/o. Plot No. 27, Falgun Colony,
Datta Chowk, CIDCO, Nashik,

District. Nashik.

12. Devendra Popatrao Borse,
Age. 53 years, Occu. Service,
R/o. Shivshakti Colony, Shindkheda,
Taluka. Shindkheda, District. Dhule.

13. Devendra Popatrao Borse,
Age. 53 years, Occu. Service,
R/o. Shivshakti Colony, Shindkheda,
Taluka. Shindkheda, District. Dhule.

14. Assistant Charity Commissioner,
Dhule Division, Dhule,
Sakri Road, Pingale complex,
Dhule. ...Respondents

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Adv. for Appellants : Shri V.J. Dixit, senior counsel i/b Mr. J.R. Shah
Advocate for Respondents 1 and 2: Mr. A.V. Hon
Advocate for Respondent No.3 : S.B. Talekar
Advocate for Respondent Nos. 4 and 7 : Mr. V.D. Sapkal
Advocate for respondent No.6: Mr. R.R. Mantri

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CORAM : V. K. JADHAV, J.

Date of Reserving the Order : 28.02.2017

Date of pronouncing the Order: 05.05.2017

O R D E R:-

1. Being aggrieved by the judgment and order dated 2.6.2012 passed by the Assistant Charity Commissioner, Dhule Region, Dhule in Enquiry application No. 2 of 2012 and the judgment and order dated 1.1.2013 passed by the District Judge-3, Dhule in Civil Misc. application No. 50 of 2015, confirming thereby the judgment and order passed by the Assistant Charity Commissioner in the said

enquiry No. 2 of 2012, the original respondent Nos. 1 to 3 and 5 to 7 in enquiry application No. 2 of 2012, have preferred this appeal.

2. Brief facts giving rise to the present appeal are as follows:-

a) The respondent Nos. 1 and 2 herein/original applicants had filed an application under Section 50A (3) of the Maharashtra Public Trust Act 1950 (for the sake of brevity hereinafter be called as "Trust Act"), for modification in the scheme settled for the management and administration of Janta Vidya Prasarak Mandal, Sindhkheda (for the sake of brevity hereinafter be called as "public trust") bearing PTR No. E-155/Dhule. According to the original applicants (respondent Nos. 1 and 2 herein), they are members of the aforesaid public trust and interested in protection of the trust and its properties. It has been alleged by them that as per the approved scheme, the existing President and the Secretary managed the trust arbitrarily and therefore, the interest of the trust is in danger. It has been contended that initially the scheme was approved exparte. There was no notice issued before accepting the scheme vide scheme application No. 8 of 2005. The said scheme, vide application No. 8 of 2005, was not approved by the then board of trustees or in the general body meeting. It has been contended that the respondent Nos. 1 to 3, with an intention to grab the public trust, filed the said application for framing of scheme and got it accepted. It has been contended that though the public trust is established on 3.3.1998 and the managing committee was elected every three years, no change reports were filed. The trustees were looking after the affairs of the trust since 1968 to 2005. The respondent No.1 was never founder President of the trust but by mentioning the same, the said respondent misled the the authorities. It has been alleged that the important posts of President and Secretary are given to respondent Nos. 1 and 3, who are father and son, *interse,* and as such, they have managed the affairs of the Trust as if their private property. According to the applicants, clauses 7 and 8 of the scheme are vague and ambiguous, which resulted into concentration of power with the respondents. The respondents, by taking undue advantage of the said vague and ambiguous provisions of the scheme, managed to introduce the trust of their own relatives and friends as members and attempted to create majority in the Trust. The procedure for accepting the members is not transparent and bogus members are accepted only with an intention to increase the majority.

b) The respondent Nos. 1 and 3, by misusing their position as President and Secretary, respectively, unauthorizedly appointed the staff in the school run by the public trust. It has been alleged that the respondents have accepted the illegal donations from the staff members and also grab the arrears of salary of the staff working in the school and used the same for their own purpose. According to the applicants, for all these reasons, it is necessary to make modification in the scheme as well as re-arrange the board of trusses. It has been alleged that the complaint made regarding mismanagement came to be governed by respondent Nos. 1 and 3. Thus, the applicants requested for modification in the existing scheme. The applicants have also submitted modified draft scheme alongwith the first board of trustees.

c) The contesting respondents have strongly resisted the said application seeking modification in the scheme. According to them, in the year 1968, one Gorakh Ragho Patil has established “Janta Vidya Prasarak Mandal”. Since the Rules of governing the administration of the public trust were incomplete, in the year 2005, they have filed scheme application No. 8 of 2005. The said application bearing No. 8 of 2005 seeking framing of the scheme came to be allowed by the Assistant Charity Commissioner. None has filed appeal against the said order. It has been contended that this application seeking modification of the scheme is false and bogus. The applicants were never members of the public trust and they are having no concern with the Trust. The applicant Nos. 1 and 2 are working as peon and clerk, respectively, in Janta High School, Sindhkheda, which is run by the trust. At present, they are retired persons. As per original scheme the staff members cannot become the members of the Trust. However, after retirement, applicant Nos. 1 and 2 filed aforesaid application seeking modification in the scheme illegally and with some ulterior motive. The allegations made in the application against the respondents are baseless and false. The applicants want to change the board of trustees under the garb of modification of the scheme. It has been also contended that the amendments, as sought in the modified scheme, are unnecessary and uncalled for. It has also been contended that the scheme application No. 8 of 2005 was made applicable on 31.12.2005 and prior to the approval of the said scheme, enquiry was held and on merits the scheme was approved. From the said date i.e. 31.12.2005, the board of trustees, as per the said scheme, is managing the trust's property. After completion of tenure of the first board of trustees, new managing committee came to be elected. The Change Report No. 549 of 2011 was filed in the office of the Assistant Charity Commissioner, by the respondent Manohar Gorakh Patil, who happened to be the President. The said Change Report was opposed by the present applicants and afterthought this application seeking modification of the scheme was filed.

d) The learned Assistant Charity Commissioner, Dhule by judgment and order dated 2.6.2012 allowed the scheme application No. 2 of 2012 and thereby directed to modify the existing scheme framed vide application No. 8 of 2005 for proper management and better administration of the public trust "Janta Vidya Prasarak Mandal, Sindkheda," as per the modified scheme at annexures "A" attached with the judgment. It has been further directed that the affairs of the public trust shall henceforth be governed by the modified scheme. The learned Assistant Charity Commissioner has also directed that the property of the Trust shall vest in the first board of trustees under modified scheme.

e) The applicants Meera Manohar Patil and Anil Julal Marathe have filed Civil application No. 1411 of 2013 seeking leave to file second appeal to challenge the judgment and order passed by the Assistant Charity Commissioner, Dhule in the scheme application No. 2 of 2012 and confirmed by the learned District Judge, Dhule in Civil Misc. application No. 50 of 2012, as aforesaid. These two applicants also claimed themselves as trustees of the aforesaid public trust. According to them, after completion of tenure of first board of trustees, the agenda for electing new board of trustees was submitted and pursuant to the said agenda a meeting was conveyed on 17.4.2011. In the said meeting, all earlier board of trustees alongwith the members of the trust were approved and the election was conducted. By majority, new 11 trustees came to be elected. It has been further contended that the change report No. 549 of 2011 came to be filed before the learned Assistant Charity Commissioner, Dhule for reporting the change in the board of trustees. They are elected trustees in the meeting held on 17.4.2011. The applicant No.1 was elected as Secretary whereas the applicant No.2 was elected as Treasurer. Though the learned Assistant Charity Commissioner by its order dated 6.2.2012 rejected the said change report, an appeal No. 16 of 2012 came to be filed before the Joint Charity Commissioner, Nashik Division, Nashik. It is also their contentions that they were not party in the scheme application No. 2 of 2012, though they are necessary parties. On all these grounds, by filing the said civil application, they are seeking leave to prefer second appeal, as stated above.

f) Being aggrieved by the same, the original respondent Nos. 1 to 3 and 5 to 7 preferred Civil Misc. Application No. 50 of 2012 before the District Court, Dhule. The learned District Judge-2, Dhule by impugned judgment and order dated 1.1.2013 dismissed the said Civil Misc. Application No. 50 of 2012 and thereby confirmed the judgment and order passed by the Assistant Charity Commissioner in enquiry application No. 2 of 2012. Hence, this first appeal.

3. Shri P.M. Shah, learned senior counsel i/b Mr. Amol Sawant, learned counsel for the appellants, submits that scheme application No. 2 of 2012 was filed purporting to be under section 50A (3) of the Trust Act, seeking modification in the scheme framed on 31.12.2005 vide application No. 8 of 2005. The scope and ambit of sub-section (3) of Section 50A is confined to modification of the scheme already framed. Hence, the question of substituting and replacing newly elected body on 17.4.2011 falls outside the provisions of Section 50A (3) of the Trust Act. There is qualitative difference in the scope and ambit of sub-section (1) and sub Section (3) of Section 50A of the Trust Act. If the scheme is already framed and it is in existence, then, sub-section (3) cannot invoke because sub-section (3) is restricted to modify pre-existing scheme. If the scheme is not framed by the Charity Commissioner but it is framed by the District Court under Section 50 (i) (o); then sub-section (3) cannot be invoked. From the pleadings of application No. 2 of 2012, it is clear that in disguise of seeking modification of the scheme, the predominant purpose of the application is to remove the elected board of trustees. Sub-section (3) of Section 50A does not countenance the removal of existing board of trustees. The expression “modify” in sub-section (3) of Section 50A is restricted to modification of the scheme framed by him. The board of trustees elected as on 17.4.2011 is not one appointed under sub-Section (1) or sub-section (2) of Section 50A of

the Trust Act. The Assistant Charity Commissioner has exercised the powers not vested in him and the impugned order is without jurisdiction.

4. Learned senior counsel for the appellants submits that original scheme was framed in the year 2005. Sub-section (3) of Section 50A mandates an opportunity of hearing to be given to the trustees. It contemplates hearing to be given to all trustees for the obvious reason that the trustees are elected on 17.4.2011 are concerned with the implementation of the scheme. However, those elected trustees were not impleaded as party respondents in the scheme application No. 2 of 2012. The elected trustees viz. Meera Manohar Patil and Anil Julal Marathe though acting as Secretary and Treasurer, respectively, as per election dated 17.11.2004, have not been impleaded as party respondents in the scheme application No.2 of 2012 and as such, non joinder of aforesaid elected trustees, is fatal. Further, failure to give opportunity of hearing to them contravenes the mandate of Section 50A (3) of the Trust Act. The proceeding under Section 50A was initiated on 5.2.2012 whereas the aforesaid Change report No. 549 of 2011 came to be rejected on 2.6.2012. Thus rejection of Change Report in future would not be a ground to seek modification, itself. Presently, statutory appeal No. 16 of 2012 preferred against the said rejection of the change report is

pending before the Joint Charity Commissioner, Nashik.

5. Learned senior counsel for the appellants submits that, as the respondents failed in taking over the management of the trust in view of the interim orders dated 10.4.2013 and 30.7.2013, thereafter the proceeding under Section 41E was initiated on 4.10.2013 and a malafide attempt was made by them to grab the trust. In the said proceedings, initiated under Section 41E of the Trust Act, all trustees were not joined as party defendants. This Court has already granted stay to the order passed under Section 41A in respect of 7 trustees.

6. Learned senior counsel for the appellants submits that in view of the provisions of Sections 41A to 41E of the Trust Act, for removal, dismissal and suspension of the trustees, there are specific provisions incorporated in the Act. Considering the same, Section 50A (3) of the Trust Act does not empower the Charity Commissioner to replace/substitute entirely new trustees under the garb of modification of the scheme. In the wake of availability of the other provisions of the Trust Act viz. Sections 41A, 41B, 41D, 41E and 47 of the Trust Act, taking recourse to the powers of Section 50A (3) of the Trust Act, for substituting entirely new trustees under the garb of modification of scheme is improper, incorrect and illegal. The Assistant Charity Commissioner has no power and jurisdiction to

replace the existing board of trustees in the absence of enabling/empowering provision to that effect in the preexisting scheme itself.

7. Learned senior counsel for the appellants submits that on the point of making choice of new trustees, no issue is framed nor any finding is recorded by assigning the reasons to justify the selection of the members of first Board of trustees, in the impugned order. Even the learned Assistant Charity Commissioner has not undertaken any enquiry to ascertain the suitability of newly appointed trustees. There is no public notice, there is no consultation with anybody or none has adduced any evidence. The choice of the new trustees has been made only on the subjective satisfaction of the authority. There is no material available; nor any particular procedure is followed or adopted to ascertain the suitability of proper person, objectively.

8. Learned senior counsel for the appellants submits that as per the scheme application No. 2 of 2012, particularly in clause 8, the grounds have been raised for modification of the scheme. It is nowhere pleaded by the respondents regarding manipulation of record, proceeding books etc. It has been only contended that clause 21 of the earlier constitution is against the democratic principles. It has not been stated/pleaded that there is manipulation

in the scheme of the Trust. It has also not been stated that the respondents have obtained certified copy of the scheme, wherein it is mentioned that the election is to be conducted by secret ballot papers and the election is conducted by voice majority, which is against the constitution of the Trust. As per the draft scheme filed by the respondents, in clause 11, it has been stated that election of the board of trustees shall be conducted by voice majority and if necessary then the process of secret ballot paper should be followed. Thus, there is no pleading by the respondents that by manipulating the scheme, the word "*गुप्त मतदान*" (secret ballot paper voting) came to be erased and the word "*आवाजी मतदान*" (voice voting) was inserted. Learned senior counsel for the appellants submits that considering the scheme application and the pursis filed by the respondents, it is clear that there is neither pleading nor evidence is adduced before the Assistant Charity Commissioner in respect of the allegation of manipulation of record, proceeding book or not filing of the audit report or malpractice by the appellants in looking after the affairs of the Trust. Thus, the findings recorded by the learned Assistant Charity Commissioner regarding manipulation of record, proceeding book of the trust, are ill founded, unsustainable and there is no issue framed to that effect by the learned Assistant Charity Commissioner.

9. Learned senior counsel for the appellants submits that the scheme application filed by respondent Nos. 1 and 2 is not maintainable, as respondent No.1 was working as peon and respondent No.2 was working as clerk in the school run by the Trust. As per clause 9 of the earlier scheme, the employees of the institution are prohibited from getting membership of the trust. Therefore, the contention raised by respondent Nos. 1 and 2 in the scheme application that they are members of the trust, is unsustainable.

10. Learned senior counsel for the appellants submits that the comparative reading of the previous and new scheme shows that the trivial changes have been made in the new scheme and both schemes are substantially same. Thus, there was no cause of action or real and substantial reason existed for necessitating framing of a new scheme in lieu of existing scheme. The mere inadequacy of erstwhile scheme, if at all, by itself would not be a ground to alter the old scheme. There must be a reason to believe that in the interest of proper management of the Trust, a new scheme should be settled and not for replacing the management. The scheme application No.2 of 2012 is practically in the nature of review of scheme application No. 8 of 2005. The scheme application No. 8 of 2005 came to be filed, as only three trustees were alive out of 11 trustees.

The learned Assistant Charity Commissioner, has also made various changes in the draft scheme. The consent letter of all incoming trustees is placed on record and till today nobody has raised any objection to the original scheme application. As per the said order, the trustees had completed their tenure. In the midst, as two trustees were no more, the new two trustees namely (I) Mahemood Ahmed Qureshi and (ii) Jitendra Patil came to be appointed and Change Report No. 641 of 2009 to that effect came to be allowed by the Assistant Charity Commissioner on 18.6.2009. The revision filed by the respondents objecting the said change report is rejected by the Joint Charity Commissioner, Nashik on 4.10.2012. The respondents are signatories to this and therefore, they are estopped from raising objection to the said change report.

11. Learned senior counsel for the appellants submits that as per the elections dated 17.4.2011, the respondent No.3 is not re-elected in the meeting. Hence, the proceeding under Section 50A (3) of the Trust Act cannot be invoked under the garb of modification of scheme and use as a weapon to remove the elected trustees and to appoint the new trustees, who did not secure the confidence of members in the election process. Such back-door entry is required to be prohibited.

12. Learned senior counsel for the appellants submits that the scheme application No. 8 of 2005 came to be allowed on 31.12.2005. Thereafter, for five years, the trustees as per the scheme application are looking after the affairs of the Trust. The finding recorded by the Assistant Charity Commissioner in the scheme application No. 8 of 2005 were not perverse. Factually, the consent letters of the trustees, bio-data, death certificates of the trustees are also placed on record. The scheme application No. 2 of 2012 cannot be treated as review of earlier scheme application when there is no pleading to that effect.

13. Learned senior counsel for the appellants submits that there are no allegations of misappropriation of amount borrowed, however, the learned Assistant Charity Commissioner has recorded the finding to that effect. Further, in the balance sheet, membership fees was shown as Rs.1,15,023/- which is including the deposit and thereafter the corrected balance sheet was submitted showing the amount of life membership of Rs.55,011/-. However, the mistake committed by the chartered accountant has been corrected by placing corrected audit report. In fact, respondent No.3, who was treasurer, did not maintain the account of the Trust in proper manner. Respondent No.3 has also lodged F.I.R. No.6 of 2012 with Dhule City police station, levelling the allegations of manipulation of record and

misappropriation of funds. After conducting enquiry and also recording statement of respondent No.3 as well as the junior clerk of the office of the Assistant Charity Commissioner, the report came to be submitted that no offence of manipulation of record, proceeding book is made out. As per the statement of the clerk of office of the Assistant Charity Commissioner, it transpires that then Assistant Charity Commissioner had erased the word "*गुप्त मतदान*" (secret voting) and the word "*आवाजी मतदान*" (voice voting) came to be inserted. In the said proceedings, respondent No.3 also admitted that he has no knowledge as to who has committed the said manipulation in the constitution of the Trust.

14. Learned senior counsel for the appellants submits that the Assistant Charity Commissioner appointed new board of trustees. The Assistant Charity Commissioner, without conducting any enquiry recorded a finding that the board of trustees for the period of 2005 to 2010 committed malpractice. Despite this, the Assistant Charity Commissioner again appointed five trustees of the said period of 2005 to 2010 as new appointed trustees, those are respondent Nos. 3 to 7 herein. It is thus clear that only to remove the present appellants, who are elected trustees in the election, the scheme application came to be filed to handover the management of trust to respondent No.3, who is not elected as a trustee.

15. Learned senior counsel for the appellants submits that the appellants are looking after the affairs of the trust as per the interim order passed by the District Court on 26.6.2012 and subsequently as per the interim order passed by this court on 10.4.2013. The learned Assistant Charity Commissioner has passed order under Section 41E of the Trust Act on 5.12.2013, when the present appeal was already admitted. Thereafter, in all 7 trustees filed two writ petitions No. 10297 of 2013 and 1654 of 2014 in this Court objecting the order dated 5.12.2013 passed by the Assistant Charity Commissioner in application No. 13 of 2013 and this Court has granted stay to the said order. Thus, the present appellants are looking after the affairs of the Trust till today. The respondents want to control the entire trust within their family and therefore, names of close relatives were given for appointment of the trustees. The learned Assistant Charity Commissioner has appointed those persons without conducting any enquiry in respect of social status, credibility and integrity, devotion of the appointed trustees. At present, two assistant teachers lodged the complaints against the respondent Nos. 3, 5 and 6 herein alleging therein that the said trustees are asking for the amount of Rs.10,00,000/- to continue the said teachers in service. With all these aforesaid submissions, the learned senior counsel submits that the appeal deserves to be allowed and the order passed by the Courts

below are required to be quashed and set aside.

16. Learned senior counsel for the appellants, in order to substantiate his contentions, placed reliance on the following judgments:-

i) Vasantrao Vishwanathrao Mane and others vs. Apparao Baibanna Sidore and others, reported in 2008 (3) Mh.L.J. 242

ii) Ramkrushna-Appa Vishweshwar-Appa and others vs. Krushna Udaybhanji Ingale and others, reported in 2005 (3) Mh.L.J. 729

iii) Avinash Ganpatrao Shegaonkar and others vs. Jaywant @ Babasaheb Vishwanath Uttarwar and others, reported in 2010 (4) Mh.L.J. 253

iv) Mallikarjun Basvanappa Masute and another vs. Dattatraya Krushnath Wadane and others, reported in 2005 (2) Mh.L.J. 266

18. Mr. Sapkal, learned counsel for respondent Nos. 4 and 7 submits that in the year 1968, Janta Vidya Prasarak Mandal registered under the provisions of Trust Act, having 11 board of trustees at that time. In the year 2005, scheme application No. 8 of 2005 came to be filed before the Assistant Charity Commissioner,

Dhule. Since tenure of five years of the managing trustees was expired in the year 2010, change report bearing No. 549 of 2011 came to be filed on 1.10.2010 by the appellants and other trustees. The respondents have taken objection to the said change report No. 549 of 2011. However, before filing objection, the respondents have obtained the certified copies of original scheme application No. 8 of 2005 from the Assistant Charity Commissioner, Dhule and on 8.3.2011, the respondents have again obtained the certified copies of the scheme application No. 8 of 2005. It was revealed that between the period from 1.10.2010 to 8.3.2011, there was manipulation in the original record of the scheme, in the office of the Assistant Charity Commissioner, Dhule and the change was pertaining to the manner of voting. The change was made as "*आवाजी मतदान*" (voice voting) instead of "*गुप्त मतदान*" (secret voting). Learned counsel submits that after the said manipulation in respect of the manner of voting, change report bearing No. 549 of 2011 came to be filed. Learned counsel submits that erasing and scratching the relevant portion of the original scheme is apparent and the same seems to have been made for the benefit of the appellants. Consequently, the criminal case No.769 of 2011 vide F.I.R. No.6 of 2012 is pending against the appellants in respect of said manipulation in the government record. Learned counsel submits that there is also manipulation in the proceeding book of the public trust as well as fees of the members.

The persons, who have been enrolled as members in the year 2006, their membership fees were shown to be deposited in the year 2005. Consequently, the balance sheet was corrected and new balance sheet was submitted. The fees of life membership was shown firstly as Rs.55,000/- in first balance sheet and afterwards the fees of the life membership was shown as Rs.1,15,023/-. By taking into consideration the manipulation made by the present appellants, learned Assistant Charity Commissioner, Dhule rejected the change report No. 549 of 2011 filed by the appellants and allowed the scheme application No. 2 of 2012 with finding that then office bearers have not acted lawfully and there is manipulation in the government record, proceedings and the account of public trust. The respondent Nos. 3 and 6 also submitted an application bearing No. 13 of 2013 under section 41C of the Trust Act before the Joint Charity Commissioner, Nashik Division, Nashik and by order dated 4.1.2014, respondent No.3 has been restrained from interfering in the smooth management and administration of the Trust. Being aggrieved by the same, respondent No.3 herein filed civil appeal bearing No. 2 of 2014 before the learned District Judge, Dhule and also filed an application seeking interim order. However, by order dated 17.4.2014, the learned District Judge, rejected the said application seeking interim relief. Respondent No.3 has preferred writ petition against the said order in this Court and the said writ petition is pending. There is no interim relief in the said writ petition.

19. Learned counsel for the respondent Nos. 4 and 7 submits that in the above facts and circumstances, the modification of the scheme as suggested was required to be carried out. There has been instances of manipulation of the public record and existing scheme and consequently existing scheme is ambiguous, incomplete and faulty. The powers of the Charity Commissioner is provided under Section 50A of the Trust Act are wide enough and it starts with non obstante clause. This power is in addition to the other provisions under the Act. The said non obstante clause takes away the effect of other provisions, such as Sections 41A, 41B, 41D, 41E etc. Learned counsel submits that the evidence on record, unmistakenly, is raising finger towards the credential of the appellants to manage the trust. The alteration of the scheme is based on substantial grounds. The proposed alternation in the scheme will operate beneficial in the manner consistent with the objects of the Trust. The appellants are guilty of manipulation of the Government record and also acting in defiance with the bylaws of the Trust. In the circumstances, the learned Assistant Charity Commissioner has rightly appointed the new board of trustees to look after the management of the Trust in accordance with the modified scheme. No interference is required. There is no substance in the appeal.

20. Learned counsel for respondent Nos. 4 and 7 in order to substantiate his submissions, placed reliance on the following cases:-

I) Bhanudas Madhavrao Deshmukh vs. Joint Charity Commissioner, Latur and others, reported in 2009 (5) Mh.L.J. 632,

ii) Saiyed Mohammad Bakar El-Edroos vs. Abdulhabib Hasan Arab and others, reported in (1998) 4 SCC 343

21. Mr. A.V. Hon, learned counsel appearing for respondent Nos. 1 and 2, Mr. N.B. Khandare, learned counsel appearing for respondent No. 5 have adopted the arguments advanced by the Mr. Sapkal, learned counsel for respondent Nos. 4 and 7.

22. Mr. R.R. Mantri, learned counsel for respondent No.6 submits that Janta Vidya Prasarak Mandal Sindhkheda, District Dhule is a public charitable trust registered vide PTR No. E-155 of 1968 and runs educational institutions and hostel. It was established in the year 1968. However, till 2005, no change reports were submitted before the Charity organization. The appellant No.1 Gorakh Patil alongwith then record keeper of Charity Commissioner office, Dhule, Mr. More is accused in crime No. 6 of 2012 registered for the

offences punishable under sections 120-B, 420, 471, 468, 477 etc. for tampering with the record of the trust in 2005 scheme. In so far as the scheme application No. 8 of 2005 is concerned, none was shown as opponent and enquiry was also conducted secretly and one sided. There was no public notice and even individual notice to any member. Even there was no resolution passed by the then management. In consequence of which, totally defective scheme serving private object of concerned persons came to be framed. As per the said scheme, the first trustees came to be appointed for the period of 2005 to 2010. Learned counsel submits that in the so called election of the year 2010, the bogus list of the family members of the appellant Mr. Gorakh came to be shown as members of the Trust. In order to facilitate the said election, part of old scheme was forged by erasing the manner of voting. It was done so with the help of then record keeper of the Charity Organization. Furthermore, the balance sheet also came to be changed and the different balance sheet with different amount brought in existence to match the bogus number of members. Thus, the Trust turned into private property. Consequently, the respondents have opposed the change report No. 549 of 2011 and also filrd scheme application No.2 of 2012. The said application seeking modification of the scheme was moved on various grounds and prominent amongst them are following grounds:-

i) The scheme application No. 8 of 2005 made fraudulently, secretly and got fraudulently allowed by getting self serving scheme.

ii) In order to create monopoly, and convert trust into private affair, by preparing forged different balance sheets, showing different amounts for same period, showed near relative as members.

iii) The original record of the Charity organization as well as the trust came to be tampered with to facilitate the aforesaid purpose.

23. Learned counsel for respondent No.6 submits that the law laid down by the Court in the below mentioned cases is fully applicable to the facts and circumstances of the present case.

I) Rajaram Sakharam vs. Rajendra reported in 2009 BCI 20.

ii) Ramkrushna Appa vs. Krushna 2006 (2) Bombay C.R. 294 (already cited above)

24. Learned counsel for respondent No.6 submits that the law laid down by the Hon'ble Supreme court in the case of ***Sayad Mohd.***

Bakur vs. Abdul Habib etc. reported in AIR 1998 SC 1624 (supra) squarely applies to the facts and circumstances of the present case. The appellants are on the face of it, are trying to protect their personal interest at the costs of the Trust. Learned counsel submits that the appeal is thus liable to be dismissed.

25. I have also heard Mr. S.B. Talekar, learned counsel for respondent No.3 in the appeal.

26. I have also heard Shri V.J. Dixit, learned senior counsel i/b Mr. J.R. Shah, in civil application No. 1411 of 2013, seeking leave to file second appeal and the learned counsel for the petitioner in contempt petition No. 56 of 2013.

27. The scheme application No. 2 of 2012 was filed for modification of scheme framed on 31.12.2005 in scheme application No. 8 of 2005 for better management and proper administration of the Trust viz. Janta Vidya Prasarak Mandal bearing PTR No. E-155 of 1968. The submissions made on behalf of the appellants are twofold. Firstly, there is no substantial change in the scheme application No. 2 of 2012 seeking modification in the earlier scheme on that ground and trivial changes have been made in the new scheme application. Secondly, in disguise of seeking modification of

scheme, predominant purpose of scheme application No.2 of 2012 is to remove the elected board of trustees. Sub-Section (3) of Section 50A does not countenance removal of existing board of trustees.

28. According to the respondents/original applicants, the earlier scheme cannot provide a complete scheme for smooth administration of the trust and in absence of certain alterations, addition, amendment as suggested by way of scheme application No. 2 of 2012, exercise of powers would be arbitrary. The power of appointment of trustees is an important and integral part of power of framing of scheme and without the power, the later power become useless. It is not necessary to provide specifically for removal of old trustees. Considering the purpose for modifying the earlier scheme, the trustees under the old management cannot continue, the trustees are required to be reappointed under the modified scheme. Removal of old trustees is merely a consequence of modification of earlier scheme.

29. Section 50A of the Trust Act is reproduced herein below:-

*"**50A. Power of Charity Commissioner to frame, amalgamate or modify schemes:***

(1) Notwithstanding anything contained in Sec. 50, where the

Charity Commissioner has reason to believe that, in the interest of the proper management or administration of the public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such trust.

(2) Where the Charity Commissioner is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after -

> *(a) publishing a notice in the Official Gazette and also if necessary in any newspaper which in the opinion of the Charity Commissioner is best calculated to bring to the notice of persons likely to be interested in the trust with a wide circulation in the region in which the trust is registered, and*
>
> *(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard, frame a common scheme for the same.*

(3) The Charity Commissioner may, at any time, after hearing the trustees, modify the scheme framed by him under sub-section (1) or sub-section (2).

(4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the competent Court under Section 72, have effect as a scheme settled or altered, as the case may be, under a decree of a Court

under section 50."

30. This is a overriding section, which gives power to the Charity Commissioner to frame scheme for proper management or administration of the public trust. There is no doubt that functions to be discharged by the Charity Commissioner in proceeding under Section 50A of the Trust Act are quashi judicial character. It cannot be said that it is to be discharged only the administrative functions. Section 50A (4) of the Trust Act clearly mandates that decision regarding framing of scheme or modification of scheme by the Charity Commissioner has affected the scheme settled or altered, as the case may be, under a decree of the Court, under Section 50 of the Trust Act.

31. The powers under the provisions of Section 50A conferred in a special contingency when it is necessary or expedient to frame the scheme in the interest of public trust. I do not think that there is qualitative difference in the scope and ambit of sub-section (1) or sub-section (3) of Section 50A of the Trust Act. In my considered opinion, to exercise the power under sub-section (1) or sub-section (3) of section 50A of the Trust Act, the predominant purpose is in the interest of proper management and administration of public trust and it is necessary or expedient to do so. The same is also evident from

the provision of section 50 of the Trust Act. The alternative independent powers of framing of scheme and modification thereof has been created in favour of the Charity Commissioner. The power of the Court to frame scheme as provided under Section 50 clause (j) speaks about settlement of scheme or variation or alteration of scheme already settled.

32. Both the parties have placed on record comparative charts suggesting thereby that there are substantial changes in the scheme application No. 2 of 2012 or there are no substantial changes in the proposed scheme application No. 2 of 2012 compared to earlier scheme made in the year 2005. The learned counsel appearing for the respondents/original applicants has sufficiently demonstrated the need for modification in the earlier scheme in the interest of proper management or administration of public trust. It further appears from the submissions made on behalf of the appellants that the appellants have not seriously disputed about modification in the earlier scheme, however, it has been contended that in disguise of seeking modification of the scheme, predominant purpose of scheme application No. 2 of 2012 is to remove the elected board of trustees. It has been contended that under the garb of modification of earlier scheme, the modification of elected board of trustees was predominant purpose and the Assistant Charity Commissioner has

exercised the powers not vested in him by appointing the trustees, as suggested in the draft scheme submitted alongwith the scheme application No. 2 of 2012. The Assistant Charity Commissioner has no power/jurisdiction to replace the existing board of trustees in absence of enabling/empowering the provision to that effect in the existing scheme. According to the appellants, the provisions of section 50A (3) does not provide to remove the trustees under the garb of modification of the scheme.

33. In the case of ***Vasantrao Vishwanathrao Mane and others vs. Apparao Baibanna Sidore and others, (supra)*** in para 18, 20 and 27 this Court has made the following observations:-

> "18. Clinching question is whether real and substantial reasons existed for framing of a new scheme. A comparative reading of the erstwhile scheme and the new scheme would show that trivial changes are made in proposed new scheme. If a total overhauling of the erstwhile scheme was needed then the learned Assistant Charity Commissioner ought to have recorded reasons, which could support the exercise of framing a new scheme. A new scheme cannot be framed only because the erstwhile trustees did not conduct elections in time or that some of them committed act of malfeasance or misfeasance. Those members of the Managing Committee were suspended and subsequently removed when the allegations of mismanagement were held as proved. The matter is subjudiced before this Court in S. A. No. 191 of 2007 and hence, it would not be proper to express any opinion about such conduct of those trustees. The fact remains, however, that their removal from the trusteeship is

acted upon and they are no longer in the zone of consideration for appointment to the Managing Committee. The so-called changes as per the new scheme are of trivial nature and are not of such magnitude and significance that a totally new scheme could be framed under section 50A(1) of the B.P.T. Act.

20. On going through the impugned Judgment rendered by the learned Assistant Charity Commissioner, one can hardly see any specific reasons for framing of a new scheme. He vaguely observed :

"I have perused the copy of the memorandum of Association and Rules and Regulations of this trust filed by the applicant in this proceeding and found that the provisions made in the Rules and Regulations are insufficient and not match with the present needs of the society. The some of the provisions have outdated - considering the present needs of the society. I have perused the record of this trust maintained in this office and found that the trustees are the members of this trust have not made any efforts to modify the said Rules and Regulations of this trust in order to match with the present needs of the society. Moreover it is to be noted here that, the then trustees have taken disadvantage of the said insufficient constitution and mismanaged the affairs of the trust."

This part of the reasoning is enumerated in paragraph 10 of the impugned order of the learned Assistant Charity Commissioner. It does not show which provisions he considered to be outdated, and which of present needs of the society are not taken care of by the existing scheme. Which were the inadequacies that did not match with the present needs of the society? No particulars are stated by the Assistant Charity Commissioner in the said order. There is no discussion of reasons to justify framing of a new scheme. The mere fact that some of the trustees took disadvantage of their position as members of the managing committee cannot be regarded as a substantial reason to prepare a new scheme. Indeed, the learned Assistant Charity Commissioner did not discuss the inadequacies, changed needs in present times, and necessity of amended scheme. The entire exercise appears to be superfluous and undertaken to cater needs of those, who desired to take over management of the trust though they were outside realm of the group of valid members of the trust. The changes suggested in the new scheme were of cosmetic nature, including trivialities and indicative of colourable exercise of the powers available under section 50A of the B.P.T. Act.

27. So far as fact situation in the present case is concerned, the Assistant Charity Commissioner failed to ascribe adequate reasons in support of his finding that it was just and necessary to frame and settle a new scheme for better and efficient management of the trust. Though he raised such issue, yet the reasoning does not reflect proper consideration of the grounds. The only material point, which weighed with the Assistant Charity Commissioner, is that in proceedings under section 41 (d) of the B.P.T. Act in Enquiry Application No. 2/1992, the Joint Charity Commissioner, Aurangabad, found that the trustees had mismanaged affairs of the trust. The members of the Managing Committee were removed is a fact situation but that itself cannot be sufficient ground to frame a new scheme. The Assistant Charity Commissioner failed to see that previous attempt of the same group in proceedings of similar Enquiry Application No. 118 of 1992 was unsuccessful. The Assistant Charity Commissioner did not discuss as to what are changes in the circumstances after the dismissal of similar application (Enq. Appl. No. 118 of 1992). The Assistant Charity Commissioner should have made endeavour to hold elections for the nomination to Managing Committee instead of making appointment by himself. He could make appointments under section 47 in the vacancies, which occurred due to removal of the trustees of the Managing Committee. The learned

first Ad-hoc Additional District Judge also did not consider that there was no tangible reason except mismanagement committed by the erstwhile committee of the Managing trustees. The loopholes and deficiencies in the existing scheme are not high-lighted. Nor, pragmatic amendments necessitated in the changed circumstances are discussed by the learned 1st Ad-hoc Additional District Judge in support of the conclusion that framing of new scheme is necessary.

34. In the case of ***Mallikarjun Basvanappa Masute and another vs. Dattatraya Krushnath Wadane and others (supra)*** in para Nos. 13, 14 and 16, this Court has made the following observations:-

> “13. However, submission of learned counsel Shri Dhorde for the appellants that the application under section 50-A(1) was filed for framing a new scheme by contending that existing instrument of trust is inadequate to cope with the requirements, whereas the Charity Commissioner has arrived at a conclusion that it is necessary and expedient to frame a scheme, totally on a different ground i.e. there is no proper management of the trust or rather there was considerable mismanagement of the trust and hence a scheme was necessary for proper management of the same. The argument of learned counsel that subjective satisfaction of the Charity Commissioner has come on grounds different than those pleaded in the application has some substance. On going through the text of the application, it is evident that all the grounds pleaded in the application, which are summarised in para 2 ante, except Sr. Nos. (iii), (iv), (vi) and (vii), are pertaining to the shortcomings in the scheme. But, grounds iii, iv, vi and vii make some reference to mismanagement.

On going through the entire judgment of the learned trial Judge, there is no discussion of reasons and conclusions that the provisions of existing scheme are inadequate to cope up with the affairs of the trust and, therefore, are required to be modified or substituted. On the contrary, reason to believe that in the interest of proper management or administration of a public trust a scheme should be settled is only on the ground that there is no proper management of the trust in question, the learned Judge has gone a step further and observed that it is not necessary to prove that instrument of trust itself did not present a complete scheme for the administration of the trust. This observation is not sustainable in the light of view differing with Gujarat judgment taken by this Court.

If there is no scheme Charity Commissioner would be justified saying that it is necessary or expedient to settle a scheme for proper management. If there is a scheme in existence, Charity Commissioner would be justified in exercising the powers to alter or amend on finding that provisions of scheme (in spite of being observed) are inadequate to protect the Charity. Likewise he would be justified in altogether substituting the scheme, if the same proves insufficient to safeguard the charity, in spite of being followed scrupulously. But he may not be able to claim that it is necessary and expedient to settle a new scheme, merely because existing scheme is being observed in breach by trustees, thereby acting against the interest of trust. He may be justified in taking steps against erring trustees or providing additional checks by amendment of the scheme, in such a situation.

Section 50-A requires two conditions to be satisfied before a Charity Commissioner can settle a scheme for administration of a public trust, (1) reason to believe that in the interest of proper management or administration of a public trust a scheme should be settled for it, and (2) it is necessary and expedient to frame a scheme. When there is no scheme at all, it would be easier and faster for the Charity Commissioner to arrive at a conclusion that it is necessary or expedient to settle a scheme for proper management of the trust, but if there is an instrument of trust or a scheme in existence, he will have to be slower and cautious before arriving at such a conclusion. The distinction must be remembered between inadequacy of the scheme and non execution of the scheme or behaviour of the trustees in disregard of the Scheme, Act and Rules. If there is no provision in the scheme, which is required for beneficial operation of the trust, the same is inadequacy of the scheme. But, if there is a provision that succession should be by election after every five years and there is no election held, the same is an instance of omission on the part of Board of Trustees to execute the scheme and certainly not an instance of inadequacy or insufficiency in the scheme. The Charity Commissioner must be further slow in exercising the powers under section 50-A either for modifying the existing scheme or for substituting the existing scheme by a totally new scheme if the complaints are only regarding non execution/disobedience of existing scheme. There are provisions in the Act, which empower the Charity Commissioner to appoint, suspend, remove or discharge the trustees as contained in section 41-D as also section 47 in case there is default on the part of trustees to execute the scheme or to abide by the rules and regulations incorporated in the scheme. He also has powers to issue directions for proper management of the trust under section 41-A, to institute enquiries with regard to charities under section 41-B, to act for protection of the charities under section 41-E. Requirement of an action against erring trustees can seldom be a reason to believe that it is necessary and expedient to settle a new scheme.

14. In the light of above discussion regarding scope and ambit of the powers conferred by section 50-A of the Act upon Charity Commissioner to settle a scheme/new scheme in lieu of existing

one, grounds at Sr. Nos. (iii), (iv), (vi) and (vii) in para 2 ante can hardly provide reason, much less necessity or expediency to settle a scheme, although those may provide a reason for action against erring trustee/s. (Instead of taking action against the erring trustees, removing them by framing a new scheme, in fact would be against the interest of trust, in view of the fact that not only management but even misappropriation is alleged against them and they may go scot free after removal as trustees.

What is necessary or expedient is borrowed in para 15 of the judgment in the matter of Dr. R. P. Kapoor from commentary on The Bombay Public Trusts Act, 1950, which reads as follows :

" 'Necessary' and 'Expedient'-meaning : This is a power conferred under the Act in a special contingency, when it is necessary or expedient to frame a scheme in the interest of a public trust. Recently the Gujarat High Court explained the words 'necessary' and 'expedient'. The term 'necessary' means what is indispensable, needful and essential. The terms has a precise meaning and a connotation and there is nothing vague or nebulous about it. The term 'expedient' has no doubt a wider ambit and gives much scope to the exercise of power. But this expression has also a recognised connotation in the eye of law. The dictionary meaning of the term 'expedient' that what in the context it is used and which is most fitting is 'useful for effecting a desired result, fit or suitable for the purpose." (emphasis added)

Even taking into consideration the wider meaning of the term 'expedient', the Court ought to come to a conclusion that it is desirable for achieving the necessary result i.e. safeguarding the charity, to settle a new scheme and. therefore, unless the learned Charity Commissioner can arrive at a conclusion that existing scheme is insufficient for the purpose, or that even after amendment to the existing scheme the purpose of the trust would not be served, the Charity Commissioner would not be in a position to record a finding that it is expedient in the interest of trust to settle a new scheme.

16. For the reasons discussed herein-above, it is evident that the learned Charity Commissioner could not have arrived at a conclusion of necessity or expediency for settlement of a new scheme for the trust in question, on the face of existing scheme and without arriving at a conclusion that the same scheme could not have been used by amendments. In fact this observation should stand confirmed by taking into consideration the nature of provisions which are new and not in existence in the old scheme. Some of the new provisions are borrowings from legal provisions such as sections of the Act and all are of such a nature that those could have been incorporated by amendment. The finding of Charity Commissioner, as confirmed by the District Court, that it was necessary and expedient to have a totally new scheme, is, therefore, not sustainable. In fact on reference to grounds (i), (ii), (v), (viii) to (xiii), in the light of new provisions, it can be said that there is hardly anything in the new provisions touching the aspects covered by those grounds."

35. In the case of ***Bhanudas Madhavrao Deshmukh vs. Joint Charity Commissioner, Latur and others (supra)*** in para Nos. 13, 15 to 7 this Court has made the following observations:

"13. The learned Assistant Charity Commissioner and the learned Additional District Judge have scanned the evidence and documents and were of the considered opinion that new scheme only will provide new life to the virtual deadwood of the trust. Thus, there was subjective satisfaction of the Assistant Charity Commissioner to accept new scheme.

15. The Managing Committee has acted in defiance to bye-laws of Trust. The Trust property is mortgaged as could be seen in resolution dt. 19-10-2004, without permission and approval of Charity Commissioner. There is violation of section 36A of the Act while raising loan.

16. The Trust, due to the omission of Trustees, has invited penal notice from the office of Employees Provident Fund as, the deposit/deductions of salary are not accounted and institute was sealed. The Rules framed by Trust are inconsistent with provisions of the Act. Though death of Trustees could have been taken due care to infuse new trustee, deliberately, a system of anarchy and authoritative approach is surfacing, to circumvent the Rules and the very Bombay Public Trusts Act. A legitimate impression is generated that Bhanudas has arrogated to himself all the authority and treated the Trust as his proprietary concern.

17. The old scheme required a quorum for smooth administration of Trust and it is now the one man show of appellant Bhanudas. The Court will not encourage such situation to prevail, detrimental to the object and interest of trust. The requisite quorum is not available to facilitate conducting business of Trust legitimately. The term 'Quorum" means, "such a number of the members of a body as is competent to transact business in the absence of other members". The appellant Bhanudas is figuring even in the first Board of Trustees, of new scheme. Taking survey of all these events, the logical conclusion would rest in holding that the guidelines do encourage to accept a new scheme, if old scheme has failed and is

crippled. Since Bhanudas is the sole surviving trustee, his removal will not provide an impetus to the existing position, as it would inihibit the Trust itself. The substantial questions are answered as under, holding that there is no bar in the Charity Commissioner for framing a new scheme when already a scheme is in existence and that, in the event of breach committed by the trustee, it is not the remedy of removal alone, the remedy of modification of existing scheme is available.

(a) The appeal is dismissed.

(b) The parties to bear the expenses of litigation, without debiting to the Trust.

(c) The learned Assistant Charity Commissioner will take action in terms of Bombay Public Trusts Act against the Trustee within a period of six months and send compliance report to this Court.

(d) Civil Application No. 3138/2008, is rejected. C.A. No. 1807/2009, disposed of. Ad interim relief vacated."

36. In the case of ***Saiyed Mohammad Bakar El-Edroos vs. Abdulhabib Hasan Arab and others (supra),*** in para 6 and 7 the Supreme court has made the following observations:

"**6.** This empowers the Charity Commissioner to frame, amalgamate or modify a scheme for the proper management of a public trust. Under sub-section (1) he could initiate proceedings for the proper management or administration of a public trust and to frame and settle a scheme. He has two options — either to initiate proceedings suo motu or when two or more persons having interest in the public trust make an application before him, in writing, in the prescribed manner. We find, the object of the aforesaid Bombay Public Trusts Act, 1950 as revealed through its preamble is to regulate and make better provisions of the administration of public, religious and charitable trusts within the State of Maharashtra. The Charity Commissioner is appointed through a notification under Section 3 having very wide powers and duties conferred primarily under Section 69 Chapter VII and other provisions of the Act. It has been the concern of legislatures to provide with such laws and entrust officers with such power to regulate, supervise the management and functioning of a public trust and endowment in a manner so as to give optimum benefit to the public at large. It was primarily this lack of proper machinery the Bombay Trust Act, 1935 was replaced by the present aforesaid Act of 1950. It is for this reason the Charity Commissioner and other set of officers are created as watchdogs for 348 effective control and supervision of public trusts of all kind. Section 35 confers power on the Charity Commissioner in a given circumstance to issue general or special order to permit the trustees of any public trust to invest money in any manner. Before alienating any immovable property of a public trust, a previous sanction of the Charity Commissioner is required under Section 36, maintain a register of moveable and immovable properties to be in a manner as prescribed by the Charity Commissioner under Section 36-B, power of inspection and supervision under Section 37. Under Section 39, a report is to be submitted to him regarding findings on the question, whether or not a trust or the person connected with the trust has been guilty of gross negligence, breach of trust, misappropriation or misconduct which resulted in loss to the trust. He can issue orders on such reports under Section 40 and can direct the resultant loss to be charged from such defaulting person, payable to the public trust under Section 41. Section 41-A empowers him to issue directions for proper administration of the trust and institute inquiries on receipt of complaints under Section 41-B. He can suspend, remove or dismiss any trustee of a public trust on receipt of report under Section 41-B. Any person interested in a public trust may apply to the Charity Commissioner under Section 47-A for the appointment of a new trustee etc. In cases of breach of public trust including negligence, misconduct etc., he can file suit against such public trust or trustee under Section 50 and notwithstanding this in cases he has reason to believe that for proper management or administration of a public trust he may frame and settle a scheme under Section 50-A. Section 69 gives duties, functions and powers of the Charity Commissioner. It is in this background Section 50-A, for the questions raised, has to be screened. Thus, we find that the Charity Commissioner is crowned with very wide powers to check and control the irregularities, malpractices and misconduct in the functionings of any public trust. Also to supervise, regulate, settle a scheme for the proper management or administration of a public trust, in fact involved in almost every step of the functioning of a public trust.

7. Section 50-A infuses the Charity Commissioner with power in addition to Section 50 to frame, amalgamate or modify any scheme in the interest of proper management of a public trust. This is exercised either suo motu when he has reason to believe it is necessary to do so or when two or more persons having interest in a public trust make an application to him in writing in the prescribed manner. This merely enables the Charity Commissioner to initiate proceedings for settling a scheme for the proper management or administration of a public trust. In the background of the setting of various provisions, the object of the Act, the Charity Commissioner being clothed with sufficient power to deal with all exigencies where a public trust or its trustees stray away from its legitimate path and where the materials are before him or placed before him by the said two persons, then to hold abatement of proceedings on application of any procedural laws not only would amount to the curtailment of his power but make him spineless and helpless to do anything in the matter of a public trust eroding the very object of the Act. This is a too restrictive interpretation to be accepted."

37. In the case of ***Ramkrushna-Appa Vishweshwar-Appa and others vs. Krushna Udaybhanji Ingale and others (supra)*** in para 30 and 31 of the judgment, this Court has mad the following observations.

"30. As observed by the Apex Court in the case of Saiyad Mohammad Bakar El-Edroos (cited supra), the power under section 50A of the said Act, enables the Charity Commissioner to initiate proceeding for settling the Scheme for proper management or administration of a Public Trust. The Apex Court, in the said case, held that the procedural law is always in aid of justice and that it is always subservient to the substantive law. The Apex Court finds that once the material is brought before the Charity Commissioner, he may on the basis of materials itself or after inquiry or after giving opportunity to the person concerned or trustees, may or may not exercise his power depending on facts and circumstances of each case. In the present case, it can be found that the Trustees themselves were before the learned Assistant Charity Commissioner urging him to frame a Scheme in the interest of proper management or administration of the Trust. Though when the Charity Commissioner initiates proceedings suo motu, it would be necessary for him to come at a subjective satisfaction that there are reasons to believe that in the interest of proper management or administration of the Public Trust, a Scheme should be settled and that this subjective satisfaction has to be supported by the material on record and it would be necessary to give an opportunity to the Trustees to show cause as to why a Scheme should not be framed, in my view, said requirement would not be necessary in the facts of the present case. Herein, the Trustees/persons interested had approached the learned Assistant Charity Commissioner urging him to frame a Scheme, placing before him the material to point out that it was necessary to frame a Scheme in the interest of proper management or administration of the Trust. I find that only because the learned Assistant Charity Commissioner has said that the applications were not tenable and proceeded suo motu, it would not be necessary to give a fresh notice to the Trustees pointing out as to what was the material before him for arriving at a subjective satisfaction, that he had reason to believe that it was necessary in the interest of the proper management and administration of the Trust to frame a Scheme. In the present case, some of the Trustees/persons interested have themselves approached the learned Assistant Charity Commissioner and rest of the trustees had supported the request for framing of the Scheme. As observed the Apex Court in the aforesaid case of Saiyad Mohammad Bakar Ei-Edroos (cited supra), the procedural requirement is always subservient to the substantive law. In the facts of the present case, the Trustees were already heard and no fruitful purpose would have been served by again issuing notices to the Trustees. Even otherwise, I have already held that the findings of the learned Assistant Charity Commissioner that the Trust Application No. 64/2000 was not maintainable, is not correct in law.

31. Insofar as the contention of the learned counsel Shri Gordey that only when the Instrument of trust has failed and that even after amending or modifying the Scheme, proper management or administration of the Trust would not be possible, then only the resort can be had to section 50A of the said Act and that the mis-management of the trust cannot be a ground for invoking the powers under section 50A of B.P.T. Act, is concerned, I am unable to agree with the said contention. Though the learned counsel has rightly

relied on the judgment of the learned single Judge of this Court in the case of Mallikarjun (cited supra), with due respect, I am unable to agree with the view taken therein. The powers of the learned Charity Commissioner under section 50A(1) of the Act are wide enough. Sub-section (1) of section 50A of the said Act begins with the words "Notwithstanding anything contained in section 50". It is, thus, clear that the powers of the Charity Commissioner under sub-section (1) of section 50A of the said Act are in addition to the other powers prescribed in the statute. Under the Act, Charity Commissioner has been given wide powers. However, the powers under section 50A of the said Act, are in addition to the powers given to him under the other provisions. In my view, if the Charity Commissioner comes to a subjective satisfaction that it is necessary or expedient to settle a Scheme in the interest of proper management or administration of a Public Trust, he is empowered to exercise the powers under sub-section (1) of section 50A of the said Act. In my view, to put a restriction on the powers of the Charity Commissioner to the effect that unless other provisions are exhausted and only when the earlier Scheme has failed or even after amending it, proper management is not possible, then only power under sub-section (1) of section 50A of the said Act can be exercised, would defeat the purpose of the statute. The power under sub-section (1) of section 50A of the said Act are overriding and wide enough and wherever the Charity Commissioner finds, on the basis of the material placed before him, that it is necessary or expedient in the interest of proper management or administration of the Trust, he may or may not exercise the powers under section 50A(1) of the said Act for settling the Scheme. But the contention that only when all other powers are exhausted then only recourse to sub-section (1) of section 50A of the said Act could be taken, in my view, will have to be rejected. I find support from the observations of the Apex Court in the case of Saiyad Mohammad Bakar El-Edroos (cited supra). Though the reliance placed by the learned counsel on the judgment of this Court

> in the case of Mallikarjun (cited supra) is well placed, I am unable to persuade myself to accept the said view, in view of the observations of the Apex Court in the case of Saiyad Mohammad Bakar El-Edroos (cited supra)."

38. In the instant case, the Assistant Charity Commissioner, on the basis of material placed before him alongwith the scheme application No. 2 of 2012 came to the subjective satisfaction that it is necessary or expedient to modify the scheme in the interest and for proper management or administration of the public trust. It is a part of record that the scheme framed vide application No. 8 of 2005 was not approved by the Board of trustees or general body. There are serious allegations about tampering of record pertaining to the scheme framed vide application No. 8 of 2005. In the original scheme, framed vide application No. 8 of 2005, secret voting is prescribed. However, it further appears that, particularly the said clause is erased and words "voice majority" seems to have been inserted. I do not want to express any opinion about tampering of record. However, for smooth and transparent administration of public trust, it is always better to take recourse to the secret voting instead of voice majority. In case of voting of secret ballots, members may cast negative votes, if at all occasion so arises, when the power is concentrated in the hands of one group. However, ordinarily in case of voting by voice majority, the members may not gather courage to cast votes in the negative manner. Obviously, the group in power

may get advantage of the same. It also appears that the modified scheme of the year 2012 takes care of the same alongwith the addition in the objects of the trust, the manner of registration of the members as well as their disqualification. It also takes care of duties and rights of the trustees as well as office bearers. It appears that there was subjective satisfaction of the Assistant Charity Commissioner to accept the modification. Furthermore, as observed in the foregoing paras, the appellants have not raised any serious concern about proposed modification in the scheme.

39. The appointment of new trustees while modifying the earlier scheme has been seriously questioned by the appellants. So far as the power to appoint the trustees initially at the time of framing of scheme, as provided under sub-section (1) of Section 50A of the Trust Act is concerned, the said power is sufficiently wide enough to provide that the persons in the management of the trust, as on the date of the framing of scheme, will not continue the management and ceased to be the managers and/or trustees. I do not think that there is qualitative difference in the scope and ambit of sub-section (1) and sub Section (3) of Section 50A of the Trust Act. In both the provisions, the parameters are same to consider framing or modification of the scheme in the interest of proper management and administration of the public trust and if it is necessary or expedient so

to do. In the instant case, this question is purely academic one. As per the earlier scheme of the year 2005, the term of then board of trustees, appointed at the time of framing of scheme in the year 2005, expired in the year 2010. Even thereafter, though the change report No. 549 of 2011 is not accepted by the Assistant Charity Commissioner, in respect of the election of the year 2011, the said term also came to be expired due to efflux of time. It is therefore, necessary to conduct elections as per the modified scheme of the year 2012. So far as modification of earlier scheme of year 2005 is concerned, I do not find any fault in the finding recorded by the Courts below to that extent. Thus, by issuing suitable directions, for holding elections of the managing committee of the trust, this appeal and the pending civil applications can be disposed of. Hence, I proceed to pass the following order:-

O R D E R

I. The first appeal No. 2580 of 2016 is hereby dismissed and in the circumstances, it is directed that the election of the managing committee of public trust viz. Janta Vidya Prasarak Mandal, Sindhkheda, Tq. and district Dhule, be held within a period of six months from the date of this order under the supervision of Assistant Charity

Commissioner, Dhule or the person deputed on his behalf.

II. In view of disposal of first appeal, all pending civil applications, civil application seeking leave to file second appeal and also the contempt petition are disposed of accordingly.

40. At this stage, learned counsel for the appellants requested for suspension of this order for a period of eight (08) weeks from today. The respective terms of both the groups, as per their rival contentions, expired long back and as such, the question about appointment of board of trustees after modification of the scheme is purely an academic question. In the circumstances, I do not find any reason to suspend the effect of this order. Request stands refused.

(V. K. JADHAV, J.)

rlj/