

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

WRIT PETITION NO.9268 OF 2017
WITH
CIVIL APPLICATION NO.10493 OF 2017
WITH
CIVIL APPLICATION NO.15453 OF 2017
WITH
CIVIL APPLICATION NO.1353 OF 2018
WITH
CIVIL APPLICATION NO.2152 OF 2018

Sayyed Yusuf Sayyed Moosa,
Age 50 years, Occu. Service
as Head Master,
R/o Nazir Building,
Near Balgir-math, Gadipura,
Nanded

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
Secondary Education
Department, Mantralaya,
Mumbai
2. The Dy. Director of Education,
Latur
3. Education Officer, Secondary,
Zilla Parishad, Nanded
4. Assistant Charity Commissioner,
Nanded Region, Nanded
5. Sayyed Shamsoddin s/o Kasimali,
Age 73 years, Occu. Nil
R/o Labour Colony, Near Guest House,
Nanded
6. Wasim Bari s/o Syed Shamsoddhin,
Age 50 years, Occu. Nil
R/o Labour Colony, Near Guest House,
Nanded
7. Ardhapur Education Society,
Ardhapur, District Nanded,
Duly registered public Trust and Society,
Through the following persons, including
respondents no.5 and 6

- 7A. Md. Fayazoddhin Akbaroddin,
R/o Labour Colony, Nanded
- 7B. Mohammad Farook Ahmed Shah
- 7C. Khijar Majed Siddique s/o Naimoddin,

Respondents no.7B to 7C are
R/o Yusufiya Colony, Parbhani
- 7D. Mohammad Taher Mohd. Ismail,
R/o Khadakpura, Nanded
- 7E. Azimoddin Naser Md. Sharfoddin,
R/o Labour Colony, Nanded
- 7F. Md. Javed Rahmat Ali,
R/o Labour Colony, Nanded
- 7G. Shakil s/o Ahmed Vikaroddhin,
R/o Chaitanya-nagar, Nanded

Respondents no.7A to 7G's
Age major, Occu. not known
- 7H. Gulab Khutubjani s/o Gulam Jilani,
R/o Khuba Colony, Ardhapur
- 7I. M.Rahematulla s/o Shaikh Imam
- 7J. Ajamatulla Baig s/o Inamtulla Baig
- 7K. Abdul Basid s/o Abdul Ali
- 7L. Mirza Rahemtulla Baig s/o Peer Baig
- 7M. Mirza Askarulla Baig s/o Sadaulla Baig
- 7N. Mirza Isarulla Baig s/o Karimaulla Baig
- 7O. Mirza Zakertualla Baig
s/o Inayatulla Baig
- 7P. Mirza Akhtar Baig s/o Sadaulla Baig

Respondents no.7I to 7P – Age major,
Occu. Not known, r/o Ardhapur,
District Nanded.
8. Abdul Jaleel Mohd. Isamil
9. Sayyed Zaker Ali Sadat Ali

10. Asma Nahid Azeez Ahmed
11. Abdul Razzaq A. Raseed
12. Siddiqui Musheer Ahmed
Mukhatar Ahmed
13. Syed Amena Hayat S. Safdar
14. Syed Awais Ali Mansab Ali
15. Syeda aisha Siddiqua S. Younus
16. Basheerunnisa Begum Basheer Ahmed
17. Raheemunnisa Begum A Quader
18. M. Ishaq Ahmed Sajed Wali Ahmed
19. Md. Sirajoddin Md. Iqbaloddin
20. Md. Zameer Md. Nazeer
21. Meer Javed Ali Mir Himayat Ali
22. Aaisha Khanam Afsar Khan
23. Hussaini Tanveer Ibadulla
24. Pathan Shakeel A Khan
Maheboob Khan
25. Syed Azhar Ali S. Qasim Ali

All above age major, Occu. Service
with Dr. Iqbal Urdu Model High
School, Ardhapur, Dist. Nanded
r/o Nanded

26. Gulam Qutubjani s/o Gulam Jilani
Age 60 years, Occu. Business
& Vice President of Ardhapur
Education Society, R/o Quba Colony,
Ardhapur, Tq. Ardhapur, Dist. Nanded
27. Mirza Rahemtulla s/o Shaikh Imam,
Age 65 years, Occu. Business and
Secretary of Ardhapur Education
Society, R/o Quba Colony, Ardhapur,
Taluka Ardhapur, District Nanded

28. Azmatulla Baig s/o Inayatulla Baig,
Age 35 years, Occu. Agril & Joint
Secretary of Ardhapur Education
Society, R/o Dargah Galli, Ardhapur,
Taluka Ardhapur, Dist. Nanded
29. Abdul Basit s/o Abdul Ali,
Age 67 years, Occu. Pensioner
& President of Ardhapur Education
Society, R/o Pasha Colony, Ardhapur
Taluka Ardhapur, Dist. Nanded
30. Akhtarulla Baig s/o Sadulla Baig,
Age 48 years, Occu. Agri. & Treasurer
of Ardhapur Education Society,
R/o Aghapura, Ardhapur,
Taluka Ardhapur, Dist. Nanded
31. Askarulla Baig s/o Sadulla Baig,
Age 55 years, Occu. Agril. &
Member of Ardhapur Education Society,
R/o Aghapura, Ardhapur,
Taluka Ardhapur, Dist. Nanded
32. Rahmatulla Baig s/o Peer Baig,
Age 75 years, Occu. Agri. & Member
of Ardhapur Education Society,
R/o Quba Colony, Ardhapur,
Taluka Ardhapur, Dist. Nanded
33. Israrulla Baig s/o Kareemulla Baig,
Age 52 years, Occu. Business & Member
of Ardhapur Education Society,
R/o Dargah Galli, Ardhapur,
Taluka Ardhapur, Dist. Nanded
34. Shakerulla Baig s/o Inayatulla Baig,
Age 45 years, Occu. Business and
Member of Ardhapur Education
Society, R/o Qazi Galli, Ardhapur,
Taluka Ardhapur, District Nanded .. Respondents

Mr R.R. Mantri, Advocate for petitioner
 Mrs A.V. Gondhalekar, A.G.P. for respondents no.1 to 4
 Mr A.S. Bajaj, Advocate for respondents no.5 and 6
 Mr S.G. Dodya, Advocate for respondents no.8 to 25 - intervenors
 Mr H.I. Pathan, Advocate for respondents no.26 to 34
 (Respondents No.7, 7A to 7P, 8 to 34 added as per Court's
 order passed in Civil Applications No.10493 of 2017, 2152 of 2018,
 1353 of 2018)

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 16.4.2018**

**DATE OF PRONOUNCING
THE JUDGMENT : 20.7.2018**

JUDGMENT (Per A.M. Dhavale, J.)

1. The petitioner, who is a Head Master of an Urdu school run by a minority institute challenges the publications by respondents no.5 and 6 dated 15.5.2017 and 12.7.2017 in newspapers whereby the petitioner has been suspended and departmental enquiry has been initiated against him. He also seeks appropriate writ to restrain respondents no.5 and 6 from initiating, continuing and/or completing any disciplinary action or any action adversely affecting the interest of service of the petitioner as Head Master of Dr. Iqbal Urdu Model High School, Ardhapur, District Nanded and from interfering with the affairs of the school. He also claims writ of mandamus to direct the State, the Deputy Director of Education, Education Officer (Secondary) and Assistant Charity Commissioner (Respondents no.1 to 4) to appoint fit person for management of public trust till finalisation of change report and resolving the dispute in management.

2. Admittedly, Ardhapur Education Society was established in 1976 and was registered both under the Public Trusts Act and Societies Registration Act. It is running three schools as follows:

- (I) Dr. Iqbal Urdu Model High School, Ardhapur
- (II) Saibaba Primary Urdu School

(III) Crescent National English Medium Primary School

As per the rules, the trustees of the trust are elected for a period of three years and they manage the schools. The petitioner is Head Master in Dr. Iqbal Urdu Model High School, Ardhapur since 2003. Respondents no.5 and 6 claim to be in the management of the trust. Admittedly, there are dispute about the management between two groups, one led by respondent no.5 Syed Shamsoddin and other led by Gulam Qutubjane. The last change report accepted is of 1997. It was also accepted by order dated 9.6.2004. The notices were published by respondents no.5 and 6 on 15.5.2017 and 12.7.2017, one of suspension of the petitioner and other of intimation about departmental enquiry to be initiated.

3. Mr R.R. Mantri, learned Advocate for the petitioner challenges these public notices on two counts :

(I) Respondents no.5 and 6 have no authority/competency to take any action against the petitioner, as they are not in management of the trust;

(II) Respondent no.5 and his son respondent no.6 are acting with *mala fides* against the petitioner. Respondent no.5 was interested in appointing his real sister's son Jalil as a Head Master, but Jalil was too junior. Hence, he harassed the petitioner as follows :

(a) Petitioner was dismissed without enquiry on 3.8.2008. The said order was set aside by School Tribunal and the challenge to the said

order failed up to Apex Court. The petitioner was required to file Contempt Petition and take the help of Education Officer to get himself reinstated on 10.10.2009.

(b) Respondents no.5 and 6 filed Criminal Case No.1/2011 against the petitioner. Said Application under Section 156 (3) Cr.P.C. was later on withdrawn and fresh F.I.R. was filed at Vajirabad Police Station, Nanded, but the Police submitted 'C' Summary.

(c) Respondent no.5 attempted to seek permission of Education Officer to suspend the petitioner on the basis of F.I.R. lodged but the same was refused.

(d) Crime No.67/2011 was lodged against the petitioner and the petitioner was served with notice dated 25.4.2011 and was suspended. The petitioner filed Writ Petition no.3576 of 2011 and the proceedings came to be stayed. Thereafter, respondent no.5 cancelled the order of suspension and withdrew the departmental enquiry.

(e) Respondent no.5 lodged F.I.R. against the petitioner alleging misappropriation and caused his arrest and he was again suspended on 2.10.2011. The petitioner filed Writ Petition no.9588 of 2011. This Court held that the suspension was *mala fide* and the same was stayed. Thereafter, the suspension was withdrawn and this Court held the order of suspension as *non est*.

(f) Respondent no.5 instigated his nephew Abdul Jalil to raise issue of seniority and to obtain the order of Court for enquiry. The Education Officer held the petitioner as senior-most. Abdul Jalil filed Appeal no.14/2011. Respondent no.5 falsely claiming to be in the management of the trust supported Jalil and School Tribunal ignored the collusion and appointed Abdul Jalil as a Head Master by order dated 4.8.2012 with retrospective effect from 1.1.2003. This order was not challenged by respondent no.5 on behalf of management though it was against the management. It was challenged by rival group and by the petitioner and the said order was stayed by this Court. In Writ Petition no.6794 of 2012 it was held that there was collusion of respondent no.5 and Abdul Jalil and the petition was allowed on 26.10.2016. Special Leave Petition was not admitted.

(g) Respondent no.5 again, out of malice, issued false show-cause notice to petitioner and though Education Officer refused to grant permission to him, he suspended the petitioner and started departmental enquiry.

4. Since there was dispute about the management of the trust, as per Government Circular dated 19.11.2001, the petitioner was managing the affairs of the school and the school teachers, including Abdul Jalil have not complained about his management.

5. He claimed that if there was any misconduct on his part in the factual situation, the Deputy Director of Education under Section 4-A of the Maharashtra Employees of Private Schools (Conditions of

Service) Regulation Act was the sole authority to take appropriate action.

6. Mr A.S.Bajaj, learned Advocate for respondents no.5 and 6 strongly opposed the petition claiming that the petitioner has suppressed the material facts and made misrepresentations. He deliberately avoided to join the society as a necessary party. The order of suspension and departmental enquiry cannot be interfered with in a writ jurisdiction under Article 226 of the Constitution in absence of infringement of any right. The petitioner deliberately avoided to accept the suspension order dated 26.4.2017 sent by post. Its copy was also filed in enquiry before the Charity Commissioner and was given to the petitioner's Advocate. The first meeting of departmental enquiry was held on 17.7.2017. The national awardee retired Head Master is appointed as member of the enquiry committee. The petitioner is seeking protection by abusing the process of Court so as to continue his illegal activities. The so called disputes created by rival groups about management are by the petitioner with the help of son of one of the members of the trust. There are serious charges against the petitioner as per charge-sheet dated 29.7.2017. The petitioner is tyrannic. The petitioner deliberately withheld salary of Mr Jalil and Education Officer was required to withhold the salary of the petitioner so as to compel him to release salary of Mr Jalil. There were no *mala fides* on the part of respondents no.5 and 6. The various proceedings initiated by respondents no.5 and 6 against the petitioner failed on technical ground that charge report of respondents no.5 and 6 was not

accepted. The Special Leave Petition not admitted by the Supreme Court is in respect of interim order and not in respect of the main petition. The main petition (Writ Petition no.4744 of 2009) is still pending. The previous withdrawal of suspension order or departmental enquiry were on account of technicalities. He submitted that the charges against the petitioner prior to 2013 will not be considered in view of withdrawal of earlier departmental enquiry. He submitted that in September 2015, fresh election was held and respondents no.5 and 6 were elected and the change report has been accordingly submitted. The elected trustees can manage the trust and it is not essential that there should be acceptance of the change report. When the new management is changed, the earlier management has no right to work as trustees.

7. Civil Application No.10493 of 2017 is filed by the petitioner seeking leave to add respondent no.7 trust and respondents no.7-A to 7-P as respondents, who are belonging to rival group of the management and whose change reports are pending before the Assistant Charity Commissioner.

8. Civil Application No.15453 of 2017 is filed by respondents no.5 and 6 for vacating ad interim relief granted in Writ Petition No.9268 of 2017.

9. Civil Application no.2152 of 2017 is filed by Gulam Qutubjane and others belonging to the rival groups to join them as parties to the petition.

10. After hearing the parties, we find that respondent no.7 public trust and society is essential party without which the writ petition cannot be decided. Since there is dispute about the persons in-charge of the management, it will be proper to allow both the rival groups claiming to be in the management to be joined as parties. Though no cause has been shown against the proposed parties respondents no.7-A to 7-P, they are claiming that they are elected members of the managing body of the trust. Permission is granted to join them as party respondents. Hence, Civil Application No.10493 of 2017 is allowed. The applicants in Civil Application No.1353 of 2018 pray that they may be allowed to intervene in Writ Petition and Administrator may be appointed. Civil Application is allowed to the extent of prayer for intervention.

11. As far as Civil Application No.2152 of 2018 is concerned, there are neither any pleadings nor documents to justify the addition of Gulam Qutubjane and eight others as party respondents. They are, however, claiming that they were elected on the management body of trust in the elections held in 2015 and they are in control of the trust and they have submitted change report no.768 of 2015. Applicant no.4 is elected President of their group. Considering the fact that the trust/society is a necessary party, the applicants herein who are claiming to be in the management of the trust need to be joined as respondents. Hence, Civil Application No.2152 of 2018 is allowed. Necessary amendment may be carried out.

12. Since we have heard the learned Advocates for the proposed parties, it is not necessary to issue separate notices to them. For the purpose of record, the petitioner shall carry out amendment in the petition disclosing their names.

13. The issues for our consideration with our findings are as follows :

1	Whether the Writ Petition is maintainable without joining the society as party ?	...Does not survive in view of Civil Application No.10493 of 2017 filed for joining the trustees as party. The said civil application is allowed.
2(a)	Whether respondents no.5 & 6 have competence to suspend the petitioner and to take departmental action against him?	.. In the negative
2(b)	and if yes, whether the action of respondents no.5 & 6 is mala fide and baseless and whether it deserves to be struck down on that ground ?	... Cannot be decided
3	Whether any directions are necessary to respondents no.1 to 4 ?	...Directions issued to respondent No. 4.
4	What order	...The petition is allowed as per final order

- REASONS -

14. Point No.1: Considering the nature of claims, the society/trust was a necessary party. Since Civil Application No.10493 of 2017 is allowed and the petitioner is permitted to join the society as a party, the issue does not survive.

15. The management has a right to initiate departmental enquiry against the Head Master if any misconduct is found on his part. In appropriate cases, the Head Master can be also suspended. Since Ardhapur Education Society is a public trust, the management is in hands of the trustees. However, as per the admitted facts, the earlier change reports submitted were rejected and subsequent change reports by rival groups are pending. It is not clear who has authority to manage the trust. In spite of specific challenge to the authority of respondents no.5 and 6, they have not pleaded how they claimed to be in the management of the trust. The documents regarding the elections held in 2015-16 are not filed. There are two rival groups, both claiming to be elected as trustees and both have submitted change reports before the Assistant Charity Commissioner. The letters issued by public trust registration office disclose that it is not decided who has authority to manage the trust. On this ground, the Education Officer has issued letter dated 5.4.2017 declining to grant permission to respondent no.5 to suspend the petitioner. When respondents no.5 and 6 are not in the management of the trust, they have no authority to initiate any departmental enquiry against the petitioner or to suspend him. The Education Officer has not granted permission to respondents no.5 and 6.

16. Point No.2 : The earlier record shows that respondents no.5 and 6 are not having good terms with the petitioner. They have initiated several proceedings against the petitioner. All the proceedings ended in favour of the petitioner. There may be substance that those might have been decided not on merit, but on technicalities, but in the light of the facts herein above, we hold that authority of respondents no.5 and 6 have not been decided and on this sole ground, the publications of notices deserve to be quashed. The issue is accordingly answered in negative.

17. The respondents placed reliance on the Judgment in **Janata Shikshan Prasarak Mandal and anr. Vs. State of Maharashtra (Writ Petition No.6073 of 2005 decided by Division Bench Justice P.V. Hardas and Justice J.H. Bhatia) dated 22.9.2005**. In this case, after the term of Executive Committee came to an end, fresh elections were held and new body was admittedly elected. In this context, it was held that the earlier body had no right to manage the affairs of the trust. The method of election was challenged on the ground of violation of the order of Assistant Charity Commissioner. The Division Bench of this Court held that the change report submitted by respondent no.3 was not rejected and was pending. It was not a condition precedent that the change report should be accepted. In the light of these facts, it was held that respondent no.2 who was member of earlier Executive Committee body could not have cancelled the approval granted to the petitioner no.2 and could not have appointed respondent no.3 as in-charge Head Mistress. The

proposal to grant approval to the appointment of respondent no.3 was submitted by Ex-Secretary who was no longer member of the newly elected body. Hence, the said proceeding was quashed.

18. In **Hamid Khan Nayyar s/o Habib Khan Vs. Education Officer, Amravati and ors., 2004 (4) Mh.L.J. 513**, the facts were quite similar to the present case. There were change reports submitted by two rival groups in the year 2001 pending before the Assistant Charity Commissioner. The fourth respondent passed order of suspension against the petitioner who was Head Master of the Secondary School receiving grant-in-aid. No prior approval of Education Officer was taken as per Rule 33 (1) of MEPS Rules. The Division Bench, without deciding the issue regarding competency of respondent no.4 to pass such order, relied on **Avdesh Narayan Vs. A.V.M. Trust 2004 (Vol.1) Mh.L.J. 676** and laid down that as per Rules 33 and 35 of MEPS Rules, the normal rule is to issue suspension order only after obtaining permission from the Education Officer. In extra-ordinary circumstances and emergency situation, the suspension order can be passed without the permission. In that case, Rule 35 (4) of MEPS Rules will come into picture and such suspension order will not last for more than 120 days. Since the period of 120 days was over, the suspension was set aside and order of consequential benefits was passed.

19. In **Madanrao Nanasaheb Chavan Vs. State of Maharashtra & ors., 2002 (4) Mh.L.J. 872**, it is held that “past trustees cannot claim extension of their term/tenure on account of failure of a newly

elected body to file the change report in time. The delay in filing of a change report should therefore be condoned as a matter of course”.

20. In Enquiry No.20/2016, the Assistant Charity Commissioner by order dated 9.1.2016 rejected the request of group led by Gulam Qutubjaneer under Section 41-A of the Maharashtra Public Trusts Act holding that it has no authority to grant injunction or to interfere with the election process. On 7.2.2016, the main application was rejected on the ground that election was already held and the application has become infructuous. The Enquiry No.254/2016 was rejected on 6.5.2016 on the ground that the change report No.227/2016 was pending and had ended enquiry as per Section 22 (3) of the Bombay Trusts Act.

21. In this regard, it is material to note that the directions issued by this Court in Writ Petition No.369 of 2016 to the Assistant Charity Commissioner are as follows :

“2. The position that emerges is, the change reports tendered by the petitioner as well as the respondent on earlier occasions have been rejected by the Assistant Charity Commissioner. It is in this situation, to ensure the proper administration of the Trust, the Assistant Charity Commissioner shall have to be issued appropriate directions. The petitioner seeks liberty to tender an application to the Assistant Charity Commissioner to issue appropriate direction for ensuring proper management of the trust. If the petitioner tenders such application within a period of four weeks from today, the Assistant Charity Commissioner may, after conducting appropriate enquiry and after extending opportunity of

hearing to the parties concerned, pass order in accordance with provisions of the Bombay Public Trusts Act, as expeditiously as possible and preferably within a period of three months from the date of receipt of application.”

22. The learned Assistant Charity Commissioner did not consider the directions in Writ Petition no.369 of 2016 in proper perspective. It considered that the rival group was permitted to file application and she was at liberty to allow it or reject it. She held that as Change Reports No.768/2015 and 227/2016 were pending before the Court, they will have to be heard on merits and, therefore, no directions can be issued for holding fresh elections.

23. We find that the learned Assistant Charity Commissioner completely ignored the object and occasion for passing such order as shown in paragraph 2. It was stated that change report tendered by the petitioner as well as the respondents on earlier occasions have been rejected by the Assistant Charity Commissioner. Factually, after the acceptance of change report of 1997 in 2004, there was no acceptance of change report when the election was to be held after every three years.

24. The change reports submitted under Section 22 of the Act are required to be decided expeditiously, particularly when those are in respect of change of management or election of new trustees. Though there are judgments disclosing that acceptance of change report is not essential for the newly elected body for taking over the

management, it happens that there may be rival groups both claiming rights to manage a public trust, particularly like the present one which is running three schools. It cannot be left without any authorised management for years together. When the change reports are rejected, such occasion should be rare and should not last long. In such cases, the Charity Commissioner or his delegates are duty bound to make necessary arrangement for management of the trust for the interim period. In present case the Head Master of a school is claiming that he is entitled to manage the school and the Education Officer has supported him. The record shows that there are several allegations against the Head Master. One crime was registered against him and he was arrested and he was behind the bars for some days. In this situation, it is difficult to comprehend how he can be in the management of the trust or of the school. No doubt, respondents no.5 and 6 have initiated several proceedings against the petitioner and the order of dismissal was set aside while the orders of suspension were required to be withdrawn. It is equally true that the petitioner has filed application of staff members supporting the petitioner and the management by him. However, merely because the previous proceedings have culminated in favour of the petitioner, either on technical grounds or on merits, the petitioner does not get immunity from any departmental action. We are not considering whether the allegations against the petitioner are true or false. There are allegations by the petitioner and respondents no.5 and 6 against each other of forgery, fabrication, suppression of facts etc. In exercise of writ jurisdiction, we cannot take up the work of deciding the truth or

falsehood in those allegations.

25. The orders passed by Assistant Charity Commissioner indicate that *de facto* control of management is enough so that there should not be any interference by appointment of Administrator or by order of management by particular person or group. In the situation, the Charity Commissioner or his authorised delegate cannot be silent spectator. They must make necessary arrangement. We hold that in such situation, even the powers under Section 41-A of the Maharashtra Public Trusts Act can be exercised by the Charity Commissioner or his authorised delegate and for that it is not essential to allege and prima facie establish that the property of the trust was in danger of being wasted, damaged, alienated or wrongfully sold or disposed of. When the change reports pending are not decided, it is not certain who is authorised to manage the trust. Such danger is always there.

26. Apart from Section 41-A of the Maharashtra Public Trusts Act, we also find that Section 22 of the Maharashtra Public Trusts Act has been amended from 1.9.2017 (this amendment was not there when the Assistant Charity Commissioner passed the orders). It has introduced a proviso that, in the case of change in name and the addresses of the trustees and the managers or the mode of succession to the office of the trusteeship and managership, **the Deputy or Assistant Charity Commissioner may pass order provisionally accepting the change within period of fifteen working days** and issue a notice inviting objections to such change

within thirty days from the date of publication of such notice. When the elections are required to be held and are actually held and both the rival groups are claiming that their names should be entered as trustees, the Assistant Charity Commissioner or Deputy Charity Commissioner can give them hearing and decide which group has better chances, for provisional acceptance of their names and should pass the orders accordingly within the time stipulated, in exercise of powers under this new proviso. In appropriate cases, the Assistant Charity Commissioner may appoint Administrator.

27. If the Assistant Charity Commissioner notices that the elections of any public trust are not taken in accordance with the Constitution of the trust or the direction by him, he can appoint Election Officer to secure timely election of trustees on a trust so that the property and management of the trust is in safe hands. It is not at all proper that change reports are not decided for years together. In the light of these facts, we summarise our findings as follows :

There are serious disputes about the management between the rival groups since then and the change reports submitted by both the groups have not been so far rejected. Lastly, the report of 2012 was rejected at the end of 2015. Thereafter election was held and both the rival groups have filed change reports and those are pending for enquiry.

28. In such situation, the Assistant Charity Commissioner was bound to hear the parties and decide within short time in whose hands the

management of the trust will be safe. If he finds that the management will not be safe in hands of either of the rival groups, he can appoint a third person as Administrator to safeguard the interest of the public trust. If he has limits on his powers, he can bring the facts to the notice of Charity Commissioner for necessary orders.

29. In the factual matrix, we find that the order of suspension passed by respondents no.5 and 6 without authorisation from the Education Officer and the subsequent holding of departmental enquiry by service of charge-sheet needs to be set aside. In the situation, it is open for anybody to approach the director to initiate inquiry under Section 4-A of M.E.P.S. Rules against the petitioner on account of his misconduct.

30. Even otherwise, respondents no.5 and 6 have stated that the charges with respect to the incident prior to 2013, which are mentioned in the charge-sheet at page 113 need to be removed. The decision in this regard should be taken only by authorised management. It is not clear from the available record as to the persons constituting authorised management. It is necessary that the Assistant Charity Commissioner should dispose of the pending charge reports, as expeditiously as possible within a reasonable time. Hence, we pass the following order:

ORDER

(I) The Writ Petition is partly allowed.

(II) The order of suspension dated 15.5.2017 and service of charge-sheet dated 12.7.2017 by respondents no.5 and 6 against the petitioner are hereby set aside.

(III) Respondent no.4 Assistant Charity Commissioner is hereby directed to consider both the change reports filed by rival groups after the recent elections in December or January 2016 and shall pass orders as per the new proviso to Section 22 of the Maharashtra Public Trusts Act and may accept provisionally the change report of any of the party or may appoint Administrator until the change reports are decided. Respondent no.4 Assistant Charity Commissioner shall decide the change reports on merits, expeditiously.

(IV) Rule is partly made absolute in above terms with no order as to costs.

(V) In view of disposal of Writ Petition, Civil Application No.15453 of 2017 does not survive, as such stands disposed of.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)